

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

Genesee County will use terms in this program that have their meanings defined in Part 26, §26.5.

### **Section 26.7 Non-discrimination Requirements**

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

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT**

Genesee County will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to the FAA as follows:

Genesee County will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. Genesee County will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

## Bidders List

Genesee County 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 Genesee County DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s):

- All bidders are required to complete the Bidders List Collection form found in **Attachment 3** and submit a copy with their proposal.
- For negotiated projects, each prime is to submit a bidders list for all solicited work.

## Records retention and reporting:

Genesee County will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, Genesee County will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of Genesee County financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

## **Section 26.13 Federal Financial Assistance Agreement**

Genesee County has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement Genesee County signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Genesee County 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 Genesee County 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 Genesee County 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 Genesee County of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: Genesee County will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

## **ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Genesee County is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. Genesee County is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Genesee County is in compliance with it and Part 26. Genesee County will continue to carry out this program until all funds from DOT financial assistance have been expended. Genesee County does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for Genesee County:

*Timothy J. Hens, P. E.*  
*Highway Superintendent*  
*153 Cedar Street*  
*Batavia, NY 14020*  
*(585) 344-8508*  
[tim.hens@co.genesee.ny.us](mailto:tim.hens@co.genesee.ny.us)

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has administrative staff of 8 personnel that includes the County Attorney, County Treasurer, County Purchasing Director, County Manager, County Compliance Officer, and administrative staff within the Highway Department to assist in the administration of the program. The duties and responsibilities include the following:

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

## **Section 26.27 DBE Financial Institutions**

It is the policy of the Genesee County 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.

As part of this DBE Program, the County's DBE Consultant has investigated services offered by banks owned and controlled by socially and economically disadvantaged individuals in the local area by contacting the U.S. Treasury Department and reviewing its March 31, 2022 listing of Minority Bank Deposit Program in New York. Based on this search, there 12 banks defined by the Treasury located in New York, however none are in Warren County's Market area.

As of July 11, 2022, depository institutions that participate in the Federal Deposit Insurance Corporation's (FDIC) Minority Depository Institutions Program have been added to the Treasury's Minority Bank Deposit Program. By researching the Federal Reserve System and reviewing its listing of minority-owned depository institutions, DBE

banks located in the market area can be identified. Based on this search, there are two (2) minority-owned depository institutions located in New York, none of which are located within the County's market area.

The bank participants in the Minority Bank Deposit Program and Minority Depository Institutions Program do change periodically and updates can be found at the following website locations, respectively:

<https://www.fiscal.treasury.gov/mbdp/participants.html>

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

## **Section 26.29 Prompt Payment Mechanisms**

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

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

Genesee County ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, Genesee County has selected the following method to comply with this requirement:

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

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

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

The County may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 days after the Owner's payment to the prime contractor

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 7 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. A

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

From the total of the amount determined to be payable on a partial payment 5 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection titled PAYMENT OF WITHHELD FUNDS of this section. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his/her option, as provided in the subsection titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95 percent of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Section 26.31      Directory**

Genesee County is a non-certifying member of the New York Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

### **Section 26.33      Over-concentration**

Genesee County has not identified that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35      Business Development Programs**

Genesee County has not established a Business Development Program.

### **Section 26.37      Monitoring Responsibilities**

Genesee County implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in Genesee County's DBE program.

Genesee County actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

### Monitoring Payments to DBEs and Non-DBEs

Genesee County undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

The Airport, via the Highway Superintendent, monitors payments throughout a project. The following is required throughout a project:

- Prime Contractors are required to complete the Monthly Payment Report found in **Attachment 5**. The report is required as part of the monthly payment process. A progress payment will not be processed until the report is submitted. The report confirms payments are being made to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the prime contractor's DBE Letter of Intent Form submitted at the beginning of the project.
- Prime Contractors are required to have each subcontractor, DBE and non-DBE firms, complete the Subcontractor's Prompt Payment Certification found in **Attachment 6**. The form is required monthly and is part of the monthly payment process. Any delay in the submitting the required certification will cause a delay in payments being processed.
- Prime Contractors must complete and have each DBE firm sign the Disadvantaged Business Enterprise (DBE) Participation Summary Form upon completion of the project, found in **Attachment 8**. A final payment will not be processed without the required form. The intent of this form is to confirm total payments made to DBE firms. A signature is required by each DBE firm.

Genesee County requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the County's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Genesee County or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- Genesee County proactively reviews contract payments to subcontractors including DBEs each time a payment request is submitted.
- Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Genesee County by the prime contractor.

### Prompt Payment Dispute Resolution

Genesee County will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

Upon either parties' written request to the DBELO for mediation, the parties shall participate voluntary mediation by selecting a mediator within 10 days of request. Within 30 days of the request, the mediation shall be completed, with or without legal counsel, pursuant to NYS law.

