



CITY OF BOISE
DEPARTMENT OF AVIATION
DBE Program

Revised December 1, 2024

City of Boise, Department of Aviation (Boise Airport)

Disadvantaged Business Enterprise (DBE) Program

49 CFR Part 26

Table of Contents

| | |
|---|-----------|
| <i>Section 26.1, 26.3 Objectives/Policy Statement</i> | <i>3</i> |
| SUBPART A - GENERAL REQUIREMENTS | 4 |
| <i>Section 26.1 Objectives</i> | <i>4</i> |
| <i>Section 26.3 Applicability</i> | <i>4</i> |
| <i>Section 26.5 Definitions.....</i> | <i>4</i> |
| <i>Section 26.7 Non-discrimination Requirements</i> | <i>4</i> |
| <i>Section 26.11 Data Collection and Reporting Requirements.....</i> | <i>4</i> |
| <i>Section 26.13 Assurances Recipients and Contractors Must Make</i> | <i>5</i> |
| SUBPART B - ADMINISTRATIVE REQUIREMENTS | 6 |
| <i>Section 26.21 DBE Program Updates</i> | <i>6</i> |
| <i>Section 26.23 Policy Statement</i> | <i>6</i> |
| <i>Section 26.25 DBE Liaison Officer.....</i> | <i>7</i> |
| <i>Section 26.27 DBE Financial Institutions</i> | <i>7</i> |
| <i>Section 26.29 Prompt Payment to Subcontractors</i> | <i>8</i> |
| <i>Section 26.31 Directory</i> | <i>11</i> |
| <i>Section 26.33 Over Concentration.....</i> | <i>11</i> |
| <i>Section 26.35 Business Development and Mentor-Protégé Programs.....</i> | <i>11</i> |
| <i>Section 26.37 Monitoring Responsibilities</i> | <i>12</i> |
| <i>Section 26.39 Fostering Small Business Participation</i> | <i>13</i> |
| SUBPART C - GOALS, GOOD FAITH EFFORT AND COUNTING | 13 |
| <i>Section 26.43 Set-Asides or Quotas.....</i> | <i>13</i> |
| <i>Section 26.45 Overall Goals</i> | <i>13</i> |
| <i>Section 26.47 Failure to Meet Overall Goals.....</i> | <i>15</i> |
| <i>Section 26.51 Means for Meeting Overall Goals.....</i> | <i>15</i> |
| <i>Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals</i> | <i>17</i> |
| <i>Section 26.55 Counting DBE Participation</i> | <i>21</i> |
| SUBPART D - CERTIFICATION STANDARDS | 21 |
| <i>Section 26.61 – 26.73 Certification Process.....</i> | <i>21</i> |

| | |
|---|-----------|
| SUBPART E - CERTIFICATION PROCEDURES | 22 |
| Section 26.81 <i>Unified Certification Programs</i> | 22 |
| SUBPART F - COMPLIANCE AND ENFORCEMENT | 22 |
| Section 26.101 <i>Compliance Procedures Applicable to Boise Airport</i> | 22 |
| Section 26.103 <i>Enforcement Actions Applicable to FHWA and FTA Programs.....</i> | 23 |
| Section 26.105 <i>Enforcement Actions Applicable to FAA Programs</i> | 24 |
| Section 26.107 <i>Enforcement Actions Applicable to Participating Firms.....</i> | 24 |
| Section 26.109 <i>Confidentiality, Cooperation, and Intimidation or Retaliation.....</i> | 24 |
| ATTACHMENTS..... | 26 |
| Attachment 1 49 CFR Part 26..... | 27 |
| Attachment 2 Organizational Chart..... | 28 |
| Attachment 3 Bidder List Collection Form..... | 29 |
| Attachment 4 Link to UCP Directory of Certified Firms | 31 |
| Attachment 5 Overall Goal Methodology | 32 |
| Attachment 6 Demonstration of Good Faith Efforts - Forms 1, 2, and 3..... | 33 |
| Attachment 7 DBE Monitoring and Enforcement Mechanisms..... | 36 |
| Attachment 8 Link to Certification Application Form and Personal Net Worth Statement..... | 37 |
| Attachment 9 Idaho UCP Agreement | 39 |
| Attachment 10 Small Business Element | 47 |

