



**KENT COUNTY AERONAUTICS BOARD  
GERALD R. FORD INTERNATIONAL**

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<b>POLICY TYPE:</b>	<b>ADMINISTRATIVE</b>
<b>POLICY:</b>	<b>DISADVANTAGED BUSINESS ENTERPRISE PROGRAM</b>
<b>EFFECTIVE DATE:</b>	<b>NOVEMBER 25, 2009</b>

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**1. PURPOSE**

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

**2. PRINCIPLES**

- A. **STATUTORY REFERENCES:** 49 CFR Part 26.
- B. **COUNTY LEGISLATIVE OR HISTORICAL REFERENCES:** Reserved.
- C. **KENT COUNTY AERONAUTICS BOARD REFERENCES:** Reserved.
- D. **SCOPE:** None.
- E. **OPERATIONAL GUIDELINES – GENERAL:** None.
- F. **KEY GUIDING PRINCIPLES:** None.

**3. POLICY**

- A. It is the policy of the Kent County Department of Aeronautics to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.
- B. It is also the Kent County Department of Aeronautics policy
  - i. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
  - ii. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
  - iii. To ensure that the DBE Program is tailored in accordance with applicable law;

- iv. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- v. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
- vi. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

#### 4. PROCEDURE

- A. The Facilities Director has been delegated as the DBE Liaison Officer. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Kent County Department of Aeronautics in its financial assistance agreements with the Department of Transportation.
- B. The Kent County Department of Aeronautics has disseminated this policy statement to the Kent County Department of Aeronautics Board and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Advertisements will be placed in applicable business publications, and the Grand Rapids Press, local paper. This Statement will be included in all contract specifications, which have DOT assisted funding. The complete program is available through the Kent County Department of Aeronautics Internet website, <http://www.grr.org>
- C. Nondiscrimination. (§26.7)  
The Kent County Department of Aeronautics shall not 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 Kent County Department of Aeronautics 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.

- D. DBE Program Updates (§26.21)  
The Kent County Department of Aeronautics 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.
- E. Quotas (§26.43)  
The Kent County Department of Aeronautics will not use quotas in the administration of this DBE program.

F. DBE Liaison Officer (DBELO) (§26.45)

The Kent County Department of Aeronautics has designated the following individual as our DBE Liaison Officer, (DBELO) the Facilities Director, 5500 44th Street, Grand Rapids, Michigan, 616.233.6041, tecklund@grr.org. In that capacity, the Facilities Director is responsible for implementing all aspects of the DBE program and ensuring that the Kent County Department of Aeronautics complies with all provisions of 49 CFR Part 26. The Facilities Director has direct, independent access to the Kent County Aeronautics Director 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:

- i. Gathers and reports statistical data and other information as required by DOT.
- ii. Reviews third party contracts and purchase requisitions for compliance with this program.
- iii. Works with appropriate regulatory agencies to set overall annual goals.
- iv. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- v. Identifies contracts and procurements so that DBE goals are included in solicitations (both race- neutral methods and contract specific goals) and monitors results.
- vi. Analyzes Kent County Department of Aeronautics progress toward goal attainment and identifies ways to improve progress.
- vii. Participates in pre-bid meetings.
- viii. Advises the Kent County Aeronautics Board on DBE matters and achievement.
- ix. Participates with the legal counsel and project director and the Michigan Department of Transportation to determine contractor compliance with good faith efforts.
- x. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- xi. Acts as liaison to the Uniform Certification Process in Michigan.
- xii. Provides outreach to DBEs and community organizations to advise them of opportunities.
- xiii. Utilizes an updated directory on certified DBEs maintained by the Michigan Department of Transportation.

G. Federal Financial Assistance Agreement Assurance (§26.13)

The Kent County Department of Aeronautics has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The Kent County Department of Aeronautics 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 Kent County Department of Aeronautics 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.).

H. DBE Financial Institutions

It is the policy of the Kent County Department of Aeronautics 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. We have made the following efforts to identify and use such institutions:

To date we have not been able to identify any such financial institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

I. Directory

The Kent County Department of Aeronautics through its agent (State of Michigan, Michigan Department of Transportation) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, and phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory will be revised annually. The Directory is available from the Michigan Department of Transportation, 425 Ottawa Street, Lansing, Michigan 48933, and Phone 517-241-4427.

J. Over Concentration

No over concentration has been identified in any work category.

K. Required Contract Clauses

Contract Assurance

The Kent County Department of Aeronautics will ensure that the following clause is placed in every DOT-assisted contracts and subcontracts:

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

The Kent County Department of Aeronautics 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 sixty (60) days from the receipt of each payment the prime contractor receives from the Kent County Department of Aeronautics. The prime contractor agrees further to return retainage payments to each subcontractor within sixty (60) days after the subcontractor's work is satisfactorily completed and the Kent County Department of Aeronautics pays the retainage. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Kent County Department of Aeronautics. This clause applies to both DBE and non-DBE subcontractors.

L. Monitoring and Enforcement Mechanisms

The Kent County Department of Aeronautics 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 appropriate 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.

M. Overall Goals

Amount of Goal

The overall goal of the Kent County Department of Aeronautics is determined annually as a percentage of the Federal financial assistance to be expended on DOT-assisted contracts.