Genesee County has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage [*examples of mechanisms include the following*]:

(1) Alternative dispute resolution (ADR)

- If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the subcontractor should contact the DBELO to initiate complaint.
- If the subcontractor is not satisfied with the results from filing a prompt payment complaint with the Airport's DBELO, the subcontractor may contact the reconsideration official: L. Matthew Landers, County Manager, Old Courthouse, 7 Main Street, Batavia, NY 14020, (585) 344-2550 x2204

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by Genesee County to resolve prompt payment disputes, affected subcontractor may contact the responsible the FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, through the FAA civil rights connect system, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

Genesee County will provide appropriate means to enforce the requirements of §26.29. These means include:

- a) Withholding payments to the contractor under the contract until the contractor complies; and/or
- b) Cancelling, terminating, or suspending a contract, in whole or in part.

Genesee County will actively implement the enforcement actions detailed above.



### Monitoring Contracts and Work Sites

Genesee County reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the DBELO or designee. Contracting records are reviewed by DBELO or designee. Genesee County will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation**

Genesee County has created a Small Business 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.

The small business element is incorporated as **Attachment 9** to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for Genesee County to be considered by DOT as implementing this DBE program in good faith.

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

### **Section 26.43 Set-asides or Quotas**

Genesee County does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

Genesee County will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), Genesee County will submit its Overall Three-year DBE Goal to the FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA.

FAA:

[https://www.faa.gov/about/office org/headquarters offices/acr/bus ent program/media/Schedule of DBE and ACDBE Reporting Requirements Dec 2017 Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Genesee County does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this

DBE Program will remain in effect and Genesee County will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. Genesee County will use [*a Bidders List, a Disparity Study, the goal of another DOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45*] as a method to determine the base figure. Genesee County understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, 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. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. Genesee County will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Genesee County market.

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

In addition to the consultation described above, Genesee County will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Genesee County’s official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and Genesee County responses.

Genesee County will begin using the overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

### Project Goals

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

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

### Prior Operating Administration Concurrence

Genesee County understands that prior the FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by Genesee County for calculating goals is inadequate, the FAA may, after consulting with Genesee County, adjust the overall goal or require that the goal be adjusted by Genesee County. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 10 to this program.

### **Section 26.47 Failure to meet overall goals**

Genesee County cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless Genesee County fails to administer its DBE program in good faith.

Genesee County understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

Genesee County understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) Genesee County will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to the FAA upon request.

## **Section 26.51 Means Recipients Use to Meet Overall Goals**

### **Breakout of Estimated Race-Neutral & Race-Conscious Participation**

Genesee County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) 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; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (3) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (4) Consider unbundling large contracts to make them more accessible to small businesses when possible;
- (5) Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
- (6) Discuss the DBE goal and DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 10 to this program.

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

## Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

### **Section 26.53      Good Faith Efforts Procedures in Situations where there are Contract Goals**

#### Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO or designee 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.

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

#### In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
  - (4) No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration

Within 7 days of being informed by Genesee County that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: L. Matthew Landers, County Manager, Old Courthouse, 7 Main Street, Batavia, NY 14020, (585) 344-2550 x2204. 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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent 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 procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of Genesee County. This includes, but is not limited to, instances in which

a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if Genesee County agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

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.

Each prime and subcontractor contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of Genesee County as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of Genesee County may 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**

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted 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.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73      Certification Process**

Genesee County is a non-certifying member of the New York Unified Certification Program (UCP). New York UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be



certified as a DBE, a firm must meet all certification eligibility standards. Certifying New York UCP members make all certification decisions based on the facts as a whole.

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

New York State Department of Transportation  
Contract Audit Bureau  
DBE Certification  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, NY 12232  
Telephone Number: (518) 417-6631  
[dbecert@dot.ny.gov](mailto:dbecert@dot.ny.gov)

The Uniform Certification Application form and documentation requirements are found in Attachment 12 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

Genesee County is the member of a Unified Certification Program (UCP) administered by New York State Department of Transportation. The UCP will meet all of the requirements of this section.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to Genesee County**

Genesee County understands that if it fails to comply with any requirement of this part, Genesee County may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party

without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

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

Genesee County, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Genesee County understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

Attachment 1	Regulations: 49 CFR Part 26 or website link
Attachment 2	Organizational Chart (Section 26.25)
Attachment 3	Bidder's List Collection Form (Section 26.11 (c))
Attachment 4	DBE Directory link (Section 26.31)
Attachment 5	Monthly DBE Report (Section 26.29)
Attachment 6	Subcontractor's Prompt Payment Certification (Section 26.29)
Attachment 7	DBE Monitoring and Enforcement Mechanisms (Section 26.37)
Attachment 8	DBE Participation Forms (Section 26.37)
Attachment 9	Small Business Element Program (Section 26.39)
Attachment 10	Overall Goal Calculations (Section 26.45); Breakout of Race-Neutral & Race-Conscious Participation (Section 26.51) update
Attachment 11	DBE Certification Application Form (Section 26.61 – 26.73)
Attachment 12	State's UCP Agreement (Section 26.81)

