

DBE Program Bismarck Municipal Airport

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

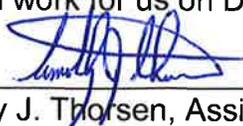
The City of Bismarck, owner of the Bismarck Municipal Airport here in after referred to as Bismarck Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Bismarck Municipal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

It is the policy of the Bismarck Municipal Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Assistant Airport Director Timothy J. Thorsen has been delegated as the DBE Liaison Officer. In that capacity, Assistant Airport Director Timothy J. Thorsen 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 Bismarck Municipal Airport in its financial assistance agreements with the Department of Transportation.

Bismarck Municipal Airport has disseminated this policy statement to the Board of City Commissioners, City of Bismarck and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by email.



Timothy J. Thorsen, Assistant Airport Director

8-20-18

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The Bismarck Municipal Airport will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The Bismarck Municipal Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. We began using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

Bidders List: 26.11(c)

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

We will collect this information in the following ways: See attachment 3

Section 26.13 Federal Financial Assistance Agreement

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

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

The Bismarck Municipal Airport shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Bismarck Municipal Airport 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 Bismarck Municipal Airport's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Bismarck Municipal Airport of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: 26.13b – The Bismarck Municipal Airport will ensure that the following clause is included in each contract we sign 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 Bismarck Municipal Airport 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.

[Note: This language is to be used verbatim, as it is stated in 26.13(b)]

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Bismarck Municipal Airport 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. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program 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)

We have designated the following individual as our DBE Liaison Officer:

Timothy J. Thorsen
Assistant Airport Director
PO Box 991
Bismarck, ND 58502
(701) 355-1808
(701) 221-6886
tthorsen@bismarcknd.gov

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO is supported by the three person airport administration section and the airport intern (see organizational chart at attachment 2) the Bismarck City attorney, and consulting engineers to assist in the administration of the program. The DBELO duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews contracts for compliance with this program.
3. Works with engineer consultant 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 Bismarck Municipal Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Airport Director/Board of City Commissioners body on DBE matters and achievement.
9. Participates with legal counsel and engineer consultant to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance.
11. Acts as liaison to the Uniform Certification Process (North Dakota Department of Transportation, Civil Rights Office).

The engineer consultant's duties include:

1. Write contracts and reviews third party contracts for compliance with this program.
2. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Participates in pre-bid meetings
4. Review contractor proposal to determine compliance with good faith efforts. Make recommendations on bid disposition to DBELO.
5. Reviews requests for reimbursements for compliance with this program.
6. Reports statistical data to DBELO.
7. Provide DBEs with information and assistance in preparing bids.
8. Analyzes Bismarck Municipal Airport's progress toward goal attainment and makes recommendations to DBELO for improvements.
9. Reviews contract payments to DBEs to ensure the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the schedule of DBE participation.
10. Reviews contract payments to ensure prompt payment and retainage to subcontractors.
11. Will provide written certification that they have reviewed contracting records and work site for compliance with the contract.
12. Complete and maintain bidders list

Section 26.27 DBE Financial Institutions

It is the policy of the Bismarck Municipal Airport 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.

To determine which financial institutions are owned and controlled by socially and economically disadvantaged individuals, the NDDOT contacted the following organizations:

- North Dakota Bankers Association
- North Dakota Department of Banking and Financial Institutions, and
- Independent Bankers Association

To date, one such institution has been identified.

To answer your second request, we found the following institution

The financial institution listed as DBE owned information is:

Turtle Mountain State Bank
908 Chief Little Shell St.
PO Box 310
Belcourt, ND 58316
(701) 447-5995

Section 26.29 Prompt Payment Mechanisms

The Bismarck Municipal Airport has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

Bismarck Municipal Airport will provide appropriate means to enforce the requirements of this section. These means include enforcement of contract provisions and may include delay or postponement of payments.

The Bismarck Municipal Airport will include two clauses in each DOT-assisted prime contract to ensure prompt payment and return of retainage to subcontractors. The first clause shall be located in the Standard Contract Provisions and the second clause shall be located in the General Provisions section of the contract:

Clause 1:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from Bismarck Municipal Airport. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Bismarck Municipal Airport. This clause applies to both DBE and non-DBE subcontractors.

Clause 2:

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. The Owner must ensure prompt and full payment of retainage from 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.

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 until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer 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.

Section 26.31 Directory

The Bismarck Municipal Airport uses the State of North Dakota DBE directory, maintained by the State.

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

The state UCP revises the Directory, including additions, deletions, and other changes as they occur. We make the Directory available by website. The Directory may be found at:

<https://dotnd.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp?TN=dotnd&XID=7316>.

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

Bismarck Municipal Airport has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Bismarck Municipal Airport will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 6 lists the regulation,

provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.

3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

The DBE program will be enforced through prompt advertisement of project for DBE participation, construction bulletin notices, bid specification sections, specific provisions for failure of a prime contractor, failure of a DBE, contractors remedies upon failure of performance by a DBE, etc. After opening bids, DBE participation is calculated. Failure to document or verify efforts will lead to non-responsive bid determination. If low goals are presented, airport and consultant shall investigate and determine good faith efforts as the Airport DBE Plan specifies has been accomplished prior to bid award.

