



**Charlotte Douglas International Airport
Disadvantaged Business Enterprise (DBE) Program**

December 1, 2024

(Formerly City of Charlotte Overall DBE Program)

(Revision 4/2015)

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**US DEPARTMENT OF TRANSPORTATION
DBE & ACDBE PROGRAMS - 49 CFR PARTS 23 & 26
POLICY STATEMENT**

§23.1 & §23.23

§26.1 & §26.23

FOR

THE CITY OF CHARLOTTE, NORTH CAROLINA

The City of Charlotte, North Carolina (City), has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program and a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (USDOT), 49 CFR Parts 23 & Part 26. The City has received direct Federal financial assistance from various federal agencies and as a sub-recipient to North Carolina Department of Transportation. As a condition of receiving this assistance, the City has signed grant assurances that it will comply with 49 CFR Parts 23 & 26 through the City departments directly benefiting from such assistance.

It is the policy of the City to ensure that ACDBEs and DBEs, as defined in 49 CFR Part 23 or Part 26, have an equal opportunity to receive and participate in airport concession opportunities and/or federally assisted contracts. It is also the policy of the City to engage in the following actions on a continuing basis:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving USDOT financial assistance and to ensure nondiscrimination in the award and administration of federally assisted contracts;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions and DBEs can compete fairly for federally assisted contracts;
3. To ensure that both the ACDBE and DBE Programs are narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 23 or Part 26 eligibility standards are permitted to participate as ACDBEs or DBEs;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s) and to the participation of DBEs in federally assisted contracts;
6. To promote the use of ACDBEs in all types of concessions activities at our airport(s) and the use of DBEs in all types of federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE or DBE Programs; and
8. To make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for ACDBEs and DBEs.

The City disseminates this policy statement to all applicable governing boards, City Departments, and it is made available to the public (including the ACDBE, DBE, non-ACDBE, and non-DBE business communities) online and is also distributed through various other methods and events.

Implementation of the ACDBE and DBE Programs will occur with the same priority with which the City complies with all other legal obligations imposed by its federal financial assistance agreements.

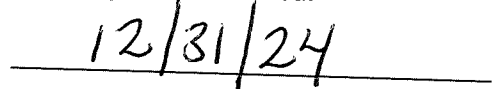
Each City department benefitting from Federal financial assistance must work with and comply with the requirements of the Federal agency granting the Federal assistance. For this reason, certain City departments, as set forth below, must be fully responsible for the implementation, maintenance, monitoring, and periodic amendment and update of their specific ACDBE and DBE programs administered through their departments in compliance with this City policy. Each shall ensure that their department's programs fully comply with all federal law and guidance and, if required by such law or guidance, shall assign a Disadvantaged Business Enterprise Liaison Officer (DBELO) (and an Airport Concessions Disadvantaged Business Enterprise Liaison Officer (ACDBELO) as applicable) who shall be responsible for implementing all aspects of their respective City department's ACDBE or DBE Program.

As such, I delegate the authority to create and implement separate DBE and ACDBE (as applicable) programs for their respective City departments to the Director of Aviation and the Director of Transit. For all other departments and any remainder of the City not under a specific City department program, I shall delegate the authority to create and implement additional DBE programs as needed.



Marcus D. Jones

City of Charlotte, Manager



DATE

SECTION I: GENERAL REQUIREMENTS

A. Section 26.1 – Objectives

The objectives are elaborated in the policy statement on the first page of this program. The program objectives are intended to be, and to remain, in compliance with DBE regulations as codified in Title 49 of the Code of Federal Regulations, Part 26, (Part 26), which may be found using the link in **Attachment 1**.

B. Section 26.3 – Applicability

The City, through its Aviation Department, as owner and operator of Charlotte Douglas International Airport (“CLT”) is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

C. Section 26.5 – Definitions

CLT will use terms in this program that have their meanings defined in Part 26, §26.5 as may be amended from time to time. The current version of the ‘Definitions’ section of Part 26 (currently §26.5) is hereby incorporated by reference and made a part of this DBE Program.

D. Section 26.7 – Nondiscrimination Requirements

CLT 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, CLT 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. Section 26.11 – Data Collection and Reporting Requirements

Reporting to DOT

CLT will provide data about its DBE Program to the FAA or other operating administrations as directed by DOT.

DBE Participation will be reported to the FAA as follows:

CLT will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. CLT will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

Bidders List

CLT will create and maintain a bidders list. 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 CLT’s FAA assisted contracts.

CLT 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.

CLT will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our FAA 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 can 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.

CLT will collect the data from all bidders for our FAA federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements. (See **Attachment 2** from Bidders List Form).

CLT 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), CLT will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

F. Section 26.13 – Assurances Recipients and Contractors Must Make

CLT has signed certain assurance, applicable to all USDOT-assisted contracts and their administration. The assurances are in compliance with Parts §26.13(a) and §26.13(b) and are included in this DBE Program as **Attachment 3**.

SECTION II: CLT ADMINISTRATIVE REQUIREMENTS

A. Section 26.21 – DBE Program Updates

CLT 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.

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

B. Section 26.23 – Policy Statement

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

C. Section 26.25 – DBE Liaison Officer (DBELO)

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

Jasmyne N. Turman, Accessibility & Equity Manager

City of Charlotte Aviation Department

5601 Wilkinson Blvd.

Charlotte, NC 28202

Telephone: 980.348.8477

Email: Jasmyne.Turman@cltairport.com

The DBELO shall be responsible for implementing all aspects of the CLT DBE Program and ensuring that CLT complies with all provisions of 49 CFR Part 26. The CLT DBELO has direct, independent access to CLT's Chief Executive Officer concerning DBE program matters. DBE administrative matters will be managed for CLT by the DBELO with occasional support from industry consultants. An organizational chart displaying the DBELO's position in the organization is included as **Attachment 4** to this program.

The DBELO is responsible for developing, implementing, updating, and monitoring the CLT DBE Program, in coordination with his or her department head. The DBELO has a staff of two (2) direct reports to assist in the administration of the program, (the DBELO plus 2 staff provide a DBELO office of 3 total personnel), as well as assistance as needed from the entire staff of CLT, including professionals in the fields of Finance, Accounting, Engineering, and Legal. The DBELO's (or designee's) duties and responsibilities for CLT 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 divisions within CLT to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes CLT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CLT's Chief Executive Officer, as well as the City Manager, on DBE matters and achievement.
9. Completes DBE language on agenda items prior to going to City Council.
10. Determines contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

14. Accesses certified DBEs through the Unified Certification Program (UCP) of the North Carolina Department of Transportation (NCDOT).
15. Follows DBE Program requirements as necessary for sub-recipient, municipal agreements with NCDOT.

D. Section 26.27 – DBE Financial Institutions

It is the policy of CLT 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. CLT encourages the use of these institutions during outreach events with vendors and contractors. CLT will re-evaluate the availability of DBE financial institutions on an annual basis. The following institutions have been identified:

Mechanics & Farmers Bank

101 Beatties Ford Rd.
Charlotte, NC 28216
(704) 332-2121
<https://www.mfbonline.com/>

Latino Community Credit Union

5910 South Blvd.
Charlotte, NC 28217
(919) 595-1800
<https://latinoccu.org/>

E. Section 26.29 – Prompt Payment Mechanisms

CLT 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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR §26.29(a) and North Carolina General Statute (NCGS) §22C, CLT established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts. The Contractor is required to pay subcontractors for satisfactory performance of their contracts within seven (7) calendar days after the City has paid the Contractor for such Work. This requirement also applies to subcontractors and the flow of payments to lower-tier subcontractors. If the Contractor withholds any retainage pending final completion of any subcontractor's Work, the Contractor is required to pay the retainage withheld within seven (7) calendar days after subcontractor completes its Work satisfactorily, even if the City has not yet paid the Contractor for retainage.