**ATTACHMENT 1**

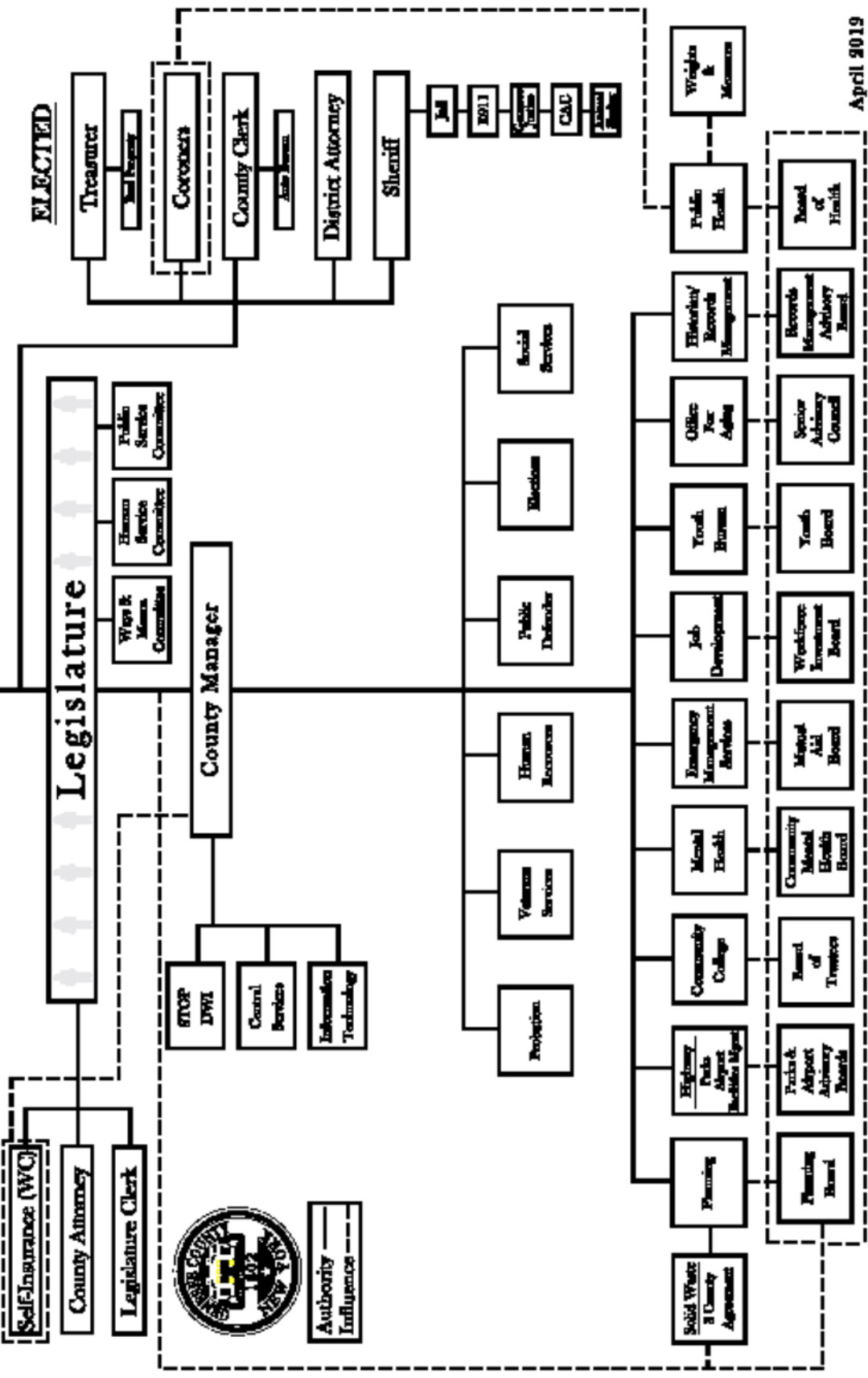
Regulations: 49 CFR Part 26 Link

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

**ATTACHMENT 2**

**Organizational Chart**

# Organization of Genesee County Government



**ATTACHMENT 3**  
**Bidder's List Collection Form**  
**(Bidder's Information)**

The sponsor is required by CFR Title 49, Subtitle A, Part 26, Subpart A, Section 26.11 to collect the following information from the bidder. As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a proposal for this project. The sponsor will consider incomplete information to be an irregular proposal.

