

## POLICY STATEMENT

**Section 26.1, 26.23**

### **Objectives/Policy Statement**

Miami University has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Miami University has received federal financial assistance from the DOT, and as a condition of receiving this assistance, Miami University has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Miami University to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Miami University policy:

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

Laura Baessler has been delegated as the DBE Liaison Officer. In that capacity Ms. Baessler is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Miami University in its financial assistance agreements with the DOT.

Miami University has distributed this statement to DBE and non-DBE business communities that perform work for Miami University on DOT-assisted contracts, to its Board members and all components of the organization by posting it on Miami University and OXD maintained websites and by reference in bid requests.

David K. Creamer

By: \_\_\_\_\_

Its: \_\_\_\_\_

September 30, 2024

Date

**David K. Creamer**  
**Senior Vice President for**  
**Finance and Business Services**  
**Miami University**

## **SUBPART A – 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**

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

### **Section 26.5 Definitions**

Miami University adopts the definitions contained in Section 26.5 for this program.

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

Miami University 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, Miami University 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 Data Collection and Record Keeping Requirements**

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

Miami University and its management partner will submit its accomplishments annually on the Uniform Report of DBE Commitments/Awards and Payments via FAA's designated reporting system..

#### Bidders List: 26.11(c)

Miami University will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

Miami University will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts will be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc) rather than requesting an exact figure from the firm.

Miami University will collect the data from all bidders for our federally assisted contracts by requiring this information to be submitted with their bids or initial responses to negotiated procurements.

Miami University will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), Miami University will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Miami University will maintain records documenting a firm's compliance with the requirements of this part. These records will be retained in accordance with all applicable record retention requirements of Miami University's financial assistance agreement. Other 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.

The form used to collect this information is included as Attachment 6 to this program.

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

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

#### Assurance: 26.13(a)

Miami University shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. Miami University 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 sponsor's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, are 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 Miami University 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: 26.13(b)

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

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of 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.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

Since Miami University has received a grant of \$250,000 or more for airport planning or development, Miami University will continue to carry out this program until all funds from DOT financial assistance have been expended. Miami University will provide updates to DOT representing significant changes in the program.

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

Miami University has designated the following individual as the DBE Liaison Officer:

Elizabeth Davidson  
Director of Strategic Procurement and Contract Management/Director of Facilities Contracting  
Miami University  
204 Hoyt Hall  
Oxford, OH 45056  
(513) 529-2453  
Email: [davidsea@miamioh.edu](mailto:davidsea@miamioh.edu)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Miami University complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to Dr. Creamer concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 5 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with its management partners and other appropriate officials. 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 attainment).
6. Determines bidder/contractor compliance with good faith efforts.
7. Analyzes Miami University's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the CEO and governing body on DBE matters and achievement.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in Ohio.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of Miami University 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 contract to use these institutions. The availability of such institutions will be investigated on an annual basis.

Miami University and its management partner reviewed information taken from the Federal Reserve Website and the Federal Deposit Insurance Corporation (FDIC) website, <https://www.fdic.gov/regulations/resources/minority/mdi.html>, which showed that there are two location, comprised of one such institutions located within the normal market area. Miami University will periodically investigate whether new financial institutions owned and controlled by socially and economically disadvantaged individuals have been established in the community and shall make reasonable efforts to use these institutions and encourage prime contractors on DOT-assisted contract to use these institutions

### **Section 26.29 Prompt Payment Mechanisms & Monitoring**

Miami University requires that all subcontractors performing work on DOT-assisted contracts be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29 Miami University has established, as part of its DBE Program, a contract clause that 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 Miami University.

Miami University will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Per the General Provisions of Advisory Circular 150-5370-10G included in each FAA-assisted construction contract, Miami University will 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 payment to the prime contractor.