We will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Monitoring Payments to DBEs

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

We will perform quarterly audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation and prompt payment requirements per 26.29

Prompt Payment Dispute Resolution

Bismarck Airport or authorized representative will take the following steps to resolve disputes as to whether work has been satisfactorily completed for the purposes of 26.29

- The subcontractor shall attempt to resolve the discrepancy with the prime contractor
- If the subcontractor is unable to resolve the discrepancy with the prime contractor, the subcontractor shall present and attempt to resolve the discrepancy with the engineer consultant.
- If the subcontractor is unable to resolve the discrepancy after meeting with the prime contractor and the engineer consultant, the subcontractor shall present its complaint to the DBELO. In addition to the complaint, subcontractor shall provide documentation stating their efforts to resolve the discrepancy with the prime contractor and Engineer Consultant
- If the subcontractor is unable to resolve the discrepancy through the DBELO the subcontractor shall contact the Airport Director.

Prompt Payment Complaints

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

- The subcontractor shall attempt to resolve the discrepancy with the prime contractor
- If the subcontractor is unable to resolve the discrepancy with the prime contractor, the subcontractor shall present and attempt to resolve the discrepancy with the engineer consultant.
- If the subcontractor is unable to resolve the discrepancy after meeting with the prime contractor and the engineer consultant, the subcontractor shall present its complaint to the DBELO. In addition to the complaint, subcontractor shall provide documentation stating their efforts to resolve the discrepancy with the prime contractor and Engineer Consultant
- If the subcontractor is unable to resolve the discrepancy through the DBELO the subcontractor shall contact the Airport Director.
- .

Section 26.39 Fostering small business participation.

The NDDOT considers those contractors, subcontractors, consultants and subconsultants bidding under \$500,000 per year to be small business enterprises. The Department has implemented many processes that assist small business enterprises which help in fostering small business participation. They include the following:

- All projects are initially reviewed and most are of a size that small businesses can reasonably perform either as a prime contractor or as a subcontractor. Very few projects last longer than one construction.
- All projects are reviewed in the development stage, to determine if it is feasible to unbundle large projects to such a size that small businesses can reasonably perform.
- In the actual bidding process small businesses are afforded the opportunity to retrieve a pre-bid list, generated the day before the bid opening, which lists the projects each prime contractor or subcontractor over \$500,000 is bidding on.
- All small business enterprises have the ability to access the Civil Rights Division's Listserv which posts the pre-bid addendums, notification of projects being let by other local, state, and federal agencies, and other pertinent notifications regarding the Department's bid opening process.
- All small business enterprises may receive or view the Supportive Services Newsletter, via the Listserv or online. This newsletter provides the following:
 - A means by which primes and large subcontractors over \$500,000 solicit participation on both race-conscious and race-neutral projects.
 - This Newsletter contains advertisements by prime contractors and large subcontractors over \$500,000, soliciting quotes, and provided contact information so all subcontractors and suppliers may contact them to provide quotes.
 - Training opportunities relative to performing on a transportation project or to aid small business enterprises in all facets of their business.
 - List contacts for Civil Rights.
 - Small business related articles and information.

The implementation of a small business program is intended to facilitate compliance with the twin obligations in 49 CFR §26.51:

1. To meet the maximum feasible portion of the overall goal by using race-neutral means of obtaining DBE participation and;
2. To establish DBE contract goals to meet any portion of the overall goal the Department is unable to meet using race-neutral means along. (quote from Q & A issues 12-9-11)

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Bismarck Municipal Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Bismarck Municipal Airport will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Bismarck Municipal Airport will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

| Airport Type | Region | Date Due (Goal Period) | Next Goal Due (Goal Period) |
|-----------------|-------------|------------------------------------|------------------------------------|
| Non-Hub Primary | All Regions | August 1, 2018 (2019/2020/2021) | August 1, 2021 (2022/2023/2024) |

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

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

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

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The *Bismarck Municipal Airport* understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

Section 26.47 Failure to meet overall goals.

The Bismarck Municipal Airport will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the Bismarck Municipal Airport awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;

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

The Bismarck Municipal Airport 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 used by Bismarck Municipal Airport include, but not limited to:

- (1) Advertise program goals.
- (2) Encouraging prime contractors to subcontract portions of work they would otherwise perform with their own forces.

- (3) Providing engineer consultant technical assistance and other service to fill out bids.
- (4) Ensuring prime contractors have lists of potential DBE subcontractors.
- (5) Inform prime contractors of past DBE participants.
- (6) Ensuring prime contractors have address and web page for NDDOT DBE directory.
- (7) Utilize engineer consultant to administer and monitor compliance.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

Section 26.51(d-g) Contract Goals

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

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

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

We will express our contract goals as a percentage the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

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

Bismarck Municipal Airport's Consulting Engineer Project Officer 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.

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

Information to be submitted (26.53(b))

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, 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 (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within seven (7) business days of being informed by Bismarck Municipal Airport that it is not responsive or responsible because it has not documented sufficient good faith

efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official

Timothy J. Thorsen
Assistant Airport Director
P.O. Box 991
Bismarck, ND 58502
(701) 355-1808
tthorsen@bismarcknd.gov.

