

**PUBLIC BUILDING COMMISSION
ST. CLAIR COUNTY, ILLINOIS**



**DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM**

FY 2025/2026/2027

DBE LIAISON OFFICE

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**MIDAMERICA ST. LOUIS AIRPORT
ST. CLAIR COUNTY, ILLINOIS**

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**MidAmerica St. Louis Airport
Disadvantaged Business Enterprise Program (FY 2025/2026/2027)**

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PUBLIC BUILDING COMMISSION

— OF —

ST. CLAIR COUNTY, ILLINOIS

10 Public Square, Rm. 551-B
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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

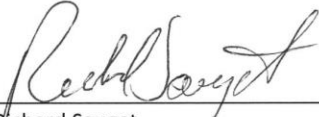
St. Clair County with Public Building Commission of St. Clair County as authorized Agent, d/b/a MidAmerica St. Louis Airport (herein after referred to as BLV) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. BLV has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, BLV has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of BLV to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also BLV 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 recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Ms. Alice Tejada, Engineering Program Manager, MidAmerica St. Louis Airport, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Tejada 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 BLV in its financial assistance agreements with the Department of Transportation.

This policy statement was disseminated to and approved by the Public Building Commission on July 18, 2024. This policy statement was distributed to various agencies and organizations involved with DBE and non-DBE business communities that could perform work on DOT-assisted contracts at MidAmerica St. Louis Airport. This policy statement is posted on the MidAmerica St. Louis Airport website (<https://flymidamerica.com>), and is included, when appropriate, in BLV business publications and other materials related to business practices and opportunities for DOT-assisted contracts.



Richard Sauget
Chairman
St. Clair County Public Building Commission

07/18/2024

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

BLV will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

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

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

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

Bidders List

BLV will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted

contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

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

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

BLV will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

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

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

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

BLV 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. BLV 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 BLV 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 BLV 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: BLV 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 BLV 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

BLV 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.

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for BLV:

Ms. Alice Tejada
Contract Administrator – Engineering & Planning
MidAmerica St. Louis Airport (BLV)
9656 Air Terminal Dr., Suite 250
Mascoutah, Illinois 62258-5501
Telephone: (618) 566-5321
Email: Alice.Tejada@flymidamerica.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BLV complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Public Building Commission Chairman 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 does not have 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. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes BLV's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Chairman on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of BLV to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions, the following institutions will be recommended for use on DOT-assisted contracts.

St. Louis Community Credit Union (SLCCU)
3651 Forest Park Ave.
St. Louis, MO 63108

Paramount Bank
90 Village Square Shopping Center
Hazelwood, MO 63042

As the result of an internet search for minority financial institutions in our region, St. Louis Community Credit Union was the first institution that appeared. The majority of their members are African-American. SLCCU serves residents of St. Louis City and those of Franklin, St. Louis and St. Charles counties in Missouri, as well as St. Clair, Madison, Monroe and Jersey counties in Illinois.

Additionally, Paramount Bank was identified on the [Minority Depository Institution \(MDI\) and Community Development Financial Institution \(CDFI\) website](#) as a MDI. MDIs and CDFI banks are banks, savings banks, and savings associations (collectively, banks) that serve minority, low- or moderate-income (LMI), and rural communities at higher rates than mainstream banks. Such banks are commonly

known as “mission-driven banks” because they play a role in transforming the lives of underserved citizens and communities by making loans and providing other vital banking products and services. Mission-driven banks also ensure that residents and businesses in these communities have access to safe and affordable financial services.

Availability of such institutions will be investigated on an annual basis.

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR § 26.29, BLV 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 BLV.

BLV 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, BLV has selected the following method to comply with this requirement:

Option 3: BLV will 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 30 days after BLV payment to the prime contractor.

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

Prompt Payment Monitoring for DBEs and Non-DBEs

BLV clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor’s failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, BLV undertakes proactive monitoring and oversight of prime contractors’ compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s): Use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system.

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

- BLV proactively reviews contract payments to subcontractors including monthly since most prime contractors also invoice on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to BLV by the prime contractor.

Prompt Payment Dispute Resolution

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

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

To implement this measure, BLV includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

- a. From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:
 - (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.
 - (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner 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.
- c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

- BLV will consider a subcontractor's work as satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by BLV. When the

Authority 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.

- BLV will provide appropriate means to enforce the requirements of this section. These means may include appropriate liquidated damages for failure to comply, the terms and conditions of which BLV will set. Our program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with the Authority's prior written approval.
- 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.

Enforcement Actions for Noncompliance of Participants

BLV provides appropriate means to enforce the requirements of § 26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Other remedies for failure to comply, up to and including withholding payments and contract termination.

BLV will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

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

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

4. All additional data fields of readily verifiable optional information described above.
5. A link to the online directory may be found in **Attachment 4** to this program document.

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

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

BLV has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

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

BLV monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will maintain by a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. BLV coordinates this effort with consultants and contractors by requesting a running tally with each invoice/application for payment. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

BLV reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by DBELO, project managers, consultant(s). Contracting records are reviewed by DBELO, project managers, consultant(s). BLV will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

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

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

BLV does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

BLV 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), BLV will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If BLV 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 BLV 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. BLV will use the IL UCP and Census Bureau Data that complies with §26.45 as a method to determine the base figure. BLV 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 BLV 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. BLV 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 BLV market.

In establishing the overall goal, BLV 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 efforts by BLV to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (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 BLV 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 BLV 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, BLV will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on BLV's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on BLV's 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 BLV. This notice will provide that BLV 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) and the location(s) where the proposed goal may be reviewed. BLV requested from FAA and was approved for an extension to the public comment period.

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

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

Project Goals

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

Prior Operating Administration Concurrence

BLV 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 BLV for calculating goals is inadequate, FAA may, after consulting with BLV, adjust the overall goal or require that the goal be adjusted by BLV. 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

BLV 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 BLV fails to administer its DBE program in good faith.

BLV 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.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) BLV will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. BLV will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.49 How are overall goals established for transit vehicle manufacturers? N/A

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

BLV will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime

contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

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

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

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

Contract Goals

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

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

Contract goals will be expressed as a percentage 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.

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

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

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

For each DBE listed as a regular dealer or distributor BLV will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, BLV will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

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

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

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by BLV 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: Richard Sauget, St. Clair County Public Building Commission, 10 Public Square – Room 551-B, Belleville, IL 62220 with an informational

copy to: Alice Tejada, MidAmerica St. Louis Airport, 9656 Air Terminal Dr., Mascoutah, IL 62258. 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. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

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

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

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

BLV will include in each prime contract a provision stating that:

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

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

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE

contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

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

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

The prime contractor's written notice must give the DBE five (5) days to respond, advising BLV and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why BLV should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), BLV may provide a response period shorter than five (5) days.

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

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

Section 26.55 Counting DBE Participation

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

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

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

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

BLV is a non-certifying member of the Illinois Unified Certification Program (UCP) and relies upon the UCP’s determinations of certification eligibility. Illinois UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Illinois UCP members make all certification decisions based on the facts as a whole.

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

IDOT DISTRICT 8 DBE Resource Center Kenneth Hall Regional Building #10 Collinsville Avenue 3rd Floor, Room 303 East St. Louis, IL 62201 Phone: (618) 583-2213	For more on the Supportive Services Program, please reference the overview document or email DOT.SupportiveServices@illinois.gov
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The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Illinois UCP agreement. The full UCP agreement can be found in **Attachment 9**. The DBE Certification Requirements can be found at: <https://idot.illinois.gov/doing-business/certifications/dbe/dbe-certification.html>

- Section 26.81 Unified Certification Programs – N/A
- Section 26.83 Procedures for Certification Decisions – N/A
- Section 26.85 Interstate Certification – N/A
- Section 26.86 Decision Letters – N/A
- Section 26.87 Decertification – N/A
- Section 26.88 Summary Suspension of Certification – N/A
- Section 26.89 Appeals to the Department – N/A
- Section 26.91 Actions Following DOT Certification Appeal Decisions – N/A

COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to BLV

BLV understands that if it fails to comply with any requirement of this part, BLV 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.