From the total of the amount determined to be payable on a partial payment, 8 percent of such total amount may be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

1. Contractor may request release of retainage on work that has been partially accepted by the Owner. Contractor must provide a certified invoice to the Resident Project Representative (RPR) that supports the value of retainage held by the Owner for partially accepted work.
2. In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 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.

When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR 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.

Further, Miami University 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.

Prime Contractors shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that includes, without limitation, the requirements described as follows:

1. If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Request, the Contractor shall pay within 10 days after receipt of payment from the University:
  - a. To a Subcontractor other than a Material Supplier, an amount equal to the percent of completion allowed by the Contracting Authority for the Subcontractor's Work.
  - b. To a Material Supplier, an amount equal to all or that portion of the Contractor Payment Request that represents the materials furnished by the Material Supplier.
2. The Contractor may reduce the amount paid to a Subcontractor at a rate equal to the percentage retained from the Contractor and may withhold amounts necessary to (1) resolve disputed liens or claims involving the Work of the Subcontractor or (2) account for the failure of the Subcontractor to perform its obligations under its agreement with the Contractor.
3. Labor Payments
  - a. Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is 50 percent complete.
  - b. After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.
4. Material Payments.
  - a. The Contractor shall pay the Subcontractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project.
  - a. The Contractor shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Subcontract, for materials delivered to the Site, or other offsite storage location approved by the A/E, provided the Subcontractor provides the information required by Sections 9.6.2.1 and 9.6.2.2 with its request for payment.

#### Monitoring Payments to DBEs and Non-DBEs

Miami University and its management partner will provide appropriate means to enforce the requirements of this section. These means may include:

1. Requiring and reviewing certification and/or lien waivers from subcontractors that the subcontractor has been paid before releasing further payment to the prime contractor;
2. Inserting 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;
3. Termination of contract for breach of the prompt payment provisions if left uncured for 15 days or more;

4. Responsibility determinations in future bids/contracts; and,
5. Seeking suspension and debarment of the prime contractor from future Miami University bids/contracts for a specified period of time.

Miami University will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Miami University, FAA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Miami University performs interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Prompt Payment Complaints, Dispute Resolution, and Enforcement Actions for Noncompliance of Participants**

Miami University will provide appropriate means to enforce the requirements of §26.29. Disputes and complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

Miami University has established, as part of its DBE program, the below clauses for inclusion in prime contracts to ensure prompt payment and return of retainage:

#### **4.6 Prompt Payment**

- 4.6.1 The Contractor shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that include, without limitation, the requirements described under this Section 4.6.
  - 4.6.1.1 If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Request, the Contractor shall pay within 10 days after receipt of payment from the State: .1 To a Subcontractor other than a Material Supplier, an amount equal to the percent of completion allowed by the Contracting Authority for the Subcontractor's Work. .2 To a Material Supplier, an amount equal to all or that portion of the Contractor Payment Request that represents the materials furnished by the Material Supplier.
- 4.6.2 The Contractor may reduce the amount paid to a Subcontractor pursuant to Section 4.6.1 at a rate equal to the percentage retained from the Contractor and may withhold amounts necessary to (1) resolve disputed liens or claims involving the Work of the Subcontractor or (2) account for the failure of the Subcontractor to perform its obligations under its agreement with the Contractor. Document 00 72 13 General Conditions (General Contracting Project) M160-00 72 13 2022-FEB Page 9 of 60.
  - 4.6.2.1 Labor Payments. .1 Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is 50 percent complete. .2 After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.
  - 4.6.2.2 Material Payments. .1 The Contractor shall pay the Subcontractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project. .2 The Contractor shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Subcontract, for materials delivered to the Site, or other off site storage location approved by the A/E, provided the Subcontractor provides the information required by Sections 9.6.2.1 and 9.6.2.2 with its request for payment.