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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

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

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

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

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

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

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

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Bismarck Municipal Airport to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ___ percent as determined in the goal calculation Attachment 5 has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work

provided in the prime contractor's commitment; (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

If the firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The NDDOT shall act as agent for Airport in handling certifications. The Airport Will use the NDDOT DBE Directory/Roster, which follows the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards applied by the NDDOT certification program. Certification decisions are based on the facts as a whole.

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

North Dakota Department of transportation, Office of Civil Rights
<http://www.dot.nd.gov/dotnet2/submitinfo/SubmitInfo/Index?pageID=contact-dbe-officer>

Our certification application forms and documentation requirements are found in the following URL:
http://www.dot.nd.gov/divisions/civilrights/docs/dbe/NDDOT_OnlineApplication_UserManual.pdf

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Bismarck Municipal Airport is the member of a Unified Certification Program (UCP) administered by the North Dakota Department of Transportation. The UCP will meet all of the requirements of this section. See attachment 7.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Applicable state law is North Dakota Century Code 44.04-18.4 confidentiality of trade secret, proprietary, commercial and financial information.

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

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

The Bismarck Municipal Airport, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Overall Goal Calculations
- Attachment 5 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 State's UCP Agreement

ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

<http://www.ecfr.gov/cgi-bin/text-idx?SID=8e02e2e5f0b6d4978c85eed695a7fe59&mc=true&node=pt49.1.26&rgn=div5>

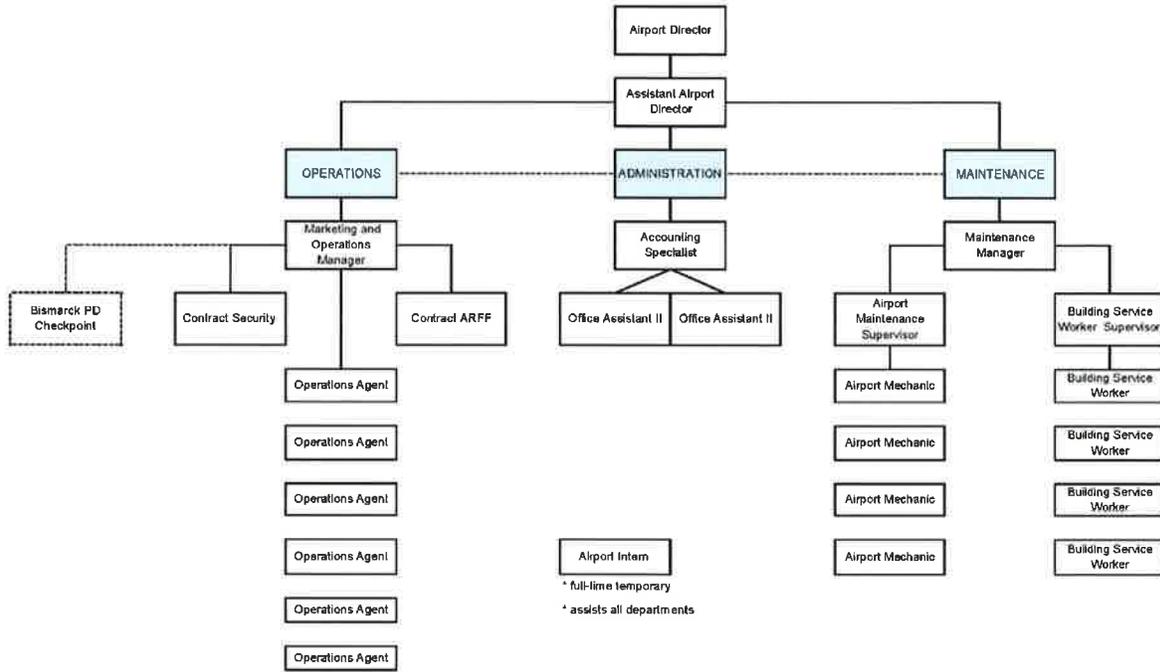
ATTACHMENT 2

Organizational Chart

Attachment 2

Bismarck Airport

Organizational Structure



ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

| Firm Name | Firm Address/ Phone # | DBE or Non-DBE Status (verify via State's UCP Directory) | Age of Firm | Annual Gross Receipts |
|-----------|--------------------------|---|--|---|
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |

Note: Bismarck Airport Engineer Consultant may use a spreadsheet with similar format to collect bidder information

ATTACHMENT 4

Overall Goals (26.45)

Amount of Goal

Airport's overall goal for FY 2019-2021 is the following:

- 1.50% of the federal financial assistance we will expend in DOT-assisted contracts.

During FY 2019-2021 Bismarck Airport expects to let \$33,065,000 in Federal Grant assisted projects, this means that we have set a goal of spending \$495,975 with DBE's in FY 2019-2021. Bismarck Airport competes for bidders with other state airports and with highway related work.

Method

Step One: The North Dakota Department of Transportation (ND DOT) determined the availability of DBEs from information supplied by all federal-aid bidders on prime and consultant contracts from 1 April 2016 to 30 March 2017. The data from this timeframe is an accurate reflection of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts. As a note, several DBEs have been removed from the ND DOT DBE directory since the last goal setting period, due to firms withdrawing and/or graduating from the program.