CLT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed.

NCGS §143-134.1 does not allow retainage to be withheld on public construction contracts in which the total project costs are less than one hundred thousand dollars (\$100,000). The statute allows retainage to be withheld on public construction contracts that exceed that amount. CLT complies with NCGS §143-134.1 – retainage is not withheld on construction contracts for projects below that statutory threshold and is withheld for all other contracts.

Pursuant to §26.29, CLT has selected the following methods to comply with this requirement:

1. On construction contracts for projects that are below the NCGS §143-134.1 statutory threshold, CLT will decline to hold retainage from prime contractors and requires a contract

clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed.

2. On all other contracts, CLT 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 seven (7) days after City payment to the prime contractor.

The City will include the following clauses in each USDOT-assisted prime Contract:

For every airport construction project funded under Federal grant assistance programs, CLT includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, North Carolina payment laws provide for payment in seven (7) days rather than 30 days, any reference to "30 days" will be revised accordingly to seven (7) days.

Prompt Payment Monitoring and Enforcement for DBEs and Non-DBEs (26.29(d))

CLT clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, CLT undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities, for FAA funding flowing through CLT, will be accomplished through the following method(s):

- Posting prime contractor and subcontractor (at every tier) payments to an online database accessible to subcontractors to alert them to the start of the 7-day clock for payment;
- Use of an automated supplier diversity and labor compliance system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system;
- Conducting spot check calls and contacts with DBE's regularly on both a random and focused basis to create dialogue and maintain open communication. The occurrence or presence of payment issues, miscommunications, or willful non-compliance are examples of what would trigger focused spot checks.

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

- CLT proactively reviews contract and subcontract payments to subcontractors at any tier including DBEs, on a monthly basis (or more frequently if merited).

- A monthly audit, using an outside consulting service, is conducted. Subcontractors are allowed up to 90 days after receipt of payment to confirm the correctness of the payment reports. Primes and subs are required to correct any payment discrepancies within the same 90-day period.
- Payment reviews specifically evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to CLT by the prime contractor.

Prompt Payment Dispute Resolution

CLT will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made when work has been satisfactorily completed as required by §26.29:

Step 1 – Communication, Facilitation, Information Gathering

- The DBELO, upon becoming aware of an apparent prompt payment dispute, shall contact all related parties including relevant subcontractors, the Prime Contractor, and related CLT project staff. Such disputes are often preventable or easily resolved when channels of communication are opened, facilitated, and the relevant facts and contractual obligations are clarified;
- All relevant data, documents, and facts (specifically including all relevant communications to date between the above stakeholders) is requested and shared appropriately between the DBELO and the stakeholders;

Step 2 – Analysis and Solution Development

- The above documentation (including, but not limited to, invoices, emails, schedules, etc.) related to the disputed work or payment from all stakeholders involved in the dispute are analyzed in detail;
- CLT resources such as Finance and Legal are informed and utilized as appropriate;
- Simple misunderstandings or incomplete submittals are often resolved at this stage allowing payments to be secured and resolution to occur;
- More complex misunderstandings are often resolved with guidance from Finance, Legal, or the CLT project team conveying information that the other parties perhaps were unaware of, misunderstood, or needed assistance in supplying information or a missing element;
- Refusals by any of the stakeholders to fulfill their clarified contractual and DBE Program related obligations lead to Step 3

Step 3 – Good Faith Meeting / Mediation

- All stakeholders are brought together to assess and resolve factual disputes, missing or incomplete forms, data, work, or payments are brought into focus with facilitation by the DBELO;
- Parties are not threatened, but are made aware of the potential actions and responses that are legally available to CLT and that CLT vigorously implements, enforces, and defends the DBE Program;

- If the good faith meeting is not successful in resolving the issues and disputes, formal mediation pursuant to the Prime contract is initiated.

Step 4 – Post-Mediation Action

- If the Mediation is successful, the DBELO and CLT project staff document the outcome and perform a review looking for lessons learned or process improvements – which are shared with stakeholders as appropriate;
- If resolution is not reached, the DBELO, with the support of all relevant CLT staff, will take action to address any violations of the DBE program that may have been identified, using all appropriate legal tools available (see below) including but not limited to contract termination and/or liquidated damages;
- If the stakeholders move forward with litigation, the DBELO with the assistance of Legal monitors the litigation and facilitating with documents, discovery, and acting as a resource if CLT is not a named party, and following the appropriate litigation process if CLT is named as a Party – CLT may also bring litigation under the appropriate circumstances.

In addition to the contractual obligation of prompt payment, CLT has established, as part of its DBE program, the following mechanisms to enforce prompt payment, return of retainage and other contractual obligations:

- (1) Alternative Dispute Resolution (ADR) - Mediation
- (2) DBE Program Specific Remedies & Liquidated Damages

1. ADR – Mediation

CLT, in compliance with state law (NCGS §143-128(f1)), establishes ADR via a clause in prime construction contracts– specifically mediation is required as a precondition to any litigation for any claim of \$15,000 or more between the Prime, and subcontractor at any tier, whether including or not including CLT as a party. Examples of the contract language used in CLT’s current contracts is included in **Attachment 5**.

2. Other mechanisms

CLT in compliance with 49 CFR Part 26, established, enforces, and defends this DBE Program. The DBE Program is incorporated by reference into every federally funded prime contract and applies to all subcontracts at every tier. A standard clause that CLT includes the DBE Program as a whole, background information, points of contact, forms, Contractor assurances, and a Remedies and Liquidated Damages sections. The Remedies and Liquidated Damages clauses are noted in **Attachment 5** and included in **Attachment 7**.

Prompt Payment Complaints

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

- Subcontractors should first reach out to the prime with their complaint and request an updated status/timeline to confirm whether the prompt payment requirements are being met.

- If an affected subcontractor is not comfortable contracting prime directly regarding payment or is unable to resolve payment discrepancies with the prime, the subcontractor should contact the DBELO to initiate a complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by CLT to resolve prompt payment disputes, the affected subcontractor may contact the CLT Project Manager for the applicable project, Legal team, or Chief Executive Officer.
- If contacting the DBELO and other CLT representative does not result in timely and meaningful action by CLT to resolve prompt payment disputes, the affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

CLT provides appropriate means to enforce the requirements of § 26.29 (see §2, page 9 above). These means include the following remedies, which are by contract deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor;
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract;
- Withhold all payments due to the Contractor under the Contract until such violation has been fully cured or CLT and the Contractor have reached a mutually agreeable resolution;
- Other penalties for failure to comply, up to and including contract termination, as set out in Attachment 7

CLT will actively implement the enforcement actions detailed above.