BLV understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) **Noncompliance complaints.** Any person who believes that a BLV has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **Compliance reviews.** The concerned operating administration may review the BLV's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(3) Reasonable cause notice. If it appears, from the investigation of a complaint or the results of a compliance review, that BLV is in noncompliance with part 26, the appropriate DOT office will promptly send BLV, return receipt requested, a written notice advising that there is reasonable cause to find BLV in noncompliance. The notice states the reasons for this finding and directs BLV to reply within 30 days concerning whether you wish to begin conciliation.

(4) **Conciliation.**

- a. If BLV requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
- b. If BLV and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and BLV is regarded as complying. The conciliation agreement sets forth the measures BLV has taken or will take to ensure compliance. While a conciliation agreement is in effect, BLV remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If BLV fail to carry out the terms of a conciliation agreement, BLV is in noncompliance.
- d. If BLV does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

(5) **Enforcement actions.**

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility

criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a BLV. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Proposals that include confidential business information of the Bidder/Proposer, such as commercial or financial information, that Bidder/Proposer does not want disclosed outside the Owner must be marked on the title page with a legend that states:

“This response includes data that shall not be disclosed outside St. Clair County, Illinois, St. Clair County Public Building Commission and MidAmerica St. Louis Airport (Owner) without the permission of [insert firm’s name] and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this response to the extent nondisclosure is allowed by applicable law, include Illinois’ public records laws. This restriction does not limit the Owner’s right to use information contained in this data if it can be obtained from another source without restriction. The data subject to this restriction are contained in pages [insert numbers or other identification of pages].”

Proposers shall mark only those pages containing restricted data with the following legend:

“Use or disclosure of data contained on this page is subject to the restriction on the title page of this Proposal.” A blanket restriction applicable to the entire Proposal is not acceptable.

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, 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,

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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 which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

BLV, 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. BLV understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 Illinois UCP Agreement
- Attachment 10 Small Business Element Program

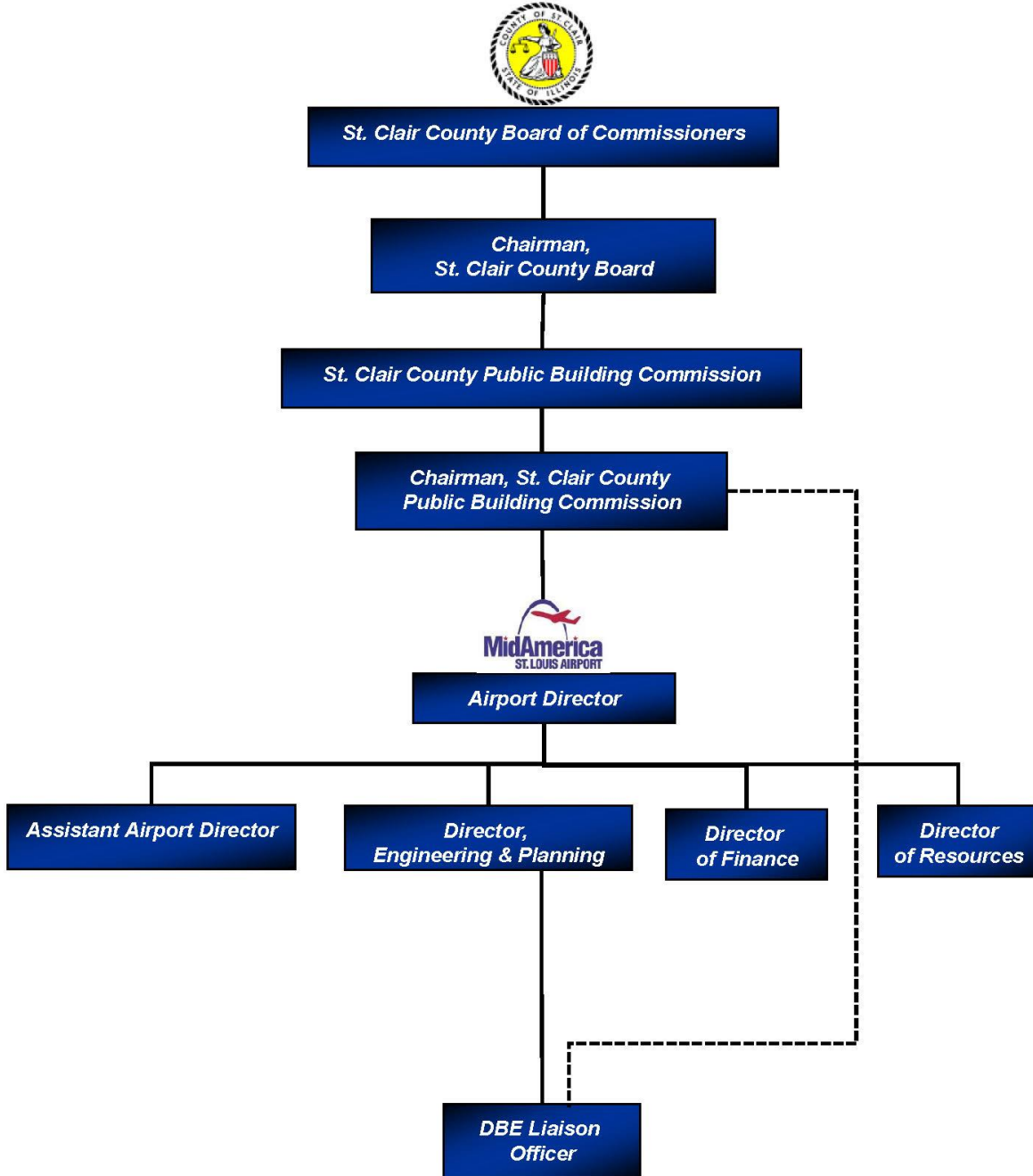
ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

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

Attachment 2

Organizational Chart



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

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

ATTACHMENT 4

Illinois UCP Directory may be found here:

<https://webapps1.dot.illinois.gov/UCP/ExternalSearch>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Airport Sponsor: St. Clair County, IL

Airport: MidAmerica St. Louis Airport

Goal Period: FFY-2025-2027 – October 1, 2024 through September 30, 2027

DOT-assisted contract amount:	FY-2025	<u>\$7,992,000</u>
	FY-2026	<u>\$27,627,945</u>
	FY-2027	<u>\$3,134,000</u>
	Total	<u>\$38,753,945</u>

Overall Three-Year Goal: 10.13 %, to be accomplished through 10.13 % RC and 0.0 % RN

Total dollar amount to be expended on DBEs: \$ 3,923,956.52
[multiply goal % x DOT-assisted amount]

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

Contracts Fiscal Year #1: FY2025

1. Tree Obstruction Removal - \$1,236,000
2. Runway Shoulder Rehabilitation - \$1,580,000
3. Runway Shoulder Widening - \$4,250,000
4. Runway Lighting Upgrades - \$434,000
5. ARFF and Electrical Vault Generators - \$492,000

Contracts Fiscal Year #2: FY2026

1. Terminal Apron Expansion - Construction Project 2 - \$8,747,945
2. Snow Removal Equipment Facility - \$18,880,000

Contracts Fiscal Year #3: FY2027

1. Acquire Snow Plows (2) and Snow Blower (1) - \$3,134,000

Market Area:

Illinois Counties: St. Clair, Madison, Bond, Clinton, Randolph, Monroe, Washington

Step 1. Relative Availability of DBEs

The Step 1 figure for the relative availability was calculated as follows:

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Method: Use DBE Directories <https://idot.illinois.gov/doing-business/certifications/dbe/il-ucp/illinois-ucp-directory.html> and Census Bureau Data from <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

