

## POLICY STATEMENT

### Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the Commission 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 policy of the Commission:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for FAA-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 DOT assisted contracts; and
6. promote the use of DBEs in all types of FAA-assisted contracts and procurement activities.

The Airport Manager has been delegated as the DBE Liaison Officer. In that capacity the 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 Commission in its financial assistance agreements with the Department of Transportation.

The Commission has disseminated this policy statement to the City of Gardner and all of the components of the organization. The Commission has distributed this statement to DBE and non-DBE business communities that perform work for the Commission on DOT-assisted contracts. The distribution was accomplished by printed media and via email communications.

---

Mr. Kenneth Bonk, Chairman  
Gardner Airport Commission

---

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

The Gardner Airport Commission (Commission) is the recipient of Federal Airport Funds authorized by 49 U.S.C. 47101, et seq.

### **Section 26.5 Definitions**

The Commission will use terms in this program that have the meaning defined in Section 26.5.

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

The Commission 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 Commission 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**

The Commission will provide data about its DBE Program to the Department as directed by DOT operating administration and report DBE participation to FAA as follows:

The Commission will transmit to FAA annually, or before December 1st, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. All reporting will be done through the FAA Civil Rights Connect online portal.

#### **Bidders List: 26.11(c)**

The Commission will create and maintain a bidders list. The purpose of the list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and

subcontractors who seek to work on its DOT-assisted contracts for use in helping to set its overall goals. The bidders list will include the name, address, and DBE and non-DBE status.

The Commission will collect this information using the data collection forms included in Attachment 3. This form and a contract clause requiring this information will be included in the bid documents and collected from contractors at the time of bid.

### Records Retention and Reporting

The Commission will retain records documenting compliance with the requirements of 49 CFR Part 26 for a minimum of three (3) years.

### **Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: 26.13(a) - Each financial assistance agreement the Commission signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Commission 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 Commission 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 Commission's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Commission 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 Commission will ensure that the following clause is included in each FAA-assisted 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 Commission deems appropriate, which may

include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The Commission 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 Commission is not eligible to receive DOT financial assistance unless DOT has approved the DBE program and the Commission is in compliance with it and this part. The Commission will continue to carry out the program until all funds from DOT financial assistance have been expended. The Commission does not have to submit regular updates of the program as long as it remains in compliance. However, significant changes in the program will be submitted to FAA for approval.

### **Section 26.23 Policy Statement**

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

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

The Gardner Airport Commission has designated the following individual as its DBE Liaison Officer (DBELO):

Mr. Kevin McCole  
Airport Manager  
City Hall, Room 226  
95 Pleasant Street  
Gardner, MA 01440  
Phone: (978) 630-4010  
[kevin@loonair.com](mailto:kevin@loonair.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Commission complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chairman of the Gardner Airport Commission, Dan Cunningham, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization 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 one 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. Analyzes the Commission's progress toward attainment and identifies ways to improve progress.
6. Advises the CEO\governing body on DBE matters and achievement.
7. Determines contractor compliance with good faith efforts.

### **Section 26.29 Prompt Payment Mechanisms**

The Commission 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.

The Commission has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 21 days from receipt of each payment made to the prime contractor.

The Commission will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 21 days after the subcontractor's work is satisfactorily completed and will use the following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 21 days after payment to the prime contractor.

The Commission will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Commission. When the Commission has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

**Section 26.31            Directory**

The Commission uses the Massachusetts Supplier Diversity Office (SDO) DBE directory, maintained by the State.

The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The MA SDO revises the directory on a daily basis. The MA SDO makes the Directory available through their website:

<https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>

**Section 26.33            Over-concentration**

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

**Section 26.35            Business Development Programs**

The Commission has not established a business development program.

**Section 26.37            Monitoring Responsibilities**

The Commission 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 sets forth these mechanisms in the Commission's DBE program.

The Commission 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

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

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

With each Periodic Cost Estimate (PCE), the Prime Contractor shall provide proof of payment of all Subcontractors and Suppliers whose work was included in the previous PCE. Proof of payment shall consist of a copy of a cancelled check or a certificate of payment signed by the Subcontractor or Supplier. The Commission may provide the Contractor with one or more forms to be filled out and returned to the Commission to monitor and track payments.

To track work by Subcontractors and Suppliers, the Prime Contractor shall submit copies of Gale form 34 for every approved Subcontractor and Supplier with each PCE, even if the Subcontractor or Supplier did not do any work on the project or supply any materials to the project during the period covered by the PCE.