F. Section 26.31 – Directory of Certified Firms

CLT is currently a non-certifying member of the North Carolina Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm have been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 - (1) Physical location
 - (2) NAICS code(s)
 - (3) Work descriptions;
 - (4) All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

The primary DBE Directory for USDOT-assisted projects (other than acquisition of transit vehicles), comes from certification files compiled and maintained by the Unified Certification Program (UCP) of the North Carolina Department of Transportation (NCDOT). The directory is accessible online at the state's website: <https://www.ebs.nc.gov/VendorDirectory/default.html>

G. Section 26.33 – Overconcentration

CLT has not, at this time, identified any overconcentration in one or more types of work at CLT.

H. Section 26.35 – Business Development and Mentor-Protégé Programs

At this time, CLT has not established a Business Development or mentor-protégé program as described by 49 CFR Part 26.

I. Section 26.37 – Monitoring Responsibilities

CLT implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

CLT actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by:

- Requiring all prime contractors bidding on DOT-assisted projects to submit a list of all DBE-certified firms that sought subcontracting opportunities, and ones they intent to use on the project, and the intended dollar amount they intend to pay subcontractors during the life of the project.
- Utilizing an automated supplier diversity and labor compliance software system that keeps track of all subcontractor utilization and payments, for both DBE-certified and non-DBE-certified firms, at every tier.

This mechanism to maintain a running tally of overall goal attainment will be used to inform CLT decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

CLT actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal

monitoring will be maintained by utilizing an automated supplier diversity and labor compliance software system that keeps track of all subcontractor utilization and payments, for both DBE-certified and non-DBE-certified firms, at every tier. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

CLT 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 the DBELO in cooperation with and with the assistance of CLT project managers, inspectors, and consultants - all being part of an effective monitoring and compliance team. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by the DBELO in cooperation with and with the assistance of CLT project managers, inspectors, and consultants. CLT will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. CLT 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.

CLT hereby notifies all participants that pursuant to 49 CFR Part 26 and CLT's DBE Program, they must affirmatively ensure that in any contract entered into with CLT for applicable projects; DBEs will be afforded equal opportunity to participate in subcontracting activities.

All contracts between CLT and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the CLT's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this Program.

All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered to be part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the DBELO.

Should a DBE firm not certified by the NCDOT UCP be proposed by a potential Contractor as a part of his/her DBE plan efforts, replacement with a properly certified DBE firm or review and certification

procedures must be conducted prior to award of any contract. Agreements between a Contractor and a DBE in which the DBE promises not to provide subcontracting quotations to other participants are prohibited.

In contracts with a DBE contract goal, bids submitted which do not meet the DBE contract goal, and which do not show that a meaningful good faith effort was made to achieve the stated goal, will be considered nonresponsive bids, and bidders will not be eligible for award of the contract.

CLT reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsible, responsive, and qualified bidder who complies with 49 CFR, Part 26, and CLT's DBE Program.

The participant shall bring to the attention of CLT any situation in which regularly scheduled progress payments are not made to DBE participants. Records of all progress payments made by prime contractors are required on a monthly basis. To verify the truthfulness and accuracy of representations made by bidders/proposers as well as to ensure their compliance with contract requirements, the following steps will be taken:

1. Review bid package documentation thoroughly, obtaining clarification, if necessary.
2. Review all information on the subcontract awards made to DBE and Non-DBEs including the firm's name, scope of work to be performed (For DBEs- determining whether the work is in a NAICS code that NCDOT-UCP has certified the company), and contract amount.
3. Conduct desk audits to review monthly reports to ensure adherence to this Program as represented in bid documents and as stipulated in 49 CFR Part 26.
4. Monitor records of all progress payments to DBEs through monthly reports from prime contractors. Records will be periodically verified by obtaining certified statements from DBE subcontractors.
5. Monitor progress of DBE's work through on-site reviews and communications with DBEs.
6. Conduct any additional investigation that may be necessary due to a lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence of unsatisfactory performance; other evidence as may warrant further investigation.
7. Use the legal instrument of the contract clause to enforce 49 CFR Part 26 requirements. Documentation of noncompliance will include the specific areas in which the contractor failed to comply. In these instances, appropriate legal action consistent with the DBE Program and other contract provisions will be taken.
8. Ensure that prime contractors and DBEs immediately notify CLT of any changes in their firms including ownership, trade license(s), areas of expertise, addresses, telephone numbers and contact person(s).
9. CLT 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 CLT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.
10. CLT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

CLT will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the Program, thereby enabling USDOT to pursue the appropriate 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 49 CFR 26.109. CLT will also consider similar action under local legal authorities, including responsibility determinations in future contracts.

J. [Section 26.39 – Fostering Small Business Participation](#)

Purpose and Implementation Plan

CLT, effective February 25, 2013, created a Small Business Participation Plan (“Plan”) to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. The Small Business Participation Plan is set forth below in this DBE Program. The Plan elements will be actively implemented to foster small business participation. CLT acknowledges that implementation of the Small Business Plan element is required for us to be considered by DOT as implementing our DBE program in good faith.

The Plan effects contracts that fall within the DBE regulation and is not meant to replace the City’s Charlotte Business INCLUSION (CBI) Program. For purposes of the Plan, a small business concern as defined in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65.

Certification and verification requirements

CLT will accept the following certifications for participation in the Small Business Participation Plan:

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.
5. City of Charlotte’s Charlotte Business INCLUSION Program- SBE Certification by the City of Charlotte which stipulates that a firm has been determined to meet all the requirements in accordance with the SBE program. All certification determinations are evidenced by a letter of SBE certification issued by the City of Charlotte.

Monitoring /Enforcement

1. CLT will use the same race-neutral guidance when reporting is required.
2. CLT will use a bidders list to recruit and encourage DBE's, non-DBE's and SBE's to bid on projects.
3. CLT will hold annual SBE, DBE training and outreach events to promote bidding, sub-contracting, networking, and community involvement and will ensure that bidders will have no geographic restrictions.

Participation Strategies

Under the Plan, CLT will undertake certain efforts intended to facilitate opportunities for small businesses to compete for contracts when it is both commercially and operationally reasonable to do so. These strategies shall include but not be limited to the following:

1. Megaproject Breakout. In multi-year design-build contracts or other large contracts (e.g. for "megaprojects"), CLT will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. Unbundling. CLT will, ensure that a reasonable number of prime contracts are a size that small businesses, including DBE's, can reasonably perform. CLT will do this by unbundling large projects into smaller ones, rather than letting one large contract of a size that a small business could not be expected to compete for as a prime contractor.
3. With these strategies in place, we hope to maximize the chances for Small Businesses to compete as either a prime contractor or subcontractor.

SECTION III: GOALS, GOOD FAITH EFFORTS, AND COUNTING

A. Section 26.43 – Set-Asides or Quotas

CLT does not use quotas in any way in the administration of this program.

B. Section 26.45 – Overall Goals

Pursuant to 49 CFR 26.45, CLT will establish its overall DBE goals for participation of DBEs in USDOT-assisted projects that are funded through the FAA. In accordance with §26.45(f), CLT 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 FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45.

STEP 1: The first step is to determine a base figure for the relative availability of DBEs in the market area. CLT will utilize the services of an outside professional consultant that analyzes the following data supplied by CLT:

- Bidders lists from previous projects.
- DBE Directory information
- Census Bureau Data

CLT 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 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 [Sec.26.45(d)]. 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. CLT 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 Charlotte area market.

