

**SANFORD REGIONAL AIRPORT
DBE PROGRAM**

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

Objectives /Policy Statement (§§26.1, 26.23)

The Town Council, Town of Sanford, Maine 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 Town of Sanford has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Town of Sanford has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Town of Sanford 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; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Human Resource Director has been delegated as the DBE Liaison Officer. In that capacity, the Human Resource Director 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 Town of Sanford in its financial assistance agreements with the Department of Transportation.

The Town of Sanford has disseminated this policy statement to the Town Council, Town of Sanford, Maine and all the components of the airport organization. We distribute this statement to DBE and non-DBE businesses that perform work for us on DOT-assisted contracts as part of bid packages and contracts.

James Nimon
Town Manager

June 6, 2012
Date

Non-discrimination. (§26.7)

The Town of Sanford 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 Town of Sanford 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.

DBE Program Updates (§26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (§26.43)

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (§26.45)

We have designated the following individual as our DBE Liaison Officer (DBELO): Glenn J. Dowe, Director of Human Resources, 919 Main Street, Sanford, Maine 04073. In that capacity, Glenn J. Dowe is responsible for implementing all aspects of the DBE program and ensuring that the Town of Sanford complies with all provisions of 49 CFR Part 26. Glenn J. Dowe has direct, independent access to the Town Manager concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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 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 if used) and monitors results.
6. Analyzes the Town of Sanford's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Town of Sanford, Town Council, on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Acts as liaison to the Uniform Certification Process in Maine.

Federal Financial Assistance Agreement Assurance (§26.13)

The Town of Sanford has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The Town of Sanford 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 recipient 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 recipient'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 Town of Sanford of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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.).

Directory (§26.25)

The Town of Sanford will use as its DBE directory, the *Maine Department of Transportation Certified Disadvantaged Enterprise Directory*. The directory lists each firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Town will revise the directory annually or obtain a copy revised by the State. A copy of the Directory is maintained at the Office of Human Resources for public review. It can also be downloaded from the Maine Department of Transportation's web site: <http://www.state.me.us/mdot/disadvantaged-business-enterprises/pdf/directory.pdf>

DBE Financial Institutions

It is the policy of the Town of Sanford 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.

Currently, there are no DBE financial institutions in the State of Maine. If a financial institution is certified by the State Department of Transportation it will be included in *the Maine Department of Transportation's Certified Disadvantaged Enterprise Directory*, which is used as the Town of Sanford's directory.

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor 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 recipient deems appropriate.

Prompt Payment

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

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

If the prime contractor fails to meet the prompt payment timeframes established in this section, the Town of Sanford has established the sanctions including, but not limited to:

1. Withholding payments to the Contractor under the contract until the Contractor complies; and

2. Cancellation, termination or suspension of the contract in whole or in part.

The Contractor will be responsible for any reasonable costs associated with the legal and administrative costs incurred while trying to enforce payment.

Monitoring and Enforcement Mechanisms (§26.37)

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 §26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall Goals (§26.45)

Consultation

In accordance with Section 26.45(f), the Town of Sanford will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, the Town of Sanford will consult with the Engineering Consultant to the Sanford Regional Airport, the State of Maine DOT, and the US Census to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Town of Sanford's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Town of Sanford Town Hall for 30 days following the date of notice, and inform the public that the Town of Sanford and DOT will accept comments on the goals for 45 days from the date of the notice. These goals will also be advertised on the Town of Sanford's website for public viewing. We will issue this notice by June 1 of each year and the notice will include the address to which comments may be sent.

Amount of goal

The Town of Sanford's overall goal for FY 2010 is the following: 5.5% of the Federal financial assistance we will expend in DOT-assisted contracts.

Method

The State of Maine DOT's methodology for impacting a DBE goal, Step 2, is adjusted to suit aviation/airports below. The most recent methodology from 2010 was adjusted to create this template. The impact of specific factors requires narrowly tailoring the DBE program.

