

**KEENE, NEW HAMPSHIRE  
DILLANT-HOPKINS AIRPORT  
DISADVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM**

**POLICY STATEMENT**

**Section 26.1, 26.23: Objectives/Policy Statement**

The City of Keene, owner and sponsor of the Dillant-Hopkins Airport (hereinafter referred to as the Sponsor) has established a Disadvantage Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 (see **Attachment 1**). The Sponsor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of USDOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-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 USDOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

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

The Sponsor will disseminate this policy statement to the Keene City Council. This statement will be published on the Sponsor's Internet website and posted on the Sponsor's community bulletin board.

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David Hickling, Airport Director

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Date

**DBE PROGRAM  
SUBPART A – GENERAL REQUIREMENTS**

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

**Section 26.5: Definitions**

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

**Section 26.7: Non-discrimination Requirements**

The Sponsor 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 Sponsor 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 USDOT: 26.11(b)**

Since the Sponsor may receive an annual grant during the reporting period of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from USDOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to USDOT as follows:

**DBE PROGRAM  
SUBPART A – GENERAL REQUIREMENTS**

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We will transmit to FAA annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payments using the USDOT DBE Office Online Reporting System (DOORS).

**Bidders List: 26.11(c)**

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

**Assurance: 26.13(a)**

The Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT 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 USDOT assisted contracts. The Sponsor's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 Sponsor 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.).

This language will appear in financial assistance agreements with sub-recipients.

**DBE PROGRAM  
SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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Contract Assurance: 26.13b

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

*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 USDOT 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.*

**SUBPART B - ADMINISTRATIVE REQUIREMENTS****Section 26.21: DBE Program Updates**

The Sponsor may receive an annual grant for airport planning or development totaling \$250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from USDOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding \$250,000 annually, during the reporting period.

**Section 26.23: Policy Statement**

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

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

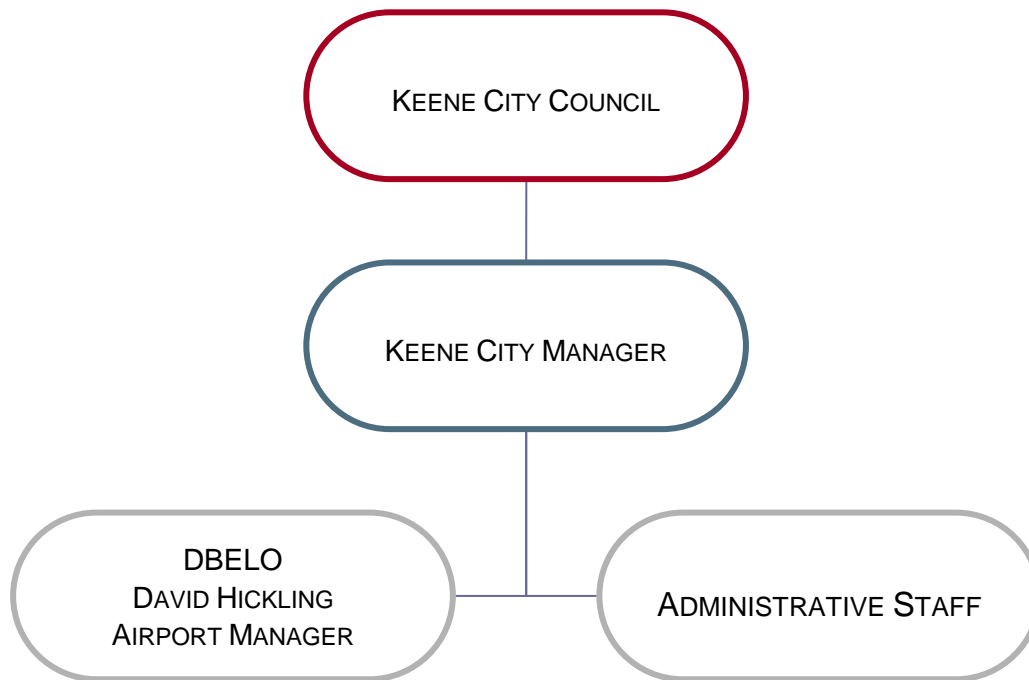
We have designated the following individual as our DBE Liaison Officer:

David Hickling, Airport Director  
Dillant-Hopkins Airport  
80 Airport Road  
Keene, NH 03431  
(603) 357-9835  
[dhickling@ci.keene.nh.us](mailto:dhickling@ci.keene.nh.us)

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SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Sponsor complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Keene City Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is shown in the figure below.