Consultations and Public Participation

In establishing the overall goal, CLT 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 CLT 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 CLT 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 CLT engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to Step 1 and Step 2 of the Methodology, CLT consults with a variety of resource agencies and persons in developing the overall goal. These agencies have included, but are not limited to local minority, women's, and general contractors groups.

Public Notice

In addition to the consultation described above, CLT will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on CLT'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 CLT's official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how CLT considered and responded to any comments and information received before finalizing the goal.

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

Project Goals

If permitted or required by the FAA, 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 it must meet all the substantive and procedural requirements 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.

Prior Operating Administration Concurrence

CLT 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 CLT for calculating goals is inadequate, FAA may, after consulting with CLT, adjust the overall goal or require that the goal be adjusted by CLT. 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 6** to this program.

C. Section 26.47 – Failure to Meet Overall Goals

CLT 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 City fails to administer its DBE program in good faith.

CLT 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.

CLT understand that if the awards and commitments shown on the City's Uniform Report of Awards of Commitments and Payments at the end of any fiscal year are less than the overall 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 actual 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; and
3. CLT will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

D. Section 26.51 – Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral and Race-Conscious Participation

CLT 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;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

CLT 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.

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

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

CLT will express its contract goals as a percentage of a USDOT-assisted contract.

E. [Section 26.53 – Good Faith Efforts Procedures in Situations Where There are Contract Goals](#)

The provisions of this section apply only when a contract goal is established.

Demonstration of good faith efforts (pre-award)

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

The DBELO, or his/her designee, is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive. The DBELO will identify the criteria being used to determine good faith efforts at the beginning of each evaluation document. The DBELO may reference Appendix A to Part 26 for the types of actions which are normally considered good faith efforts. While not intended to be exclusive or exhausted those factors help to serve as a framework for the decision of responsiveness.

CLT will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before CLT commits to the performance of the contract by the bidder/proposer.

CLT treats bidders'/proposers' compliance with good faith effort requirements as a matter of responsiveness.

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

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 CLT 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 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 commitment from the bidder/proposer 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;
3. The bidder/offeree will be required to present the information stipulated in paragraph (2) of this section:

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeree 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 CLT. 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 CLT 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, CLT 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 CLT solicits proposals to design and build a project with minimal project details at time of letting, CLT 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, CLT will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. CLT 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.

CLT 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, CLT **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.

Administrative reconsideration of Good Faith Efforts determinations (26.53(d))

Within three (3) business days of being informed by CLT that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official, with a copy to the DBELO:

Director of Aviation

CLT Center

5601 Wilkinson Blvd.

Charlotte, NC, 28202

Phone: (980) 900-7184

Email: Angela.Maynard@cltairport.com

CC: Jasmyne.Turman@cltairport.com

NOTE: Electronic Mail is Preferred.

The reconsideration official, or their designee, will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. This meeting should take place within ten (10) days from the date that the reconsideration official receives the letter, unless both parties agree to a different time frame. Bidder/proposer should make every effort to attend this meeting in time frame specified above.

CLT will send the bidder/proposer a written decision on reconsideration within two (2) business days after the reconsideration meeting, 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 appealable to the Department of Transportation or to the FAA.

Good Faith Efforts procedural requirements (post solicitation/award 26.53(f))

CLT will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that CLT deems appropriate if the prime contractor fails to comply with the requirements of this section.

CLT will require the awarded contractor 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.

CLT will require that a prime contractor not terminate a DBE, or any part of its work listed in response to §26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without CLT's prior written consent, unless CLT causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

CLT will include in each prime contract a provision stating that:

1. The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains CLT's written consent as provided in § 26.53(f); and
2. Unless CLT's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

CLT may provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
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 1200 or applicable state law;
6. CLT has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to CLT 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; and

10. Other documented good cause that CLT determines compels the termination of the DBE subcontractor;

Before transmitting to the CLT its request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to CLT sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising CLT and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why CLT should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), CLT may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs, or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If CLT requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. CLT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

F. Section 26.55 – Counting DBE Participation

DBE participation will be counted toward the 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.

SECTION IV: CERTIFICATION STANDARDS

A. Section 26.61 – 26.73 – Certification Process

CLT is currently **a non-certifying member** of the North Carolina Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. The North Carolina UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as

DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying North Carolina UCP members make all certification decisions based on the facts as a whole.

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

Benny F. Sloan, EI, DBE Certification Manager

North Carolina Department of Transportation Office of Civil Rights

1511 Mail Service Center

Raleigh, NC 27699-1511

Telephone: 984.236.1260

E-mail: bfsloan@ncdot.gov

<https://connect.ncdot.gov/business/SmallBusiness/Online-Cert-App-Portal/Pages/default.aspx>

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>.

SECTION V: CERTIFICATION PROCEDURES

A. Section 26.81 – Unified Certification Programs

CLT is currently **a non-certifying member** of a Unified Certification Program (UCP) administered by the North Carolina Department of Transportation (NCDOT). The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SECTION VI: COMPLIANCE AND ENFORCEMENT

A. Section 26.101 – Compliance Procedures Applicable to CLT

CLT understands that if it fails to comply with any requirement of this part, CLT 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 FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

CLT understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

The provisions of this section apply to enforcement actions under FAA programs. **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

B. Section 26.105- Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs. The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

C. Section 26.107 – Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

D. Section 26.109 – Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent

of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

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

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

ATTACHMENTS

- Attachment 1** Regulations: Link to 49 CFR Part 26 (eCFR);
Link to Certification Application Form and Personal Net Worth Statement;
State's UCP Agreement
- Attachment 2** Bidders List (CLT DBE Forms 3, 4, and 5)
- Attachment 3** Assurances
- Attachment 4** CLT Organizational Chart (DBELO)
- Attachment 5** Mechanisms to Ensure Prompt Payment and Return of Retainage
- Attachment 6** Goal Calculation Methodology
- Attachment 7** DBE Monitoring and Enforcement Mechanisms

ATTACHMENT 1

Regulations: Link to 49 CFR Part 26 (eCFR);

Certification Application Form and Personal Net Worth Statement;

State's UCP Agreement

WEBSITE/WEBPAGE LINKS:

- Regulations: Link to 49 CFR Part 26 (eCFR) – [Linked Here](#)
- Link to Certification Application Form and Personal Net Worth Statement – [Linked Here](#)
- State UCP Agreement – [Linked Here](#)

ATTACHMENT 2

BIDDERS LIST

(CLT DBE Forms 3, 4, and 5)



Disadvantaged Business Enterprise Program

DBE Form 3: Subcontractor / Supplier Utilization CommitmentThis form **MUST** be submitted at the time of Bid Opening**Copy this Form 3 as needed, to document additional subcontracting commitments. Indicate page # range: Page ____ of ____**

v.9.10.14 .