If the Contractor is in violation of this prompt payment requirement, the Commission may withhold the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received. If the Contractor is in violation of this prompt payment requirement four (4) or more times, the Commission may terminate the Contract for cause and / or may require the Contractor to pay some or all of their Subcontractors or Suppliers and provide proof of payment before the Subcontractor's or Supplier's work can be included a PCE.

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 21 days from the receipt of each payment the prime contractor receives from Commission. The prime contractor agrees further to return retainage payments to each subcontractor within 21 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

### **Section 26.39            Fostering small business participation**

The Commission 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 Commission's small business element is incorporated as Attachment 8 to this DBE Program. The Commission will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of the DBE program.

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

The Commission will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$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 Commission will submit its Overall Three-year DBE Goal to FAA by October 30th as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest, Mountain, & Southern	October 30, 2020 (2021/2022/2023)	August 1, 2023 (2024/2025/2026)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Commission does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 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 Commission will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, “base figure”. The Commission will compare Massachusetts SDO DBE Directory against Census Bureau Data to determine the base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the Commission would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

(d) Step 2. Once a base figure has been calculated, the Commission will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the Commission will provide consultation and publication. This includes consultation with minority, women’s and general contractor groups,



community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Commission's efforts to establish a level playing field for the participation of DBEs. The consultation will include outreach via email or telephone to schedule direct, interactive exchange (i.e. teleconference) with all interested stakeholders. These discussions will focus on obtaining information relevant to the Commission's goal setting process, and it will occur before the required submission deadline. The Commission will document the consultation process in the goal submission. Notwithstanding paragraph (f)(4) of this section, the proposed goal will not be implemented until the Commission has complied with this requirement.

**GROUPS:**

- Greater New England Minority Supplier Development Council
- Women's Business Enterprise National Council
- Center for Women & Enterprise
- Greater Gardner Chamber of Commerce

In addition, the Commission will publish a notice announcing the proposed overall goal before submission to the operating administration. The notice will be posted on the City's internet website. If the proposed goal changes following review by the operating administration, the revised goal will be posted on the official Commission internet web site. The Commission will inform the public that the proposed overall goal and its rationale are available electronically for inspection and that the Commission and DOT/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 public comment period will not extend the submission deadline.**

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

The Commission will begin using its overall goal on October 1 of the reporting period, unless other instructions from DOT are received.

**Section 26.45 (e) - Project Goals**

If permitted or required by the FAA Administrator the Commission will express its overall goals 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 should 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 the Commission establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### Section 26.45(f) - Prior Operating Administration Concurrent

The Commission understands that it is not required to obtain prior operating administration concurrence with its overall goal. However, if the operating administration's review suggests that its overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with the Commission, adjust its overall goal or require that it does so. 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 Commission will maintain an approved DBE Program and overall DBE goal, if applicable, as well as administer its DBE Program in good faith to be considered to be in compliance with this part.

If the Commission awards and commitments shown on its 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 Commission will do the following in order to be regarded by the Department as implementing the DBE Program in good faith:

- 1) Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year;
- 2) Establish specific steps and milestones to correct the problems identified in the analysis and to enable the Commission to meet fully its goal for the new fiscal year;
- 3) Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

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

(a) The Commission 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 of this part.
- 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) Communicating information regarding contracting procedures and specific contract opportunities; and
- 5) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

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

### **Section 26.51(d-g) Contract Goals**

The Commission 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.

If the Commission's approved projection under paragraph (c) of this section estimates that it can meet its entire overall goal for a given year through race-neutral means, the Commission will implement its program without setting contract goals during that year, unless it becomes necessary in order meet the overall goal.

(f) (1): The Commission will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal is not necessary on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

The Commission will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

## **Section 26.53            Good Faith Efforts Procedures**

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

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

### Information to be submitted (26.53(b))

In solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, the Commission will require the following:

- 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 Commission at the time provided in paragraph (b)(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 (see Appendix A of this part). 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 Commission will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Administrative reconsideration (26.53(d))

Within 4 business days of being informed by the DBELO that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. Ken Bonk, Chairman  
Gardner Airport Commission  
Gardner Municipal Airport  
50 Manca Drive  
Gardner, MA 01440  
Phone: (978) 852-1331  
[kbonk@netzero.com](mailto:kbonk@netzero.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 it met the goal or made adequate good faith efforts to do. The Commission will send the bidder/offeror 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 procedures in situations when there are contract goals (26.53(f)(g))

The Commission will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from the Commission as provided in this paragraph 26.53(f); and

That, unless the Commission consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Commission will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

In this situation, the Commission will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

The Commission will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without prior written consent from Commission. This includes, but 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 with another DBE firm.