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 Sponsor'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 USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

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SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes the Sponsor's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Sponsor's city manager and city council on DBE matters and achievement.
8. Determines contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.

**Section 26.27: DBE Financial Institutions**

The Sponsor will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons and make reasonable efforts to use these institutions, within state law.

New Hampshire Department of Transportation (NHDOT) has not identified any minority owned financial institutions in the state.

**Section 26.29: Prompt Payment Mechanisms**

The Sponsor will include the following clause in each USDOT-assisted prime contract:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the prime contractor receives from Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 14 days after the subcontractors 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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.*

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SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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**Section 26.31: Directory**

The Sponsor utilizes the NHDOT directory . NHDOT publishes a current directory on the Internet identifying certified DBEs willing to perform as subcontractors on NHDOT'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 contains the DBE firm name, address, phone, fax, owner name, work categories and work area. Copies are available on the NH website at:

<https://www.nh.gov/dot/org/administration/ofc/documents/dbe-directory.pdf>

Updating the Directory is the responsibility of the NHDOT DBE Program Administrator.

**Section 26.33: Over-concentration**

The Sponsor relies on NHDOT, who has not determined an over concentration in any areas. When evidence is noted, NHDOT 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.

NHDOT may adjust the Program in response to the level of utilization of non-DBE firms in any area NHDOT 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 NHDOT's Directory of DBE Certified Businesses.

**Section 26.35: Business Development Programs**

The Sponsor has not established a business development program.

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SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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**Section 26.37: Monitoring and Enforcement Mechanisms**

The Sponsor 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 United States Department of Transportation (USDOT) any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT 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.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism 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. This mechanism will include a 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). This will be accomplished by requiring each prime contractor submit detailed payment data to each DBE, including copies of DBE invoices, payment records, including dates, amounts, check numbers, and other information deemed necessary to support contract performance
4. In our reports of DBE participation to USDOT, we will show both commitments and attainments, as required by the USDOT uniform reporting form.

**Section 26.39: Fostering small business participation.**

The Sponsor 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



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§26.65(b)." 13 CFR 121.402 defines "What size standards are applicable to Federal Government Contracting programs?"

In order to actively implement the Sponsor's program elements to foster small business participation and to comply with the requirement of good faith implementation of our DBE program, the Sponsor 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 4** of this DBE program.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING****Section 26.43: Set-asides or Quotas**

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

**Section 26.45: Overall Goals**

The Sponsor will establish 3-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the 3-year goal period. Goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Sponsor does not anticipate awarding more than \$250,000 in FAA funding annually during the 3-year reporting period, we will not develop an overall goal; however the existing DBE program will remain in effect and the Sponsor will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "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 projects.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 3** to this program.

In accordance with Section 26.45(f) the Sponsor will submit its overall goal to USDOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, the Sponsor will consult with the NHDOT, Office of Civil Rights, community organizations, such as the Chamber of Commerce, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects

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of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection on the Sponsor's website for 30 calendar days following the date of the notice, and informing the public that Sponsor and USDOT will accept comments on the goals for 45 calendar days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to USDOT/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 USDOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a USDOT-assisted contract for the project.

**Section 26.47: Failure to meet overall goals.**

If the Sponsor awards and commitments are less than the goal for that year, we will:

- Analyze the reasons for difference; and
- Establish specific steps and milestones to fully meet the goal for the new fiscal year.

