

**RALEIGH-DURHAM AIRPORT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE  
PROGRAM**



**IMPLEMENTED 2001, AMENDED 2003, AMENDED 2012, AMENDED 2023**

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## **Section I: Policy Statement**

### **A. Objectives/Policy Statement (49 CFR Part 26.1, 26.23)**

The Raleigh-Durham Airport Authority (the Authority) has established a Disadvantaged Business Enterprise Program (the DBE Program) in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26. The Authority has received financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Authority has provided an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in FAA-assisted contracts. It is also the Authority's policy:

1. To ensure nondiscrimination in the award and administration of FAA-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for FAA-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove any barriers to the participation of DBEs in FAA-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Thiané Carter, Director of Small Business Programs has been designated as the DBE Liaison Officer. In that capacity, Ms. Carter is responsible for implementing all aspects of the DBE Program. Ms. Carter can be reached at P.O. Box 8001, RDU Airport, North Carolina 27623, by phone at (919) 840-7712 or via email at [thiane.carter@rdu.com](mailto:thiane.carter@rdu.com). Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with the Department of Transportation.

The Raleigh-Durham Airport Authority has disseminated this policy statement to all of the components of its organization. It has distributed this statement to DBE and non-DBE business communities that perform work for the Authority on FAA-assisted contracts, and has implemented the DBE Program with the same priority with which it complies with other legal obligations imposed by FAA. The Authority has communicated with DBE and non-DBE businesses via its website to let them know that a copy of this document is available for viewing. Additionally, this document is available to anyone who requests to see it at the Authority offices located at 1000 Trade Drive, Raleigh Durham Airport, NC 27623 during the normal business hours of the Authority.

*Michael J. Landguth*

[Michael J. Landguth \(May 18, 2023 11:30 EDT\)](#)

Michael J. Landguth, A.A.E  
President & Chief Executive Officer  
Raleigh Durham Airport Authority

May 18, 2023

\_\_\_\_\_  
Date

## **SECTION II: GENERAL REQUIREMENTS**

### **A. Objectives (49 CFR Part 26.1)**

The objectives are found in the Policy Statement on page one, hereinabove.

### **B. Applicability (49 CFR Part 26.3)**

The Authority is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **C. Definitions (49 CFR Part 26.5)**

The Authority adopts the definitions contained in 49 CFR Part 26.5 for the DBE Program.

### **D. Non-discrimination Requirements (49 CFR Part 26.7)**

The Authority will 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 Authority 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.

### **E. Record Keeping Requirements (49 CFR Part 26.11)**

#### Reporting to FAA: 26.11(b)

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

DBE participation will be reported to [operating administration] as follows:

The Authority 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. The Authority will similarly report the required information about participating DBE firms. All reporting will be done through the [operating administration] official reporting system, or another format acceptable to [operating administration] as instructed thereby. .

#### Bidders List: 26.11(c)

The Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its FAA-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms. The Authority will collect this information from bid documents submitted to the Authority at the time of a bid. The Authority will collect the name, address of bidding firm, a list of the DBE firms included in the bid or the firm's good faith efforts and the percentage and dollar amount of the work proposed for the DBE firm(s).

#### **F. Federal Financial Assistance Agreement (49 CFR Part 26.13)**

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

Assurance (49 CFR Part 26.13(a)) - Each financial assistance agreement the Authority signs with the FAA will include the following assurance:

*The Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FAA-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 FAA-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by FAA, 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 Authority 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: 49 CFR Part 26.13(b)

The Authority will ensure that the following clause is included in each FAA-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

*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 FAA-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:*

- a. Withholding monthly progress payments;*
- b. Assessing sanctions;*
- c. Liquidated damages; and/or*
- d. Disqualifying the contractor from future bidding as non-responsible*

### **SECTION III: ADMINISTRATIVE REQUIREMENTS**

#### **A. DBE Program Updates (49 CFR Part 26.21)**

The Authority 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. The Authority is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Authority is in compliance with it and Part 26. The Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. The Authority 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.

**B. Policy Statement (49 CFR Part 26.23)**

The Policy Statement is located on page one, hereinabove.