**City of Boise, Department of Aviation (Boise Airport)
Disadvantaged Business Enterprise (DBE) Program
49 CFR Part 26**

Section 26.1, 26.3 Objectives/Policy Statement

The City of Boise, Department of Aviation, hereafter referred to as Boise Airport or the Airport, has established a Disadvantaged Business Enterprise Program in accordance with U.S. Department of Transportation (DOT), regulations 49 CFR Part 26. Boise Airport receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, Boise Airport signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Boise Airport to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Airport's policy to engage in the following actions on a continuing basis:

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 meet the 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To promote 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 DBE Program; and
8. To make appropriate use of the flexibility afforded to Recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Beth Sumner, Deputy Airport Director, has been designated as Boise Airport's Liaison Officer for the DBE Program. The DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the program is accorded the same priority as compliance with all other legal obligations incurred by Boise Airport in its financial assistance agreements with the Department of Transportation.

Boise Airport has distributed this policy statement to the Mayor and City Council and all of the relevant components of our organization. Boise Airport has also distributed this statement to DBE and non-DBE businesses that perform work for Boise Airport on DOT-assisted contracts. Copies of this statement and the DBE Program Plan are also available on the Boise Airport website.



Rebecca L. Hupp
Airport Director

11/26/2024

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

Boise Airport is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The terms used in this program have the meanings as defined in 49 CFR 26.5. A link to 49 CFR part 26 can be found in Attachment 1.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

Boise Airport will provide data about its DBE Program to the Department as directed by DOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

Boise Airport 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. Boise Airport 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

Boise Airport 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.

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

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts 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.

Boise Airport will collect the data from all bidders for our 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.

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

The Bidders List Collection Form is included in the document as Attachment 3.

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

Boise Airport 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. Boise Airport 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 Boise Airport 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 Boise Airport 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: Boise Airport will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Boise Airport 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.

Boise Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Boise Airport is in compliance with it and Part 26. Boise Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. Boise Airport 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 relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer

Boise Airport's DBE Liaison Officer is:

Beth Sumner
Deputy Airport Director
3201 Airport Way, Suite 1000
Boise, ID 83705
Phone - (208) 972-8392
Email: bsumner@cityofboise.org

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

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one (1) to assist in the administration of the program. The duties and responsibilities include the following:

1. Report DBE related data and other information as required by DOT/FAA.
2. Review contracts and purchase requisitions for compliance with this program.
3. Set overall annual goals and contract-specific goals.
4. Ensure that notices for bids/proposals are available to DBEs in a timely manner.
5. Identify federally assisted contracts and solicitations, so that DBE goals are included in these documents (race-neutral methods and contract specific goals) and monitor results.
6. Analyze Boise Airport's progress toward goal attainment.
7. Participate in pre-bid/proposal meetings.
8. Advise Boise Airport's Director of DBE matters and achievements.
9. Determine/monitor contractor compliance with good faith efforts.
10. Provide DBEs with information for obtaining bonding and insurance.
11. Verify DBE certification with the Idaho Unified Certification Program.
12. Provide outreach to DBEs to advise them of opportunities.
13. Conduct periodic compliance reviews.

Section 26.27 DBE Financial Institutions

It is the policy of Boise Airport to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Availability of such institutions will be investigated on an annual basis.

There are currently no certified DBE Financial Institutions listed in the Idaho Unified Certification Program ("UCP") directory. Boise Airport will monitor the Idaho UCP Directory annually to determine if any financial institutions are added to the DBE/ACDBE list. Boise Airport also monitors annually the FDIC list of Minority Owned Banks, the Bureau of the Fiscal Service, Office of the Comptroller of the Currency and other internet sources such as Forbes and Investopedia to locate minority and women owned banks. Information on the availability of such institutions, if any, will be made at pre-proposal conferences.