Fiscal Year #1: For FY-2025, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	#DBE's Based on IL UCP	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Tree Obstruction Removal	Engineering Services	Engineering consulting services	541330	\$449,105	138	8	5.8%	\$26,035
	Landscaping Services	Tree Removal Services	561730	\$786,885	508	6	1.2%	\$9,294
Total Contract #1				\$1,236,000			2.9%	\$35,329
Runway Shoulder Rehabilitation	Engineering Services	Engineering consulting services	541330	\$387,333	138	8	5.8%	\$22,454
	Highway, Street, and Bridge Construction	Resurfacing highway, road, street, bridge or airport runway	237310	\$1,191,926	41	22	53.7%	\$639,570
Total Contract #2				\$1,580,000			41.9%	\$662,024
Runway Shoulder Widening	Engineering Services	Engineering consulting services	541330	\$1,051,886	138	8	5.8%	\$49,167
	Highway, Street, and Bridge Construction	Pavement, highway, road, street, bridge or airport runway construction	237310	\$3,197,261	41	22	53.7%	\$985,822
Total Contract #3				\$4,250,000			41.8%	\$1,776,582
Runway Lighting Upgrades	Electrical Contractors and Other Wiring Installation Contractors	Airport runway lighting contractors	238210	\$434,000	202	1	0.5%	\$2,149
Total Contract #4				\$434,000			0.5%	\$2,149
ARFF and Electrical Vault Generators	Other Building Equipment Contractors	Power generating equipment (except home standby power generator) installation	238290	\$492,000	4	0	0.0%	\$0
Total Contract #5				\$492,000			0.0%	\$0
TOTAL FY2025				\$7,992,000			31.0%	\$2,476,084

**MidAmerica St. Louis Airport
Disadvantaged Business Enterprise Program (FY 2025/2026/2027)**

Fiscal Year #2: For **FY2026** award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	#DBE's Based on IL UCP	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Terminal Apron Expansion - Construction Project 2	Engineering Services	Engineering consulting services	541330	\$668,277	138	8	5.8%	\$38,741
	Highway, Street, and Bridge Construction	Pavement, highway, road, street, bridge or airport runway construction	237310	\$7,769,534	41	22	53.7%	\$4,169,018
	Electrical Contractors and Other Wiring Installation Contractors	Airport runway lighting contractors	238210	\$310,133	202	1	0.5%	\$1,535
Total Contract #1				\$8,747,945			48.1%	\$4,209,294
Snow Removal Equipment Facility	Engineering Services	Engineering consulting services	541330	\$2,137,774	138	8	5.8%	\$123,929
	Architectural Services	Building architectural design services	541310	\$3,755,635	23	0	0.0%	\$0
	Commercial and Institutional Building Construction	Airport building construction	236220	\$12,978,655	113	0	0.0%	\$0
Total Contract #2				\$18,880,000			0.7%	\$123,929
TOTAL FY2026				\$27,627,945			15.7%	\$4,333,223

Fiscal Year #3: For **FY2027** award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	#DBE's Based on IL UCP	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Acquire Snow Plows (2) and Snow Blower (1)	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	Snow plows merchant wholesalers	423810	\$3,133,750	7	0	0.0%	\$0
Total Contract #1				\$3,133,750		0	0.0%	\$0
TOTAL FY2027				\$3,133,750			0.0%	\$0

**MidAmerica St. Louis Airport
Disadvantaged Business Enterprise Program (FY 2025/2026/2027)**

- **Sum of Weighted DBE Availability:** \$6,809,307
- **Sum of All Trades:** \$38,753,945

Dividing the weighted DBE totals by the total estimate for all trades gives an initial DBE availability figure for the projects anticipated during the goal-setting period (This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Weighted DBE Goal at Step 1: 17.57%

Step 2: Adjustments to Step 1 Base Figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal.

Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

Table 4: BLV DBE Accomplishments

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 19	\$2,218,884	4.0%	3.0%	7.0%	5.6%	0.0%	5.6%	Expand Terminal Building
FY 20	\$9,882,454	4.0%	3.0%	7.0%	2.7%	0.0%	2.7%	Expand Terminal Building
FY 21	\$16,570,200	4.0%	3.0%	7.0%	1.9%	0.0%	1.9%	CRRSA Act Funds Expand Terminal Building General ARPA
FY 22	\$1,701,117	5.7%	0.0%	0.0%	0.0%	6.6%	6.6%	Large Concessions, Small Concessions Acquire ARFF Vehicle Expand Apron
FY 23	\$2,092,500	5.7%	0.0%	0.0%	0.0%	0.0%	0.0%	Acquire Snow Removal Equipment

Arranging this historical data from low to high, (0.0%, 1.9%, 2.7%, 5.6%, 6.6%) the median is **2.68%**.

Step 1 Base averaged with historical median: $(17.57\% + 2.68\%)/2 = 10.13\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **10.13%**. BLV believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Furthermore, there are no relevant disparity studies applicable to BLV’s contracting program and market area.

Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.

BLV will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

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. Carrying out information and communications programs on 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;
5. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

BLV estimates that in meeting the established overall goal of **10.13%**, it will obtain 0.0% from RN participation and 10.13% through RC measures.

This breakout is based on: BLV does not have a history of DBE over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 10.13% is to be obtained through race-conscious participation.

BLV will monitor DBE participation on an ongoing basis during the goal period and adjust the estimated breakout of RN and RC DBE participation as needed.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, BLV provided for consultation and publication. This process 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 BLV’s efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation process are as follows:

BLV held their DBE Consultation and Outreach Teleconference on August 13, 2024, 11:00 a.m. Attendees included: SIBA Members (Southern Illinois Business Association), Holland Construction Services, Utilitra LLC, Rooters Asphalt and Material Delivery Services.

**MidAmerica St. Louis Airport
Disadvantaged Business Enterprise Program (FY 2025/2026/2027)**

Additionally, the notice of the proposed goal was published on BLV's official website before the methodology was submitted to FAA. The notice can be found here: https://flymidamerica.com/wp-content/uploads/BLV-Public_Advertisement_FY2025-2027.pdf

If the proposed goal changes following review by FAA, the revised goal will be posted on BLV's official website.

Notwithstanding paragraph (f)(4) of §26.45, BLV's proposed goals will not be implemented until this requirement has been met.

PUBLIC NOTICE

MIDAMERICA ST. LOUIS AIRPORT (BLV)
DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION IN FEDERALLY FUNDED
AIRPORT IMPROVEMENT PROJECTS

MidAmerica St. Louis Airport (BLV) hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **6.98%** for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2025 through 2027.

A web conference will be held **August 13, 2024; 11:00a.m.** for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process.

Microsoft Teams link: <https://tinyurl.com/28whqlvt> Join the meeting now

Meeting ID: 273 870 300 10

Passcode: LDikSn

Dial in by phone: +1 872-242-7833,,166656814#

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

MidAmerica St. Louis Airport
Alice Tejada, DBE Liaison Officer
Department of Engineering and Planning
9656 Air Terminal Dr., Suite 250
Mascoutah, IL 62258
Alice.Tejada@flymidamerica.com

No comments were received.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

[The following Forms 1, 2, and 3 are provided for illustrative purposes ONLY. Any forms BLVs develop and use for purposes of assessing bidders'/offerors' good faith efforts should be included with solicitation documents. These forms are NOT for use with Design-Build projects, which require respondents to provide a DBE Open-Ended Performance Plan.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void. Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

https://www.transportation.gov/sites/dot.gov/files/2024-04/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form_0.pdf



U.S. Department of
Transportation

**DBE Regular Dealer/Distributor
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Authorized DBE Representative (Name and Title):

Total Subcontract/Purchase Order Amount:

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO
(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)
 - a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? YES NO (If "YES," Go to Question 2. If "NO" Continue.)
 - b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
 YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? YES NO¹
(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)
¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? YES² NO³
 - a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

BLV 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 the terms of the contract;;
3. Breach of contract action, pursuant to Illinois Minority and Female Business Enterprise Act.