The Commission will provide such written consent only if it agrees, for reasons stated in its 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 Commission determines that the listed DBE subcontractor is not a responsible contractor;
- 7) The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal to the Commission;
- 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 Commission 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 Commission its 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 Commission, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

The Commission 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 established for the procurement. The good faith efforts shall be documented by the contractor. If the Commission requests documentation from the contractor under this provision, the contractor shall submit the documentation to the Commission within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the Commission shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The Commission 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 Commission deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, the contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the

contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Commission to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of \_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; (6) if the contract goal is not met, evidence of good faith efforts.

The forms found in Attachment 6 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

**Section 26.55            Counting DBE Participation**

The Commission will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The Commission will not count the participation of a DBE subcontract 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.



If the 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 Commission will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

### **SUBPART D – CERTIFICATION STANDARDS**

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

MassDOT has established a Unified Certification Program for all recipients and individuals seeking to do business with transportation agencies as Disadvantaged Business Enterprises (DBEs). Contact information for the MassUCP/DBE Certification Office is provided below:

MassUCP/DBE Certification Office  
10 Park Plaza, Suite 2600-B  
State Transportation Building  
Boston, MA 02116  
Phone: (857) 368-8656

Additional information regarding MassDOT's certification process, including instructions and application forms, can be found at the following website: <https://www.mass.gov/how-to/apply-for-disadvantaged-business-enterprise-dbe-certification>

### **SUBPART E – CERTIFICATION PROCEDURES**

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

The Commission relies on the MassDOT UCP for all certification purposes.

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

#### **Section 26.101 Compliance Procedures Applicable to Gardner Airport Commission**

The Commission understands that if it fails to comply with any requirement of this part, the Commission 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.

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

Information that may be reasonably regarded as confidential business information, consistent with Federal, state and local law will be safeguarded from disclosure to third parties.

The Freedom of Information Act (FOIA) is a federal law that establishes the public's right to obtain information from federal government agencies. Information regarding this legislation can be accessed through the following website: <https://www.foia.gov/>

The Massachusetts Public Records Law concerns access to public meetings and public records. Information regarding this legislation can be found in the Massachusetts General Laws, Chapter 66, Section 10. M.G.L., Chapter 66, Section 10, and can be accessed through the following website: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleX/Chapter66/Section10>

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

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

The Commission, 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. If the Commission violates this prohibition, it is in noncompliance with this part.

## ATTACHMENTS

Attachment 1	Regulations: 49 CFR Part 26 website link
Attachment 2	Organizational Chart
Attachment 3	DBE Data Collection Forms
Attachment 4	Massachusetts Supplier Diversity Office Directory of Certified Businesses
Attachment 5	Overall DBE Three-Year Goal Methodology
Attachment 6	Demonstration of Good Faith Efforts - Forms 1 & 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	Small Business Element Program

DRAFT

**ATTACHMENT 1**

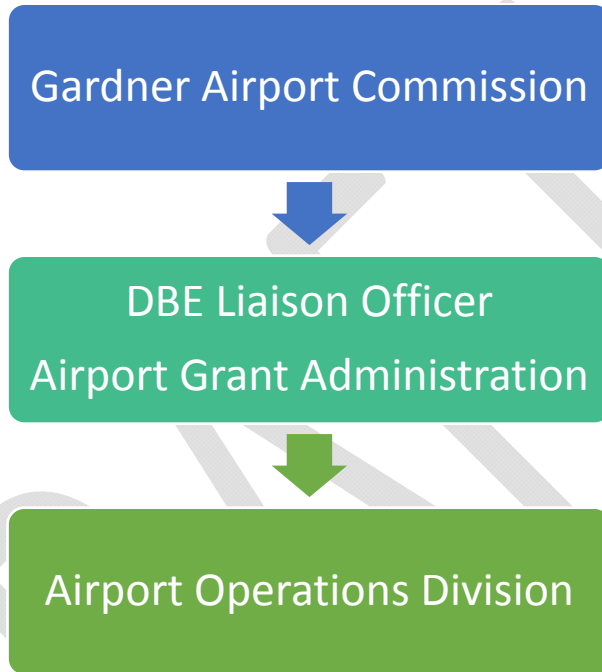
Regulations: 49 CFR Part 26

<https://www.ecfr.gov/cgi-bin/text-idx?SID=d02f5450fbb6c0727083385ce7ecb706&mc=true&node=pt49.1.26&rgn=div5>