Airport Name: \_\_\_\_\_ AIP No. \_\_\_\_\_

Project Name: \_\_\_\_\_

**Bidder's Information**

Firm Name	Firm Street Address, City, State, Zip Code, Phone No.	DBE/Non DBE Status	Age of Firm	Annual Gross Receipts
	_____	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year	<input type="checkbox"/> Less than \$500K
	_____		<input type="checkbox"/> 1-3 years	<input type="checkbox"/> \$500K - \$1M
	_____		<input type="checkbox"/> 4-7 years	<input type="checkbox"/> \$1-\$2M
	_____		<input type="checkbox"/> 8-10 years	<input type="checkbox"/> \$2-\$5M
	_____		<input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> More than \$5M

**(This form must be completed and submitted with the Proposal.)**

**(Subcontractor's Information)**

The sponsor is required by CFR Title 49, Subtitle A, Part 26, Subpart A, Section 26.11 to collect the following information from each subcontractor submitting a quote, bid or proposal to the bidder. As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a proposal for this project. The sponsor will consider incomplete information to be an irregular proposal.

Please note that the information requested below must be filled out for each quote received by the bidder, regardless of DBE status. For example, if the bidder requests quotes from three contractors for electrical work, the information requested below must be filled out for the three subcontractors. It is important to note that providing the information does not commit the bidder to using any one of the three subcontractors in the work.

Airport Name: \_\_\_\_\_ AIP No. \_\_\_\_\_

Project Name: \_\_\_\_\_

**Subcontractor's Information**

Firm Name	Firm Street Address, City, State, Zip Code, Phone No.	DBE/Non DBE Status	Age of Firm	Annual Gross Receipts
	_____ _____ _____ _____	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M
	_____ _____ _____ _____	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M
	_____ _____ _____ _____	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M



Firm Name	Firm Street Address, City, State, Zip Code, Phone No.	DBE/Non DBE Status	Age of Firm	Annual Gross Receipts
	<hr/> <hr/> <hr/> <hr/> <hr/>	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M
	<hr/> <hr/> <hr/> <hr/> <hr/>	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M
	<hr/> <hr/> <hr/> <hr/> <hr/>	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M
	<hr/> <hr/> <hr/> <hr/> <hr/>	<input type="checkbox"/> DBE  <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs.	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-\$2M <input type="checkbox"/> \$2-\$5M <input type="checkbox"/> More than \$5M

(Copy this form and submit with your original proposal if more space is needed.)

**(This form must be completed and submitted with the Proposal.)**

**ATTACHMENT 4**

New York State DBE Directory Link

<https://nysucp.newnycontracts.com/>

**ATTACHMENT 5**  
Monthly Payment Report

MONTHLY PAYMENT REPORT

Name of Contractor's Firm: \_\_\_\_\_  
 Project Name/Location: \_\_\_\_\_  
 FAA AIP Project No.: \_\_\_\_\_

Subcontractor or DBE Supplier Name* and Description of <b>SYCS</b>	DBE Y/N	Supplier Y/N	Subcontractor Contract Amount	Pay App #	Payment Period Date (From-To)	Amount Invoiced This Period	Total Amount Invoiced	Current Retainage Amount	Total Retainage	Payment	Payment Date	Total Paid to Date	Total Due Sub/DBE Supplier

\*ALL Subcontractors Must Be Listed – ONLY DBE Suppliers Must Be Listed

Signature of Contractor's Representative \_\_\_\_\_ Date \_\_\_\_\_

Print Contractor's Representative

Signature of Contractor's Representative

Date

**ATTACHMENT 6**

**SUBCONTRACTOR'S PROMPT PAYMENT CERTIFICATION**

NOTE: Each Contractor shall provide a copy of this form to each of their Subcontractors (DBE and non-DBE) that are working on or has worked on this project. This certification applies to all tier Subcontractors. A completed copy of this form shall be submitted to the Prime Contractor you are working for at least 7 days prior to an application for payment. Any Subcontractor failing to submit a copy of this form shall be cause for the Sponsor's representative to delay the payment application.

Should a Subcontractor indicate that they have not received payment for work they performed in which their Contractor has received payment, the Sponsor shall withhold the delinquent amount indicated unless the Contractor received written approval from the Sponsor of the Contractor's written request justifying withholding payment from the Subcontractor.

=====  
Project Title: \_\_\_\_\_

Airport Name: \_\_\_\_\_

AIP No.: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

\_\_\_\_\_ Contact Phone No.: \_\_\_\_\_

Contractor's Name you subcontract to: \_\_\_\_\_  
=====

1. Have you performed work on this project within the last 30 days? Yes \_\_\_ No \_\_\_
2. Has the work you performed within the last 30 days been completed and accepted by the Engineer? Yes \_\_\_ No \_\_\_ Not sure \_\_\_
3. Have you been paid by the contractor you subcontracted with for the work you performed? Yes \_\_\_ No \_\_\_
4. Estimated value of work performed in which you did not receive payment: \$ \_\_\_\_\_
5. Have you completed all work that you are required to perform on this contact? Yes \_\_\_ No \_\_\_

Written Name of Subcontractor's Rep. \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ATTACHMENT 7

### **DBE Monitoring and Enforcement Mechanisms**

Genesee County has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

**New York State Constitution:** Article 1, Section 11, of the NYS Constitution prohibits discrimination against anyone because of race, color, creed, or religion by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision thereof. NY Executive Law Section 296 (see below) substantially extends to employment relationships the equal protection clause (Art.1, Sec.11) of the Constitution.