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

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

Illinois UCP Agreement

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
Unified Certification Procedures

Illinois Unified Certification Program

UPDATED: July 8, 2024

IL UCP PROCEDURES

Illinois Unified Certification Program

Pursuant to the requirements of the federal regulations, 49 CFR part 26, all recipients of federal-aid must implement a "one-stop" certification process for Disadvantaged Business Enterprises (DBE) and ACDBE.

As a result of this requirement, the following five entities have established the Illinois Unified Certification Program (IL UCP). The five certifying Illinois United States Department of Transportation (US DOT) direct recipients (Participants) are:

- **Illinois Department of Transportation (IDOT)**
- **City of Chicago**
- **Chicago Transit Authority (CTA)**
- **Commuter Rail Division of the Regional Transportation Authority (Metra)**
- **Suburban Bus Division of the Regional Transportation Authority (Pace)**

IL UCP PROCEDURES

Introduction

The IL UCP is based on the concept of reciprocity among the Participants. Pursuant to 49 CFR 26.81(b)(2), "one-stop shopping" will be provided to applicants for Disadvantaged Business Enterprises (DBE) certification, such that an applicant need only apply once for DBE certification that will be honored by all recipients in the state of Illinois.

In order for the IL UCP to succeed, and the Participants to maintain the level of trust needed to effectively comply with the IL UCP requirements, it is necessary to implement minimum program requirements for compliance, as well as a process for dealing with any Participant that is found to be in non-compliance. The specific minimum requirements are:

- All decisions and recommendations related to certification must be made in compliance with 49 CFR part 26;
- All Participants will abide by IL UCP determinations and use only IL UCP certified firms;
- All hearings *must* be decided by a third party who was not involved in the certification determination nor was a direct or indirect supervisor of the party involved in such decision;
- The IL UCP Participants must each have a US DOT-approved DBE program in place that clearly defines the role of the administrative staff. In addition, each Participant must have clearly defined processes and procedures related to administration of its DBE program and certification decisions;
- All IL UCP Participants agree to full disclosure of their complete applicant files and/or documentation when requested by any other IL UCP Participants,
- Any Participant with a DBE program administered in conjunction with an MBE/WBE program must have separate and clearly defined procedures and policies for the DBE program that comply with all requirements of 49 CFR part 26. This includes, but is not limited to, eligibility requirements, data tracking, and removal/denial of certification;
- All Participants understand that there are no "emergency" or "conditional" certifications pursuant to 49 CFR part 26. All certifications must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE;
- All IL UCP Participants agree to safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Non-Compliance

If any IL UCP Participant believes that another Participant has failed to comply with its obligations under 49 CFR part 26, the complaining Participant may file a written complaint with the concerned operating administration's Office of Civil Rights.

IL UCP PROCEDURES

Illinois UCP Interstate Certification Procedures

A. Certification of Out of State Firm:

To obtain certification by the IL UCP, the out-of-state firm must provide:

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

Processing: The IL UCP will take the following actions when it receives all the information listed above:

- 1) Within ten (10) business days of receiving the documents required, the IL UCP agency must confirm the certification of the DBE by referencing the UCP DBE directory of the Jurisdiction of Original Certification (JOC). Once the IL UCP agency confirms the DBE certification, it will immediately certify the DBE without undergoing further procedures and provide the DBE with an approval letter. Its information will also be listed in the IL UCP DBE directory;
- 2) After the IL UCP agency has certified the DBE, the IL UCP agency may request a fully unredacted copy of the original DBE application, site visit(s) conducted by the JOC, personal net worth statement, last five (5) years of the DBE firm and affiliate's tax return, last three (3) years of the disadvantage owner's individual tax return and any additional supporting documentation pertinent to the file from the JOC;

NOTE: The JOC must provide a complete unredacted copy of the information requested by the IL UCP agency within thirty (30) days of receiving the request.

- 3) Once the IL UCP agency certifies the firm, it must treat the DBE as it treats other IL UCP DBE firms for all purposes. The DBE firm must provide an annual DOE with supporting documents to the IL UCP agency on the anniversary date of the DBE's original certification by its JOC.

Removal: The IL UCP will take the following actions when it moves to remove an interstate DBE certification:

- 1) If the IL UCP agency has reasonable cause to remove a DBE's certification, in whole or in part (i.e., NAICS code removal), it must notify the IL UCP agency partners and other UCPs in which the DBE is certified via email. The notice must explain the IL UCP agency's reasons for believing the DBE's certification should be removed;
- 2) Within thirty (30) days of receiving the notice, the other jurisdictions must email the IL UCP agency contemplating decertification a concurrence or non-concurrence with the proposed action;

IL UCP PROCEDURES

NOTE: The other jurisdictions' responses may provide written arguments and evidence and may propose additional reasons to remove certification. A jurisdiction's failure to timely respond to the reasonable cause notice will be deemed to be a concurrence. Other certifying jurisdictions may not participate in removal hearings.

- 3) After the IL UCP agency receives all timely responses, it must email the firm a NOI letter and follow the procedures set forth below in the Decertification section;
- 4) If the IL UCP agency finds the firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. The removal letter must include appeal instructions provided on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. The IL UCP agency must email a copy of its decision to the other jurisdictions within three (3) business days.

This procedure does not apply to removal based a DBE's actions or inactions pertaining to [§§ 26.83\(j\)](#) (Declaration of Eligibility) and 26.109(c) (failure to cooperate).

The IL UCP agency must provide due process to DBEs during the proposed removal process. If a UCP decides not to issue a letter removing the firm's DBE certification, no jurisdiction may initiate removal proceedings, within one (1) year, on the same or similar grounds and underlying facts.

B. IL UCP certified firm seeking DBE status outside Illinois:

It is the policy of the IL UCP to cooperate fully and timely to any request for an unredacted copy of the DBE's certification materials to an additional UCP within thirty (30) days of receiving the request.

NOTE: If the site visit report is more than five (5) years old and the requesting state requires more current information, the IL UCP agency may conduct a courtesy review at the request of the additional jurisdiction.

C. Ineligibility Determinations:

When an IL UCP agency removes a firm's eligibility in whole or in part, it must make an entry in the Department of Transportation Office of Civil Rights' (DOCR) Ineligibility Determination Online Database.

The entry shall include firm's name, firm's owner(s) name(s), type and date of the action, and reason for the action.

The IL UCP agencies will check the DOCR website at least monthly to determine whether any firm that is applying for certification or has already been certified, is on the list. If such a firm is on the list, the IL UCP agency will promptly request a copy of the listed decision from the UCP that made it. The information will be considered in determining what action to take with respect to a DBE or applicant. A UCP receiving the request will provide a copy of the decision to the requesting UCP within seven (7) days.

Certification Process

The Participants must ensure that all certification procedures (Subpart E) and standards

IL UCP PROCEDURES

(Subpart D) under 49 CFR part 26 are followed in making eligibility decisions.

Note: Each Participant will ensure that adequate training will be provided to their staff.

A. Overview of Certification Process

When a UCP Participant receives an application for DBE certification, a thorough, detailed, and complete analysis of the application and supporting documentation must be performed, and an on-site visit at the offices and/or job site(s), or virtually of each applicant must be conducted by the certifying Participant. Following completion of the file analysis and on-site questionnaire (attached), a summary report is written by a certification analyst. The summary report provides the recommendation regarding the applicant's certification eligibility. The recommendation is presented to the analyst's supervisor, and then to the Participant's designee, who makes the final decision regarding the firm's DBE program eligibility.

The certifying Participants have the responsibility to ensure a standardized approach to all certification decisions. The procedures outlined herein provide guidance and direction for completing the certification process. Additional information and regulatory requirements pertaining to the DBE program are contained in 49 CFR part 26, as well as 13 CFR part 121 and 49 CFR part 23.