- 4.6.3 If the Contractor fails to comply with this Section 4.6, the Contractor shall pay to the applicable Subcontractor 18 percent interest, compounded annually, on any unpaid amount beginning on the 11th day after receipt of payment from the State.
- 4.6.4 In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.
- 4.6.5 If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.
- 4.6.6 Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

For prompt payment complaints, subcontractors (including lower-tier subcontractors) and suppliers are required to submit complaints in writing. The complaint should identify specifics regarding the subcontract language, items of work in question, and the subcontractor's or supplier's attempts to obtain payment from the prime contractor and to resolve the issues. Subcontractor/supplier should also provide any supportive documentation they may have to support their complaint (subcontractor or supplier agreements, invoices, subcontract or supplier agreement revisions (change orders), canceled checks, identification of billing errors, etc.). Miami University reserves the right to require any documentation deemed as necessary to review and investigate the complaint.

Disputes and complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

1. Verification that the work in question has been approved by Miami University.
  - a. If the work or materials in question have not been approved, the prime contractor and subcontractor will be notified that no prompt payment issue exists. (No further action necessary related to prompt payment.)
  - b. If the work was approved, a determination will be made whether payment was made by Miami University. If payment was not made, Miami University will make payment to the prime contractor and notify the parties involved of the resolution. (No further action necessary related to prompt payment.)
2. If Miami University paid for the work or materials, a determination will be made if a dispute exists by referring to prompt payment certifications and other supporting information. Supporting information to aid in the determination of a dispute or resolution of a dispute may include subcontractor or supplier agreements, invoices, subcontract or supplier agreement revisions (change orders), cancelled checks, identification of billing errors, etc.
  - a. If a dispute is determined to exist, Miami University will advise the subcontractor that they may file against the payment bond surety. The subcontractor's letter of complaint will be forwarded to the prime contractor with a letter advising them of their responsibility to work with the subcontractor to resolve the dispute. Copies of the letter to the prime contractor will be provided to both the subcontractor and the payment bond surety. (No further action necessary related to prompt payment.)
  - b. In addition, Miami University will advise subcontractors of their ability to make a lien claim. If all requirements are met, Miami University will create an escrow account and withhold the claimed amount from payments owed to the contractor (including any retainage) until such time as the parties come to an agreement or a court issues instruction on release of payment (note that the contractor can post an escrow bond on the money held to release the payment while a court action is pending).
  - c. If it is determined that a dispute does not exist, the subcontractor's letter of complaint will be forwarded to the prime contractor with a copy to the payment bond surety. Payment or justification for non-payment will be requested and a deadline for response will be set.



- i. If the prime contractor makes payment or provides documentation that substantiates the dispute, the response will be forwarded to the subcontractor, and they will be advised that payment was made, or a dispute exists. A copy of the subcontractor notice will be sent to the payment bond surety. In instances of a dispute, all parties will be advised that it is the responsibility of the parties involved to resolve the issue. (No further action necessary related to prompt payment.)
- ii. If the prime contractor has not made payment and does not provide justification of a dispute within the timeframe specified, the appropriate administrative action will be initiated. Possible administrative actions include: suspension of work, withholding all or a portion of an estimate, withholding project acceptance, default for breach of contract, or other actions deemed appropriate.

Second tier subcontractor complaints should be forwarded to and addressed by the prime contractor, with a copy of the prime contractor's notice sent to the payment bond surety.

The following information will be provided to subcontractors:

1. Per ORC Chapter 153, if the Prime Contractor fails to comply with the prompt payment requirements set forth herein, the Contractor shall pay to the applicable Subcontractor 18 percent interest, compounded annually, on any unpaid amount beginning on the 11th day after receipt of payment from the University
2. In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.
3. If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.
4. Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

If filing a prompt payment complaint with the Miami University does not result in timely and meaningful action by Miami University to resolve prompt payment disputes, affected subcontractor may contact the Federal Aviation Administration (FAA). The FAA will investigate the complaint of noncompliance by program participants.

Contact: Office of Civil Rights (ACR-1) Federal Aviation Administration External Programs  
Team ACR-4 800 Independence Ave SW Room 1030 Washington, DC 20591 Phone: (202) 913-7502.