1. Capacity limits.

Statewide:

The amount of non-DOT work available to contractors in Maine has been significantly decreased over the last several years; there have not been sudden increases in private development, so there is no anticipated capacity limit related to outside sources. Maine's economy is slowly growing, as is the number of contractors and special trades businesses. There is no reason to adjust the goal based upon statewide economy and resources.

DBE/ Project Specific:

We do receive complaints from prime contractors regarding the unavailability of DBE's on specialized services, especially those used most frequently on airport projects. The State of Maine's short construction season creates a situation where the work for the year must be completed in the same 5 to 7 month time frame. This further limits the capacity and availability of DBE firms. Specialty work like runway/taxiway/ramp paving often happen at the end of the season and must be incorporated into only a few months for projects statewide. The amount of these refusals is likely to equal 10% of potential DBE work.

Geography is also an issue. Smaller companies can not afford to travel long distances to do small amounts of work and frequently decline to quote for our more remote locations. These refusals represent approximately 8% of potential DBE work.

Working on an airport, especially within Airport Operations Areas (AOA) typically requires special training and certificates. This additional burden can be difficult for smaller DBEs.

Extraordinary Projects:

There are no projects significant enough to cause extraordinary impact this federal fiscal year.

Base adjusted for capacity limits: $11.7 \times 82\% = 9.59\%$

- 11.7 is derived from Step 1 of MDOT's Base Goal Setting for DBE's
- 82% derived from adding the 10% and 8% refusals cited above, then subtracting from 100%.

2. Past participation.**Sanford Regional Airport DBE Participation, FAA Funded projects****Design**

Year	Project	Value	DBE	%
2006	East Terminal Ramp Construction Admin/Permitting	\$183,600.00	\$1,705.32	0.93%
2006	Supplemental Master Plan Update	\$37,100.00	\$9,541.38	25.72%
2007	Environmental Assessment	\$103,550.00	\$24,517.81	23.68%
2007	Slurry Seal Design and Construction	\$35,589.76	\$0.00	0.00%
2008	Taxiway F Design	\$234,700.00	\$21,672.54	9.23%
2009	Taxiway F Construction	\$274,900.00	\$0.00	0.00%
	Design DBE Participation	\$869,439.76	\$57,437.05	6.61%

Construction

Year	Project	Value	DBE	%
2006	East Ramp Reconstruction/Expansion	\$2,319,462.00	\$10,410.00	0.45%
2007	Slurry Seal and Mark East Ramp	\$51,340.00	\$47,600.00	92.72%
2009	Taxiway F Construction	\$1,860,140.54	\$22,930.00	1.23%
	Construction DBE Participation	\$4,230,942.54	\$80,940.00	1.91%

Totals By Year

2006	\$2,540,162.00	\$21,656.70	0.85%
2007	\$190,479.76	\$72,117.81	37.86%
2008	\$234,700.00	\$21,672.54	9.23%
2009	\$2,135,040.54	\$22,930.00	1.07%
Total DBE Participation	\$5,100,382.30	\$138,377.05	2.71%

Median Past Participation

The median past participation is 5.15% is then averaged with the adjusted base calculation of 9.59%. The average of the median past participation figure and the Step 1 Base Figure is 7.37%

Adjustment for median past participation: 7.37%**3. Census figures:**

Census: The 2002 data used was the most current census date available.

All firms

Heavy Construction other than building construction contractors 22,398

Minority-owned firms

Heavy Construction other than building construction contractors 263

Women-owned firms

Standard Industry Code (SIC) 16 Heavy Construction other than building construction contractors 1,370

The Census data indicates minorities own 1.1% of Heavy Construction firms, and women own 6.1% of Heavy Construction firms.

Using the Census figures, with minority and women owned firms as the numerator and all firms as the denominator, the percentage is **7.29%**.