B. Certification Decision Timeline

Decisions on applications for certification must be made by the certifying Participant within ninety (90) days of receiving all required information from the applicant firm. This period may be extended once, for no more than an additional thirty (30) days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. On a case-by-case basis, the Operating Authority (e.g. FHWA, FAA, FTA) may give the certifier one deadline extension if it approves a written request explaining why the certifier needs more time. Failure to decide by the applicable deadline shall be deemed a constructive denial of the application, based on which the firm may appeal to US DOT under 49 CFR 26.89.

C. Curative Measures

Curative Measures may be taken by the firm to reconcile any concerns and questions regarding an application prior to the Participant making a recommendation. Examples include: the firm may obtain proof of an investment, transaction, or other fact on which its eligibility depends; an owner or related party may create a legally enforceable document of irrevocable transfer to the SEDO; or the firm may amend an operating agreement, bylaw provision, or other governance document, provided that the amendment accurately reflects the parties' relationships, powers, responsibilities, and other pertinent circumstances. The firm may take curative measures at the request of the Participant or on its own initiative at any time before a final determination on certification has been made by the Participant.

D. Certified Firm Reporting Requirement

Once a firm is certified, it shall remain certified until its certification has been removed through the procedures set forth in 49 CFR 26.87. A firm is not required to reapply for certification as a condition of continuing to participate in the program. However, a DBE-certified firm must provide a Declaration of Eligibility to the certifying IL UCP Participant every year on the anniversary of the date of its certification, together with documentation of its gross receipts for its most recently completed fiscal year.

IL UCP PROCEDURES

Any change in circumstances affecting a DBE firm's ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information previously provided must be provided by the DBE firm in writing to the certifying Participant within thirty (30) days of the occurrence of the change. Changes in management responsibility among members of a limited liability company are included in this requirement.

Supporting documentation must be attached that describes in detail the nature of such changes. If the DBE firm fails to make timely notification of such a change, it will be deemed to have failed to cooperate under 49 CFR 26.109(c).

Certification Procedures:

- 1) When a certification application is received:
 - a) Incoming certification application requests will be date/time stamped and logged.
 - b) The file is forwarded to the certification staff. Following receipt of the file, the certification staff will:
 - i. Perform a complete review of the application and supporting documentation against the completed checklist to ensure that all relevant documents have been submitted. If there are questions/concerns, a Request for Information (RFI) letter is prepared within thirty days, documenting the need for additional information, and advising the applicant of the deadline to submit such information. The initial RFI shall capture all missing and/or incomplete documentation;
 - ii. Applicants are given twenty (20) calendar days after receipt of the RFI letter to respond. If information is not received by the 20th calendar day, a follow-up RFI letter will be sent giving the firm ten (10) additional calendar days to respond. The letter may be sent via email or certified mail with a return receipt requested, to the applicant. On a case-by-case basis, one deadline extension may be granted by the certification staff;
 - iii. If, within the specified time period, no contact has been made with the applicant, the certification staff submits a memorandum to his/her supervisor recommending denial based on 49 CFR 26.109(c) - failure to cooperate. The certification staff prepares the denial letter and forwards it to the DBELO or designee for signature;
 - iv. Keep a record in the file of all contact with an applicant. This file information is a permanent record of activity with an applicant. The record should include the date of contact, contact person, questions asked and responses;
 - v. Conduct an analysis to determine business size and personal net worth eligibility. In addition to submitting copies of their corporate tax returns or business tax returns and personal income tax returns, each individual owner of a firm applying to participate as a DBE must submit a signed statement of personal net worth, with personal income tax returns.

This step in the review process should precede all other document reviews. It will assist each agency to immediately render size determinations prior to

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expending unnecessary time and manpower for ineligible firms.

- a. A firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The Participant must apply current SBA business size standards and NAICS codes found in 13 CFR part 121 and 49 CFR part 26.73 (a)(1), appropriate to the type(s) of work the firm seeks to perform with respect to participation in FHWA and FTA assisted contracting opportunities. Per 49 CFR Part 26.65, a firm is not an eligible DBE if its (including its affiliates) average annual gross receipts over the previous three fiscal years have exceeded the DBE statutory cap of \$30,720,000, or \$56,420,000 for ACDBE, 49 CFR Part 23. The US DOT will adjust this amount annually and post the adjusted amount on its website available at <https://www.transportation.gov/DBEsizestandards>.

Affiliates must be considered together in determining whether a firm meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

- b. The personal net worth of each individual owner whose ownership and control are relied upon for DBE certification must be less than \$2,047,000.
 1. US DOT will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. US DOT will post the adjustments on the Departmental Office of Civil Rights' web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.
 2. Personal net worth decisions will be based upon the standard accounting principal formula of Assets - Liabilities = Net Worth. Ownership interest in the applicant's firm, equity in the primary personal residence and retirement accounts are excluded when determining personal net worth.
 3. While the concept that PNW under \$2,047,000 results only in a rebuttable presumption of economic disadvantage, the certifying participant should consider that the inquiry doesn't necessarily stop when the certification analyst/officer sees the PNW under the limit. In some cases, there should be further inquiry as described in the regulations at 49 CFR 26.67(c)(2)(i) as follows: To rebut the presumption, the certifier must prove that a reasonable person would not consider the individual economically disadvantaged. The certifier may consider assets and income, free use of them or ready access to their benefits, and any other trappings of wealth that the certifier considers relevant. There are no assets (including retirement assets), income, equity, or other exclusions and no limitations on inclusions. A broad and general analysis suffices in most cases: the owner has, or enjoys the benefits of, income of X; two homes worth approximately Y; substantial interests in outside businesses Q, R, and S; four rental properties of aggregate value Z; etc. The certifier need only demonstrate "ballpark" values based on available evidence. The reasonable person is not party to detailed financial information. S/he considers the owner's overall circumstances and lifestyle.

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4. It may be appropriate from time to time to request an updated PNW from some firm owners to verify that not only is their PNW less than \$2.047 million, but that they are actually economically disadvantaged. If it looks like they might not be economically disadvantaged, you must have a proceeding to rebut the presumption of economic disadvantage.
- vi. Perform subsequent analysis and review of the file. A subsequent RFI letter may be sent if necessary. This includes reviewing the information contained in the file, individually as well as collectively, and documenting the findings during the review.

Particular attention should be paid to the areas of special concern listed below while conducting the review of the file. **Note:** The first item listed below must be met before any consideration is given to an out-of-state, firm's eligibility. The special concerns listed are not intended to be all-inclusive. They are meant to give direction and be a starting point for analysis and review of an application.

- a. The applicant, whose principal place of business is in a state other than Illinois, must be certified by its
- b. JOC US DOT- approved UCP or certified as a DBE with a DOT recipient in the firm's JOC, in accordance with 49 CFR part 26 prior to applying for IL UCP DBE certification.
- c. The authorized/registered legal name of the firm should be verified for accuracy.
- d. The main address of the firm should be the actual physical location of the main or corporate office. Post office box numbers are not acceptable by themselves.
- e. The contact person should be an individual(s) the analyst can contact for answers to questions regarding the certification application.
- f. The application must include a signed US DOT Declaration of Eligibility form, found at the end of the USDOT's uniform application.
- g. Ethnicity should be resolved early. In cases where the ethnicity status cannot be determined, evidence demonstrating that the individual has held herself/himself/themself out publicly as a member of the group for a long period of time prior to applying for DBE certification, and that the relevant community considers the individual a member. The certifier may not require the individual to provide evidence beyond that related to group membership.
- h. Evaluate Corporate Structure and Ownership
 - i. Review and evaluate all corporate governing documents:
Note: Make sure copies of all the following relevant business documents (depending on type of firm) are included:
 1. Sole Proprietorship - A copy of the assumed name certificate issued by the county clerk's office to provide evidence of registration,.