**New York General Municipal Law:** Article 5-A, Sections 103-a and 103-b, allows a municipal corporation or any public department, agency, or official to cancel or terminate any contract made with a contractor who refuses to appear before a grand jury, head of a state department, temporary state commission, or other state agency that is empowered to compel the attendance of witnesses.

**New York Labor Law:** Article 8, Section 220-e, provides that every contract for or on behalf of the state or a municipality for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies shall contain provisions by which a contractor with the state or municipality agrees, among other things, that it will not discriminate in the hiring of employees (Subparagraph (a)), that there may be deducted from any amount payable to the contractor by the state or municipality under the contract a penalty of \$50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of this contractual provision (Subparagraph (c)), and that moneys due or to become due under the contract may be forfeited for a second or any subsequent violation.

**New York State Finance Law:** Article 9, Sections 139-a Grounds for cancellation of contract by state and 139-b Disqualification to contract with state.

**New York Transportation Law:** The authority for the New York State Department of Transportation to establish a Disadvantaged Business Enterprise (DBE) Program is in the Surface Transportation Assistance Act of 1983, section 105(f); The Surface Transportation and Uniform Relocation and Assistance Act of 1987, section 106(c); the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; title 49 of the Code of Federal Regulations, part 26; New York Highway Law, section 85; and such other laws, rules, regulations and orders as may apply. (17 NYCRR 35.1).

Further, the policy of the NYSDOT is expressed in 17 New York Code of Rules and Regulations (NYCRR) Part 35, Section 35.2, to afford the opportunity for full participation in the free enterprise system to socially and economically disadvantaged persons for encouraging utilization of disadvantaged business enterprises in NYSDOT construction projects. Part 35, Section 35.3, adopts by reference the federal DBE regulations found in 49 Code of Federal Regulations (CFR) Part 26 (reference is made to Volume 64, Number 21 of the Federal Register, issued February 2, 1999).

**New York Executive Law:** Section 296 details the types of discrimination that are unlawful in New York. Sections 297 and 298 contain the review and enforcement procedures available through the Human Rights Division or the courts.

New York Highway Law: Section 85 states that the Commissioner of Transportation is authorized, empowered, and directed to perform and do such other and further acts as may be necessary to comply with federal highway aid requirements and transportation acts.

New York Civil Practice Law and Rules: These laws and rules govern the enforcement of a party's rights and obligations in state courts.

In addition, each contract for work that includes federal funding sets forth the federally required Airport Aid Contract Provisions that contain non-discrimination requirements, sanctions for non-compliance and DBE assurances. In addition, where state funding is involved, there are New York State standard provisions which include non-discrimination requirements and a restatement of the remedies available under New York Labor Law, as set forth previously in this document.

The Airport has a number of Contract remedies available to enforce DBE requirements.

- Contract Assurance 26.13b – discrimination by a contractor is considered a material breach of contract and may result in termination of the contract; withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.
- Breach of Contract – Any violation or breach of terms of the contract may result in the suspension or termination of a contract, the withholding of payments until such time the contractor corrects the breach of contract.
- Sanctions for Noncompliance - In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a) Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancelling, terminating, or suspending a contract, in whole or in part.

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

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

**ATTACHMENT 8**

**Demonstration of Good Faith Efforts - Forms 1 & 2**



**CONTRACTOR'S DBE PLAN**

(Submit this form and attach one DBE Letter of Intent Form for each DBE subcontractor, supplier or manufacturer.)

Airport Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Anticipated FAA AIP Project No: \_\_\_\_\_

Total Awarded Contract Amount: \$ \_\_\_\_\_

Name of Bidder's Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Printed name of signer: \_\_\_\_\_

Printed title of signer: \_\_\_\_\_

**DBE UTILIZATION SUMMARY**

	<u>DBE Contract Amount</u>	<u>DBE Value</u>	<u>Contract %</u>
DBE Prime Contractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractors	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Suppliers	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturers	\$ _____ x 1.00 =	\$ _____	_____ %
* Total Proposed DBE Participation		\$ _____	_____ %
Established DBE Goal		\$ _____	_____ %

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

**Affirmation:**

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior approval from the Civil Rights Staff of the Federal Aviation Administration.

By: \_\_\_\_\_  
 (Signature of Bidder's representative) (Title)

### DBE LETTER OF INTENT FORM

(Submit one form for each DBE subcontractor, supplier or manufacturer.)