Bidder/Proposer Name:			
Bidder/Proposer Address:			
Bidder/Proposer Annual Gross Receipt:	Less than \$500K ☐ \$500K-\$1M ☐ \$1M-\$2M ☐ \$2-5M ☐ More than \$5M ☐		
Bidder/Proposer Age (in years):			
Project Name:			
Project Number:		Established DBE Goal:	

1. List below all **DBEs** that you intend to use on this contract

DBE Vendor Name & Address	Description of work / materials	NAICS Code	Reporting Number	Total Projected Utilization (\$)
Annual Gross Receipt: ☐ < \$500K ☐ 500K-1M ☐ 1M-5M ☐ >\$5M	Firm Age (in years):			
Annual Gross Receipt: ☐ < \$500K ☐ 500K-1M ☐ 1M-5M ☐ >\$5M	Firm Age (in years):			
Annual Gross Receipt: ☐ < \$500K ☐ 500K-1M ☐ 1M-5M ☐ >\$5M	Firm Age (in years):			

2. List below all **Non-DBEs** that you intend to use on this contract

Vendor Name & Address	Description of work / materials	NAICS Code	Reporting Number	Total Projected Utilization (\$)
Annual Gross Receipt: ☐ < \$500K ☐ 500K-1M ☐ 1M-5M ☐ >\$5M	Firm Age (in years):			
Annual Gross Receipt: ☐ < \$500K ☐ 500K-1M ☐ 1M-5M ☐ >\$5M	Firm Age (in years):			

A. Total Subcontractor/Supplier Utilization (DBEs and Non-DBEs): \$ _____

B. Total DBE Utilization: \$ _____ **C.** Total Bid Amount: \$ _____

D. Percent DBE Util. (B÷C): _____ % Must be rounded to two (2) decimal places

Signature: Your signature below indicated that the undersigned Company certifies and agree that:

- a) It has complied with all provisions of the DBE Program;
- b) Failure to properly document such compliance in the manner and within the time periods established by the Aviation DBE Coordinator may constitute rejection of bid.

Signature of Authorized Official Printed Name Title Submitted Date



Disadvantaged Business Enterprise Program

DBE Form 4: Letter of Intent

Letter of Intent must be executed by both the DBE subcontractor and the Bidder

v.1.15.15

Project Name:	
Project Number:	

To be completed by the Bidder/Proposer	
Name of Bidder/Proposer: _____	
Address: _____	
Contact Person: _____	Email: _____
Telephone: _____	Fax: _____

Identify in complete details the scope of work to be performed or item(s) to be supplied by the DBE: _____

NAICS Code #: _____

Cost of work to be performed by DBE: \$ _____

To be completed by DBE	
Name of DBE: _____	Reporting #: _____
Address: _____	
Owner's ☐ Black American ☐ Hispanic American ☐ Native American ☐ Subcont. Asian American	
Ethnicity/ ☐ Asian-Pacific American ☐ Non-Minority Women ☐ Other	
Gender: _____	
Contact Person: _____	Email: _____
Telephone: _____	Fax: _____

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 46 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.

Upon execution of a Contract with the City for the above referenced project, the Bidder certifies that it intends to utilize the DBE listed above, and that the description, cost and percentage of work to be performed by the DBE as described above is accurate. The DBE Firm certifies that it has agreed to provide such work/supplies for the amount stated above.

Bidder/Proposer: _____	Date: _____
Signature and Title	
DBE Firm: _____	Date: _____
Signature and Title	



Disadvantaged Business Enterprise (DBE) Program **DBE Form 5: Schedule of Non-Selected Subcontractors**

An Excel spreadsheet with the same information can be used in lieu of this form

v.9.29.15

Copy this side of Form 5 as needed

Project Name: _____ Project N^o: _____

Project N^o: _____

Bidder's Name: _____

NAME Of Subcontracting Firm and Annual Gross Receipts (AGR)	Address, Contact Name AND Phone Number	DBE Certified? (Y/N)	Scope of Work	Reason For Not Selection
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 1M - 5M ☐ 5M+				
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 500k - 1M ☐ 500k - 1M				
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 1M - 5M ☐ 5M+				
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 1M - 5M ☐ 5M+				
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 1M - 5M ☐ 5M+				
AGR: ☐ <\$500k ☐ 500k - 1M ☐ 1M - 5M ☐ 5M+				

The Undersigned certified that the firm(s) above was (were) contacted, in good faith, and that said firm(s) was (were) not selected to participate in this contract.

 Authorized Signature Printed Name Title Date

ATTACHMENT 3

ASSURANCES

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

Assurance: Each financial assistance agreement CLT signs with a DOT operating administration (or a primary recipient) will include the following assurance verbatim. When the City uses the services of sub-recipients as part of its development Program, this language will also appear in financial assistance agreements with sub-recipients). See §26.13(a):

“CLT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City of Charlotte 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 City of Charlotte’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Charlotte 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: CLT will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor). See §26.13(b):

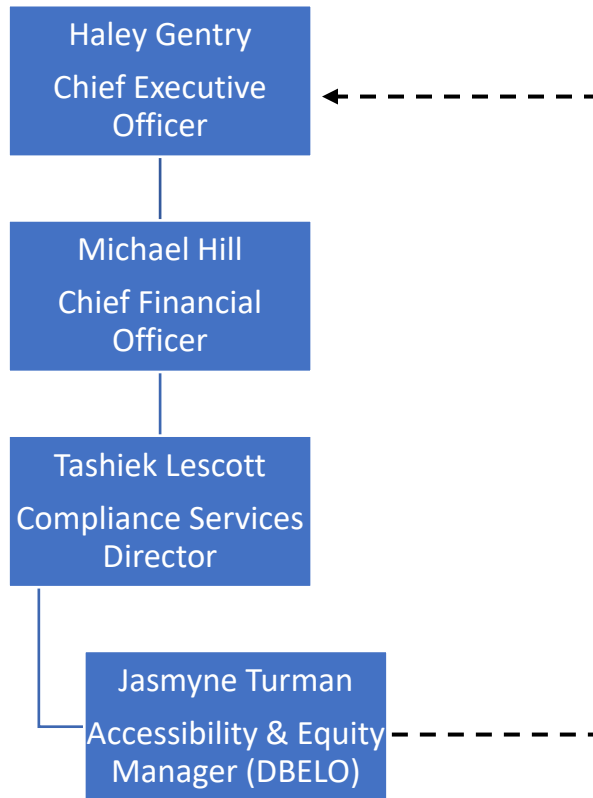
CLT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“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.”*

ATTACHMENT 4

CLT ORGANIZATIONAL CHART (DBELO)



ATTACHMENT 5

MECHANISIMS TO ENSURE PROMPT PAYMENT AND RETURN OF RETAINAGE

Examples of the contract language used in CLT's current contracts are below:

1. ADR - Mediation

Mediation

- A. The Owner and any party contracting with the Owner or with any first-tier or lower-tier subcontractor for the construction of the Project agree to participate in good faith in any mediation of a dispute subject to the terms and conditions of this Section and NCGS 143-128(f1) including without limitation the following parties (if applicable): architect(s), engineer(s), surveyor(s), construction manager, construction manager at risk, prime contractor(s), surety(ies), subcontractor(s), and supplier(s).*
- B. Full compliance with this section is a precondition for any party to initiate any form of litigation concerning the claim and/or dispute. Unless otherwise directed by the Owner, the Contractor shall continue performance under this Contract while matters in dispute are being resolved. The process set forth by this section may be foregone upon the mutual written agreement of all parties in interest to the claim and/or dispute.*
- C. The Contractor shall include this section in every subcontract or any other agreement it enters into with any party related to or that will be involved in this Project. Failure to do so will constitute a breach of this Contract, and the Contractor shall indemnify and hold harmless the Owner from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach.*
- D. The following disputes are not subject to the provisions of this Article:*
 - i. A dispute seeking a non-monetary recovery; and*
 - ii. A dispute seeking a monetary recovery of \$15,000 or less.*
- E. A dispute seeking the extension of any time limit set forth in this Contract shall be subject to mediation pursuant to this section only if the damages which would be suffered by the party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.*
- F. For purposes of this section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single party or two or more parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all parties to such disputes.*
- G. Prior to requesting mediation, a party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining parties. Such belief must be based on a reasonable and prudent investigation into*

the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining party, unless supported by such investigation and good faith belief by the party requesting the mediation. If a party breaches any provision of this section, it shall indemnify and hold harmless all other parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other parties that arise from such breach.

