

## SAMPLE DBE PROGRAM

### POLICY STATEMENT

#### **Section 26.1, 26.23**

#### **Objectives/Policy Statement**

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

It is the policy of New Flyer of America to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

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

Darrin Smith has been delegated as the DBE Liaison Officer. In that capacity, Darrin Smith is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by New Flyer of America in its financial assistance agreements with the Department of Transportation.

New Flyer of America has disseminated this policy statement to the Executive team and all of the components of our organization. We distribute this statement to DBE and non-DBE business communities through the use of our website and local papers.

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Paul Soubry, President and Chief Executive Officer

July 27, 2017  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

New Flyer of America is the Transit Vehicle Manufacturer (TVM) and has bid on projects and been awarded contracts from various Transit Authorities which are recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

New Flyer of America will adopt the definitions contained in Section 26.5 for this program.

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

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

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

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

We will report DBE participation to DOT as follows:

We will report DBE participation bi-annually, using the DOT DOORs reporting system. These reports will reflect payments actually made to DBEs on DOT and non DOT-assisted contracts.

#### Bidders List: 26.11(c)

New Flyer of America will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status.

We will collect this information in the following ways:

As we submit a bid on a heavy duty transit vehicle federally funded contracts we seek to get DBE's involved within this process. We have a team dedicated to reading the specification for the bid evaluating the technical and commercial requirements specified by the customer. Once the bid requirements are understood we pursue three avenues to involve DBEs within the contract.

Firstly, if the bid specification identifies a new supplier, we will research the supplier and gather the necessary information to send out the request for quote with the bid specification and the contract details such as number of buses, the bus models and expected delivery schedule. This is a customer driven selection where the supplier specified may or may not be a DBE.

Secondly, if the customer's specification calls out a non DBE supplier by name where we have a DBE equivalent in our supply base who can meet the requirement, we make a formal request through the bids process for an approved equal to use our DBE supplier. An approved equal is a method of introducing a different product or supplier which was not named in the bid specification.

Thirdly, if the specification is not calling out a supplier by name and is a performance based specification, we will proceed to bid with the qualified DBE we have as our established supplier who can support the bid requirements.

For each bid we log all quotes requested by project.

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

New Flyer of America has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance: 26.13(a)

New Flyer of America shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

#### Contract Assurance: 26.13b

We 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.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

New Flyer of America will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

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

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

We have designated the following individual as our DBE Liaison Officer:

*Darrin Smith, 711 Kernaghan, 204-224-6607, darrin\_smith@newflyer.com*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the New Flyer of America complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Paul Soubry, President and Chief Executive Officer concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations
5. Analyzes New Flyer of America's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and achievement.
8. Chairs the DBE Advisory Committee.
9. Provides DBEs with information and assistance in preparing bids.
10. Plans and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in the state of Minnesota.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains New Flyer of America's directory on certified DBEs.

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

It is the policy of New Flyer of America to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions: via research using the

internet for financial institutions associated to the chamber of Commerce every 2 years. To date we have not identified the following such institutions.

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

### **Section 26.29 Prompt Payment Mechanisms**

New Flyer of America will work with our supply base to support prompt payments to both DBE and not-DBE subcontracts. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from New Flyer of America. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the New Flyer of America. This clause applies to both DBE and non-DBE subcontracts.

### **Section 26.31 Directory**

New Flyer of America maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory as required.

Links to UCP directories used in calculating our goals:

- <http://www.osdbu.dot.gov/DBEProgram/StateDOTDBESites.cfm>
- <http://www.dot.state.mn.us/civilrights/dbedirectory.html>
- <https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification>
- <https://faa.dbesystem.com/Default.asp?>
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### **Section 26.33 Overconcentration**

New Flyer of America has not identified or created overconcentration in the types of work that DBE's perform. We do not use contract goals and as such will not create overconcentration.

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

New Flyer of America has not established a business development program.

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

New Flyer of America will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract

remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished through a review of actual DBE spend at contract completion.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **§ 26.39 Fostering small business participation.**

This section should note that New Flyer of America has incorporated the following non-discriminatory element to its DBE program; in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses)

New Flyer has three main methods to encourage DBE and Small Business participation for federally funded contracts:

The first is through our Supplier Selection Process

The second is through our Bids Process, where new contract requirements are tendered

The third is through creating increased awareness to the statute with our current suppliers (sub contractors) and engaging them in supporting this important legislation

Below you will find for each of these three elements a summary of how we go about applying these methods to support DBE and Small Business participation.

#### Supplier Selection

We need to support our transit buses in the field for up to 20 years. Therefore, it is critical that we establish long term relationships with suppliers that provide us our requirements across all of our customer contracts. We do not select our suppliers on a contract by contract basis. As well, many major components and systems that comprise a significant portion of our inputs on a bus contracts would never be able to be provided by a business that qualifies as a DBE or Small Business. (engines, transmissions, A/C units, axles, etc).

Although there is not significant turnover in our supplier base on a regular basis, we have a team in our Supply Chain department dedicated to sourcing and validating new suppliers. When evaluating new suppliers to join our qualified supply base, our main goals are to:

Ensure the specification can be met

Ensure product quality

Ensure capable delivery performance and future product support

Ensure value for our end customer



When identifying potential new suppliers we utilize the following sources: State DBE registries, local or state business registries, NAICS codes, transit trade shows, our customers, industry publications, business news, our current supply base and various search engines on the internet. These sources are extremely valuable when seeking new supply partners with a DBE status or without. As the market leader in transit bus manufacturing, we also receive direct inquiries from interested potential suppliers on a regular basis.