Section 26.29 Prompt Payment to Subcontractors

Boise Airport 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, the Boise Airport established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Boise Airport.

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

- Boise Airport will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after Boise Airport payment to the prime contractor.
- Boise Airport includes the following clause from FAA Advisory Circular 150/53 70-10 (90-06) in each DOT-assisted prime contract:

a. From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Boise Airport (the "Airport") for protection of the Airport's interests. Unless otherwise instructed by the Airport, the amount retained by the Airport will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Airport in accordance with Section 50-14 of FAA Advisory Circular 150-5370-10(H). Contractor must provide a certified invoice to the Airport that supports the value of retainage held by the Airport for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Airport evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Airport. When the Airport has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Airport's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Airport may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Prompt Payment Monitoring for DBEs and Non-DBEs

Boise Airport 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, the Airport 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 will be accomplished through the following method(s): Posting prime contractor/subcontractor payments to a spreadsheet and verifying through email that subcontractors have been paid within the time period.

Boise Airport 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 Boise Airport's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Airport or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Boise Airport proactively reviews contract payments to subcontractors including DBEs monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Boise Airport by the prime contractor.

Prompt Payment Complaints

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

- Complaints may be initially made to the Prime Contractor or to the Boise Airport DBELO.
- In the event that the subcontractor has contacted the Prime Contractor and is unable to resolve the issue, the subcontractor should initiate a complaint with the Boise Airport DBELO.
- The Boise Airport DBELO will investigate the complaint within 5 business days and will make an effort to resolve the matter through contact with the Prime Contractor.
- If filing a prompt payment complaint with the Boise airport DBELO does not result in timely and meaningful action to resolve the dispute, the affected subcontractor may contact the FAA Regional Civil Rights Officer.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported to FAA in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

When the contractor is found to be in non-compliance, and informal resolution procedures have failed to demonstrate that the contractor has made every effort to resolve the issue(s) of non-compliance, Boise Airport will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced.

Enforcement for Prompt Payment

Failure of the prime contractor to comply with the stated requirements of this DBE program will be considered a breach of contract, subject to any and all legal and contract remedies available to the Boise Airport.

The first level of administrative action will be a cure notice.

The second level of administrative action will be withholding payment to the prime contractor.

Additional administrative actions may include, but are not limited to contacting the bond company, termination of contract, suspension, and disbarment.

Section 26.31 Directory

Boise Airport is a non-certifying member of the Idaho Unified Certification Program's ("IUCP"). The Idaho Transportation Department ("ITD") maintains the DBE/ACDBE Directory on behalf of the IUCP. 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 has 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 IUCP Directory is available online and contains a searchable database. The IUCP Directory website is included in bid specifications for DOT-assisted contracts. The website address can be found in Attachment 4.

Section 26.33 Over Concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

Boise Airport has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

Boise Airport 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.

Boise Airport 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 through submission of monthly reports by the Prime Contractor. This mechanism to maintain a running tally of overall goal attainment will be used to inform Boise Airport's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Boise Airport 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 through submission of monthly reports by the Prime Contractor. 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

Boise Airport 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. 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. Boise Airport 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. Boise Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

Boise Airport has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The program elements will be actively implemented to foster small business participation. Boise Airport acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing the DBE program in good faith. The Small Business Element is attached hereto as UCP10.

SUBPART C - GOALS, GOOD FAITH EFFORT AND COUNTING

Section 26.43 Set-Asides or Quotas

Boise Airport will not use set asides or quotas in any way in the administration of this DBE Program.

Section 26.45 Overall Goals

Boise Airport will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), Boise Airport 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. If Boise Airport does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and Boise Airport will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

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

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity

study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. Boise Airport 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 Boise Airport market.

In establishing the overall goal, Boise Airport 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 Boise Airport 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 Boise Airport is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Airport engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, Boise Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Boise Airport'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 Boise Airport'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 Boise Airport considered and responded to any comments and information received before finalizing the goal.