There were a total of 424 bidders and quote supplied on construction projects: 23 DBEs and 401 Non-DBEs. A total of 59 consultant bids were included in the bid on consulting projects: 7 DBEs and 52 Non-DBEs.

A weighted average was developed by determining the comparative percentage DBEs and Non-DBEs obtained in prime contracting (Asphalt, Bridge, Concrete, Dirt, and Additional Contracting Opportunities, Consulting) and subcontracting dollars. **This calculation establishes a base figure for Step 1 of 4.91%.**

1) Description of Calculations Performed:

The relative availability was calculated by dividing the number of DBE primes that bid on **Asphalt** contracts (7) by the number of total prime bidders (99); and multiplying that quotient by the percentage of dollars projected for asphalt work in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$531,882,780 / \$897,357,499 = 59.27\% \times 73.93\% = 43.82\%$).

$$7 \text{ DBE primes} / 99 \text{ total primes} = 7.07\% \times 43.82\% = 3.10\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on **Bridge** contracts (0) by the number of total prime bidders (14); and multiplying that quotient by the percentage of dollars projected for bridge work in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$56,783,293 / \$897,357,499 = 6.33\% \times 73.93\% = 4.68\%$).

$$0 \text{ DBE primes}/14 \text{ total primes} = 0.00\% \times 4.68\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on **Concrete** contracts (0) by the number of total prime bidders (11); and multiplying that quotient by the percentage of dollars projected for concrete work in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$87,331,642 / \$897,357,499 = 9.73\% \times 73.93\% = 7.19\%$).

$$0 \text{ DBE primes}/11 \text{ total primes} = 0.00\% \times 7.19\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on **Dirt** contracts (2) by the number of total prime bidders (23); and multiplying that quotient by the percentage of dollars projected for dirt work in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$82,738,018 / \$897,357,499 = 9.22\% \times 73.93\% = 6.82\%$).

$$2 \text{ DBE primes}/23 \text{ total primes} = 8.69\% \times 6.82\% = 0.59\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on **Additional Contracting Opportunities** contracts (0) by the number of total prime bidders (19); and multiplying that quotient by the percentage of dollars projected for other work in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$43,923,164 / \$897,357,499 = 4.89\% \times 73.93\% = 3.62\%$).

$$0 \text{ DBE primes}/19 \text{ total primes} = 0.00\% \times 3.62\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE **Consultants** that responded to an RFP or were included in a consultants response to an RFP (7) by the number of total consultants (59); and multiplying that quotient by the percentage of dollars projected for consultants in FY 2018-2020 as compared to overall dollars projected to be spent in FY 2018-2020 and multiplying that by the percentage of work paid to primes in 2016-2017 ($\$49,151,100 / \$897,357,499 = 5.48\% \times 3.94\% = 0.22\%$).

$$7 \text{ DBE consultants}/59 \text{ total consultants} = 11.86\% \times 0.22\% = 0.03\%$$

The relative availability was calculated by dividing the number of DBE **Subcontractors** that bid (18) by the number of total subcontractors (303); and multiplying that sum by the percentage of dollars between 1 April 2016 to 31 March 2017 (20.04%). This serves as an indicator of the overall total dollars projected to be spend in FY 2018-2020.

$$18 \text{ DBE subcontractors}/303 \text{ total subcontractors} = 5.94\% \times 20.04\% = 1.19\%$$

2) Resulting Baseline Goal

The baseline goal for North Dakota is 4.91%

$$3.10\% + 0.59\% + 0.03\% + 1.19\% = 4.91\%$$

Step Two: Step Two is used to adjust the Step One figure, based on factors of past DBE participation in airport projects, barrier of entry resulting from a lack of interest, and factors raised by consultation with the public.

The Bismarck Airport believes that an adjustment based on past DBE participation is warranted. Our history of DBE achievement was:

| Year | Percentage Achieved |
|-------------|----------------------------|
| 1990 | 0.70% |
| 1991 | 0.20% |
| 1992 | 1.40% |
| 1993 | No Projects (0%) |
| 1994 | 3.90% |
| 1995 | 0.00% |
| 1996 | 8.80% |
| 1997 | 9.60% |
| 1998 | No Projects (0%) |
| 1999 | 5.00% |
| 2000 | 1.69% |
| 2001 | 1.12% |
| 2002 | 1.04% |
| 2003 | 0.19% |
| 2004 | 2.21% |
| 2005 | 0.00% |
| 2006 | 0.54% |
| 2007 | 5.32% |
| 2008 | 3.36% |
| 2009 | 0.36% |
| 2010 | 2.40% |
| 2011 | 0.65% |
| 2012 | 0.00% |
| 2013 | 1.09% |
| 2014 | 1.08% |
| 2015 | 11.25% |
| 2016 | 3.22% |
| 2017 | 1.01% |