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2. Partnership - Copies of the original and amended partnership agreements and the assumed name certificate issued by the county clerk's office,
 3. Limited Liability Company - Copies of the original and amended administrative agreements and the assumed name certificate issued by the county clerk's office,
 4. Corporation:
 - a. Articles of Incorporation - this document confirms that the business is incorporated. Information contained in this document should include names of incorporators, date of incorporation, state of incorporation, type of business in which the firm is authorized to engage, and information concerning voting and non-voting stock in the firm.
 - b. First organizational meeting minutes - this document is a record of the first organizational meeting. It is reviewed to verify information contained in other documents. Pertinent information which can be verified by this document includes election of officers, identity of board of directors, purchase and issuance of stock, and adoption of by-laws.
 - c. Corporate By-laws - this document explains how the corporation should function. Important information to be contained includes duties and responsibilities of the board of directors, the number of directors, duties and responsibilities of the officers, information concerning the voting stock of the firm, voting rights of the shareholders and directors' information, about firm meetings, and possible restrictive language affecting shareholders and directors.
 - d. Stock certificate(s), signed on both sides, and documentation to substantiate stock purchases.
 - e. Copy of the signed corporate bank resolution(s) and bank signature card(s).
 - ii. Attention should be given to names appearing in the documents since the applicant's name may appear on different documents. Different names on different documents may indicate a relationship that affects the control of the firm by disadvantaged owners.
 - iii. Also, evidence of the equity contribution by the disadvantaged owners must be examined closely. Among other documents, proof of contribution may be shown by copies of canceled checks (both sides), signed loan agreements, deposit slips, proofs of purchase and vehicle titles.
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- iv. Tracing dates through the documentation is a good review technique. Conflicting dates/information must be resolved. Compare changes in financial position to check for possible effects on control.

Note: An organizational chart is helpful when there are changes or several companies with interlocking directors and/or officers. This will give a clearer picture of interlocking relationships (possible affiliations).

- v. Reviews of equipment titles and registrations can be used to assist in determining ownership. Obtain or compile a list of the equipment owned by or available to the firm and the license(s) the firm and its key personnel possess to perform the requested work categories.
 - vi. Review the resume(s) of the owner(s), officer(s), and member(s) of the board of directors and principal management and control personnel. Resumes may indicate technical competence based on experience in the industry and the degree of operational and/or managerial control to be exercised by the owner(s) and other principals within the firm. When reviewing the resumes, observe present and prior occupations, length of time in the industry, areas of expertise, and relevant occupational licenses/certificates.
- i. Evaluate Corporate Structure and Ownership
 - i. Ownership means a firm must be at least 51-percent (51%) owned by socially and economically disadvantaged individuals.
 - 1. In the case of a corporation, such individuals must own at least 51-percent (51%) of each class of voting stock outstanding and 51-percent (51%) of the aggregate of all stock outstanding.
 - 2. In the case of a partnership, socially and economically disadvantaged individuals must own 51-percent (51%) of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement.

Areas of consideration/concern include:

- 1. Previous employers, common to two or more principals of the firm
 - 2. Previous employers who subcontract work with the firm
 - 3. Interlocking directors/officers and the possible effect on control
 - 4. Equipment/office/storage lease arrangements
 - 5. Day-to-day operational decisions and responsibilities
 - 6. Composition and responsibilities of the board of directors
- ii. Operational and managerial control - means that the disadvantaged owner(s) not only directs the management of the business, but also oversees its day-to-day operations.

Areas of consideration include:

- 1. Hiring and firing authority

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2. Signature authority
 3. Financial obligation authority
 4. Contract negotiation authority
 5. Bidding and estimating expertise
 6. Firm policy development ability
 7. Job selection authority
 8. Day-to-day and long-term decision-making authority that affect the performance/operation of the firm.
- iii. Financial information - a close review of the financial statements is required to determine firm actions that may restrict or dilute the disadvantaged owner's effectiveness to control the business. Financial information is useful in resolving management, operational and ownership control concerns.

Areas of consideration include:

1. Financial statements including end-of-year balance sheets and profit and loss statements over a three-(3)-year period, accounts/notes payable, notes and loans payable/receivable to/from stockholders and officers, accrued expenses, purchases/loans, and footnotes to the financial statement.
2. Expense statements including salaries, rent expenses, lease expenses, payment to subcontractors, and changes in financial position.
3. Corporate tax returns including salaries paid to officers, dividends paid, and names of officers and stock ownership.
4. Partnership/Third party agreements including terms/purpose of agreement, parties to the agreement, duties and responsibilities of each Party, and dollar investment/division of profits.

These documents explain the terms and conditions of the arrangement(s). Check to see if the firm's control is diluted or restricted by the agreement(s). If it is determined that a firm's average annual gross receipts over the preceding three (3) fiscal years exceed the DBE program statutory cap, the firm is not an eligible DBE.

- j. Other considerations
- i. Bonding capacity - attention should be paid to the bonding capacity of the firm. The dollar amount should be in line with the work history of the firm, including contracts it has received and work it has completed.
 - ii. Work Category(ies) and location(s) - the work category(ies) and location(s) the firm prefers should be denoted in the application, if applicable to the agency.

The applicant seeking certification in the work category of trucking

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must obtain proper intra-state authorization from the Illinois Commerce Commission (ILCC).

On-Site Interview Visit

The federal regulations 49 CFR 26.83(c)(1)(i) require the performance of an on-site visit to the offices of the firm seeking DBE certification. The site visit report of a DBE applicant by any other US DOT federal fund recipient may be relied upon to meet this requirement.

Procedure:

The on-site visit allows the analyst to conduct an interview while observing the firm's owner(s) in his/her own principal place of business to substantiate and clarify submitted documentation, while ascertaining the general pattern of operation of the business. In addition to reconciling information/concerns, the on-site visit will assist in detecting and eliminating "fronts" and "shams" (applicants that do not meet the eligibility standards set forth in the federal regulations). The procedures outlined herein provide guidance and direction for completing the on-site interview and visit.

The on-site procedures are listed below:

- 1) Prepare standardized and specific questions for the on-site visit/interview. Questions for the interview should be determined in advance by reviewing and analyzing the application and supporting documentation. Any conflicting information brought out during the review should be questioned and clarified by staff. Additional questions may be raised during the on-site interview. In addition, staff should discuss any concerns with his/her supervisor prior to the visit.

Questions should also be devised in a manner that will evoke a coherent response. Questions should not be leading, and the applicant should not be able to answer the question in one or two words.

Examples of typical interview questions include:

"Explain the process used to monitor job costs." "Describe your corporate duties and responsibilities." "Explain and describe the bidding and estimating process."

The above questions are typical examples only. The questions developed should be unique to the file being reviewed. They should be prepared and based on information derived from the applicant file.

- 2) Conduct an on-site visit/interview virtually or at the office(s) of the firm and any job site(s) in the Participant's jurisdiction or local area at which the firm is working at the time of the eligibility investigation. The principal officers and majority owners of the firm must be interviewed and their resumes and/or work histories reviewed. The interview is concluded after all questions/concerns have been addressed and the administrative process that follows the interview is explained.

Note: Depending on the circumstances, a firm may or may not be notified when an on-site visit/interview will be conducted.

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- 3) Prepare the summary report following completion of the analysis and review of the file. The content of the summary report is very important. It must be accurate and complete and satisfy all areas addressed on the questionnaire form. ~~See Appendix E.~~

The report should include the following:

- a) Name of the firm
- b) Date and location of the on-site visit/interview
- c) People present at the interview
- d) Information supplied to the applicant, and
- e) Questions asked and responses received.

A copy of the on-site questionnaire is attached to the summary report.

Summary reports written on "reapplication after denial" applications must include the issues and eligibility standards for which the firm was previously denied certification. In addition, the report should clearly indicate how the firm's operations/ownership/control have changed since the previous denial.