Project Name/Location: \_\_\_\_\_

Anticipated FAA AIP Project No: \_\_\_\_\_

Name of Bidder's Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Certifying Agency: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
(DBE firm shall submit evidence, such as a photocopy, of their certification status)

Classification:       Prime Contractor               Subcontractor               Joint Venture  
                              Manufacturer                       Supplier

Disadvantaged Group (check one):

Black American <input type="checkbox"/>	Hispanic American <input type="checkbox"/>	Native American <input type="checkbox"/>	Subcont. Asian American <input type="checkbox"/>
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>
Asian Pacific American <input type="checkbox"/>	Non-Minority <input type="checkbox"/>	Other (not of any group listed here) <input type="checkbox"/>	
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	

#### SUMMARY OF WORK ITEMS

Work Item(s)	Description of Work Item	Estimated Quantity	Total Value

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

#### Affirmation:

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
(Signature of DBE firm's representative) (Title)

By: \_\_\_\_\_  
(Signature of Prime Contractors Representative) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void. *Submit this page for each DBE subcontractor.*

**DISADVANTAGED BUSINESS ENTERPRISE  
DBE FINAL PARTICIPATION SUMMARY**  
(Submit one form for each DBE Firm.)

**Airport Name** \_\_\_\_\_

**Contractor** Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Firm** DBE Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person** Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**DBE Certification Agency:** \_\_\_\_\_ **Expiration Date:** \_\_\_\_\_

*Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.*

**DBE Commitments/Awards  
-Breakdown By  
Ethnicity & Gender**

- |  |  |
|--|--|
| <input type="checkbox"/> Black American              | <input type="checkbox"/> Asian-Pacific American                    |
| <input type="checkbox"/> Hispanic American           | <input type="checkbox"/> Non-Minority Women                        |
| <input type="checkbox"/> Native American             | <input type="checkbox"/> Other (i.e. not of any group listed here) |
| <input type="checkbox"/> Subcontinent Asian American |  |

**Classification:**

- |   |  |
|---|--|
| <input type="checkbox"/> Prime Contractor | <input type="checkbox"/> Supplier      |
| <input type="checkbox"/> Manufacturer     | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Subcontractor    |  |

Work items performed by DBE	Description	NAICS	Amount Paid to DBE

The Contractor utilized the above-named DBE Firm for the work items described above.

The actual participation is as follows:

Total amount paid to DBE Firm:	\$ _____	Percent of Contractor's total contract:	_____ %
--------------------------------	----------	---	---------

**Affirmation:**

The above-named DBE Firm and Prime Contractor affirms that the DBE Firm performed the work items described above and has been paid the amount stated above.

By: \_\_\_\_\_  
(Signature of DBE firm's representative) (Title)

By: \_\_\_\_\_  
(Signature of Prime Contractors Representative) (Title)

## ATTACHMENT 9

### 49 CFR Part 26.39: FOSTERING SMALL BUSINESS PARTICIPATION

#### A. OBJECTIVE: FOSTERING SMALL BUSINESS PARTICIPATION

DBE program regulations, CFR § 26.39, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, including DBEs, taking 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. All DBE firms are eligible for this program.

#### B. DEFINITION

For the purpose of the Genesee County Airport's Small Business Element, a small business is defined as: A company and/or firm whose annual revenue does not exceed the cap on average annual gross receipts specified in §26.25(b). All businesses meeting this criterion will be considered to be small businesses without regard to race or gender.

#### C. STRATEGIES

In compliance with this policy, Genesee County DBE program in regard to §26.39 Fostering Small Business Participation may include, but is not limited to, the following strategies:

- Ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform;
- Arranging quantities, specifications, and delivery schedules to facilitate small business participation; and
- Dividing large contracts into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract.

#### D. VERIFICATION

All firms participating in small business contracting opportunities are verified by Genesee County as to meeting the eligibility criteria of this program. This is accomplished using the state business records that list any certifications a firm might have, including DBE certification, as well as annual sales volume.

#### E. MONITORING / RECORD KEEPING

Genesee County actively monitors projects for possible small business participation and encourages use of small businesses in projects. Genesee County seeks ways to include all available contractors in its contracts. This may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases, jobs usually performed by primes can be performed as an unbundled prime contract, especially if the outcome of the overall project will not be impacted by the unbundled contracting opportunity.

In addition to the above strategies, Genesee County strives to:

- In large contracts, require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- On prime contracts not having DBE contract goals, require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved; and
- Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

#### **F. ASSURANCES**

The following Assurances apply to this Small Business Element:

1. The program is authorized under state law.
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
4. Aggressive steps are taken to encourage those minority- and women-owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location. There is no local or other geographic preference.