- H. All expenses incurred by a party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the party. The parties shall share the mediator's fee and any filing fees equally with at least one-third of such fees to be paid by Owner, if Owner is party to the dispute. Agreements reached in mediation shall be enforceable as settlement agreements in any court have jurisdiction thereof.*
- I. The mediation shall be held in Charlotte, Mecklenburg County, North Carolina, unless otherwise agreed by all parties in writing. The provisions of this Section are subject to any other provision of this Contract concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Section. The parties understand and agree that mediation in accordance with this Section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Section."*

2. Other Mechanisms - **See Attachment 7.**

ATTACHMENT 6

GOAL CALCULATION MEHODOLOGY

City of Charlotte – Charlotte Douglas International Airport
Disadvantaged Business Enterprise Program Proposed Overall Goal and Methodology
for Federal Fiscal Years 2023 through 2025

Amount of goal. Charlotte Douglas International Airport (CLT) has developed an overall race-conscious goal of **15.66%** for Disadvantaged Business Enterprise (DBE) participation in seven projects that are anticipated to receive funding¹ from the U.S. Department of Transportation/Federal Aviation Administration (USDOT/FAA) during Federal Fiscal Years (FFYs) 2023-2025 (October 1, 2022 through September 30, 2025). The DBE participation goal represents \$32,009,040 of the anticipated \$204,400,000 in USDOT/FAA funding for these projects.

In setting this proposed overall DBE goal, CLT closely followed the USDOT DBE Program regulations set forth in 49 Code of Federal Regulations Part 26 (49 CFR Part 26), including the two-step goal-setting methodology in 49 CFR Section 26.45.

Market Area Determination. The geographic market area in which CLT awards most of its federal contract dollars and where most bidders come from (i.e., the relevant geographic market area) is the following 18 North Carolina counties. CLT determined that these counties are the Airport’s relevant geographic market area for FFYs 2023-2025:

- | | | |
|--------------|-----------------|-----------------|
| 1. Alamance | 7. Gaston | 13. New Hanover |
| 2. Buncombe | 8. Guilford | 14. Rowan |
| 3. Cabarrus | 9. Iredell | 15. Surry |
| 4. Catawba | 10. Johnston | 16. Union |
| 5. Cleveland | 11. Lincoln | 17. Wake |
| 6. Durham | 12. Mecklenburg | 18. Wilson |

Number and types of projects that CLT anticipates awarding:

Table 1 – Anticipated FFYs 2023-2025 USDOT/FAA Funded Projects

Federal Fiscal Year	Anticipated Project	Anticipated USDOT/FAA Grant Amount
2023	North End Around Taxiway (NEAT) Construction	\$ 26,300,000
2023	Dual Taxi Lanes Construction	\$ 20,250,000
2023	South Crossfield Taxiway Construction	\$ 22,950,000
2024	NEAT Construction	\$ 26,500,000
2024	South Crossfield Taxiway Construction	\$ 43,200,000
2025	NEAT Construction	\$ 13,800,000
2025	Fourth Parallel Runway Construction	\$ 51,400,000
TOTAL		\$204,400,000

¹ Includes anticipated Bipartisan Infrastructure Law (BIL) funding for projects as defined under the existing Airport Improvement Program (AIP) and AIP discretionary funding.

Step 1. Base Figure Determination – 49 CFR Section 26.45(c)

Availability of DBE firms. The North Carolina Unified Certification Program (NCDOT) directory was utilized to identify the total number of DBE certified firms and firms potentially eligible for DBE certification (MBE-, WBE- and HUB-certified firms) that are located in CLT's 18- county market area and certified to perform work in each relevant NAICS code. The number of all firms located in CLT's market area that are in the relevant NAICS codes for each project was determined from U.S. Census Bureau 2020 County Business Patterns data.

The following Tables 2, 3 and 4, show the Step 1 calculation for FFYs 2023, 2024 and 2025 projects. To derive a base DBE availability figure for each federal fiscal year, the total number of DBEs was divided by the total number of all firms for each project.

Table 2 – FFY 2023 Projects

Project Name	NAICS Code	Type of Work	Total DBE Firms	Total All Firms	% Availability of DBE Firms
North End Around Taxiway (NEAT) Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #1 DBE Availability		510	4,266	11.95%
Dual Taxi Lanes Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #2 DBE Availability		510	4,266	11.95%
South Crossfield Taxiway Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #3 DBE Availability		510	4,266	11.95%
		FFY 2023 DBE Availability			35.85%

Table 3 – FFY 2024 Projects

Project Name	NAICS Code	Type of Work	Total DBE Firms	Total All Firms	% Availability of DBE Firms
North End Around Taxiway (NEAT) Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #1 DBE Availability		510	4,266	11.95%
South Crossfield Taxiway Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #2 DBE Availability		510	4,266	11.95%
	FFY 2024 DBE Availability				23.90%

Table 4 – FFY 2025 Projects

Project Name	NAICS Code	Type of Work	Total DBE Firms	Total All Firms	% Availability of DBE Firms
North End Around Taxiway (NEAT) Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237130	Power and communication line and related structures construction	0	183	0.00%
	237310	Airport runway construction	113	176	64.20%
	238910	Site preparation contractors	53	587	9.02%
	238990	All other specialty trade contractors	39	531	7.34%
	484220	Hauling	224	394	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #1 DBE Availability		510	4,266	11.95%
Fourth Parallel Runway Construction	237110	Water & sewer line & related structures construction	25	207	12.07%
	237310	Airport runway construction	113	176	64.20%
	238210	Electrical contractors	25	1,450	1.72%
	238910	Site preparation contractors	53	587	9.02%
	484220	Hauling	224	531	56.85%
	561730	Landscaping services	56	2,188	2.55%
	Project #2 DBE Availability		496	5,139	9.65%
	FFY 2025 DBE Availability				21.60%

The base goal projections as shown in Tables 2, 3, and 4 above are as follows:

- FFY 2023 – 35.85%
- FFY 2024 – 23.90%
- FFY 2025 – 21.60%

Average of weighted availability: $(35.85\% + 23.90\% + 21.60\%)/3 = 27.11\%$

Base of DBE Goal: 27.11%

Step 2. Determining if a base figure adjustment is needed – 49 CFR Section 26.45(d)

After establishing the base figure, CLT considered available information to determine whether any adjustment was needed to the base figure to determine the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, CLT evaluated and considered:

- Overall past DBE participation on CLT’s federally-funded contracts;
- The 2017 City of Charlotte, North Carolina disparity study;
- Other factors; and
- Stakeholder consultation.