- 4) Forward the file and summary report to the reviewer's supervisor, and then to the Participant's designee, who makes the final decision regarding the firm's DBE program eligibility.
- 5) The interviewer must audio-record the on-site interview and a complete copy of that audio recording is to be kept in the applicant file.

IL UCP Notification

Once an eligibility decision is rendered, the certifying Participant notifies the firm in writing. Information regarding approved DBE certifications is uploaded to the IL UCP DBE Directory.

IL UCP DBE Directory

The IL UCP Participants will maintain a unified DBE directory containing pertinent information on all firms certified by the IL UCP, including those from other states certified under the provisions of 49 CFR 26.81(g). The IL UCP Participants shall make the directory available to the public electronically on the internet. The IL UCP Participants shall update the electronic directory entries by including additions, deletions, and other changes on a regular basis.

Annual Declaration of Eligibility

To remain certified and in good standing, all DBE firms are required to submit an annual *Declaration of Eligibility (DOE)* using the USDOT DOE form. The DBE firm must also submit documentation of the gross receipts of the firm and any affiliates for the prior fiscal year.

If the DBE fails to provide this *DOE* in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

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Declaration of Eligibility Process

- 1) Prior to the anniversary date of a firm's DBE certification, the *DOE* is sent to the firm. The form will be sent with a letter explaining that the firm must complete the form and file the requested supporting documentation to remain certified and in good standing with the IL UCP. If the firm has not responded after thirty (30) calendar days, a follow up request is sent to the firm. If the firm fails to respond to the Participant's request for a *DOE* by the firm's anniversary date, the firm will be issued a notice of proposed removal of DBE certification due to a lack of cooperation pursuant to 49 CFR part 26.109(c). The proposed removal will be in accordance with the procedures listed in 49 CFR 26.87.
- 2) Forms/Supporting Documentation Submitted Complete - When the completed forms and supporting documentation are submitted and reviewed/approved a document is prepared stating the firm remains in good standing. A notification of continued eligibility is sent to the DBE firm. The notification of continued eligibility, supporting documentation and the memo are placed in the firm's file.
- 3) Forms Submitted Incomplete - If the forms/supporting documentation have been submitted but are incomplete, a Request for Information letter that lists the deficiencies is sent to the firm. The firm is given **twenty (20) calendar days** upon receipt of the letter to submit the requested information. Once twenty (20) calendar days has passed, a second request for the requested additional information is sent to the firm, giving them an additional **ten (10) calendar days** upon receipt of the letter to submit the requested information. This second request will list the requested information and the date the firm will be denied if they do not respond to this request. If the firm does not respond in this time frame, or the firm's response is incomplete, the firm will be issued a notice of proposed removal of DBE certification due to a lack of cooperation pursuant to 49 CFR part 26.109(c). This proposed removal will be in accordance with the procedures listed in 49 CFR part 26.87.

Additional Reviews

Whenever an agency becomes aware of information that raises a question about the continued eligibility of a firm, or there has been a material change in the DBEs circumstances, the agency may perform an additional review.

Eligibility Investigation

- 1) Summary Suspension
 - a. Mandatory: A UCP Participant must summarily suspend a DBE when:
 - i. The certifier has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, OR
 - ii. The Operating Administration with oversight directs it.
 - b. Elective: A UCP Participant has discretion to summarily suspend a DBE when:
 - i. The certifier has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, OR
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- ii. An owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that § 26.83(j) requires.

2) Summary Suspension Procedures

(1) **Notice.** The certifier must notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN must explain the action, the reason for it, the consequences, and the evidence on which the certifier relies.

(i) Elective SSNs may not cite more than one reason for the action.

(ii) Mandatory SSNs may state multiple reasons.

(iii) The SSN, regardless of type, must demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the certifier should lift the suspension. The SSN must also advise that the DBE may provide written information and arguments in lieu of or in addition to attending the hearing.

(2) **Hearing.** The hearing date must be a business day that is at least fifteen (15) but not more than twenty-five (25) days after the date of the notice. The DBE may respond in writing in lieu of or in addition to attending the hearing; however, it will have waived its right to a hearing if it does not confirm its attendance within ten (10) days of the notice and will have forfeited its certification if it does not acknowledge the notice within fifteen (15) days. The show-cause hearing must be conducted as a video conference on a standard commercial platform that the DBE may readily access at no cost.

(3) **Response.** The DBE may provide information and arguments concerning its continuing eligibility until the 15th day following the suspension notice or the day of the hearing, if any, whichever is later. The DBE must email any written response it provides. Email submissions correctly addressed are effective when sent. The certifier may permit additional submissions after the hearing, as long as the extension ends on a business day that is not more than thirty (30) days after the notice.

(4) **Scope and burdens.**

(i) Suspension proceedings are limited to the suspension ground specified in the notice.

(ii) The certifier may not amend its reason(s) for summarily suspending certification, nor may it electively suspend the firm again during the 12-month period following the notice.

(iii) The DBE has the burden of producing information and/or making arguments concerning its continued eligibility, but it need only contest the reason cited.

(iv) The certifier has the burden of proving its case by a preponderance of the evidence. It must issue an NOD within thirty (30) days of the suspension notice or lift the suspension. Any NOD must rely only on the reason given in the summary suspension notice.

(v) The DBE's failure to provide information contesting the suspension does not impair the certifier's ability to prove its case. That is, the uncontested evidence upon which the certifier relies in its notice, if substantial, will constitute a preponderance of the evidence for purposes of the NOD.

(5) **Duration.** The DBE remains suspended during the proceedings described in this section but in no case for more than thirty (30) days. If the certifier has not lifted the suspension or provided a rule-compliant NOD by 4:30 p.m. on the 30th day, then it must lift the suspension and amend applicable DBE lists and databases by 12 p.m. the following business day.

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Decertification.

1) Initiation of Decertification

- a. Operating Administration Direction. The concerned operating administration must provide the certifying Participant and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. The certifying Participant must immediately commence and prosecute a proceeding to remove eligibility, following the procedures set forth in the following paragraphs.
- b. Third Party Challenge - The IL UCP Participants shall accept written complaints from any person alleging that a currently certified firm is ineligible (general allegations and anonymous complaints need not be considered). The complainant must state specific reasons for ineligibility, and any documentation in support of the complaint must be attached. The identity of the complainant will be always kept confidential.
- c. US DOT Directive to Initiate Proceeding - If US DOT determines that information in certification records or other available information provides reasonable cause to believe that an IL UCP-certified DBE firm does not meet the eligibility criteria of 49 CFR part 26, US DOT may direct the certifying Participant to initiate a proceeding to remove the firm's certification.
- d. IL UCP Partner Challenge - If based on Sections 1 or 2 above, and/or notification by a firm of a change in its circumstances or other information that of which an IL UCP Participant becomes aware, it is determined that there is reasonable cause to believe that a currently certified IL UCP firm is ineligible, the IL UCP Participant originally responsible for the certification shall thoroughly investigate the complain/inquiry within sixty (60) days. The certifying Participant shall also notify the challenged firm in writing, giving the stated reasons and the relevant regulations.

2) Burden of Proof: To decertify a DBE, the Participant bears the burden of proving, by a preponderance of the evidence, that the DBE does not meet the certification standards of this part.

- a. The Participant must review its records concerning the DBE, any material the DBE and/or complainant provides, and any other available information. The Participant may request additional information from the DBE or conduct any other investigation that it deems necessary.
- b. If the Participant determines that there is reasonable cause to decertify the DBE, it initiates a decertification proceeding. If it determines that there is not such reasonable cause, it notifies the complainant and the DBE in writing of its decisions and the reasons for it.

3) Decertification Process.

