

**Disadvantage Business Enterprise Program
Pittsfield Municipal Airport
Pittsfield, Massachusetts**

This Disadvantage Business Enterprise program update is prepared because the City of Pittsfield was recently notified that they would be eligible for federal funding of an airport program. The program covers the period from October 1, 2020 – September 30, 2023.

This report is prepared under USC, Title 49,
Part 26



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October 2020

**Pittsfield Municipal Airport
Pittsfield, Massachusetts
Disadvantage Business Enterprise Program
October 2020**

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the City of Pittsfield 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.

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

The City of Pittsfield will disseminate this policy statement to the City Council and this statement will be published on the City's internet website. 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 publishing on the City's website.



Daniel Shearer, Airport Manager

December 3, 2020

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

Section 26.5 Definitions

The City of Pittsfield uses terms in this program that has the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 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” using the FAA dbE-Connect website, <https://faa.dbeconnect.com/FAA/login.asp>. We will also report the DBE contractor firm information on the FAA dbE Connect website. We will transmit to FAA annually on December 1.

Bidders List: 26.11(c)

The City of Pittsfield will create and maintain a bidders list, **Attachment 3**. 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 by requesting each primary contractor awarded a contract to submit the details to our DBELO in writing with 14 days of contract award. The requirement to provide this information will be disseminated during bid solicitations and during pre-bid conferences.

Section 26.13 Federal Financial Assistance Agreement

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

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

The City of Pittsfield shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The City of Pittsfield shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City of Pittsfield'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 City of Pittsfield, of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b – The City of Pittsfield 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 City of Pittsfield deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Pittsfield 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:

Daniel Shearer
Airport Manager
Pittsfield Municipal Airport
832 Tamarack Road
Pittsfield, MA 01201
Phone: (413) 448-9790
Email: dshearer@pittsfieldch.com

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one plus the City's aviation consultant to assist in the administration of the program. The duties and responsibilities include the following:

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

Section 26.27 DBE Financial Institutions

The City of Pittsfield will 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.

The Massachusetts State Supplier Diversity Office (MSDO) has identified two minority owned financial institutions.

National Capital Resources, LLC
P.O. Box 1145 c/o LVCC
Marblehead, MA. 01945

The Boston Bank of Commerce
100 Franklin Street, Suite 600
Boston, MA. 02110

Section 26.29 Prompt Payment Mechanisms

The City of Pittsfield requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

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

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

- You may 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.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

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

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the

subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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 Airport or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim 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.

Section 26.31 Directory

The City utilizes the Massachusetts State Supplier Diversity Office (MSDO). MSDO publishes a current directory on the Internet identifying certified DBEs willing to perform as subcontractors on MSDO's federal aid projects. All DBE firms listed in the directory are certified as meeting the requirements as outlined in 49 CFR Part 26. The directory lists the firm's name, address, phone number, owner name, work categories and work area. 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.

Copies are available on MSDO website at: <https://www.sdo.osd.state.ma.us/default.aspx>. The DBE Directory is the responsibility of the MSDO Program Administrator. **Appendix 4.**

Section 26.33 Over-concentration

The City of Pittsfield relies on MSDO who has not determined an over concentration in any areas. When evidence is noted, MSDO will take specific remedial steps. These may include but are not limited to:

- reduced/no contractual credit for Contractors/Consultants who utilize businesses in over concentrated areas;
- some "incentive" benefit to Contractors/Consultants who expand/initiate new contracting arrangements with DBEs in non over concentrated areas;
- and public relations or marketing campaign to promote "other" business opportunities in the DBE program than those more traditionally known.

Current areas of possible over concentration which are of concern include: landscaping, trucking, striping, flagging and guardrail.

MSDO may adjust the Program in response to the level of utilization of non-DBE firms in any area MSDO determines as being over concentrated. This is accomplished via periodic reviews conducted.

Contractors and consultants are encouraged to promote DBE relationships which reflect the array of businesses represented in [MSDO's Directory of DBE Certified Businesses](#).