**Section 26.49: Transit Vehicle Manufacturers Goals**

The Sponsor will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

**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 3** to this program.

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

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

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

1. Arranging solicitations, times for the presentation of bids, specifications, and delivery schedules in ways that facilitate DBE participation (e.g., encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors);
3. Ensuring distribution of the NHDOT DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
4. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
5. Ensuring the DBE goals are published in all bid and contract documents.

The Sponsor anticipates using contract goals during the 2021-2023 reporting period. The Sponsor will monitor the DBE participation and adjust contract goals as required.

The recipient estimates that it will meet its overall goal of 3.3% over the three year program through a combination of Race Neutral (RN) and Race Conscious (RC) measures.

The Sponsor will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f) and 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 prime contract that a DBE obtains through customary competitive procurement procedures. DBE participation thorough a subcontract on a prime contract that does not carry DBE goal; DBE participation on 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. The Sponsor will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

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

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**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.

David Hickling, 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))

The Sponsor treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility and only the apparent successful bidder will submit the DBE information.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within 14 business days of being notified that they are the successful bidder, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 14 business days of being informed by the Sponsor that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request

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

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administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Elizabeth Dragon, City Manager, **edragon@ci.keene.nh.us**. 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 when a DBE is replaced on a contract (26.53(f))**

The Sponsor 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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 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;

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

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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 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 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.

**DBE PROGRAM**

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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.

**Section 26.55: Counting DBE Participation**

The Sponsor 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.

**SUBPART D – CERTIFICATION STANDARDS****Section 26.61 – 26.73: Certification Process**

The Sponsor will rely on NHDOT who uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

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

New Hampshire Department of Transportation  
Office of Federal Compliance  
7 Hazen Drive  
Concord, NH 03302  
(603) 271-3734

**SUBPART E – CERTIFICATION PROCEDURES****Section 26.81: Unified Certification Programs**

**DBE PROGRAM  
SUBPART F – COMPLIANCE AND ENFORCEMENT**

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NHDOT is the certifying agency for all USDOT recipients in New Hampshire for the DBE program, which was approved by USDOT in 2000. All recipients are required to have signed the UCP Agreements in order to participate in USDOT assisted programs. NHDOT has a list of all participating recipients and has signed copies of agreements on file at the NHDOT.

**SUBPART F – COMPLIANCE AND ENFORCEMENT****Section 26.109: Information, Confidentiality, Cooperation**

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 must transmit this information to USDOT 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.

**Monitoring Payments to DBEs**

The Sponsor 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 Sponsor or USDOT. 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.



**DBE PROGRAM**

**ATTACHMENT 1 - REGULATIONS: 49 CFR PART 26**

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**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 [http://www.access.gpo.gov/nara/cfr/waisidx\\_02/49cfr26\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/49cfr26_02.html)

**DBE PROGRAM  
ATTACHMENT 2 – DBE/WBE & SMALL BUSINESS PARTICIPATION**

**ATTACHMENT 2 – DBE/WBE & SMALL BUSINESS PARTICIPATION**

**City of Keene  
Dillant-Hopkins Airport  
DBE/WBE and Small Business Participation Form**

**Project:** \_\_\_\_\_

**Prime Contractor:** \_\_\_\_\_

**INSTRUCTIONS**

Contractors must make a good faith effort to include Certified DBE or Small Business (SB) firms in all aspects of the project. If no DBE firms are to be part of this project, a detailed explanation is required. Attach supporting evidence to the maximum participation of DBEs and/or SB on this project. This is a requirement. This evidence must include name of firm(s) contacted, date contacted, and outcome of solicitation.

Complete the following information. Indicate if DBE, WBE, or small business (SB). Name of company/firm, brief description of work, and their contract amount . Total and submit to the Dillant-Hopkins Airport Manager.

Small Business Firms to be utilized		Work to be Performed
Name		
Address		
City, St, Zip		
Telephone		
Certified DBE?	<input type="checkbox"/> No <input type="checkbox"/> Yes (State: _____)	
Total Estimated Contract	\$	

(Duplicate form as necessary.)