According to the US DOT's *"Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program"* Paragraph III Subpart A Number 5, an adjustment based upon past participation can be made if we feel that it is warranted. Paragraph III Subpart A Number 5 describes a method for adjusting the Step One figure to reflect past participation by averaging the Step One figure by the median value of past participation. The median is the middle number in any group of numbers, in this case the middle percentage of our historical achievement. To obtain the median, the percentage achieved was arranged in order from the lowest percentage to the highest percentage, as shown below:

| Reordered Participation | |
|--------------------------------|----------------------------|
| Year | Percentage Achieved |

| | |
|------|------------------|
| 1993 | No Projects (0%) |
| 1998 | No Projects (0%) |
| 1995 | 0.00% |
| 2005 | 0.00% |
| 2012 | 0.00% |
| 2003 | 0.19% |
| 1991 | 0.20% |
| 2009 | 0.36% |
| 2006 | 0.54% |
| 2011 | 0.65% |
| 1990 | 0.70% |
| 2017 | 1.01% |
| 2002 | 1.04% |
| 2014 | 1.08% |
| 2013 | 1.09% |
| 2001 | 1.12% |
| 1992 | 1.40% |
| 2000 | 1.69% |
| 2004 | 2.21% |
| 2010 | 2.40% |
| 2016 | 3.22% |
| 2008 | 3.36% |
| 1994 | 3.90% |
| 1999 | 5.00% |
| 2007 | 5.32% |
| 1996 | 8.80% |
| 1997 | 9.60% |
| 2015 | 11.25% |

To find the median, you take one value away from each end of the spectrum, until you are left with one or two values. In this case, there are two values left. The two values were averaged. **The median of past participation is 1.085%.**

The base figure of 4.91% was averaged with the median of past participation, which is 1.085%. This yielded an adjusted figure of **2.99%.**

We estimated in meeting our adjusted overall goal of 2.99%, we would obtain 0.0% from race neutral participation and 2.99% through race conscious measure (see Breakout Paragraph). The goal was adjusted further downward to **1.50%** as a result of industry/DBE firm consultation (see Consultation Paragraph).

Process

The Bismarck Airport must submit its 3-year overall goal to the Federal Aviation Administration (FAA) by August 1, 2018 for FY 2019-2021.

Before establishing the overall goal, Bismarck Airport will consult with ND DOT and then use the current listing of minority contract associations in the DBE roster (Minority Contractors Association of ND and Minority Association of Contractors) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and the Bismarck Airport's efforts to establish a level playing field for the participation of DBE's.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Airport Administration Office, in the commercial terminal, 2301 University Drive, Building #17, Bismarck, ND 58504 and on the airport website, and informing the public that Bismarck Airport will accept comments on the goals for 30 days from the date of notice. The notice will include addresses to which comments may be sent and addresses (including offices and web sites) where the proposal may be reviewed. Following the public notice period, the final goal will be submitted to the FAA.

Consultations:

On June 8, 2018, fifty-one separate letters requesting comments were sent to: contractors, DBE contractors, the North Dakota Aeronautics Commission and the North Dakota Department of Transportation (NDDOT) Civil Rights Division, Bismarck Airport's Unified Certification Program (UCP). Additionally, letters were sent to state DBE Program managers and specialists in CO, IA, WY SD, NE, KS, MT, MN, and UT. The letter was sent to three minority contractor associations, North Central Minority Supplier Development Council in Glendale, WI, Minority Association of Contractors in Denver, CO, and Minority Contractors Association of ND, in Mandan, ND. The Tribal Rights Employment Offices of Turtle Mountain Band of Chippewa, Three Affiliated Tribes, Spirit Lake Nation, and Standing Rock Sioux Tribe received the letter.

The airport received four responses from the fifty-one letters sent out. The responses were received from two contractors Strata Corporation and Northern Improvement, one consultant, KLJ, and a ND state commission, the ND Aeronautics Commission.

On June 18, 2018 Jared Wingo, Airport Planner with the North Dakota Aeronautics Commission, e-mailed a letter commenting on the airport's goal. Mr. Wingo stated that he found the proposed goal of 2.99% reasonable. Mr. Wingo went on to state, "I would recommend consulting relevant entities, such as contractors and DBE firms, to determine if a downward adjustment to the 2.99% goal is warranted"

On June 18, 2018 Bruce Thompson, Vice President and Estimator of Northern Improvement Company (NIC), e-mailed a letter with comments. NIC has completed the great majority of FAA funded projects at Bismarck Airport since 2002. NIC's comments have consistently recommended that race conscious goals that are above 2% are too high. NIC's June 18th comments were similar: "Northern Improvement Company will continue to do our best to solicit DBE quotes through Good Faith Efforts. As you are well aware the ability to achieve the goal is based largely on scope of work and DBE subcontractors willing to quote FAA projects" Mr. Thompson also notes in an e-mail that when the oilfield or highway programs are strong, DBE are difficult to get. Currently the oilfield and highway programs are strong.

On June 19 Eric Simek, Project Manager for Strata Corporation, e-mailed comments in response to our letter. Mr. Simek states "The lower goal is always better for us (contractors) in North Dakota, the main reason is - there are very few qualified small businesses in the State that can work on Air Field projects - besides seeding types of contractors. Other types of professional contracting firms seem to be highly priced and are do not usually fall in a competitive range to be used. So from our point of view to get a truly competitive bid we like to see the DBE Goal around 1 to 2 percent."