Method

The following is a summary of the method used to calculate this goal:

- The method used to calculate the relative availability of DBEs ("base figure") for "Step 1" of the process (see §26.45(c)) is as follows: The base figure is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. The data sources used to derive the numerator and denominator in the calculation are as follows: the number of DBEs in the Michigan Department of Transportation Directory and the total firms in the SIC codes (SIC1600 Heavy Construction, Excluding Buildings and SIC8711 Professional Engineers) and from the following counties found in the Census Bureau's CBP data base.

Clinton, Gratiot, Ionia, Kent, Mecosta, Montcalm, Muskegon, Newago, Oceana, Ottawa.

#### Adjustments to Base Figure

The availability of DBEs in the area historically has been declining. This is due to the increase in the numbers and size of the projects in the area, mainly highway, and larger airport projects. The smaller numbers of DBEs can result in a reduced goal. Depending on the size, the number, and complexity of the upcoming projects.

#### Process

Kent County Department of Aeronautics shall submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, Kent County Department of Aeronautics will consult with its agent, Michigan Department of Transportation, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Kent County Department of Aeronautics efforts to establish a level playing field for the participation of DBEs.

The Kent County Department of Aeronautics agent, Michigan Department of Transportation, consults with its state wide DBE Advisory Committee that is comprised of minority and women business owners as well as non DBE business owners. This group meets quarterly and the resulting comments will be documented and distributed.

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

#### Breakout of Estimated Race-Neutral and Race-Conscious Participation

Kent County Department of Aeronautics will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Kent County Department of Aeronautics uses the following race-neutral means to increase DBE participation.

The following is a summary of the basis of estimated breakout of race-neutral and race-conscious DBE participation. Kent County Department of Aeronautics race neutral goal is based on a preliminary study of accomplishments in the past year of airport projects state wide that awarded contracts to DBEs as prime contractors and subcontracts awarded to DBEs where no goal was set. This is done manually by the Michigan Department of Transportation.

The race conscious method of goal setting is based on the availability of DBEs in the project district for the work classifications in the project. For an approximate average, the districts are of the size that would consider DBEs within a fifty-mile radius. Projects that are within a few miles of another district would consider that other district also for the availability "base" area.

The Kent County Department of Aeronautics will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation 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.

N. Contract Goals

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

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

Kent County Department of Aeronautics will express contract goals as a percentage of the Federal share of a DOT-assisted contract.

O. Good Faith Efforts

Information to be submitted

Kent County Department of Aeronautics treats bidder/offeror compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information in accordance with Michigan Department of Transportation deadlines:

- ♦ The dollar amount of the participation of each DBE firm;
- ♦ A description of the work that each DBE will perform;
- ♦ The dollar amount of the participation of each DBE firm in the contract;
- ♦ Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- ♦ Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- ♦ If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

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.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: The Michigan Department of Transportation, Bureau of Aeronautics, DBE Waiver Committee-Airports Division Administrator, Project Section manager and the DBE Liaison.

The Kent County Department of Aeronautics will ensure that all information is complete and accurate and adequately documents the bidder/offeror good faith efforts before committing to the performance of the contract by the bidder/offeror.

#### Administrative Reconsideration

Within ten days of being informed by Kent County Department of Aeronautics that it is not responsive, because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following reconsideration official: Michigan Department of Transportation, Bureau of Aeronautics, Deputy Director, 2700 East Airport Service Road, Lansing, Michigan 48906.

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make 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. 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 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. We will send the bidder/offeror a written decision on the reconsideration, explaining the basis of the 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

We 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 DBEs 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. 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.

P. Counting DBE Participation

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

Q. Certification

The Kent County Department of Aeronautics will use the certification standards 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 as incorporated by the Michigan Department of Transportation. 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: Michigan Department of Transportation, Office of Equal Opportunity, 425 West Ottawa Street, Lansing, Michigan 48933.

To remove a DBEs certification the Michigan Department of Transportation procedures will be followed. For a copy of the Michigan Department of Transportation's procedural manual contact MDOT, at the above address.

Unified Certification Program

The Kent County Department of Aeronautics contribution to this effort is to utilize the Michigan Department of Transportation certification program, which is recognized as the only process meeting Federal DBE guidelines.

Certification Appeals

Any firm or complainant may appeal our 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

The Kent County Department of Aeronautics will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

#### Recertifications

The Kent County Department of Aeronautics will, again, utilize the Michigan Department of Transportation certification process, which has been updated to Part 26 requirements.

#### “No Change” Affidavits and Notices of Change

The Kent County Department of Aeronautics will utilize for this requirement, the Michigan Department of Transportation Certification process, which has been updated, to part 26 requirements.

#### Personal Net Worth

Kent County Department of Aeronautics will utilize the Michigan Department of Transportation certification process, which has been updated to Part 26 Requirements.

#### Information Collection and Reporting – Bidders List

The Kent County Department of Aeronautics through its agent the Michigan Department of Transportation will create a bidder's 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 bidder's list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. The Kent County Department of Aeronautics will require the prime bidders to report the names/addresses

#### Monitoring Payments to DBEs

Kent County Department of Aeronautics 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 Kent County Department of Aeronautics, the Michigan Department of Transportation, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Kent County Department of Aeronautics, through its agent the Michigan Department of Transportation, will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The Kent County Department of Aeronautics through its agent the Michigan Department of Transportation 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

The Kent County Department of Aeronautics will report DBE participation to DOT as follows:

The Kent County Department of Aeronautics will submit annually DOT Form 4630, as modified for use by FAA recipients.