DRAFT

ATTACHMENT 2

**ORGANIZATIONAL CHART**



**ATTACHMENT 3**

DBE Data Collection Forms

DRAFT



## LETTER OF INTENT DBE\* SUBCONTRACTOR /SUPPLIER

- This Form must be filled out by the Prime Contractor for each Subcontractor / Supplier and submitted within 24 hours of the bid opening by the three lowest bidders
- This Form must be submitted throughout the term of the contract any time a new Subcontractor / Supplier is acquired
- In order to be counted towards DBE participation, DBE firm must be certified **in the state where the work is being performed** and a certification letter from that state must be provided

Project Name: \_\_\_\_\_  
 Airport: \_\_\_\_\_  
 AIP Number: \_\_\_\_\_

### Prime Contractor

Company Name: \_\_\_\_\_

### Subcontractor / Supplier Contractor

Company Name: \_\_\_\_\_

DBE Status:	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Certified DBE	(Check one)
-------------	----------------------------------	--	-------------

The undersigned DBE firm intends to perform work in connection with the above referenced project as: (Check One)

an individual       a partnership       a corporation

a joint venture with \_\_\_\_\_

other \_\_\_\_\_

(Attach other sheets if necessary)

1. The undersigned affirms that they are a duly authorized official representing the proposed Disadvantaged Business Enterprise and affirms that its certification has not expired nor been revoked (**Attach a copy of certification letter**)

States you are DBE Certified in:	(If not a DBE leave blank)	
Age of Firm:	_____ Years	
Ethnicity (Check One)	<input type="checkbox"/> Black American	<input type="checkbox"/> Asian-Pacific American
	<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American
	<input type="checkbox"/> Native American	<input type="checkbox"/> Non-Minority
Gender (Check One)	<input type="checkbox"/> Male	<input type="checkbox"/> Female
Certification	<input type="checkbox"/> Attached	

\*The business identified on this form **must** be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in National Certified Directory of DBE businesses at [www.faa.dbesystem.com](http://www.faa.dbesystem.com).



2. If the bidder is awarded the Contract, the undersigned intended to enter into a Subcontract to perform the work described on the following schedule for the prices indicated.

**SCHEDULE OF PARTICIPATION**

(Attach Additional Sheets if Needed)

Contract Item No.	Description of Work to be Performed by DBE* Subcontractor / Supplier	Estimated Quantity	Unit Price	Item Subtotal
<b>Total Amount Credited to DBE:</b>				
<b>Total Project Bid Amount:</b>				
<b>Percent of DBE:</b>				

The undersigned certifies that they will enter into a formal agreement upon execution of the Contract for the above referenced project and for the estimated dollar value as stated above, pursuant to all conditions noted in the attached Contract Documents, searing and affirming under the pains and penalties of perjury, that the foregoing information and appropriate attachments are true to the best of their knowledge. If the Bidder/Offeror does not receive award of the Contract, any and all representatives in the Letter of Intent and Affirmation shall be null and void.

NAME OF SUBCONTRACTOR / SUPPLIER: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME OF SUBCONTRACTOR / SUPPLIER: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Note: If the Prime Contractor is a DBE, the Prime Contractor must fill out and submit a copy of this form listing themselves as the Prime Contractor and the Subcontractor / Supplier.

\*The business identified on this form **must** be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in National Certified Directory of DBE businesses at [www.faa.dbesystem.com](http://www.faa.dbesystem.com).

**SUBCONTRACTOR / SUPPLIER  
DISADVANTAGED BUSINESS ENTERPRISE (DBE\*)  
EXPENDITURE REPORT**

(To be filled out by the Prime Contractor and the Subcontractor / Supplier and submitted with each Periodic Cost Estimate)

Project Name: \_\_\_\_\_  
 Airport: \_\_\_\_\_  
 AIP Number: \_\_\_\_\_

**Prime Contractor**

Company Name: \_\_\_\_\_

**Subcontractor / Supplier Contractor**

Company Name: \_\_\_\_\_

DBE Status:	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Certified DBE	(Check one)
-------------	----------------------------------	--	-------------

Contract Item No.	Description of Work to be Performed by Subcontractor / Supplier	Estimated Quantity	Unit Price	Item Subtotal
Total Amount requested by Subcontractor / Supplier this Invoice:				
Total amount previously requested by Subcontractor / Supplier:				
Total amount requested by Subcontractor / Supplier to date:				

(Attached additional sheets if needed)

\*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in National Certified Directory of DBE businesses at [www.faa.dbesystem.com](http://www.faa.dbesystem.com).