On June 20, 2018, Tom Neigum, Project Manager for KLJ, the Bismarck Airport's Engineering Consultant, provided some additional comments based on KLJ's experience as the Airport's consultant. "Under Professional Services, DBE accomplishments have historically been very challenging. There are very few DBE consulting firms registered in ND, and even fewer that can offer services applicable to working on the Bismarck Airport. In the past, we've had MABU on our team in case we had any services they could assist with. During that time, we didn't have work for their team. In addition, they lost their DBE status in ND. For this next term of our consultant selection, we have proposed to utilize Holly Beck to assist with survey on the airport. Since much of the airport has been surveyed previously, we anticipate some DBE participation but don't see this as a large part of our services. In summary, DBE accomplishments under Professional Services has been very challenging. We would recommend lowering the proposed overall goal of 2.99 percent down to 1 percent to allow the potential to accomplish the goal."

As a result of the comments and recommendations from Mr. Wingo, Mr. Thompson, Mr. Simek. and Mr. Neigum, the Bismarck Airport believes that lowering the overall DBE goal is justified. We have decided to further lower our goal by 1.49% to 1.50%. This number reflects the comments and recommendations received as part of the consultation period, and also our actual DBE achievement in recent years.

The 30-day public comment period began June 26, 2018 when a public notice requesting comments was published in the Bismarck Tribune and posted on the airport's website. The public comment period ended on July 26, 2018. No comments were received during the comment period. Therefore, the goal of 1.50%, will not be adjusted any further, and submitted to the FAA.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The Bismarck Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Bismarck Airport uses the following race-neutral means to increase DBE participation:

1. Advertise program goals.
2. Encouraging prime contractors to subcontract portions of work they would otherwise perform with their own forces.
3. Providing engineer consultant technical assistance and other service to fill out bids.
4. Ensuring prime contractors have lists of potential DBE subcontractors.
5. Inform prime contractors of past DBE participants.
6. Ensuring prime contractors have address and web page for ND DOT DBE directory.
7. Utilize engineer consultant to administer and monitor compliance.

We estimate that, in meeting our overall goal of 1.50%, we will obtain 0.0% from race-neutral participation and 1.50% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

The Bismarck Airport used strictly race-neutral means of DBE participation in FY 2000, those contracts resulted in 1.69% DBE participation. In 2001, we used an overall goal of 1.7% through race-neutral means and 4.2% race-conscious means. That contract resulted in 1.12%. For FY 2002 Bismarck Airport used strictly race conscious means resulting in 1.04%. For FY 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 Bismarck Airport used strictly race conscious means resulting in 0.19%, 2.21%, 0%, 0.54%, 5.32 %, 3.36%, 0.36%, 2.4%, 0.65%, 0%, 1.09%, 1.08%, 11.25%, 3.22%, and 1.01% respectively. For FY 2019-2021, we believe that our previous experience justifies that our goal of 1.50% can only be accomplished by use of race conscious means.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract

that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (26.51)

The Bismarck Airport will use contract goals to meet any portion of the overall goal the Bismarck Airport does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

We will express our contract goals as a percentage of the total amount of the DOT assisted contract.

DBE Program Bismarck Municipal Airport

ATTACHMENT 5 **Demonstration of Good Faith Efforts - Forms**

Bismarck Municipal Airport uses the following Forms:

- DBE Form A – Disadvantaged Business Enterprise Participations
- DBE Form B – List of Businesses that Submitted Quotes
- DBE Form C – Notification of Intent to Use
- Utilization Statement

DBE Form A Disadvantaged Business Enterprise Participation

Submit a completed copy of this form with the bid proposal for the bid to be consider responsive.

| | |
|------------|------------------|
| Contractor | Phone |
| AIP No. | Bid Opening Date |

Note: For the life of the project, any changes in work listed here to be self-performed, to be performed by a DBE, or to be completed by a non-DBE subcontractor approved at the time of award must be approved in writing by the Owner prior to commencement of any work. No payment will be made without written approval.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

List all DBE firms who quoted your firm on this project in Section 1, Section 2, and/or Section 3.

SECTION 1

List DBE firms to be used on the project.

1. List DBE firms to be used by the bidder toward the projects goal.
2. List the DBEs to be used by subcontractors toward the project goal. Include the subcontractor's Form A listing the DBE's to be used by the subcontractor.
3. List the bid item numbers to be performed by DBEs and the total dollar value of the contract. Note whether the DBE firm is to perform a partial item (supply, haul, place, etc.) and state the reason(s) the DBE is not being used for the entire item. State the name of the contractor who will perform the remaining portion.
4. DBE bidders: List the work to be performed with "own forces and equipment." Separately list any work to be subcontracted to DBEs and any materials to be purchased from DBEs.

| | | |
|---|-----------------------------|------------------------------|
| DBE Firm | | |
| List specific Bit Item Numbers or Products to be Supplied | Total Contract Dollar Value | |
| Percent DBE will do with own equipment/forces | = | % |
| Percent non-DBE trucker will perform | = | % If regular dealer, x 60% = |

| |
|----------|
| DBE Firm |
|----------|

| | | | |
|---|---|---|-----------------------------|
| List specific Bit Item Numbers or Products to be Supplied | | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces | = | % | If regular dealer, x 60% = |
| Percent non-DBE trucker will perform | = | % | |

| | | | |
|---|---|---|-----------------------------|
| DBE Firm | | | |
| List specific Bit Item Numbers or Products to be Supplied | | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces | = | % | If regular dealer, x 60% = |
| Percent non-DBE trucker will perform | = | % | |

| | | | |
|---|---|---|-----------------------------|
| DBE Firm | | | |
| List specific Bit Item Numbers or Products to be Supplied | | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces | = | % | If regular dealer, x 60% = |
| Percent non-DBE trucker will perform | = | % | |

| | | | |
|---|---|---|-----------------------------|
| DBE Firm | | | |
| List specific Bit Item Numbers or Products to be Supplied | | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces | = | % | If regular dealer, x 60% = |
| Percent non-DBE trucker will perform | = | % | |