**Sponsor Use:**

**AIP #:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

**DBE PROGRAM  
ATTACHMENT 3 - METHODOLOGY**

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**ATTACHMENT 3 - METHODOLOGY**  
Section 26.45: Overall DBE 3-Year Goal Methodology

**NAME OF RECIPIENT:** City of Keene, NH, Dillant-Hopkins Airport

No diversity study has been done in the State of New Hampshire and, therefore all DBE plans in the state or region start off as race neutral and then are determined locally whether race conscious goals are needed in a given year. No local diversity study has been required or conducted locally and, given the demographics of this region, the DBE Plan for Dillant-Hopkins Airport remains Race Neutral

**GOAL PERIOD:** FY-2021-2022-2023 – Oct. 1, 2020 through Sep. 30, 2023

**USDOT-ASSISTED CONTRACT AMOUNT:**

FY-2021	\$670,000
FY-2022	\$1,100,000
FY-2023	<u>\$872,250</u>
<b>Total</b>	<b>\$2,642,250</b>

**DBE 3-YEAR OVERALL GOAL:** 3.3%

**TOTAL DOLLAR AMOUNT TO BE EXPENDED ON DBE'S:** \$87,194 during the period FY2021-2023.

**NUMBER AND TYPE OF PROJECTS THAT THE AIRPORT ANTICIPATES AWARDDING:**

FY 2021:

1. Taxiway A Reconstruction Phase 2 (construction): \$500,000
2. Perimeter Fence Design/Permitting: \$170,000

FY 2022:

1. Perimeter Fence (Final Design/construction): \$1,100,000

FY 2023:

1. Obstruction Study: \$162,250
2. Purchase SRE: \$560,000
3. Pavement Maintenance/Markings: \$150,000

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**MARKET AREA**

The Dillant-Hopkins Airport is located in southwestern New Hampshire and serves an area including New Hampshire, southern Vermont and the Franklin County area of Massachusetts. The Market Area was established based on a review of the service area, project lists, bidders list and DBE participation over the previous performance periods. These lists indicate the distance that contractors, including DBEs, were willing travel to engage in work at the Dillant-Hopkins Airport and the areas where contracting dollars were distributed. The USDOT (FAA) assisted contracting market extends beyond the borders of New Hampshire. Contractors from the neighboring states of Maine, Massachusetts and Vermont routinely travel across state borders. Over 90% of the bids were received from contractors in NH, in Chittenden and Washington Counties in Vermont, Cumberland and York Counties in Maine, and Franklin County in Massachusetts with the remainder coming from south-eastern MA, CT, RI and NY. These contractors have been included in the calculation of the base figure if they have been identified as submitting a bid or quote. Contracting dollars were awarded in NH, ME, VT and MA.

DBE Contracting dollars were spent in NH (57%), ME (19%), specialized Airfield Lighting supplies were purchased from a DBE in NJ (25%).

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KEENE DBE PLAN SERVICE AREA			
Table 1: Counties In The Service Area			
New Hampshire	Vermont	Massachusetts	Maine
Belknap	Addison	Franklin	Cumberland
Carroll	Bennington		York
Cheshire	Chittenden		
Coos	Orange		
Grafton	Rutland		
Hillsborough	Washington		
Merrimack	Windham		
Rockingham	Windsor		
Strafford			
Sullivan			

**STEP 1 - ANALYSIS: ACTUAL RELATIVE AVAILABILITY OF DBE'S**

The table below lists the North American Industry Classification System (NAICS), type of work, total DBE's within the market area, and the total of all firms (also within the market area) for the range of services anticipated for the projects listed above. Only those firms needed for the specific work proposed at the airport for the projects listed above were considered available.

As noted in Section 26.31, the sponsor uses the NH DOT DBE list to determine DBEs willing and available to work on projects in NH. As the majority of DBEs willing to cross state lines are already registered in multiple states using the NH DOT DBE list avoids duplication and artificial inflation of the number of DBE firms available.