**SUBCONTRACTOR / SUPPLIER  
DISADVANTAGED BUSINESS ENTERPRISE (DBE\*)  
EXPENDITURE REPORT**

The undersigned certifies that the Subcontractor / Supplier has successfully completed the above referenced work associated with this project and further assures that the Subcontractor / Supplier will be paid in full for the amount indicated on page 1 for said services in accordance with the Contract Documents.

NAME OF SUBCONTRACTOR / SUPPLIER: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME OF PRIME CONTRACTOR: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Note: If the Prime Contractor is a DBE, the Prime Contractor should fill out and submit a copy of this form listing themselves as the Prime Contractor and the Subcontractor / Supplier.

\*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in National Certified Directory of DBE businesses at [www.faa.dbesystem.com](http://www.faa.dbesystem.com).

**ATTACHMENT 4**

Supplier Diversity Office Directory of Certified Businesses

<https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>

DRAFT

## ATTACHMENT 5

### Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: Gardner Airport Commission owner of Gardner Municipal Airport.

Goal Period: FY-2021-2022-2023 (October 1, 2020 through September 30, 2023)

DOT-assisted contract amount:	FY-2021	\$	0.00
	FY-2022	\$	6,500,000.00
	FY-2023	\$	0.00
	<b>Total</b>	<b>\$</b>	<b>6,500,000.00</b>

Overall Three-Year Goal: 9.2%, to be accomplished through 9.2% RC and 0% RN

Total dollar amount to be expended on DBEs: \$594,869.03

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

FFY-2021 Project

No Project

FFY-2022 Project

Reconstruct/Mark/Light/Sign Runway 18-36 and Parallel Taxiway – \$6,500,000.00

FFY-2023 Project

Airport Master Plan Update (Ineligible – Less than \$250,000 federal funding)

**Market Area:** The Commission defines its market area as the County of Worcester, Massachusetts and the surrounding counties of Franklin, Hampden, Hampshire, and Norfolk, Massachusetts. The contracting community that the Commission works with is relatively small and primarily Massachusetts-based. Although out-of-state firms do bid and subcontract on projects, because of high mobility costs and capacity, many out-of-state firms are less likely to mobilize to Gardner, Massachusetts to work on construction projects.

#### **Step 1. 26.45(c)** Actual relative availability of DBEs

Pursuant to 49CFR 26.45, the Commission has used the following methodology to determine the baseline figure for its 2021-2023 DBE goal. The Commission has used the most recent (2018) US Census data and the Supplier Diversity Office Directory of Certified Businesses to determine the number of ready, willing, and able DBEs in the market area.

For each area of work, the total number of DBEs within the market area (with adjustments for specific work categories) found in the SDO DBE Directory is divided by the total number of all



firms found through analysis of the (2018) US Census data for the market area to arrive at the percentage of DBE firms that are ready, willing, and able to perform contract work.

In order to determine the expected DBE participation in dollars, the estimated contracting dollars for each area of work is multiplied by the percentage of firms that are ready, willing, and able to perform contract work. To establish the DBE project goal, the overall projected DBE participation (in dollars) is divided by the estimated total project costs. This is the base goal for each project.

To determine the overall base figure for more than one project, the sum of all the dollars expected to be spent on DBE participation is divided by the estimated total of all project costs. This number is the overall base goal for the Airport. A breakdown of all mathematical calculations is provided in the table at the end of this section.

**Step 2. 26.45(d):** Adjustments to Step 1 base figure.

No adjustment was made to the Step 1 base figure; therefore, the Commission is adopting the Step 1 base figure as its overall goal for this three-year goal period.

**26.51(b) (1-9):** Breakout of Estimated “Race and Gender Neutral” (Race Neutral) and “Race and Gender Conscious” (Race Conscious) Participation.

The Commission will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation, including but not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Relaying information regarding contracting procedures and specific contract opportunities;
3. 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;
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

The Commission will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation. The Commission estimates that in meeting its overall goal of 9.2%. It will obtain 9.2% from Race Neutral participation and 0% through Race Conscious measures.