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.

### **Section 26.31 Directory of Certified Firms**

Miami University is a non-certifying member of Ohio's Unified Certification Program. The Ohio Department of Transportation's Office Business and Economic Opportunity maintains the State's directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

This directory is available online at <https://www.transportation.ohio.gov/working/data-tools/resources/dbedirectory>. Miami University also maintains links on the OXD Airport website at <https://oxdairport.com/>, to the Office for Civil Rights & Small Business Development website and the directory.

### **Section 26.33 Overconcentration**

Miami University has not identified that overconcentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs and Mentor-Protégé Programs**

Miami University has not established a business development or a Mentor-Protégé program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

Miami University will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 by all program participants, including prompt payment, and describes and sets forth these mechanisms in Miami University's DBE Program.

1. Miami University will bring to the attention of the FAA any false, fraudulent, or dishonest conduct in connection with the program, so that FAA can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. Miami University will consider similar action under its own legal authorities, including responsibility determinations in future contracts. **Attachment 3** lists the regulation, provisions, and contract remedies available to Miami University in the event of non-compliance with the DBE regulation by a participant in Miami University's procurement activities.
3. Miami University and its management partner will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by on-site verification of DBE provided labor and by keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Miami University and its management partner will implement a monitoring and enforcement mechanism that will include written certification that Miami University has reviewed contracting records and monitored work sites for this purpose. This will be accomplished by: a) verification through jobsite interviews with subcontractor employees; b) certifications, signed by both the prime contractor and DBE subcontractor(s), submitted with payment requests specifying the work performed by the DBE subcontractor(s) and certifying it was actually performed by the DBE subcontractor(s); and, c) comparing certifications with payment line items and commitments submitted with the prime contractor's bid.

4. Miami University and its management partner will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to FAA, Miami University will show both commitments and attainments, as required by the DOT uniform reporting form.
5. Miami University will implement a process to monitor prompt payment through sub-contractor usage, billing and payment applications. This process will include a certified statement of payment from the prime and subcontractor that will be utilized for prompt payment verification.

### **Monitoring Contracts and Work Sites**

Miami University 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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by project managers or consultant teams. Contracting records are reviewed by the DBELO. Miami University will maintain written certification that contracting records have been

reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

**Section 26.39 Fostering Small Business Participation**

Miami University has created a small business element to structure contracting requirements to facilitate competition by small business concerns, 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.

Miami University's small business element is incorporated as Attachment 7 to this DBE Program and Miami University will actively implement the program elements to foster small business participation.

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

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

Miami University does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 1 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) Miami University will submit its overall 3-year goal to DOT on August 1 of the year in which the goal is due, as required by the schedule established by the FAA. Before establishing the overall 3-year goal, Miami University will consult with professional organizations, regional minority business groups, and other groups as Miami University may deem appropriate to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Miami University's efforts to establish a level playing field for the participation of DBEs.

Miami University will also publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Miami University's administrative offices and informing the public that Miami University will accept comments on the goals. The notice will be published on the OXD Airport website. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Miami University's overall goal submission to DOT will include a summary of information and comments received during this public participation process.

Miami University will begin using the overall goal on October 1 of each year, unless instructed by DOT otherwise. If a goal is established on a project basis, Miami University will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

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

Miami University 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 Miami University fails to administer its DBE program in good faith.

Miami University understands compliance with this part includes, an approved DBE Program and overall DBE goal must be maintained, and this DBE Program must be administered in good faith.

Miami University understands 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; and,
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. Miami University 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.

### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found as part of the overall goal in Attachment 1 to this program. This section of the program will be updated every three years when the goal calculation is updated.

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

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

Miami University will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It is not necessary to establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

Miami University will express our contract goals 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 (26.53(a) & (c))

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 done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

Miami University's DBELO, Elizabeth Davidson 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. Award of the contract will be conditioned on meeting the requirements of this section.