**C. DBE Liaison Officer (49 CFR Part 26.25)**

The Authority has designated the following individual as its DBE Liaison Officer (DBELO):

**Thiané Carter, Director of Small Business Programs**

**1000 Trade Drive**

**RDU Airport, NC 27623**

**Telephone: 919-840-7712**

**Fax: 919-840-0175**

**E-mail: [Thiane.carter@rdu.com](mailto:Thiane.carter@rdu.com)**

In that capacity, the DBELO is responsible for, in coordination and cooperation with Authority staff and Board members, implementing all aspects of the DBE Program and ensuring that the Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the President and Chief Executive Officer concerning DBE Program matters. An organizational chart displaying the DBELO's position in the organization is found in **Attachment 1** attached hereto and incorporated herein by reference.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 2 to assist in the administration of the program. The duties and responsibilities include the following:

1. Developing, managing, and implementing the DBE Program on a day-to-day basis;
2. Advising the President & CEO and Authority Board on DBE matters and achievement; and
3. Acting as a liaison to the Uniform Certification Process (UCP) in North Carolina.

These duties and responsibilities include the following:

Outreach & Education

1. Providing outreach to DBEs and community organizations to advise them of opportunities;
2. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance;
3. Planning and participating in DBE training seminars;
4. Providing assistance to DBEs in overcoming barriers in the procurement process such as inability to obtain financing or technical assistance;

Contract & Procurement Activities

1. Providing information to DBE firms about the Authority, its functions, and the full range of its contractual needs;
2. Providing DBE firms with information on future procurement and contracting schedules;
3. Providing sufficient lead time for advertisement of all invitations for bids so that all firms have reasonable time to develop a complete bid package or proposal and secure necessary assistance;
4. Placing bid notices in local newspapers, especially publications which are circulated through the DBE community;

5. Sending bid notices to DBE trade associations, technical assistance agencies, DBE economic development groups, and DBEs with capabilities relevant to the bid notice, as identified by the DBE directory;
6. Making bid specifications available to DBE contractor associations and technical assistance agencies;
7. Providing DBEs and DBE organizations with lists of contractors who are expected to be interested in bidding on a contract;
8. Holding pre-bid conferences and pre-proposal meetings to provide firms with an opportunity to inquire about the Authority's DBE requirements;
9. Conducting information and communication programs on contracting procedures and specific contracting opportunities;
10. Offering instructions and clarification on bid specifications, the Authority's procurement policy, procedures and general bidding requirements;
11. Providing instructions about contract performance requirements;
12. Notifying, whenever possible, certified DBEs of informal bid solicitations for contracts within their areas of qualification to ensure a full and fair opportunity to participate in such contracts;

#### Goal Setting

1. Working with Authority staff to set overall annual goals;
2. Analyzing contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment);

#### Monitoring & Compliance

1. Reviewing third party contracts and purchase requisitions for compliance with this DBE Program;
2. Compiling and reporting statistical data and other information as required by FAA; and
3. Analyzing the Authority's progress toward attainment and identifies ways to improve progress;
4. Creating a compilation of successful public bid documents from past procurements and permitting DBEs to review and evaluate these documents;

Other Authority personnel have responsibilities for DBE Program implementation, including:

1. Providing information to the DBELO on contracting and leasing opportunities, together with a breakdown of subcontracting possibilities;
2. Consulting with the DBELO on procurement policies, including bonding, licensing, and other requirements;
3. Explaining the DBE participation requirements at pre-bid and pre-proposal conferences;
4. Ensuring that solicitations contain the requisite clauses and goals; and
5. Reviewing contract provisions to assure that they comply with applicable law.

#### **D. DBE Financial Institutions (49 CFR Part 26.27)**

It is the policy of the Authority 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 FAA-assisted contracts to make use of these institutions. The DBELO will review this list of institutions annually. The following institutions have been identified:

Mechanics and Farmers Bank  
2634 Chapel Hill Blvd.  
Durham, NC 27707

Latino Community Credit Union  
PO Box 25360  
Durham NC, 27702

**E. Prompt Payment Mechanisms (49 CFR Part 26.29)**

The Authority 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 Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 5 days from the prime contractor's receipt of each payment from the Authority.