In order to actively implement the County's program elements to foster small business participation and to comply with the requirement of good faith implementation of our DBE program, the County will require for FAA funded projects without a DBE contract goal, that the prime fill out and submit the FOSTERING SMALL BUSINESS PARTICIPATION form for construction work items as well as for professional services work items. The forms shall be completed and submitted to the Sponsor at time of bid or for negotiated projects, prior to receiving the Notice to Proceed. **SEE THE FOSTERING SMALL BUSINESS PARTICIPATION FORM FOLLOWING THIS SECTION.**

### Fostering Small Business Participation

<b>Sponsor's Name:</b>	
<b>Airport Name:</b>	
<b>City, State:</b>	
<b>AIP Number:</b>	
<b>Federal Fiscal Year:</b>	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

Small Business Firms to be Utilized (Name, Address, Phone)	Work to be Performed	Total Estimated Cost of Work										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr><td>Is the firm a Certified DBE?</td><td><input type="checkbox"/> Yes   <input type="checkbox"/> No</td></tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr><td>Is the firm a Certified DBE?</td><td><input type="checkbox"/> Yes   <input type="checkbox"/> No</td></tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr><td>Is the firm a Certified DBE?</td><td><input type="checkbox"/> Yes   <input type="checkbox"/> No</td></tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr><td>Is the firm a Certified DBE?</td><td><input type="checkbox"/> Yes   <input type="checkbox"/> No</td></tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**(Duplicate form as necessary.)**

**The following notation is for Sponsor Use Only:**

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

**ATTACHMENT 10**  
Overall DBE Three-Year Goal Methodology

**Name of Recipient:** Genesee County  
Genesee County Airport

**Goal Period:** FY-2023-2024-2025 – October 1, 2022 through September 30, 2025

<b>DOT-assisted contract amount:</b>	FY-2023	\$1,706,402
	FY-2024	\$ 252,000
	FY-2025	\$ N/A
	<b>Total</b>	<b>\$1,958,402</b>

**Overall Three-Year Goal:** 4.0%, to be accomplished through 4.0% RC and 0% RN

**Total dollar amount to be expended on DBEs:** \$78,274

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

Contracts Fiscal Year #1 (2023)

1. APMS	\$ 76,500
2. Purchase Rotary Plow	\$765,000
3. Replace Runway 28 PAPI (D&C)	\$112,500
4. Replace Runway Edge Lighting & Signage (C)	\$752,402

Contracts Fiscal Year #2 (2024)

1. Rehabilitate Runway 10 End (D)	\$175,500
2. Replace TW Lighting & Signage (D)	\$ 76,500

Contracts Fiscal Year #3

No projects awarded over \$250,000

**Market Area:** *The market area is be identified as the area in which the substantial majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located **and** the area in which the Airport spends the substantial majority of its contracting dollars; this must be clearly specified. The market area consists of Onondaga, Erie, Monroe and Oneida counties.*

**Step 1.** Actual relative availability of DBEs

The base figure for the relative availability was calculated as follows:

Method: Use DBE Directories [NYSUCP \(newnycontracts.com\)](https://newnycontracts.com) and Census Bureau Data from <https://data.census.gov/cedsci/>



Weighted Availability of DBE firms:

Fiscal Year #1

For FY—2023, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract #1 APMS	Engineering Services	Engineering Services	541330	\$76,500	425	16	3.8%	\$2,880
<b>Total Contract</b>				<b>\$76,500</b>			<b>3.8%</b>	<b>\$2,880</b>
Contract #2 Purchase Rotary Plow	Rotary Plow	Snow Removal Equipment	423810	\$765,000	32	0	0.0%	\$0
<b>Total Contract</b>				<b>\$765,000</b>			<b>0.0%</b>	<b>\$0</b>
Contract #3 Replace Runway 28 PAPI (D&C) (BIL)	Engineering, Inspection,	Engineering Services	541330	\$54,000	425	16	3.8%	\$2,033
	Mobilization, Airfield Safety and Traffic Control & Signage	Highway, Street, and Bridge Construction	237310	\$2,340	78	15	19.2%	\$450
	Demolition	Site Preparation Contractors	238910	\$3,510	219	12	5.5%	\$192
	Electrical	Electrical Contractors	238210	\$46,800	440	4	0.9%	\$425
	Material Suppliers	Material Suppliers	423320	\$5,850	22	3	13.6%	\$798
<b>Total Contract</b>				<b>\$112,500</b>			<b>3.5%</b>	<b>\$3,898</b>
Contract #4 Replace RW Edge Lighting & Signage	Engineering / Admin	Engineering Services	541330	\$130,500	425	16	3.8%	\$4,913
	Mobilization, Traffic Control & Signage	Highway, Street, and Bridge Construction	237310	\$55,971	78	15	19.2%	\$10,764
	Demolition	Site Preparation Contractors	238910	\$37,314	219	12	5.5%	\$2,045
	Material Suppliers	Material Suppliers	423320	\$62,190	22	3	13.6%	\$8,480
	Fuel Suppliers	Petroleum Merchant	424720	\$15,548	9	0	0.0%	\$0
	Trucking Services	General Freight Trucking, Local	484110	\$15,548	155	12	7.7%	\$1,204
	Administrative & General Construction Mgmt.	Administrative Mgmt. & General Mgmt. Consulting Services	541611	\$31,095	377	2	0.5%	\$165