The Commission will adjust the estimated breakout of Race Neutral and Race Conscious DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) 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**

Consultation: Section 26.45(g)(1).

In establishing the overall goal, the Commission provided for consultation and publication. This included 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 Commission's efforts to establish a level playing field for the participation of DBEs. The consultation included outreach emails seeking scheduled, direct, interactive exchange via teleconference with as many interested stakeholders as possible focused on obtaining information relevant to the Commission's goal setting process, and it occurred before it was required to submit its goal methodology to the operating administration for review pursuant to paragraph (f) of this section.

Notwithstanding paragraph (f)(4) of this section, the Commission will not implement its proposed goal until it has complied with this requirement.

The Commission submits its overall DBE three-year goal to DOT as required by the set schedule.

Before finalizing the overall goal, the Commission reached out to the Greater New England Minority Supplier Development Council, Women's Business Enterprise National Council, Center for Women & Enterprise, and the Greater Gardner Chamber of Commerce without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Commission's efforts to establish a level playing field for the participation of DBEs.

The Commission also published a notice on the City's internet website of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection electronically for 30 days following the date of the notice, and informing the public that the Commission and DOT will accept comments on the goals for 30 days from the date of the notice. Any comments received will be published in this section prior to final submission to the FAA.



## CONTRACT GOALS

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

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

The Commission will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

DRAFT



**2021 Project Name:** No Project

AIP Eligible Amount
\$0.00

DBE Participation	
in dollars	in percentage
\$0.00	0.0%
\$0.00	0.0%

**STEP 1: Calculation of Goal**  
**STEP 2: Goal Adjustment**  
PROJECT DBE PARTICIPATION GOAL

**2022 Project Name:** Reconstruct/Mark/Light/Sign Runway 18-36 and Parallel Taxiway

AIP Eligible Amount
\$6,500,000.00

DBE Participation	
in dollars	in percentage
\$594,869.03	9.2%
\$594,869.03	9.2%

**STEP 1: Calculation of Goal**  
**STEP 2: Goal Adjustment**  
PROJECT DBE PARTICIPATION GOAL

**2023 Project Name:** Airport Master Plan

AIP Eligible Amount
\$0.00

DBE Participation	
in dollars	in percentage
\$0.00	0.0%
\$0.00	0.0%

**STEP 1: Calculation of Goal**  
**STEP 2: Goal Adjustment**  
PROJECT DBE PARTICIPATION GOAL

Ineligible (less than \$250,000 federal funding)

**TOTAL FOR ALL GARDNER MUNICIPAL AIRPORT PROJECTS**

Overall Eligible Amount
\$6,500,000.00

DBE Participation	
in dollars	in percentage
\$594,869.03	9.2%
\$594,869.03	9.2%

**STEP 1: Calculation of Goal**  
**STEP 2: Goal Adjustment**

**\$594,869.03      9.2%      FINAL OVERALL AIRPORT DBE PARTICIPATION GOAL**

2022 Project Name: Reconstruct/Mark/Light/Sign Runway 18-36 and Parallel Taxiway

Overall Project Cost: \$6,500,000.00

Federal Share: \$5,850,000.00

STEP 1: Calculation of Goal

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars	
<b>Professional/Consultant Contract</b>								
X	Engineering and Management Services	541330	914	25	2.7%	\$425,000.00	\$11,624.73	
X	Engineering Construction Phase Services	541330	914	25	2.7%	\$385,000.00	\$10,530.63	
X	Geotechnical	541330	914	25	2.7%	\$35,000.00	\$957.33	
X	Electrical Engineering Subconsultant	541330	914	25	2.7%	\$20,000.00	\$547.05	
X	Engineering / Environmental	541330	914	25	2.7%	\$20,000.00	\$547.05	
X	Materials Testing (Soils Investigation) Subconsultant	541380	103	4	3.9%	\$40,000.00	\$1,553.40	
X	Survey (GIS) Subconsultant	541370	70	2	2.9%	\$30,000.00	\$857.14	
X	Erosion Control Engineering	541690	304	19	6.3%	\$15,000.00	\$937.50	
						Subtotal	\$970,000.00	\$27,554.82
							% DBE Participation	2.8%