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

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than five (5) days from the receipt of each payment the prime contract receives from Authority. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors.*

The Authority will include the applicable clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract to implement this measure.

**F. Directory (49 CFR Part 26.31)**

The Authority is not a certifying member DBE firms for the North Carolina 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.

**G. Overconcentration (49 CFR Part 26.33)**

The Authority has not identified overconcentration in the types of work that DBEs perform.

**H. Business Development Programs (49 CFR Part 26.35)**

The Authority has not established a Business Development Program.

**I. Monitoring and Enforcement Mechanisms (49 CFR Part 26.37)**

The Authority 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 the Authority's DBE program.



The Authority 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

The Authority undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system.

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

The Authority proactively reviews contract payments to subcontractors including DBEs each month. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the Authority by the prime contractor.

#### Prompt Payment Dispute Resolution

The Authority encourages all contractors (prime contractors and subcontractors) to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29 through appropriate formal and informal means including but not limited to negotiation, mediation and arbitration. If contractors are not able to resolve disputes, contractors may contact the Authority for assistance. The Authority may require documentation of their good faith attempts to resolve the dispute as a condition of providing assistance.

#### Prompt Payment Complaints

The Authority has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

1. The Authority will ensure that prime contractors are entering payments to subcontractors in the contract compliance system
2. The Authority will ensure that subcontractors are verifying payments in the contract compliance system
3. Each subcontractor will notify both the Authority and the prime contractor that it has a payment dispute or has not been paid in a timely manner
4. If a subcontractor unable to resolve payment discrepancies with the prime contractor, subcontractor should contact DBELO to initiate complaint.
5. In the event that the prime contractor and the subcontractor are unable to resolve the dispute, the DBELO will intervene
6. In the event that the dispute is not resolved, subcontractors may contact the FAA Office of Civil Rights for additional assistance.

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. The applicable contract clause is:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 5 days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.*

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, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

All bidders are hereby notified that failure to carry out the obligations of this DBE Program will constitute a breach of good faith in dealing with the Authority, and the Authority will take any and all actions permitted by law to ensure compliance by all contractors engaged by it.

The Authority will provide appropriate means to enforce the requirements of §26.29. These means include but are not limited to: assessing penalties or liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor, or contract termination, in accordance with the contract. The Authority will include the following clause in each DOT-assisted contract:

*The Contractor shall cooperate fully and promptly with government and Owner compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the Contractor, including but not limited to findings of non-responsibility for future contracts and/or suspension and debarment.*

The Authority will bring to the attention of the Department of Transportation any false, fraudulent or dishonest conduct in connection with the DBE Program, so that Department of Transportation can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the Department of Transportation Inspector General, action under suspension and debarment of Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26.107. The Authority will also consider similar action to the extent permitted by applicable law, including responsibility determinations in future contracts. The DBELO and appropriate staff will make prompt compliance determinations regarding contractors. Documentation of non-compliance will include the specific areas in which the contractor failed to comply. In these instances, appropriate action, consistent with the DBE Program and contract provisions, will be taken.

#### Monitoring Contracts and Work Sites

The Authority 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 Authority staff or consultants representing the Authority. Contracting records are reviewed by Authority staff or consultants representing the Authority. The Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

## **SECTION III: SMALL BUSINESS PARTICIPATION**

### **A. Objective (49 CFR Part 26.39)**

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

1. **Set asides:** Where feasible, the Authority will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the Authority and its prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This determination will be made based on the estimated availability of small businesses able to provide the requisite scopes of work regardless of DBE status. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and DBELO will document why a small business set-aside is inappropriate and the factors which were considered in making that determination, including project scope and estimated availability of firms.
2. **Unbundling:** The Authority, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Authority will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. This determination will be made based on the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, the Authority will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses. The Authority will assist prime contractors or prime consultants in identifying portions of work which may be unbundled and performed by small businesses. The Authority will document the factors used to determine whether or not an FAA-assisted contract will be unbundled or bid separately.
3. **Outreach and technical assistance:** The Authority sponsors and participates in outreach and training opportunities for small businesses through various partnerships. The Authority provides scholarships to the North Carolina Department of Transportation Business Opportunities Workforce Development Executive Management Program for Design and Construction (BOWD Executive Management Program). The Authority identifies small businesses which could benefit from the BOWD Executive Management Program and provides scholarships to those firms to attend the five-day program. Furthermore, the Authority staff participates in business outreach sessions conducted by local municipalities and non-profit agencies which are designed to introduce small and minority-owned businesses to the Authority’s procurement processes and practices. The Authority has participated in and sponsored conferences and outreach sessions conducted by: the National Institute of Minority Economic Development, the Carolinas-Virginia

Minority Supplier Development Council, Minority Economic Development week. Additionally, the Authority advertises contracting opportunities through various outlets, including local newspapers, minority-based publications and trade publications as well as on its website.