- a. A Participant's first step in any decertification proceeding must be to email a notice of intent (NOI) to the DBE. The NOI must
 - i. clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason;

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- ii. notify the DBE of its right to respond in writing, at an informal hearing, or both;
 - iii. inform the DBE of the hearing scheduled on a date no fewer than thirty (30) days and no more than forty-five (45) days from the date of the NOI;
 - iv. If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, the Participant issues a NOD decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.
- b. If the DBE wants a hearing, it must email the Participant saying so within ten (10) days of the NOI. If the DBE does not do so, it loses its opportunity for a hearing. The Participant and DBE may negotiate a different hearing date from that stated in the NOI. Parties must not engage in dilatory tactics.
- c. If the DBE does not want a hearing or does not give timely notice to the Participant that it wants one, the DBE may still provide written information and arguments to the Participant rebutting the reasons for decertification stated in the NOI.
- d. Hearing procedure
- i. The purpose of the hearing is for the Participant to present its case and for the DBE to rebut the Participant's allegations.
 - ii. The hearing is an informal proceeding with rules set by the hearing officer.
 - iii. The SEDO's attorney, a non-SEDO, or other individuals involved with the DBE may attend the hearing and answer questions related to their own experience or more generally about the DBE's ownership, structure, and operations. The Participant must maintain a complete record of the hearing, either in writing, video, or audio. If the DBE appeals to DOT under § 26.89, the Participant must provide that record to DOT and to the DBE.
- e. Notice of Decision
- i. The Participant must ensure that the decision in a decertification case is made by an individual who did not take part in actions leading to or seeking to implement the proposal to decertify the DBE and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The Participant's method of implementing this requirement must be made part of its DBE program and approved by the appropriate OA. The decisionmaker must be an individual who is knowledgeable about the certification requirements of this part.
 - ii. The Participant must send the firm a NOD no later than thirty (30) days of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD must describe with particularity the reason(s) for the Participant's decision, including specific references to the evidence in the record that supports each reason. The NOD must also inform the firm of the consequences of the decision under paragraph (i) of this section and of its appeal rights under § 26.89.
 - iii. The Participant must make an entry in DOCR's Online Portal within five (5) days of the action. The Participant must enter the name of the firm, name(s) of the firm's owner(s), date of decision, and the reason(s) for its decision.

f. Grounds for Decision

A decision by any IL UCP Participant to remove eligibility must not be based on a

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reinterpretation or changed opinion of information available to the IL UCP-certifying Participant at the time of its certification of the firm. A decision may only be based on one or more of the following:

- 1) Changes in the firm's circumstances since the certification of the firm that rendered the firm unable to meet the eligibility standards of 49 CFR part 26.
 - 2) Information or evidence not available at the time the firm was certified.
 - 3) Information that was concealed or misrepresented by the firm in previous certification actions.
 - 4) A change in US DOT's certification standards or requirements since the firm was certified
 - 5) A documented finding that the certifying Participant's determination to certify the firm was factually erroneous.
 - 6) The firm has failed to cooperate.
 - 7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program; or
 - 8) The firm has been suspended or debarred for conduct related to the DBE program.
- g. Status of Firm during Decertification Proceedings: A firm remains an eligible DBE during the pendency of proceedings to remove its eligibility. The firm does not become ineligible unless and until the notice removing its certification is issued.

h. Availability of US DOT Appeal

After the IL UCP Participant makes its final decision to remove a firm's eligibility, the firm may appeal the removal to US DOT under 49 CFR 26.89. The firm must email US DOT at DBEAppeals@dot.gov within forty-five (45) days of the date of this decision, including a narrative that explains fully and specifically why you believe the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions the certifier misapplied. Include the certifier's name, date of the certifier's decision, and your contact information. Pending US DOT's decision, the decision of the IL UCP Participant remains in effect.

The IL UCP will promptly implement any US DOT certification appeal decisions affecting the eligibility of DBEs for the IL UCP's US DOT-assisted contracting.

Appeals can also be mailed to:

United States Department of Transportation
Departmental Office of Civil Rights
Disadvantaged Business Enterprise Program Division
1200 New Jersey Avenue SE
Washington, DC 20590

i. Effects of Removal of Eligibility

- a. If the certifying Participant removes a firm's eligibility, the firm may not reapply for certification within twelve (12) months from receipt of the certifying Participant's final denial decision.
- b. When a firm's eligibility is removed, per 49 CFR 26.87, the following action(s) must be taken:
- c. When a prime contractor has made a commitment to use the decertified firm, or

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the IL UCP Participant has made a commitment to use a prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the decertified firm does not count toward the contract goal or overall goal. The prime contractor must be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.

- d. If a prime contractor has executed a subcontract with the firm before the firm was notified of its decertification, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, however, the prime contractor may not extend or add work to the contract after the firm was notified of its decertification without prior written consent from the Participant.
- e. If a prime contractor has executed a subcontract with the firm before the Participant has notified the firm of its decertification, the prime contractor may continue to use the firm however, the portion of the decertified firm's continued performance of the contract must not count toward the Participant's overall goal.
- f. If the Participant executed a prime contract with a DBE that was later decertified the portion of the decertified firm's performance of the contract remaining after the notice of its decertification was issued shall not count toward a Participant's overall goal but may count toward the contract goal.
- g. Exceptions:
 - i. If the DBE firm's decertification is caused solely by its having exceeded the size standard during the performance of the contract, its participation may continue to be counted on that contract toward overall and contract goals.
 - ii. If the Participant decertifies the DBE because it was acquired by or merged with a non-DBE, the Participant may not continue to count the portion of the decertified firm's performance on the contract remaining, after the Participant issued a NOD, toward either the contract goal or the overall goal, even if a prime contractor has executed a subcontract with the firm or the Participant has executed a prime contract with the DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor's ability to meet the contract goal, the Participant must direct the prime contractor to subcontract to an eligible DBE to the extent needed to meet the contract goal or demonstrate to the recipient that it has made good faith efforts to do so.

Participant Contact Information

Participant	Address
IDOT	2300 S Dirksen Parkway, Springfield, IL
City of Chicago	121 N. LaSalle, Room 806 Chicago, IL
CTA	567 W. Lake St. 4th Floor, Chicago, IL
Metra	547 W. Jackson, Chicago, IL
Pace	550 W. Algonquin Rd Arlington Hts., IL

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In Witness Whereof, the parties hereto have caused this Unified Certification Proposal to be executed by their respective authorized officials:

DocuSigned by:
Debra Lee 11/20/2024 | 12:17 PM CST
8BF A0C9349AB47D...
Illinois Department of Transportation Date

Signed by:
Sharla D. Roberts 11/12/2024 | 11:09 AM CST
23B3CAFEDDC5452...
City of Chicago Date

Signed by:
Juan Pablo Prieto 11/4/2024 | 7:18 AM PST
8C4C796717DA49B...
Chicago Transit Authority Date

Signed by:
Shanta Williams 11/11/2024 | 7:02 AM CST
9886AD1BAB054ED...
Commuter Rail Division of the
Regional Transportation Authority (Metra) Date

Signed by:
Chi Kwan Tang 11/11/2024 | 3:42 PM CST
1BB4590A12EB4A0...
Suburban Bus Division of the
Regional Transportation Authority (PACE) Date

ATTACHMENT 10

Small Business Element

1. Objective/Strategies

(1) Prime contracts under \$300,000 will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, 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.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

DBE firms should be identified in the Small Business element of the BLV’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.

- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
- Personal Net Worth standards – should be consistent with 49 CFR Part 26 thresholds.
- Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.]

3. Verification

BLV will diligently attempt to minimize fraud and abuse in the small business element of the DBE program by verifying that all disadvantaged business enterprises are certified under the Illinois UCP program. The DBELO will document the certification and will refer any concerns of potential/suspected fraudulent certifications to the Illinois Department of Transportation - Civil Rights Division, 2300 Dirksen Parkway, Room 317; Springfield, Illinois 62764.

4. Monitoring/Record Keeping

All race-neutral DBE participation obtained by the plan will be reported as part of the Airport's annual DBE Accomplishment Reporting. In addition, the airport will track the plan's small business participation on an annual basis.

5. Assurance

- The program is authorized under state law;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).