Section 26.35 Business Development Programs

The City of Pittsfield has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Pittsfield 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 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 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts.
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 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.

Section 26.39 Fostering small business participation.

The City of Pittsfield has created an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. For clarification purposes, 49 CFR Part 26.5 states, "Small business concern means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b)." 13 CFR 121.402 defines "What size standards are applicable to Federal Government Contracting programs?"

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

- Establishing a race-neutral small business set aside for prime contracts that exceed \$500,000 of grant funding awarded during the goal reporting period.

- On prime contracts exceeding \$250,000 not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facility the ability of consortia or businesses, including DBEs, to compete for and perform prime contracts.

To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

To actively implement the City of Pittsfield's program elements to foster small business participation and to comply with the requirement of good faith implementation of our DBE program, the City of Pittsfield will require that the Prime Contractor(s) for Construction Work Items and for Professional Services Work Items complete the form entitled, Fostering Small Business Participation, located in **Attachment 9** of this DBE program.

The Special Conditions of the Contract will indicate the amount of small business participation as determined by the City of Pittsfield.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City of Pittsfield 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 City of Pittsfield will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Corporation%20Grant%20Recipients.pdf

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use MaineDOT D/WBE Directory of Businesses and United States Census Bureau as a method to determine our base figure. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

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

26.45 (g)(1) In establishing the overall goal, the City of Pittsfield will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Pittsfield efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City of Pittsfield goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the City of Pittsfield will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the City of Pittsfield and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1st deadline.**

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(f) - Prior Operating Administration Concurrent

The City of Pittsfield 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 5** to this program.

Section 26.47 Failure to meet overall goals.

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

Section 26.51(d-g) Contract Goals

If it is determined by the City of Pittsfield that the annual DBE goal will not be met through race and gender neutral means, the Department may implement race and gender conscious contract goals on some projects. Race-conscious contract goals are goals that are enforceable by the Department and require that the prime contractor use good faith effort to achieve the goal set by the Department for that particular project and document those efforts. If race conscious means are implemented on a project, the Prime must comply with the requirements of 49 CFR.

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 6** to Part 26.

Mr. Shearer, the DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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 6** 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 (b)(2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within 14 business days of being informed by the City of Pittsfield that it is not 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: Colleen Hunter-Mullet, Purchasing Agent, 70 Allen Street, Pittsfield, MA, (413) 499-9470, (purchasing@cityofpittsfield.org). The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with 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.

The City of Pittsfield 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 City of Pittsfield 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 good faith efforts have been demonstrated.

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

If the contractor fails or refuses to comply in the time specified, 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 City of Pittsfield 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 **2.6** percent has been determined in the goal calculation for this contract, **Attachment 5**. The bidder/offeror shall make good faith efforts, as defined in **Appendix 6**, 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.

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found in **Attachment 6** can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional

services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.]

Section 26.55 Counting DBE Participation

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 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 City of Pittsfield will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on facts, as a whole.

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

[Massachusetts Supplier Diversity Office](#)

The McCormack Building
One Ashburton Place, Room 1017
Boston, MA 02108
Phone: (617) 502-8831
Fax: (617) 502-8841
wsdo@state.ma.us

Our certification application forms and documentation requirements are found in **Attachment 8** to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

MSDO is the certifying agency for all USDOT recipients in Massachusetts for the DBE program. All recipients are required to have signed the UCP Agreements in order to participate in USDOT assisted programs. MSDO has a list of all participating recipients and has signed copies of agreements on file at the MSDO.

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.