SECTION 2

List DBE firms not used because the bidder will self-perform or procure specific bid item numbers.

| DBE firms not used - bidder self-performing | Bid item numbers or products to be supplied by the bidder |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

SECTION 3

List DBE firms not used due to bid differential and indicate which firm will be performing the work instead.

| DBE firms not used – bid differential | Firms to be used instead of DBE |
|---------------------------------------|---------------------------------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

**DBE Form B
List of Businesses
That Submitted
Quotes**

Submit a completed copy of this form with the bid proposal for the bid to be consider responsive.

| | |
|------------|------------------|
| Contractor | Phone |
| AIP No. | Bid Opening Date |

List all firms that submitted quotes form all tiers of subcontracting.

Copies of all DBE and non-DBE quotes must be retained for 60 days after the bid opening date, or until the project is awarded, and be provided upon request of the Engineer.

| | | |
|--|--|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No | |

| | | |
|--|--|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No | |

| | | |
|--|--|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No | |

| | | |
|--|--|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No | |

| | | |
|--------------------------|----------------|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |

| | |
|--|--|
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|

| | | |
|--|--|------------------|
| Name of Business | Contact Person | Telephone Number |
| Mailing or Email Address | | Type of Work |
| DBE <input type="checkbox"/> Yes <input type="checkbox"/> No | Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No | |

Use additional pages, following the same format, if necessary.

DBE Form C
Notification of
Intent to Use

Submit a completed copy of this form with the Bid Proposal for the bid to be considered responsive.

1. The apparent low bidder shall submit an individual Form C for each DBE and non-DBE to be used on the project.
2. The contractor and DBE or non-DBE shall both sign the form. Faxed, scanned, or photocopied signatures are acceptable. Form C applies to all tiers of subcontractors for DBE achievement credit to be given.
3. If Form C contains additional pages or attachments, both parties must sign each page or attachment.
4. Explain any difference between the information on Form A and Form C in the comments section below.

This form is not a contract and does not take the place of any contract. This form indicates that all DBEs listed on Form A will be used on the project.

| AIP Number | | | | | | |
|--|------------|---|--|------------------|------------|--------|
| Bid Opening Date | | | | | | |
| Prime Contractor / Subcontractor Name | | | | | | |
| Prime Contractor / Subcontractor Phone & Email | | | | | | |
| Intended DBE / Non-DBE Name | | | | | | |
| Intended DBE / Non-DBE Phone & Email | | | | | | |
| Intended DBE / Non-DBE Address | | | | | | |
| Intended DBE / Non-DBE Status: <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | | | | | | |
| Spec # | NAICS Code | Work Description <i>(For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55)</i> | (DBE) % of work to be done with own forces | Approx. Quantity | Unit Costs | Amount |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Total

| |
|--|
| |
|--|

Are there any agreements not addressed in your quote? Yes No If yes, explain:

Comments: Use the space below to explain any differences between the amounts, units, work descriptions, spec items, quantities and totals between those indicated on Form A as submitted with the bid proposal and this Form C.

| |
|--|
| |
|--|

The undersigned bidder/offeror is committed to utilizing the above-named DBE / Non-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 / Non-DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form, it may not substitute or terminate the DBE / Non-DBE listed above without following the procedures of 49 CFR Part 26, §26.53 and the DBE Replacement Good Faith Efforts.

| | | |
|--|-------|------|
| Prime Contractor / Subcontractor Signature | Title | Date |
|--|-------|------|

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

| | | |
|----------------------------------|-------|------|
| Intended DBE / Non-DBE Signature | Title | Date |
|----------------------------------|-------|------|

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

North American Industry Classification System (NAICS) code information can be found at <https://www.naics.com/search/>.

DBE Utilization Statement

Submit a completed copy of this form with the bid proposal for the bid to be consider responsive.

The undersigned bidder/offeror has satisfied the requirements of the bid specifications in the following manner. *(Mark the appropriate box.)*

- 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 (GFE).

The undersigned hereby further assures that the information included herein is true and correct and that the DBE firm or firms identified within the submitted Letter of Intent forms have agreed to perform a commercially useful function for the indicated work elements.

The undersigned further understand that no changes to this statement may be made without prior approval from the Owner and the Federal Aviation Administration.