As described above, the Authority will utilize a variety of methods to facilitate small business participation. In each FAA-assisted contract, the DBELO will document the method in which the small business element will be implemented (i.e. set-aside, unbundling and/or outreach) and the process by which those methods were considered.

## **B. Definitions**

### **1. Small Business:**

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

### **2. Disadvantaged Business Enterprise:**

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

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

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

## **C. Certification and Verification Procedures**

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

1. NCDOT DBE Certification – DBE Certification by the NCDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by NCDOT.
2. NCDOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the NCDOT DBE Certification application after contract award.
3. North Carolina Department of Administration HUB Certification - Will require submittal of three years of business tax returns and page 2 of the NCDOT DBE Certification application after contract award.

4. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

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

#### **D. Implementation Schedule**

The Authority will approve the small business element of the Small Business Participation element of the DBE Program by February 28, 2012, and will implement it within two months of the FAA's approval of this element.

#### **E. Assurances**

The Authority makes the following assurances:

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

### **SECTION IV: GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **A. Set-asides or Quotas (49 CFR Part 26.43)**

The Authority does not use quotas in any way in the administration of this DBE Program.

#### **B. Overall Goals (49 CFR Part 26.45)**

The Authority 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), the Authority will submit its overall three-year DBE goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA. The FAA schedule can be found [here](#).

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Authority 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 the Authority 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. The Authority will use DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45] as a method to determine the base figure. The Authority 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. The Authority 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 Authority’s market.

In establishing the overall goal, the Authority 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 the Authority 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 the Authority 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 the Authority 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, the Authority will publish a notice announcing the proposed overall goal before submission to the [operating administration] on August 1st. The notice will be posted on the Authority’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 FAA, the revised goal will be posted on the official internet web site.

The Authority overall goal submission to FAA will include a summary of information and comments received during this public participation process and the Authority’s responses.

The Authority will begin using the overall goal on October 1 every third year, unless it has received other instructions from FAA and/or applicable law.

#### Prior Operating Administration Concurrence

The Authority understands that prior 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 the Authority for calculating goals is inadequate, FAA may, after consulting with the Authority, adjust the overall goal or require that the goal be adjusted by the Authority. 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 2** to this program.

### **C. Contract Goals (49 CFR Part 26.51(d-g))**

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.

Individual contract goals will be established on a contract by contract basis by the DBELO in conjunction with other Authority staff. Contract goals will be determined by considering the total dollar value of potential subcontract awards to DBEs, the total estimated dollar value of the prime contract the scope of work to be accomplished, the availability of certified DBEs to perform necessary work, and past experience on similar contracts.

If the Authority establishes a goal on an individual project basis, it will begin using that goal by the time of the first solicitation for a FAA-assisted contract for that project.

### **D. Failure to Meet Overall Goals (49 CFR Part 27.47)**

The Authority 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 the Authority fails to administer its DBE program in good faith.

The Authority 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.

The Authority 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. The Authority 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 FAA upon request.

#### **E. Means Recipients Use to Meet Overall Goals (49 CFR Part 26.51)**

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

The Authority 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. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. 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);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
6. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
7. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
8. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The Authority 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.

The Authority will use contract goals to meet any portion of the overall goal that the Authority 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 the overall goal that is not projected to be met through the use of race-neutral means. The Authority will establish contract goals only on those FAA-assisted contracts that have subcontracting possibilities. The Authority may not establish a contract goal on every such contract, and the size of any 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 total amount of a DOT-assisted contract.

## **F. Good Faith Efforts Procedures (49 CFR Part 26.53(a-f))**

### Demonstration of good faith efforts

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.