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

#### Information to be submitted (26.53(b))

Miami University treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
- 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;

Provided that, in a negotiated procurement, such as a procurement for professional services, 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 (b)(2) of this section before the final selection for the contract is made by Miami University. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor Miami University will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, Miami University will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which Miami University solicits proposals to design and build a project with minimal project details at time of letting, Miami University may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, Miami University will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Miami University and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Miami University will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Miami University **will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Each solicitation for which a contract goal is established will include the following provisions stating the specific contract goal will be included in the solicitation and contract documents:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of Miami University to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit

bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of # percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in 49 CFR Part 26 Appendix A, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the bidder's/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

#### Administrative reconsideration (26.53(d))

Within five (5) days of being informed by Miami University that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following reconsideration official:

M. Cristina Alcalde, Ph.D. (she/her)  
Vice President for Institutional Diversity and Inclusion  
Professor, Global and Intercultural Studies  
Miami University  
222 Roudebush Hall  
Oxford, OH 45056  
Phone: 513-529-1715  
Email: [alcaldmc@miamioh.edu](mailto:alcaldmc@miamioh.edu).

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 it met the goal or made adequate good faith efforts to do. Miami University will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

#### Good Faith Efforts procedural requirements (post-solicitation) (26.53(f))

The awarded contractor must 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 are 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 Miami University's DBE Liaison Officer. 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. Miami University will require a contractor to make good faith efforts to replace a

DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Miami University requires the prime contractor to notify the DBE Liaison officer immediately of the DBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, Miami University will require the prime contractor to obtain Miami University's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. Written consent will be provided only if Miami University's DBE Liaison Officer agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate or substitute the DBE firm.

Each prime contract will include a provision stating:

The Contractor must utilize the specific DBEs listed in the contractor's solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of Miami University's DBE Liaison Officer as provided in 49 CFR Part 26, §26.53(f). Unless this consent is provided, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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. Miami University determines that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides Miami University 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 Miami University 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 Miami University, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Miami University's DBE Liaison Officer, 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 5 days to respond to the prime contractor's notice and advise Miami University's DBE Liaison Officer 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 5 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 must utilize the specific DBEs listed in the contractor's solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of Miami University's DBE Liaison Officer as provided in 49 CFR Part 26, §26.53(f). Unless this consent is provided, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Miami University 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 must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated or substituted, to the extent needed to meet the contract goal that was established for the procurement. The contractor must document its good faith efforts. If Miami University requests documentation from the contractor under this provision, the contractor must submit the documentation within 7 days, which may be extended at Miami University's sole discretion for an additional 7 days if necessary at the request of the contractor. Miami University will 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 Miami University department responsible for the project will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, Miami University may issue a termination for default proceeding.

#### **Section 26.55 Counting DBE Participation**

Miami University 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).

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals 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**

Miami University is a non-certifying member of the Ohio Unified Certification Program (OUCP). OUCP 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 OUCP 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:  
Ohio Unified Certification Program

1980 West Broad Street  
Columbus, Ohio 43223  
614-466-2878  
DOT.SDBE@dot.ohio.gov  
<https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp#page=1>

Certification application forms and documentation requirements are found at the following links:

The OUCP Uniform Certification Application is available at the following website:  
<https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp/ucp-application>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

Miami University is a member of the Ohio Unified Certification Program (OUCP) administered by the Ohio Department of Transportation.

All certification procedures will be handled through the ODOT pursuant to the Revised Agreement Governing The Ohio Certification Program For The Disadvantaged Business Enterprise Program between Miami University and the Ohio Department of Transportation.

### **Section 26.89 Certification Appeals**

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

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone: (202) 366-4754  
Fax: (202) 366-5575

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

### **Section 26.109 Information, Confidentiality, Cooperation**

Miami University will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law including, but not limited to, the Ohio Public Records Act (ORC Chapter 149.43 et seq.).