New Flyer has a mature process for selecting and approving suppliers to be added to our approved supplier list. We will research for our candidates with the information/tools above, create a list of candidates, shorten the list for most plausible candidates, qualify each of those on the short list and then pass each of these through our final selection policy. Prior to approving any new supplier, we will go through a vigorous supplier audit with multiple departments involved which include; Strategic Sourcing, Purchasing, Engineering, Finance and Quality Assurance. We also usually include plant visits in order to make our final qualification. This process is applied in the same fashion for both DBE and non DBE candidates and through this process, we ensure DBE companies are identified and provided an equal opportunity to win business.

In order to identify potential qualified DBE's and Small Business', New Flyer outreaches through various means which include attending APTA sponsored events, attending pre bid meetings, publication of DBE goal in various media, follow up on written requests, providing willing DBE's and Small business' adequate information and time to reply to bid requests, negotiate with willing DBE's and Small business', assist DBE's and Small Business' with credit support, and supply a DBE and small business utilization plan with bid proposals to meet contract goals in good faith.

#### Bid Process

As we submit a bid on a heavy duty transit vehicle federally funded contracts we seek to get DBE's involved within this process. We have a team dedicated to reading the specification for the bid evaluating the technical and commercial requirements specified by the customer. Once the bid requirements are understood we pursue three avenues to involve DBE's and Small Business' within the contract.

Firstly, if the bid specification identifies a new supplier, we will research the supplier and gather the necessary information to send out the request for quote with the bid specification and the contract details such as number of buses, the bus models and expected delivery schedule. This is a customer driven selection where the supplier specified may or may not be a DBE or Small Business.

Secondly, if the customer's specification calls out a non DBE supplier by name where we have a DBE or Small Business equivalent in our supply base who can meet the requirement, we make a formal request through the bids process for an approved equal to use our supplier. An approved equal is a method of introducing a different product or supplier which was not named in the bid specification.

Thirdly, if the specification is not calling out a supplier by name and is a performance based specification, we will proceed to bid with the qualified DBE or Small Business we have as our established supplier who can support the bid requirements.

Engaging our current supply base (our sub contractors)

We have a large supply base to support our manufacturing of multiple bus models. While it would not be possible to source most major components (engines, transmissions, AC units, axles) from DBE's, we can work with these major component suppliers to engage them to understand the federal DBE program and have them incorporate a DBE program within their business strategies. These commodities account for approximately 60% of the projected base spend figure.

Our opportunity is to increase the good faith efforts and create tracking mechanisms that will support the guidelines and principles as set out in 49 CFR 26 in this area with our sub contractors. We continue to work with our major suppliers on improving this process and tracking it's effectiveness.

In regards to the new element of the DBE program for fostering Small Business Participation, New Flyer of America already support many small business' throughout the US which support our manufacturing facilities. These include DBE's, Small Business with designation (VOSB, HUBZONE and Small Business) and other suppliers without official small business designation but are small in relation to number of employees and yearly sales. In order to further track and support the opportunities for further small business activities we will adopt the following:

- First we will define a small business as one where the annual sales ranges between 1 million and 22 million dollars and less 200 employees
- For projects which require new sources of supply we will search for small businesses via the methods described in section 26.39 above and other sites such as [www.SBA.gov](http://www.SBA.gov)
- Track the opportunities and successful implementation of small business implementations
- During our projects we often consider bundling and unbundling products and will continue to do so to support small business outreach
- Request that our prime contracts also provide sub contracts appropriate for small businesses

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

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

New Flyer of America does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in our yearly submission to the DOT.



In accordance with Section 26.45(f) New Flyer of America will submit its overall goal to DOT on August 1 of each year.

Following consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### **Section 26.47 Short Fall Analysis**

In the event where New Flyer of America will not meet its DBE goal we will prepare and keep on file an analysis on the shortfall which will be available to the DOT upon request.

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

New Flyer of America does not currently enter into contracts with our supply base with specific targets for DBE spend. Until such time we will not have procedures for determining the parameters for allowing the prime contractor to still bid on a contract.

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

New Flyer of America will consider using contract goals to meet the overall goal it does not project being able to meet using race-neutral means.

#### **Section 26.53 Good Faith Efforts Procedures**

This section is not applicable for New Flyer America.

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

This section is not applicable for New Flyer America.

### **SUBPART D – CERTIFICATION STANDARDS**

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

New Flyer of America will direct potential DBEs to local UCP for information regarding certification.

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

**Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from disclosing to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

**Monitoring Payments to DBEs**

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

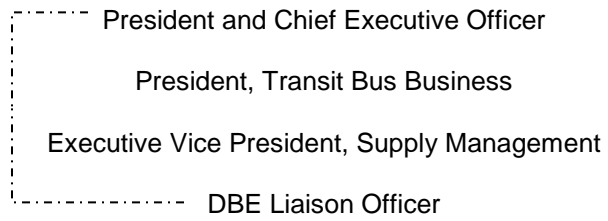
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

**ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms

**Attachment 1**

**Organizational Chart**



**Attachment 2****Monitoring and Enforcement Mechanisms**

New Flyer of America the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to relevant State code;

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

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