We then divided the total number of DBE's by the total number of All Firms to arrive at the base figure of 3.4%

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**2012 County Business Patterns**

NAICS	Type of Work	Total All Firms	Total DBE
23821	Electrical Contractors	952	7
54137	Land Surveyors	136	5
54162	Environmental Consulting Services	151	24
237310	Airport Runway Construction	112	19
238910	Site Preparation Contractors	800	10
541330	Engineering Services	640	31
		2791	96
	<b>Percent DBEs</b>		<b>3.4%</b>

**STEP 2 - ANALYSIS: ADJUSTMENT TO STEP 1 BASE FIGURE TO MAKE IT MORE PRECISE**

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

The data used to determine the adjustment to the base figure was to use the total of DBE accomplishments over the 3-year period from FY 2018-2020 since one of those years had DBE of 0%. Therefore, using a median value for the three years would create an unadjusted low value. It should be noted that for FY 2020 estimated values are used since these construction projects have not yet started but the contractor has stated in their contract with the City that 3.3% DBE usage will be used. The total USDOT –Assisted contracts totaled \$4,692.425 with total of \$146,211 expended and anticipated to be expended on DBE’s over the 3- year period from 2018-2020. This correlates to a 3.1% usage based on total contracts.

To arrive at an overall goal, we added our Step 1 base figure (3.4%) with our Step 2 adjustment figure (3.2%) and then averaged the total arriving at an overall goal of 3.3% ( $3.4 + 3.1 = 6.5 / 2 = 3.3$ ). We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during FY-21/22/23.

There are no applicable disparity studies for the local market area or recent legal case information available from the state of New Hampshire, Office of Civil Rights to show any

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evidence of barriers to entry or competitiveness of DBEs in any of the counties within the market area.

Consultation: Section 26.45(g)(1).

We provided for public participation in several ways:

1. We will publish a notice of the proposed DBE goal in the New Hampshire Sunday News, the only statewide newspaper during the month of January 2021. We will review comments received and if necessary, adjust our methodology accordingly.
2. We will offer a thirty-day period to examine and evaluate our DBE goal setting methodology by offering persons or groups to review this Plan in person at the Keene City Hall or if preferred, we will email a copy of this plan to any individual or organization wishing a copy.
3. The public notice will announce that a public meeting is scheduled for January 13, 2021 to review and discuss the DBE goal setting methodology with any interested individuals or groups.

Further input will be solicited by providing the proposed DBE goal and methodology to the following groups and associations, with a request to engage in face-to-face discussions regarding the proposed goal at a time and date of their choosing. The proposed goal, methodology and request for a face-to-face meeting were sent to the following organizations:

- NH Association of General Contractors
- NH Small Business Administration
- NH Chapter of NAACP in Portsmouth, Manchester and Nashua
- NH Chapter of the National Association of Women in Construction

We will take notice of any comments received and will consider adjusting our methodology accordingly.

**PUBLIC NOTICE**

The City of Keene hereby announces its fiscal year 2021, 2022, and 2023 goal of 3.3% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection on the Sponsor's website at <http://ci.keene.nh.us/departments/airport>, or in the Sponsor Office between 8:00 a.m. and 3:00 p.m., Monday through Friday at Dillant-Hopkins Airport, 80 Airport Road, Keene, NH 03431 for 30 days from the date of this publication.

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Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following: David Hickling, Airport Director, Keene Dillant-Hopkins Airport, 80 Airport Road, Keene, NH 03431.

**CONTRACT GOALS**

The City of Keene will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using race neutral means. Contract goals would be 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 Sponsor will establish contract goals only on those USDOT-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).

The Sponsor will express its contract goals as a percentage of the Federal share of a USDOT-assisted contract.



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ATTACHMENT 4 –FOSTERING SMALL BUSINESS PARTICIPATION**

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**Attachment 4****FOSTERING SMALL BUSINESS PARTICIPATION****Objective (49 CFR Part 26.39)**

Recognizing that the DBE Program goals should be met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses, the Sponsor seeks to implement a small business element into its current DBE policy in accordance with applicable law. The Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The Sponsor is committed to taking all reasonable step to eliminate obstacle to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. The Sponsor will meet its objectives using combination of the following methods of strategies:

1. **Set asides:** Where feasible, the Sponsor may establish a percentage of the total value of all prime contract and subcontract awards that exceed \$500,000 to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This determination will be made bases on the estimated availability of small businesses able to provide the requisite scopes of work regardless of DBE status. This set aside is in addition to the DBE contract goals which the Sponsor may determine applicable.
2. **Unbundling:** The Sponsor, where feasible, ay “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Sponsor will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundles” or bid separately. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.
3. **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 DBE’s, can reasonably perform, rather than self-performing all the work involved.