The 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 responsive.

The Authority 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.

The obligation of the bidder is to make good faith efforts to meet the applicable DBE participation goal(s). The bidder can demonstrate that it has done so either by meeting the contract goal or documenting its good faith efforts.

All bidders agree, by the submission of a bid for work on a project for which a contract is to be awarded by the Authority, to ensure that they will not discriminate against DBEs in assembling contract bids, and that where there are contract goals, that they will either present a bid that meets the goals or provide documentation of the good faith efforts made to meet the goals. Failure to make good faith efforts and to adequately document such efforts to the Authority will be grounds for disqualifying a bid as non-responsive, pending the outcome of the administrative reconsideration process.

Bidders shall not discriminate on the basis of race, color, national origin or gender in the award and performance of contracts. The Authority will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before it commits to the performance of the contract by the bidder.

Information to be submitted

The Authority 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:
  - a. The names and addresses of DBE firms that will participate in the contract;
  - b. 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;
  - c. The dollar amount of the participation of each DBE firm participating;
  - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - e. 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.
  - f. 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. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

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 three (3) days of being informed by Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidder should make this request in writing to the following reconsideration official:

**Michael Landguth, President & Chief Executive Officer**  
**PO Box 80001**  
**RDU Airport, NC 27623**  
**919-840-7733**  
**michael.landguth@rdu.com**

The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the reconsideration official to discuss whether it met the goal or made adequate good faith efforts to do. The reconsideration official will send the bidder a written decision on the reconsideration, explaining the basis for the decision. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good faith efforts (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.

#### Good faith efforts when a DBE is replaced

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 the Authority. 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 the Authority 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. The Authority determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the Authority 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 the Authority 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 a request to terminate and/or substitute a DBE subcontractor to the Authority, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Authority, 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 the Authority 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 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 the Authority 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.*

The Authority 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 the Authority 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. The Authority 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 The Authority 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.

#### **G. Counting DBE Participation (49 CFR Part 26.55)**

The Authority will count DBE participation toward overall and contract goals as provided in 49 CFR 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.

## **SECTION V – CERTIFICATION**

### **A. Certification Process & Decisions (49 CFR Part 26.61-26.91)**

The Authority is a member of a Unified Certification Program (UCP) administered by the North Carolina Department of Transportation (NCDOT). The Authority has signed a memorandum of agreement with the NCDOT regarding DBE certifications as a part of the UCP. (The Authority primarily performs Airport Concessions Disadvantaged Business Enterprise (ACDBE) certifications while the NCDOT performs DBE certifications. The Authority does not, certify DBE firms unless those firms are simultaneously seeking ACDBE certification). A copy of the memorandum of agreement is included as **Attachment 3** to this program.

The Authority 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. The Authority makes all certification decisions based on the facts as a whole. Certification decisions will be made using the process and standards of Part 26, except as provided for in Part 23.

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

**Thiané Carter**  
**PO Box 80001**  
**RDU Airport, NC 27623**  
**919-840-7712**  
[Thiane.carter@rdu.com](mailto:Thiane.carter@rdu.com)

The Uniform Certification Application form and documentation requirements is located [here](#).

## **SECTION VI – COMPLIANCE AND ENFORCEMENT**

### **A. Compliance Procedures Applicable to the Authority (49 CFR Part 26.101)**

The Authority understands that if it fails to comply with any requirement of this part, it 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.

### **B. Information, Confidentiality, Cooperation (49 CFR Part 26.109)**

The Authority will safeguard from disclosure to third parties information that meets the requirements of confidential business information, established by applicable federal, state, and local law. Notwithstanding any contrary provisions of state or local law, financial information which is submitted by an applicant for DBE certification must be kept confidential by the Authority and will not be released to any third party except upon written consent by the party whom the information pertains, except to transmit information to Department of Transportation in the event of an appeal. In accordance with applicable provisions of state or local law, the Authority will not release personal

financial information submitted in response to the personal net worth requirement to a third party (other than FAA) without the written consent of the submitter.