The applicability of the Census figures remains in question:

- The minority or women owned firms counted in the Census are those firms that are 51% *owned* -- but not necessarily *controlled* -- by minorities or women.
- Social and economic disadvantage are not addressed in the Census numbers.
- The Census figures also do not address the size limits of the businesses or the personal net worth of the minority or women owners.
- These totals may not be reflective of the actual totals since an assumption is made that women and minorities are separate groups.

49 CFR Part 26 is clear in stating that to be included in the program, individuals must “demonstrate group membership, ownership, *control*, and *social and economic disadvantage*.”

Also the regulations say the overall goal “must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate...”

Ready, willing and able DBEs are those DBEs providing quotes/bids to Contractors who bid on the Department’s projects, or those DBEs themselves bidding as primes. The Census figures broadly count total Heavy Construction firms and total Specialty Trades firms, but the only demonstrable evidence of the total field of “ready, willing and able” firms are the Department’s Prime Bidders List and the Contractors’ lists of firms providing quotes or bids on their projects.

In no way should the goal exceed the available number of firms, ready willing and able, and qualified as DBEs. Because census data does not ask that specific question, however, only indicates the total women and minority owned firms are roughly 7.29% assuming the groups are mutually exclusive, and because we can assume all those firms are not qualified as DBEs, we recommend for an adjustment based upon census data that the goal not exceed 75% of that figure. We assume 75% of these businesses would qualify as DBEs as a rule of thumb based upon the historical pattern that only 75% of businesses that apply for DBE certification in Maine are actually certified. This calculation results in a recommendation for census data adjustment of the goal to 5.47%.

Adjustment for Census Data: 5.47%

Additional Considerations:

Disparity Studies: No relevant disparity studies have been conducted within the state’s jurisdiction.

General Economics: According to the US Department of Labor’s website, (<http://www.bls.gov/ppi/>) there is no Producer Price Index (PPI) for airport construction related projects.

Adjustment for additional considerations: 0%

New FFY 2010 DBE Adjusted Goal

Base: 11.7 %

Base adjusted for capacity limits: 9.59%

Base adjusted for past participation: 7.37%

Base adjusted for census data: 5.47%

FFY 2010 Goal 5.5%

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The Town of Sanford will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation in DOT assisted contracts. The Town of Sanford uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for presentation of bids, quantities, specification, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; and ensuring the dissemination to bidders on prime contracts a list of potential subcontractors); and
4. Ensuring distribution of the DBE directory to the widest feasible universe of potential prime contractors.

We estimate that, in meeting our overall goal of 5.5%, we will obtain 100% from race-neutral participation and 0% through race-conscious measures.

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.

If the Town of Sanford fails to meet the DBE goal on DOT assisted contracts using race neutral measures, race-conscious measures will be adopted, which could include (but are not limited too) contract goals and documentation of good faith efforts.

Counting DBE Participation (§26.55)

We will count DBE participation toward overall goals as provided in 49 CFR §26.55.

Certification (§§26.61 – 26.91)

The Town of Sanford will adopt the Maine Department of Transportation's (MDOT) 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.

Process

For information about the certification process or to apply for certification, firms should contact: **MDOT, Office of Human Resources, State House Station 16, Augusta, Maine 04333.**

Certification Appeals

Any firm or complainant may appeal the decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

Information Collection and Reporting

Bidders List

The Town of Sanford will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following way:

- \$ A contract clause, on DOT assisted contracts, requiring prime bidders to report the names/addresses, DBE/non-DBE status, age and annual gross receipts, of all firms who quote to them on subcontracts.

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 Town of Sanford or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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.

Reporting to DOT

We will report DBE participation to DOT as follows:

We will submit annually DOT Form 4630, as modified for use by FAA recipients.

Confidentiality

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 including, but not limited to, Title 1 M.R.S.A. 401 et seq. the State Freedom of Information Act, which makes public records available to the public. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Reference Material

A copy of 49 CFR Part 26, *Participation of Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, is provided at the Sanford Regional Airport for public review. It can also be downloaded from the internet at <http://www.dotcr.ost.dot.gov/asp/dbe.asp>