<b>Independent Fee Estimate Contract</b>								
X	Engineering/Specialty Subconsultant - IFE	541330	914	25	2.7%	\$4,000.00	\$109.41	
						Subtotal	\$4,000.00	\$109.41
							% DBE Participation	2.74%

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars	
<b>Construction</b>								
X	Airport Runway Lighting Contractors/Electrical Contractors	238210	1383	8	0.6%	\$250,000.00	\$1,446.13	
X	Asphalt Paving	237310	121	15	12.4%	\$900,000.00	\$111,570.25	
X	Drainage Subconsultant	237310	121	23	19.0%	\$150,000.00	\$28,512.40	
X	Landscaping/Seeding/Hydroseeding	561730	2150	16	0.7%	\$40,000.00	\$297.67	
X	Pavement and Pavement Markings (Painting) Subconsultant	237310	121	15	12.4%	\$30,000.00	\$3,719.01	
X	Sedimentation and Erosion Control (Landscaping)	561730	2150	16	0.7%	\$94,000.00	\$699.53	
X	Unclassified Excavation	238910	656	33	5.0%	\$300,000.00	\$15,091.46	
X	Trucking (hauling of bulk materials, gravel, sand etc.)	484220	101	2	2.0%	\$100,000.00	\$1,980.20	
X	Airport Construction Services	237310	121	16	13.2%	\$3,000,000.00	\$396,694.21	
X	Electrical Contractors (Electrical Installation)	238210	1383	8	0.6%	\$80,000.00	\$462.76	
X	Site Preparation (Land/Tree Clearing)	238910	656	33	5.0%	\$60,000.00	\$3,018.29	
<b>Construction Material Providers:</b>								
X	* Asphalt	324121	26	0	0.0%	\$350,000.00	\$0.00	
X	* Concrete	327320	21	0	0.0%	\$15,000.00	\$0.00	
X	* Electrical supplies	423610	202	6	3.0%	\$125,000.00	\$3,712.87	
X	* Pipe & Pipe Fitting Suppliers	332996	0	0	0.0%	\$25,000.00	\$0.00	
						Subtotal	\$5,519,000.00	\$567,204.80
							% DBE Participation	10.3%

<b>Non - Contributive Expenses</b>								
X	Sponsor Admin Fee	N/A	N/A	N/A	0%	\$7,000.00	\$0.00	
X	Acquisition of Parcel	N/A	N/A	N/A	0%		\$0.00	
						Subtotal	\$7,000.00	\$0.00
							% DBE Participation	0.0%

<b>Overall Total</b>	\$6,500,000.00	\$594,869.03
<b>% Overall DBE Participation</b>		<b>9.2%</b>

STEP 2: Goal Adjustment

% Goal Adjustment 0%

**FINAL PROJECT DBE PARTICIPATION GOAL 9.2%**

**ATTACHMENT 6**

Demonstration of Good Faith Efforts - Forms 1 & 2

**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 and that the firm is DBE certified to perform the specific trades.

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

\_\_\_\_\_  
(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 Gardner Airport Commission 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 in the General Provisions of the contract;
2. Breach of contract action, pursuant to Massachusetts law commonly known as the "Massachusetts Consumer Protection Law."  
(See <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter93A>)

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

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

## ATTACHMENT 8

### Small Business Element Program

The Gardner Airport Commission (Commission) 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. For clarification purposes, 49 CFR Part 26.5 states, "*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)." 13 CFR 121.402 defines "What size standards are applicable to Federal Government Contracting programs?"

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

- 1) On prime contracts not having DBE contract goals (prime contracts under \$250,000 of grant funding in a federal fiscal year), requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- 2) To meet a portion of the projected overall goal through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

In order to actively implement the Commission's program elements to foster small business participation and to comply with the requirement of good faith implementation of its DBE program, the Commission will require that the Prime Contractor(s) for Construction Work Items and for Professional Services Work Items complete the form entitled, *Fostering Small Business Participation*, which follows this section of the DBE program.

## Fostering Small Business Participation

<b>Sponsor's Name:</b>	
<b>Airport Name:</b>	
<b>City, State:</b>	
<b>AIP Number:</b>	
<b>Federal Fiscal Year:</b>	

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

Small Business Firms to be Utilized (Name, Address, Phone)		Work to be Performed	Total Estimated Cost of Work
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		

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

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

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

**(Duplicate form as necessary.)**

**The following notation is for Sponsor Use Only:**

**Accepted by:** \_\_\_\_\_ **Date:** \_\_\_\_\_