Notwithstanding any contrary provisions of state or local law, Miami University will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

## **ATTACHMENTS**

Attachment 1	Overall Goal Calculation and Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 2	Form 1, 2 and 3 for Demonstration of Good Faith Efforts
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Link to UCP Directory of Certified Firms
Attachment 5	Regulations: 49 CFR Part 26
Attachment 6	Organizational Chart
Attachment 7	Bidder's List Collection Form
Attachment 8	Small Business Element
Attachment 9	Link to Certification Application Form and Personal Net Worth Statement
Attachment 10	Link to State's UCP Agreement

**Attachment 1**

**Section 26.45: Overall Goal Calculation**  
**MIAMI UNIVERSITY**  
**OVERALL DISADVANTAGED BUSINESS**  
**ENTERPRISE GOAL**  
**FISCAL YEARS 2025-2027**

**Document Attached Separately**

**Attachment 2**

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

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**FORM 2: LETTER OF INTENT**

Name of bidder's firm: \_\_\_\_\_

Bidder's address: \_\_\_\_\_

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

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

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

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

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm (Include associated NAICS, and if Manufacturer, Regular Dealer, Distributor, or Broker):

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-----  
-----  
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The bidder intends to utilize the above-named DBE firm for the work described above. The estimated amount of work is valued at \$ \_\_\_\_\_.

**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) (Title) (Company)

**If the above-named bidder is not determined to be the successful bidder, this Letter of Intent and Affirmation is null and void. The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.**

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


By \_\_\_\_\_  
(Signature) (Title) (Company)

**The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.**

(Submit this page for each DBE subcontractor.)

## FORM 3: DBE REGULAR DEALER/DISTRIBUTOR AFFIRMATION FORM

**OMB Control #2105-0586 (Exp. 5/31/2027)**



U.S. Department of  
Transportation

### DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Authorized DBE Representative (Name and Title):

Total Subcontract/Purchase Order Amount:

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment?  YES  NO  
 (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)
  - a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?  YES  NO (If "YES," Go to Question 2. If "NO" Continue.)
  - b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?  YES  NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

\* If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)
  
2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?  YES  NO<sup>1</sup>  
 (If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)  
<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)
  
3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?  YES<sup>2</sup>  NO<sup>3</sup>
  - a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

**Printed Name and Signature of DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

**Printed Name and Signature of Bidder's Authorized Representative:**



### **Attachment 3**

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

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Similar actions pursuant to Ohio Revised Code;
3. Responsibility determinations in future bids/contracts; and
4. Violation of the Rules and Regulations of the Miami University.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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; and
3. Prosecution pursuant to 18 USC 1001.

Miami University will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including, but not limited to the following:

1. All FAA-assisted contracts between Miami University and a contractor will contain an appropriate provision to the effect that failure by the contractor to comply with Miami University's DBE Program constitutes a breach of contract, exposing the contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until the contractor complies with all requirements of this program. Miami University may impose liquidated damages, contract suspension, or even contract termination in accordance with Ohio law.
2. All documentation submitted with bidder/offeror's submittal, as well as additional data provided by the successful bidder/offeror, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission must have prior written approval of Miami University's DBE Liaison Officer.
3. If a DBE firm not certified by the Ohio Department of Transportation is proposed by a potential contractor as a part of its DBE plan efforts, review and certification procedures consistent with 49 CFR Part 26 must be conducted prior to award of any contract.
4. Miami University reserves the right to reject any or all bids or re-advertise for bids. A submittal will not be considered responsive unless the bidder/offeror complies with Title 49 CFR Part 26 and Miami University's DBE Program.
5. Miami University will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.
6. Miami University will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
7. Miami University also will consider similar action under its own legal authority, including responsibility determinations in future contracts. In addition, the Sponsor will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.