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 City of Pittsfield, 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
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 DBE link to Massachusetts Supplier Diversity Office (MSDO) DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 Small Business Element Program

ATTACHMENT 1: REGULATIONS: 49 CFR PART 26

49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, is available on the Internet at

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT 2 – ORGANIZATIONAL CHART



ATTACHMENT 4 – DBE DIRECTORY

Massachusetts Supplier Diversity Office (MSDO) web link to DBE directory

[MSDO's Directory of DBE Certified Businesses](#)

ATTACHMENT 5 – OVERALL GOAL CALCULATIONS

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Pittsfield, Pittsfield Massachusetts

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

DOT-assisted contract amount:	FY-2021	\$ 135,000
	FY-2022	\$ 250,000
	FY-2023	\$ <u>0</u>
	Total	\$ 385,000

Overall Three-Year Goal: 2.6%, to be accomplished through 0% RC and 2.6% RN. (Note: the goal may be reflected as (1) an average of the three years; (2) three-year Median; or (3) weighted percentage)

Total dollar amount to be expended on DBE's: \$10,027

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

Contracts Fiscal Year 2021

Easement Acquisition (Four Parcels: Runway 14 Approach and RPZ)

Contracts Fiscal Year 2022

Obstruction Removal

Contracts Fiscal Year 2023

No Projects

Market Area: Historically, counties in western Massachusetts (west of Springfield), as well as the southern counties of Vermont, the northern part of Connecticut, and eastern New York are considered the market area for the City.

STEP 1. 26.45(c) Actual relative availability of DBE's

Weighted Average of Availability of DBE firms:

Fiscal Year #1 - For FY-2021, we anticipate the award of the following

Contract Name	Trade Description	NAICS Code	Trade (\$)	NAICS	DBEs	DBE (%)	DBE (\$)
Easement Acquisition (Four Parcels: Runway 14 Approach and RPZ)	Consulting Engineering	541330	\$10,000	1524	87	5.71%	\$571
	Legal Fees	541110	\$5,000	4383	2	0.05%	\$2
	Real Estate Appraiser	531320	\$5,000	177	1	0.56%	\$28
	Surveying	541370	\$5,000	148	5	3.38%	\$169
	Land/Easement Acquisition	N/A	\$110,000	1	0	0.00%	\$0
<i>Total FY21</i>			<i>\$135,000</i>			<i>0.57%</i>	<i>\$770</i>

Fiscal Year #2 - For FY-2022, we anticipate the award of the following

Contract Name	Trade Description	NAICS Code	Trade (\$)	NAICS	DBEs	DBE (%)	DBE (\$)
Obstruction Removal	Consulting Engineering	541330	\$20,000	1524	87	5.71%	\$1,142
	Excavation / Site Preparation Contractor	238910	\$230,000	1162	41	3.53%	\$8,115
<i>Total FY22</i>			<i>\$250,000</i>			<i>3.70%</i>	<i>\$9,257</i>

Total Weighted Goal FY21-FY23	\$385,000	2.60%	\$10,027
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The base goal projection after weighting is as follows:

- Total Weighted DBE Availability
- Total for All Trades

$$\text{Weighted Base Goal} = \frac{\text{Total FY21 DBE \$} + \text{Total FY22 DBE \$}}{\text{FY21 Trade \$} + \text{FY22 Trade \$}}$$

$$\text{Weighted Base Goal} = \frac{\$770 + \$9,257}{\$135,000 + \$250,000}$$

$$\text{DBE Weighted Base Goal} = \frac{\$10,027}{\$385,000} = 2.6\%$$

The data source or demonstrable evidence used to derive the numerator was: **MSDO's Directory of DBE Certified Businesses.**

The data source or demonstrable evidence used to derive the denominator was the **North American Industry Classification System (NAICS).**

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

We feel the DBE Weighted Base Goal of **2.6%** accurately reflects the Airport's ability to attain the goal, and no further adjustments are necessary.

Disparity Studies

No history of any applicable disparity studies for the local market area or recent legal case information available from the state of Massachusetts, Office of Civil Rights to show any evidence of barriers to entry or competitiveness of DBEs in any of the counties within the market area.

Breakout of Estimated "Race and Gender Neutral" (RN) and "Race and Gender Conscious" (RC) Participation. 26.51(b) (1-9)

The City of Pittsfield's DBE Program goal of **2.6%** for FYs 2021-2023 will be achieved entirely through race and gender-neutral means. If we determine that we will not achieve the goal, we will take measures to do so, which may include targeted project goals.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing; and
3. Providing technical assistance and other services.