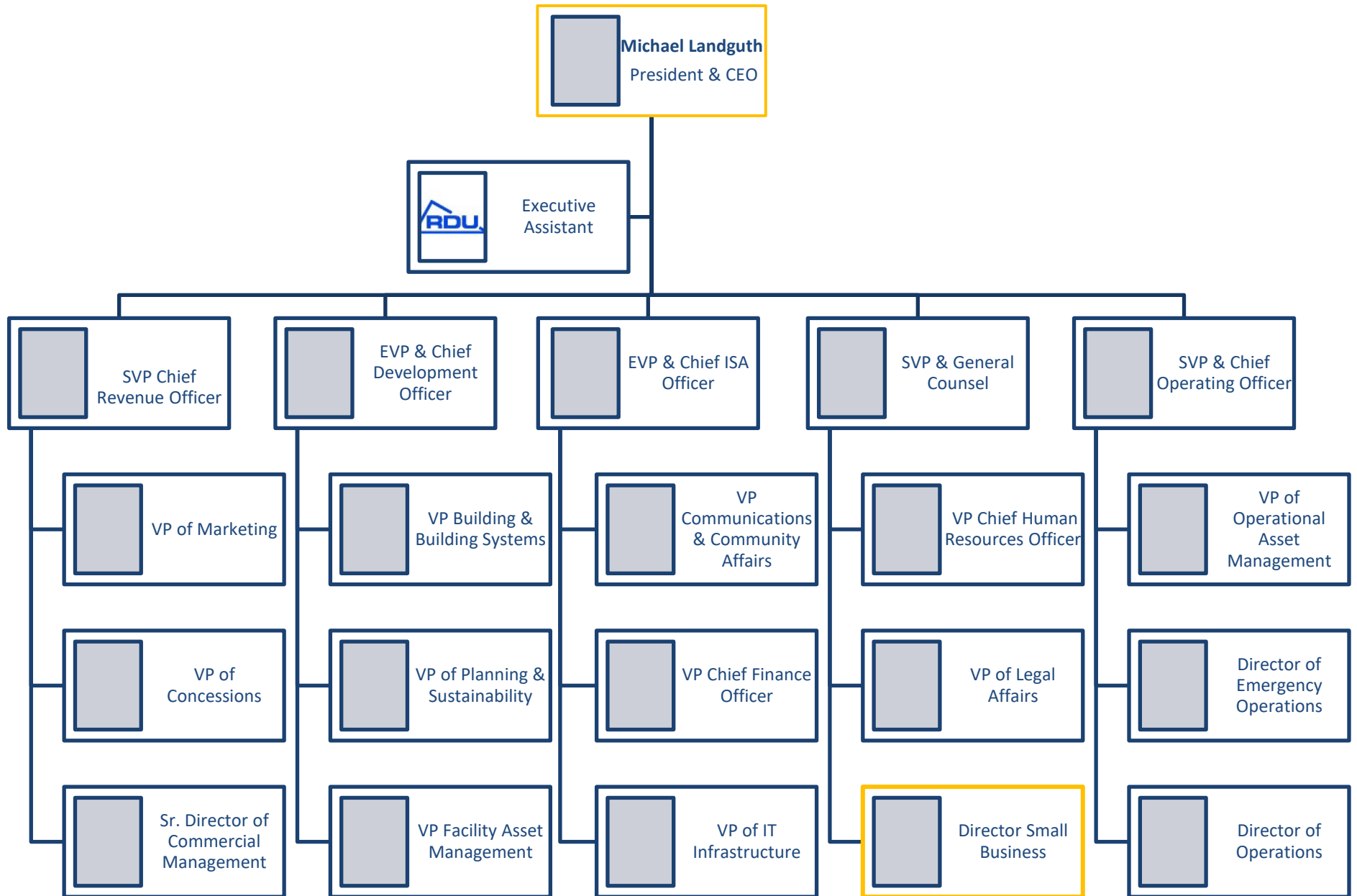
**ATTACHMENTS**

**Attachment 1: Organizational Chart**

**Attachment 2: Overall DBE Goal**

**Attachment 3: Memorandum of Understanding**

# Attachment 1: Organizational Chart





**Attachment 2: Overall DBE Goal**

**Attachment 3: Memorandum of Understanding**







# RDU DBE Program\_2023

Final Audit Report

2023-05-18

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