Overall past DBE participation on CLT’s federally-funded contracts. A factor in determining whether to adjust the Step One Base Figure is the volume of work DBEs have performed in recent years (past participation). USDOT’s Tips for Goal-Setting in the Disadvantaged Business Enterprise Program suggest that the goal setting process will be more accurate if the median of past participation is used to make the adjustment. The process of determining the median excludes all outliers (e.g., abnormally high or abnormally low past participation percentages). CLT’s FFYs 2017 through 2021 Uniform Reports of DBE Commitments/Awards and Payments were utilized to determine median past DBE participation of 15.30% in CLT’s federally-funded contracts, as shown in Table 5.

Table 5 - Past DBE Participation

Federal Fiscal Year	DBE Goal	DBE Achievement*	DBE Over/Under Achievement
2017	16.70%	21.00%	+4.30%
2018	16.70%	11.00%	-5.70%
2019	16.70%	11.50%	-5.20%
2020	15.10%	15.30%	+0.20%
2021	15.10%	21.30%	+6.20%
AVERAGE PAST DBE PARTICIPATION = 15.66% MEDIAN PAST DBE PARTICIPATION = 15.30% MEDIAN OVER/UNDER ACHIEVEMENT = - 0.04%			

*Awards/Commitments

The 2017 City of Charlotte, North Carolina disparity study. The most recent 2017 City of Charlotte Disparity Study that measured disparities between the utilization and availability of minority-owned businesses and woman-owned businesses in City contracts was not considered in determining whether to adjust the Step One Base Figure. The data in that study covers the period July 1, 2011 to June 30, 2016, and does not represent current airport procurements and Census data.

Other factors. When the Step 1 base figure (27.11%) was added to the Step 2 adjustment figure (15.30%) and the total was averaged, the result was 21.20%. CLT believes that the Step 2 adjustment figure (21.20%) is too high because all of the projects anticipated during this goal period would draw from the same pool of firms in almost every NAICS category. CLT therefore proposes to adjust its goal to 15.66%, in line with the average participation it has been able to achieve.

Stakeholder consultation. In establishing the overall goal, CLT consulted 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 CLT's efforts to establish a level playing field for the participation of DBEs. Notice of CLT's proposed goal and virtual stakeholder consultation meeting that was held on September 14, 2022, from 5 p.m. to 7 p.m., was posted on the Airport's website² and published in *La Noticia* (see Exhibit 1). The consultation included a direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process. Exhibit 2 of this document is the stakeholder consultation list.

Michele Torres, CLT's Office of Civil Rights Manager; and Nancy West, consultant to CLT for its 2023-2025 DBE plan, presented the goal setting methodology and its requirements as set forth in 49 CFR Part 26 and USDOT guidance. Stakeholders asked general questions about the goal setting methodology, which was presented in a PowerPoint presentation (see Exhibit 3), as follows:

1. An attendee asked if meeting participants would receive a video recording of the presentation. Michele Torres responded that the presentation would be uploaded on CLT's website for all attendees and the general public to access.
2. Slides 10-12 of the presentation that show each project during this goal period indicate that there are no DBEs in North American Industry Classification System (NAICS) code 237130. An attendee asked whether the zero number signifies that currently there are no DBE companies supplying in this category. Nancy West explained that the number represented only the availability of firms in the market area that are certified as DBEs, MBEs, WBEs or HUBs in that NAICS code; those firms had been identified in the North Carolina Unified Certification Program (NCUCP) directory. There may be suppliers under NAICS code 237130 who may be eligible for DBE certification and are not listed in the directory.
3. Another meeting participant asked if only 9.65% DBE participation was needed for the Fourth Parallel Runway Construction project shown in slide 12 of the presentation. Michele Torres explained that 9.65% just shows the percentage of available DBEs. Goals would be set for this

² <https://www.cltairport.com/business/business-diversity-programs/dbe-program/>

huge project that will be bid out in components, all of which will have individual contract goals that vary depending on the actual scopes of work.

4. Another attendee asked for more information on how the proposed 15.66% goal was determined and how more participation could be obtained in CLT's projects. Nancy West referenced slide 13 of the presentation, explaining that the proposed goal was based on average participation achieved over the last five years, as well as the current availability and capacity of DBE firms. She noted that the Airport would continue to draw most of its participation from firms already engaged in existing, ongoing airport projects. The proposed goal was not the ceiling, as CLT had exceeded its goals in previous years, but in her assessment of the big picture the proposed goal was in line with what the Airport expected to achieve. Ms. West also mentioned that partnering with other DBE firms was one viable way to achieve more participation. Michele Torres added that the more firms that get certified the more it makes a difference – enabling a larger pool of firms to draw from. She explained that the Airport wants as much participation as possible, but that capacity is one of the issues right now. She asked that participants help get message out to their peers to consider the Airport for business opportunities, that they come to the pre-bid meetings and outreach sessions, and get certified. Ms. Torres echoed the benefits of partnering, citing hauling and janitorial services contract examples that had been successful in that regard.

Stakeholders also asked a variety of questions and shared comments concerning certification, the status of design projects, future design/build projects, how and where to learn about upcoming projects, holding prime contractors accountable for DBE participation, capacity building and other general questions.

Certification:

Michele Torres explained that for all federally-funded projects a firm seeking to participate as a DBE would need to be certified as a DBE by NCDOT, North Carolina's Unified Certification Program agency. While a firm does not have to be a DBE to participate in CLT's projects, Mrs. Torres recommended that a firm wanting to participate as a DBE apply for DBE certification if eligible; there is not cost to do so. She further explained that a "pre-qualified certification" for CLT's federally-assisted projects was not required.

An attendee commented that the online application process is a challenge, as some firms that are capable of doing the work may not have the backend support they need to navigate the system for applying.

Status of design projects:

An attendee wanted to know if the anticipated construction projects for FFYs 2023-2025 were complete in design or if design services would be available for any of the future projects. Michele Torres explained that the majority of the projects are complete in design and that proposals for design of the Fourth Parallel Runway were due soon. A participant shared that those proposals were due Sept. 15, 2022 at 5 p.m., which Mrs. Torres confirmed. She also reminded professional services firms that if they were not the successful on a bid, they could obtain feedback from the Airport on why they were not successful.

Future design/build projects:

In response to whether there would be any design/build projects in the future, Michele Torres responded that there had been some in the past and that two were underway currently. Other design/build projects are anticipated in the future, but it is too early to confirm federal funding for those projects.

How and where to learn about upcoming projects:

Michele Torres shared the following sources to learn about upcoming projects at CLT.

- CLT's website: <https://www.cltairport.com/business/contract-opportunities/>
- CLT's e-Builder website: Bid documents, RFQ and RFP documents, meeting presentations, interested bidders lists, and bidders lists can be downloaded. Each project is provided its own unique E-Builder link which can be accessed from the website above.
- City of Charlotte website: <https://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>
- Early Bird: Website provides 12-18 months of project forecasts and includes project information and anticipated solicitation dates. <https://earlybird.charlottebusinessresources.com/>
- Pre-bid meetings and information sessions to learn more about projects and primes that may be submitting bids.
- Direct emails to certified DBEs in all NAICS codes for all federally funded projects. Firms can also register to receive email alerts.
- Pre-proposal meetings: One of the best sources for professional services firms and other firms.
- Separate informational and networking events where firms can network with multiple firms. These events are posted on Eventbrite and notifications are sent via direct emails.