The City of Pittsfield will not attempt to adjust the base figure based upon the effects of the DBE program. The City of Pittsfield advocates for the DBEs on each federally funded contract and provides assistance in locating DBEs to the prime contractors. We do not have data to compare the effect of the program to the results we would get without the program. Thus, we do not have a logical way to make an adjustment. However, MSDO has implemented a strong Disadvantaged Business Enterprise Supportive Services (DBE SS) Program in accordance with 23 CFR 230.204. This business development program aims to assist minority, women and disadvantaged owned firms to build strong businesses able to successfully compete when bidding for federally funded transportation projects and consulting contracts, thus increasing equal opportunity, competition, and diversity in Massachusetts airport construction industry.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

In establishing the overall goal, the City of Pittsfield provided for consultation and publication. This included consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Pittsfield's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City of Pittsfield's goal setting process, and it occurred before we were required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

The City of Pittsfield submits its overall DBE three-year goal to USDOT on August 1 as required by the set schedule.

Following the consultation, we will publish a notice on the City's website, of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the City Hall for 30 days following the date of the notice, and informing the public that the City of Pittsfield and DOT will accept comments on the goals for 30 days from the date of the notice.

Our overall goal submission to USDOT will include a summary of information and comments received during this public participation process and our responses, if any.

Comments received will be noted and an adjustment, if necessary will be made to our Plan

PUBLIC NOTICE

The City of Pittsfield hereby announces its fiscal years 2021 through 2023 goal of **2.6%** for Disadvantaged Business Enterprise (DBE) airport construction contracts. The proposed goals and rationale is available for inspection on the City of Pittsfield's website <http://www.cityofpittsfield.org/> or at the City Hall between 8:30 a.m. and 4:00 p.m., Monday through Friday at 70 Allen Street, Pittsfield, MA 01201 for 30 days from the date of this publication.

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

Daniel Shearer
Pittsfield Municipal Airport
832 Tamarack Rd
Pittsfield MA, 01201
Mobile: (413) 822-6586
Office: (413) 448-9790
dshearer@cityofpittsfield.org

or

Thomas Knox
Federal Aviation Administration
Office of Civil Rights Staff
5000 Aviation Blvd., Lawndale, CA 90261
Ph: (310) 725-3942
Fax: (310) 725-6819
Email: thomas.knox@faa.gov

Contract Goals

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

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

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

ATTACHMENT 6 – GOOD FAITH EFFORTS

Demonstration of Good Faith Efforts - Forms 1 & 2

[Forms 1 and 2 will be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

(Date)

(Title)

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

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

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

Breach of contract action, pursuant to the terms of the contract; Breach of contract action, pursuant to Mass. Gen. Laws ch. 260, § 2A.. Breach of contract; liquidated damages; costs.

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

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

ATTACHMENT 8
DBE Certification Application Form
(New form November 18, 2014)

U.S. Department of Transportation web link to Uniform Certification Application

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/dbe-uniform-certification-application>

ATTACHMENT 9
Small Business Element

It is recommended that you include the following components and notes:

1. Objective/Strategies

As part of this program element you may include, but are not limited to, the following strategies:

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).*
- (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.*
- (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*
- (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*

2. Definition

- DBE firms should be identified in the Small Business element of the recipient’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.*
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*
- Personal Net Worth standards (optional) – should be consistent with 49 CFR Part 26 thresholds.*

3. Verification

- Should diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.*

4. Monitoring/Record Keeping

- *How will the information will be organized (for counting purposes)*
- *SB element should be reasonably monitored*

5. Implementation Timeline

- *Identify implementation schedule/timeline, within 6 or 9 months of FAA's approval.*

Small Business Element (continued)

6. Assurance

- *Include the following assurances:*
 1. *assurance that the program is authorized under state law;*
 2. *assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;*
 3. *assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;*
 4. *assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and*
 5. *assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
 6. *assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*