**Attachment 4**

**Link to UCP Directory of Certified Firms**

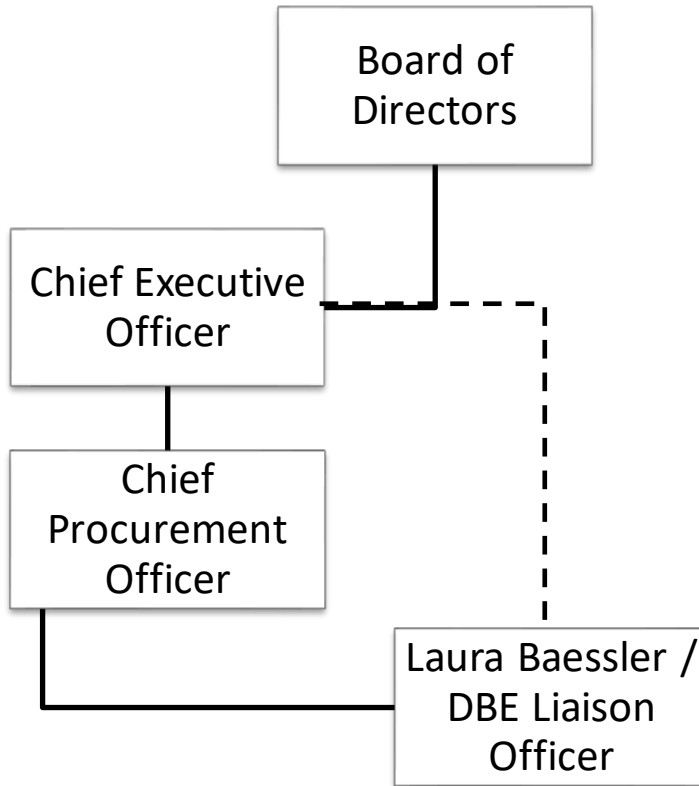
<https://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>

**Attachment 5**

**Regulations: 49 CFR Part 26**

49 CFR Part 26 is available at [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 6  
Organizational Chart



## Attachment 7

### **Bidders' List Collection Form**

<b>Bidders List</b>					
§ 26.11(c) requires Recipients to collect bidders list information from all bidders at the time of bid submittal, and provide it to USDOT. Please Complete all fields and submit with the proposal. An expanded version of this report will be required to be submitted monthly with the Contractor's pay request and electronically to the DBE Liaison Officer.					
<b>Contractors Name:</b>				<b>Project:</b>	
Subcontractor's Name	Subcontractor's Address	NAICS Code	Description of Work	Subcontract Value	Subcontract Amount
				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
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				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
				\$ -	-
				DBE Goal = x.x%	
Total Value of Subcontracts (\$)				\$ -	
Total Value of Subcontracts awarded to DBE Firms				\$ -	
				Total Contract Amount	
				DBE Committed =	
				#DIV/0!	
Total Value of DBE Subcontracts				-	
Effective DBE Value (60%) of DBE Material and Supplies				\$ -	
Effective DBE Value (40%) of DBE Distributors				\$ -	
Total Effective Value of DBE Subcontracts, Materials and Supplies				\$ -	
* Enter "1" for less than \$1 million Enter "2" for more than \$1 million, less than \$5 million Enter "3" for more than \$5 million, less than \$10 million Enter "4" for more than \$10 million, less than \$15 million Enter "5" for more than \$15 million					
Note: This report contains business proprietary information that could place this firm at a competitive disadvantage if disclosed.					
Electronic Signature of Authorized Representative				Title:	

## Attachment 8

### Small Business Element

In accordance with 49 CFR Part 26, Miami University's Small Business Enterprise (SBE) element of its DBE Program is intended to facilitate competition by, and expand opportunities for, all small businesses regardless of race, gender, or geographic location. Miami University is committed to taking reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or as subcontractors. DBE Program goals should be met through a mixture of race conscious and race neutral methods and, by definition, DBE firms are small businesses. Therefore, when Miami University is unable or does not expect to meet its goals through race neutral measures Miami University will use the following methods to meet the SBE objectives:

1. **SBE Project/Contract Goals:** Where feasible, Miami University will identify and establish an SBE goal that is a percentage of the total value of an FAA-assisted procurement. Bids submitted for FAA-assisted procurements that include an SBE goal must meet or exceed the SBE goal percentage as a matter of responsiveness. This requires that Miami University and its prime contractors/consultants include a portion of the value of each identified contract for participation by small businesses. Miami University 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 goal percentage. The final determination will be made by the DBELO and based upon the estimated availability of small businesses that are able to provide the requisite scope(s) of work. These goals are in conjunction with the DBE contract goals which may be required pursuant to applicable law or policy. In the event that an SBE goal is not established on an FAA-assisted contract, Miami University will document why an SBE goal was not established.
2. **Unbundling:** Miami University, where feasible and when permitted by applicable law, may unbundle projects or separate large contracts into smaller contracts which may be more suitable for small business participation. Miami University will review FAA-assisted procurements to determine whether portions could be unbundled or bid separately. This determination will be made by the DBELO and based upon the estimated availability of small businesses that are able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, Miami University will encourage its prime contractors/consultants to unbundle contracts to facilitate participation by small businesses. Miami University will assist prime contractors/consultants in identifying portions of work which may be unbundled and performed by small businesses. Miami University 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:** Miami University will continue to conduct and participate in outreach and training opportunities for small businesses through various partnerships. Additionally, Miami University advertises opportunities through its website and various media, including, but not limited to, local newspapers, minority-based organizations, trade publications, direct e-mail, and local chambers of commerce.

SBEs which are awarded contracts under this program and are also owned and controlled by socially and economically disadvantaged individuals will be encouraged to seek DBE certification in order to be counted towards race-neutral DBE participation. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

#### **Definitions and Certifications**

Miami University will accept the following certifications for participation as an SBE under this program:

1. Ohio Department of Transportation (ODOT) SBE certification
2. ODOT DBE certification

3. Small Business Administration (SBA) small business certification as evidenced in the System for Award Management (SAM) database.

Miami University will consider small business certifications from other government agencies. If, in Miami University's sole discretion, the certification procedures of the proffered agency is consistent with the objectives of this small business element, Miami University and its prime contractors/consultants may count participation of SBEs certified by the proffered agency.

### **Verification**

Miami University will verify eligibility by checking the directories and/or databases maintained by the certifying agencies noted above. The SBE's eligibility must be current as of the date of the bid opening to be counted as participation.

### **Monitoring/Record Keeping**

Miami University will track and report SBE participation. For reporting purposes, SBE participation includes, but is not necessarily limited to, the following:

- SBE participation through a prime contract a SBE obtains through customary competitive procurement procedures; and
- SBE participation through a subcontract on a prime contract

Miami University will require SBE information to be collected on the bidders list as described in § 26.11(c) and will enter it into the system designated by DOT. Miami University will collect the data from all bidders for federally assisted contracts by requiring this information to be submitted with their bids or initial responses to negotiated procurements.

Miami University will also implement a monitoring and enforcement mechanism to ensure that work committed to SBEs at contract award is actually performed by SBEs and perform running tallies of actual SBE attainments (e.g., payments actually made to SBE firms), including a means of comparing these attainments to commitments.

### **Assurances**

As part of the small business element of its DBE Program, Miami University makes the following assurances:

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

**Attachment 9**

**Link to Certification Application Form and Personal Net Worth Statement**

ODOT Application Forms: <https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp/ucp-application>

Personal Net Worth Statement: <https://www.transportation.gov/sites/dot.gov/files/2024-05/Personal%20Net%20Worth%20Statement%204.9.2024.pdf>



**Attachment 10**

**Link to State's UCP Agreement**

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp/ucp-mou>