	Electrical	Electrical Contractors	238210	\$388,688	440	40	9.1%	\$35,335
	Seeding, Mulching	Landscaping Services	561730	\$15,548	975	0	0.0%	\$0
<b>Total Contract</b>				<b>\$752,402</b>			<b>8.4%</b>	<b>\$62,906</b>
<b>Total FY-2023</b>				<b>\$1,706,402</b>			<b>4.1%</b>	<b>\$69,684</b>

Fiscal Year #2

For FY-2024, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract #1 Rehab RW 10 End (D)	Engineering	Engineering Services	541330	\$146,700	425	16	3.8%	\$5,523
	Geotechnical Testing	Testing Laboratories	541380	\$13,500	72	1	1.4%	\$188
	Compliance with Pollution/Erosion	Landscaping Services	561730	\$15,300	975	0	0.0%	\$0
<b>Total Contract</b>				<b>\$175,500</b>			<b>3.3%</b>	<b>\$5,710</b>
Contract #5 Replace TW Lighting & Signage (Design)	Engineering	Engineering Services	541330	\$76,500	425	16	3.8%	\$2,880
<b>Total Contract</b>				<b>\$76,500</b>			<b>3.8%</b>	<b>\$2,880</b>
<b>Total FY-2024</b>				<b>\$252,000</b>			<b>3.4%</b>	<b>\$8,590</b>

Fiscal Year #3

For FY-2025, award of the following is anticipated:

*We don't anticipate any projects awarded over \$250,000.*

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$78,274
- Total for All Trades: \$1,958,402

Dividing the weighted DBE totals by the total estimate for all trades gives a base DBE availability figure for the projects anticipated during the goal-setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Base of DBE Goal: 4.0%

## **Step 2: Adjustments to Step 1 base figure**

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, Genesee County is adopting the Step 1 base figure as the overall goal for this three-year goal period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

### **Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.**

Genesee County will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses.
- (2) Carrying out information and communications programs on contracting procedures and specific contract opportunities
- (3) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (4) Consider unbundling large contracts to make them more accessible to small businesses when possible;
- (5) Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
- (6) Discuss the DBE goal and DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

Genesee County estimates that in meeting the established overall goal of 4.0% it will obtain 0.0% from RN participation and 4.0% through RC measures.

This breakout is based on:

The Recipient does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 4.8% is to be obtained through race-conscious participation.

Genesee County will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained 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.

## PUBLIC PARTICIPATION

### **Consultation:**

In establishing the overall goal, Genesee County provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was *video conference*, which was held on July 12, 2022 at 3:00 p.m.

The following comments were received during the course of the consultation:  
No comments were received.

A notice of the proposed goal was published on the Genesee County official website before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on Genesee County official website.

Notwithstanding paragraph (f)(4) of §26.45, Genesee County proposed goals will not be implemented until this requirement has been met.

## **PUBLIC NOTICE**

Genesee County hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 4.0% for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2023 through 2025. A video conference will be held on July 12, 2022 at 3:00 pm for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. If you would like to participate please contact [lhoward@cscos.com](mailto:lhoward@cscos.com) for login credentials.

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

Timothy J. Hens, P. E.  
Highway Superintendent  
153 Cedar Street  
Batavia, NY 14020  
(585) 344-8508  
[tim.hens@co.genesee.ny.us](mailto:tim.hens@co.genesee.ny.us)

AND

Diane L. Gillam  
DBE/ACDBE Compliance Specialist, Eastern Region  
Office of Civil Rights – ACR-4  
Federal Aviation Administration  
305-716-1232  
[Diane.L.gillam@faa.gov](mailto:Diane.L.gillam@faa.gov)

**ATTACHMENT 11**  
DBE Certification Application Links

[NYS DOT DBE Certification System \(newnycontracts.com\)](#)

[MTA DBE Certification System \(newnycontracts.com\)](#)

[NFTA DBE Certification System \(newnycontracts.com\)](#)

[Diversity Management Program - Supplier Diversity - Business Opportunities - Port Authority of New York & New Jersey \(diversitysoftware.com\)](#)

**ATTACHMENT 12**  
New York State UCP Agreement

**NYSUCP NON-CERTIFYING PARTNER**

As a result of the requirements set forth in 49 CFR Part 26, we, the undersigned, agree to participate in the NYSUCP in accordance with the tenets of this MOU and agree to abide by its contents. This MOU is being executed by the NYSUCP Partners as separate agreements and at separate times. Each separately executed agreement shall be considered an original of the MOU, as if each Partner had executed the same agreement.

EXECUTED AND DELIVERED by and between the NYSUCP Partners as of the effective date of this MOU.

Mary Pat Kennoch  
for

June 23, 2004  
Date

Genesee County  
Agency