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4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or businesses, including DBEs to compete for an perform prime contracts.
5. Outreach and technical assistance: In compliance with this element and Section 26.39 of the Sponsor’s DBE Program fostering small business participation may include, but is not limited to, the following strategies: Include under the Special Conditions of contract documents the amount of small business participation required as determined by the Sponsor. In each FAA –assisted contract, the DBELO will document the method in which the small business element will be implemented (i.e. set-aside, unbundling and/or outreach) and the process by which those methods were considered.
6. The Sponsor advertises contracting opportunities through various outlets, including local newspapers, minority-based publications and trade publications as well as on its website. The DBE Plan including this Fostering Small Business section will be featured on the website. Notices will include language encouraging DBEs and Small Business concerns to participate and visit the website. The Sponsor also provides copies of all contracting opportunities notices to the NHDOT DBE list.
7. Small Businesses meeting the definition below will be encouraged to complete the attached Fostering Small Business Form and submit to the DBELO along with the required documentation. After review by the DBELO and confirmation of Small Business status the name of the business will be placed on a list of certified available Small Business contractors/subcontractors. Being placed on the list does not guarantee the award of contracts or work.

**A. Definitions****1. Small Business:**

Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121). A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. The Small Business must also meet the criteria for a DBE (below) to qualify.

**2. Disadvantaged Business Enterprise:**

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A for-profit small business (as defined by the Small Business Administration) –

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
- Whose average annual gross receipts, as defined by SBA regulations over the firm's previous three fiscal years is less than \$22.41 million.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE by the New Hampshire Department of Transportation (NHDOT) in accordance with 49 CFR 26.

For the purposes of the small business element of the Sponsor's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

**B. Certification and Verification Procedures**

The Sponsor will accept the following certifications for participation in the small business element of the Sponsor's DBE Program with applicable stipulations:

1. NHDOT DBE Certification – DBE Certification by the NHDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by NHDOT.
2. Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and a copy of NHDOT DBE Certification application after contract award.
3. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) – will require submittal of three years of business tax returns.

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Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

**C. Implementation Schedule**

The Sponsor will approve the small business element of the Small Business Participation element of the DBE Program and will implement it within nine months of the FAA's approval of this element.

**D. Assurances**

The Sponsor makes the following assurances”

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed o FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating In the DBE Program;
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
6. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

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**ATTACHMENT 4 SMALL BUSINESS PARTICIPATION**

City of Keene  
Dillant-Hopkins Airport  
FOSTERING SMALL BUSINESS  
Registration Form

**Name of Small Business** \_\_\_\_\_

**NAICS Code (s)** \_\_\_\_\_

**Address** \_\_\_\_\_

**Phone/email** \_\_\_\_\_

In an effort to address the requirement to 49 CFR Part 26.39, to foster participation of Qualified Small Business in federal contracts, Small Businesses meeting the definitions(s) on Page 26 of this 2021-2023 DBE Plan may complete this form and submit with the required confidential documentation to the DBELO or project manager. Documentation will be verified and the name of the Small Business concern entered onto a certified list of Small Business concerns interesting in participating in upcoming projects. The list of Businesses certified as meeting the definition of a Small Business will be publicly available and will be notified of upcoming opportunities. Certified Small Business wishing to remain on the list will be required to update information annually.

Certification does not guarantee that the Small Business will be awarded contracts or work.

I certify that \_\_\_\_\_ (name of company) meets the definition of a Small Business Concern as defined in 49 CFR 26.

\_\_\_\_\_

Owner

**SPONSOR USE:**

Accepted by: \_\_\_\_\_

**Date:** \_\_\_\_\_