Bidder's/Offerors Firm Legal Name

State Registration Number

Representative Name & Title

Representative Signature

Date

**DBE UTILIZATION
SUMMARY**

| | Contract Amount | | DBE Amount | Contract % |
|----------------------|-----------------|----------|------------|------------|
| DBE Prime Contractor | \$ _____ | x 1.00 = | \$ _____ | % |
| DBE Subcontractor | \$ _____ | x 1.00 = | \$ _____ | % |
| DBE Supplier | \$ _____ | x 0.60 = | \$ _____ | % |
| DBE Manufacturer | \$ _____ | x 1.00 = | \$ _____ | % |
| | | | | |
| Total Amount DBE | | | \$ _____ | % |
| DBE Goal | | | \$ _____ | % |

* If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

ATTACHMENT 6

DBE Monitoring and Enforcement Mechanisms

The Bismarck Municipal Airport 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 North Dakota Century Code 44.04-18.4;

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 7

State's UCP Agreement



North Dakota Department of Transportation

Thomas K. Sorel
Director

Doug Burgum
Governor

December 14, 2017

Bismarck Municipal Airport
2301 University Drive
Bismarck, ND 58504

UNIFIED CERTIFICATION PROGRAM AGREEMENT FOR DBE/ACDBE

An updated agreement between the Bismarck Municipal Airport Authority and the North Dakota Department of Transportation for the North Dakota Unified Certification Program is enclosed.

Please review, sign, and return the agreement to:

Laurie Martin
Executive Assistant
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

A signed copy will be returned to you for your records.

If you have any questions, please contact me at 701-328-2576.

Ramona Bernard

RAMONA BERNARD, CIVIL RIGHTS DIVISION DIRECTOR

01/Imm
Enclosure

RECEIVED
DEC 17 2017
ND Aeronautics Commission

#5417/646

Unified Certification Program (UCP) Agreement
For
Disadvantaged Business Enterprise (DBE) and
Airport Authority's Concession Disadvantaged Business Enterprise (ACDBE)

Between
The North Dakota Department of Transportation (NDDOT)
And
Bismarck Municipal Airport

PURPOSE:

To establish an agreement where the North Dakota Department of Transportation (NDDOT) will handle certification of all DBE/ACDBE firms seeking to perform work on Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA) projects funded by the United States Department of Transportation (USDOT).

AUTHORITY:

49 CFR 26.81 requires all USDOT recipients (FHWA, FAA, and FTA) to participate in a UCP. It further requires the UCP to follow all certification procedures and standards of 49 CFR 26 Subparts D and E, & Part 23.

RESPONSIBILITIES AND PROCEDURES:

NDDOT agrees to:

Make all certification decisions on behalf of FHWA, FAA, and FTA recipients in North Dakota with respect to participation in the USDOT DBE Program.

Certify DBE/ACDBE firms in accordance with procedures and standards of 49 CFR 26 & Part 23, and its approved DBE Program Plan.

Maintain and disseminate a unified directory of certified DBE/ACDBE firms.

Accept referrals of firms and individuals seeking DBE/ACDBE certification from FAA or FTA recipients.

Accept complaint referrals relative to DBE/ACDBE certification eligibility from FAA and FTA recipients and proceed in accordance with 49 CFR 26, and as specified in the Airport DBE Program Plan.

Bismarck Municipal Airport agrees to:

Use only firms certified and appearing on the current unified DBE/ACDBE director in counting participation toward DBE goal.

Refer all applicants seeking DBE/ACDBE certification in North Dakota to the NDDOT.

Abide by NDDOT certification and decertification decisions.

Monitor each DBE/ACDBE participation to ensure they perform a commercially useful function as specified in 49 CFR 26.55.

LIMITATIONS:

Nothing in the UCP between NDDOT and the Bismarck Municipal Airport shall be construed as limiting or expanding the statutory or regulatory responsibility of any involved individual in performing functions granted to them by law. Each and every provision of this UCP is subject to the laws and regulations of the state of North Dakota and the United States.

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may be in any manner result from or arise out of this agreement.

Nothing in this agreement shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party.

EFFECTIVE DATE:

This UCP shall become fully operational and effective upon signature of the Director of the NDDOT or his designee and the FAA/FTA recipient indication below.

METHOD OF TERMINATION:

This UCP shall remain in effect unless formally terminated by either party after ninety (90) days written notice to the other party.

AMENDMENTS:

Amendments to the UCP shall become effective upon mutual agreement and written approval by the NDDOT Director or his designee and the FAA/FTA recipient.

WITNESS:

KEITH J. HONKE, CITY ADMINISTRATOR
NAME (Type or Print)

[Signature]
SIGNATURE

Bismarck Municipal Airport
AIRPORT NAME

MICHAEL C. SEMINARY, PRESIDENT BOARD OF CITY COMMISSIONERS
OFFICER'S NAME (Type or Print)

[Signature]
SIGNATURE

1-9-18
DATE

(STATE)

WITNESS:

LAURENCE M. MATTHEW
NAME (Type of Print)

[Signature]
SIGNATURE

Ronald J. Henke

Settle DIRECTOR

[Signature]
SIGNATURE

3/13/18
DATE

APPROVED as to execution this
12th day of March 2018
ATTORNEY GENERAL
By [Signature]
SPECIAL ASST. ATTORNEY GENERAL

Approved as to Substance:

Wayde L. Swenson

OFFICE OF OPERATIONS DIRECTOR

[Signature]
SIGNATURE

3/9/18
DATE

Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are \$250,000 per person and \$500,000 per occurrence. The minimum limits of liability required of the State are \$250,000 per person and \$1,000,000 per occurrence.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days** prior written notice to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09