Holding prime contractors accountable for DBE participation:

Michele Torres explained CLT's good faith efforts (GFE) process that begins at the proposal phase and continues through the duration of a project. She explained that if a proposer doesn't make GFEs to meet the goal, they are not awarded the project. Once a project is awarded, CLT continuously monitors achievements toward contract goals throughout the project and requires that primes pay their subcontractors within seven days of receipt of payment from the Airport.

Capacity building:

Another attendee wanted to know if the Airport has considered implementing programs requiring primes to build capacity for MBEs and WBEs. Michele Torres shared that CLT has been in discussions with the Charlotte Business Inclusion (CBI) Program staff about a mentor protégé program, for example, and was working to determine how it would work with the Airport's DBE program and local

and legal requirements. Meanwhile, starting in January 2023, CLT would begin hosting informational sessions that would cover general topics related to capacity building.

General questions and information:

An attendee asked what work categories are included in airport runway construction. Michele Torres explained that the category included a number of items, including but not limited to pavement marking, concrete paving, and other scopes.

Another attendee asked if there were any opportunities for signage. Michele Torres explained that there may be opportunities for airfield signage, but not for print signage. These latter opportunities were available through the local CBI Program rather than through federally-funded opportunities.

An attendee asked if you bid as a DBE prime, do you have to have DBE subs. Michele Torres responded that you do not have to have DBE subs, but you can. If a DBE prime cannot self-perform all of the work, it could subcontract to other firms. For example, if the DBE prime performs 95% of the work and a DBE subcontractor performs 5% of the work, DBE participation would count at 100%.

Although today's session concerned only the DBE program for federally-funded projects, Michele Torres shared that CLT's food/beverage and retail concessionaires were holding an outreach event the following week for Airport Concession Disadvantaged Business Enterprises (ACDBEs). She asked attendees to reach out to her via email if they were interested in the event and shared her email address: michele.torres@cltairport.com. The event was also posted on Evenbrite.

Race-/Gender-Neutral and Race/Gender-Conscious Split – 49 CFR Section 26.51 (c)

Race/Gender Conscious Split. Based on the race-neutral accomplishments reported by CLT in the Annual FAA Uniform Reports of DBE Commitments / Awards and Payments (reflected in Table 6 below), CLT's average race-neutral participation for the last three federal fiscal years was 0%. Thus, it is estimated that in meeting its overall goal 15.66 %, CLT will obtain 0% using race-neutral means and 100% using race-conscious measures (e.g., contract goals).

Table 6 Historical Race Conscious and Race Neutral DBE Accomplishments

Federal Fiscal Year	DBE Goal	DBE Awards	Race Conscious Participation	Race Neutral Participation
2019	16.70%	\$1,656,776	\$1,656,776	-
2020	15.10%	\$2,493,373	\$2,493,373	-
2021	15.10%	\$4,667,349	\$4,667,349	-

Race Neutral Measures. CLT will use race-neutral measures to facilitate DBE participation. Such measures include outreach, technical consultation, small business assistance programs, prompt payment, and other measures to increase DBE participation. Any time a DBE gets a prime or subcontract when nothing but its low bid is considered, that is considered a form of race-neutral participation. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to: DBE participation through a prime contract obtained through customary competitive

procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals. CLT will use contract goals to meet any portion of the overall goal that it does not project being able to meet using race-neutral measures. 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 measures.

CLT will establish contract goals only on those FAA-funded contracts that have subcontracting possibilities. CLT need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBE's to perform the particular type of work).

CLT will express its contract goals as a percentage of the Federal share of a FAA-assisted contract. CLT will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (see 49 CFR Section 26.51(f)) and track and report race-neutral and race-conscious participation separately.

Attachment 1 – Notice of Stakeholder Consultation Meeting

Attachment 2 – Stakeholder Consultation List

Attachment 3 – PowerPoint Presentation on CLT's FFYs 2023-2025 DBE Goal

ATTACHMENT 7

DBE MONITORING AND ENFORCEMENT MECHANISMS

CLT has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following remedies that are clauses included in CLT contracts:

“REMEDIES FOR VIOLATION OF THE DBE PROGRAM

A violation of the CLT’s DBE Program by a Contractor shall constitute a material breach of the Contract, and shall entitle CLT to:

- 1. Exercise all rights and remedies that it may have at law or at equity for violation of the DBE Program;*
- 2. Terminate the Contract for default;*
- 3. Suspend the Contract for default;*
- 4. Withhold all payments due to the Contractor under the Contract until such violation has been fully cured or the City and the Contractor have reached a mutually agreeable resolution;*
- 5. Assess liquidated damages as provided in Subsection VI, below, in the CLT’s DBE Program, or in 49 CFR Part 26; and/or*
- 6. Offset any liquidated damages and/or any amounts necessary to cure any violation of the DBE Program from any retainage being held by CLT on the Contract, or from any other amounts due to the Contractor under the Contract.*

The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

LIQUIDATED DAMAGES APPLICABLE TO VIOLATIONS OF THE DBE REQUIREMENTS OF THIS CONTRACT

By entering into a Contract that is subject to the DBE Program, the Contractor agrees to the following:

CLT and the Contractor acknowledge and agree that CLT will incur damages if the Contractor violates the DBE Program in one or more of the ways set forth below, including but not limited to loss of goodwill and reputation with the general public, loss of goodwill and reputation with federal agencies that fund CLT projects, risk to current and future federal grant funding, detrimental impact on airport development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages CLT might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by CLT at the rates set forth below for each category of violations of the DBE Program. The Contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss CLT will incur as a result of such violation:

- 1. Failure to meet a subcontracting goal. CLT may assess the lesser of (a) \$200,000 or (b) the dollar difference between the subcontracting goal amount and the dollar amount actually paid to DBE subcontractors.*

2. *If the Contractor lists a DBE for a subcontracting goal with knowledge that the DBE will be acting as a Conduit or will not be performing a Commercially Useful Function, CLT may assess the greater of (a) \$100,000 per incident or (b) the dollar amount stated on the DBE's letter of intent.*
3. *If the Contractor terminates or replaces a DBE Subcontractor without prior DBELO approval, CLT may assess for the first violation the lesser of (a) \$50,000 per incident or (b) the dollar amount of the prospective work to be performed by the DBE Subcontractor. For any subsequent violation on the same project the assessment shall be the greater of the two above amounts. Assessments under this subsection 3 do not apply if an assessment is appropriate under subsection 4 below.*
4. *If the Contractor terminates or replaces a DBE Subcontractor without prior DBELO approval but is otherwise in compliance with the DBE Program and 49 CFR Part 26 and the DBELO later approves and ratifies the action, CLT may assess the lesser of (a) \$1,000 per incident or (b) the dollar amount of the prospective work to be performed by the DBE Subcontractor.*
5. *If the Contractor knowingly makes a false statement, material misrepresentation, or material misleading omission regarding any DBE matter, then CLT may assess the lesser of (a) \$50,000 per incident or (b) the dollar amount affected or caused by the falsehood.*
6. *If the Contractor fails to provide any report, documentation, affidavit, certification, or written submission required under the DBE Program within the time period set forth therein, CLT may assess \$40 per Day until receipt of the item.*
7. *If the Contractor violates any requirement of the DBE Program and 49 CFR Part 26 not addressed in the above six (6) subsections, CLT may assess \$40 per Day until the violation is cured in the case of on-going violations that are subject to cure or, the City may assess \$1,000 per incident for violations that are not ongoing or are not subject to cure."*