Boise Airport 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

Boise Airport 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 Boise Airport for calculating goals is inadequate, FAA may, after consulting with Boise Airport adjust the overall goal or require that the goal be adjusted by Boise Airport. 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 5 to this program.

Section 26.47 Failure to Meet Overall Goals

Boise Airport 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 Boise Airport fails to administer its DBE program in good faith.

Boise Airport 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.

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

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

Section 26.51 Means for Meeting Overall Goals

Boise Airport 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. 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);
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
5. Utilizing Boise Airport's small business program.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

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

Contract Goals

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

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

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

Demonstration of good faith efforts (pre-award)

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

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. 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/offeror 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/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by Boise

Airport. 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 Boise Airport 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, Boise Airport 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 Boise Airport solicits proposals to design and build a project with minimal project details at time of letting, Boise Airport 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, Boise Airport will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Boise Airport 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.

Boise Airport will apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Boise Airport 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

Within 5 days of being informed by Boise Airport that it is not *responsive* because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Missy Grothaus

Boise City Purchasing Manager
150 North Capital Blvd
Boise, ID 83702
Phone - (208) 972-8171
Email: mgrothaus@cityofboise.org

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

Boise Airport 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 Boise Airport deems appropriate if the prime contractor fails to comply with the requirements of this section.

Boise Airport 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.

Boise Airport will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless Boise Airport 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.

Boise Airport 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 Boise Airport's written consent as provided in § 26.53(f); and

- (2) Unless Boise Airport'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.

Boise Airport may provide such written consent only if it agrees, for reasons stated in our 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) Boise Airport 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 Boise Airport 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 Boise Airport determines compels the termination of the DBE subcontractor;

Before transmitting to Boise Airport the 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 Boise Airport 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 Boise Airport and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why Boise Airport should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), Boise Airport 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 Boise Airport 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. Boise Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in § 26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

For FAA-funded projects only, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Boise Airport is a non-certifying member of the Idaho Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. Idaho 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 Idaho 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:

Office of Civil Rights | Email: CivilRights@itd.idaho.gov

Location: 11331 W Chinden Blvd, Boise, ID 83714

Mail Address: PO Box 7129, Boise, ID 83707-1129

Website: <https://itd.idaho.gov/civilrights/>

Asali Crisp, Civil Rights Program Manager | Phone: 208-334-8884 |

Email: Asali.Crisp@itd.idaho.gov

Ronnie Winks, DBE Program Coordinator | Phone: 208-334-8567 |

Email: Ronnie.Winks@itd.idaho.gov

Connie Rozean, Contract Compliance Officer | Phone: 208-334-8152 |

Email: Connie.Rozean@itd.idaho.gov

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

SUBPART E - CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Idaho UCP agreement. The full UCP agreement is include as Attachment 9.

Section 26.81 Unified Certification Programs

Boise Airport is a member of a Unified Certification Program (UCP) administered by the Idaho Transportation Department (ITD). The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Boise Airport

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

Boise Airport 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.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **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.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that Boise Airport is in noncompliance with part 26, the appropriate DOT office will promptly send Boise Airport, return receipt requested, a written notice advising that there is reasonable cause to find Boise Airport in noncompliance. The notice states the reasons for this finding and directs Boise Airport to reply within 30 days concerning whether you wish to begin conciliation.
- (4) **Conciliation.**
 - a. If Boise Airport requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
 - b. If Boise Airport and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and Boise Airport is regarded as complying. The conciliation agreement sets forth the measures Boise Airport has taken or will take to ensure compliance. While a conciliation agreement is in effect, Boise Airport remains eligible for FHWA or FTA financial assistance.
 - c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If Boise Airport fail to carry out the terms of a conciliation agreement, Boise Airport is in noncompliance.
 - d. If Boise Airport does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.
- (5) **Enforcement actions.**
 - a. Enforcement actions are taken as provided in this subpart.
 - b. Applicable findings in enforcement proceedings are binding on all DOT offices.

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.

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.

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.

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).

Boise Airport 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. Boise Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulation: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

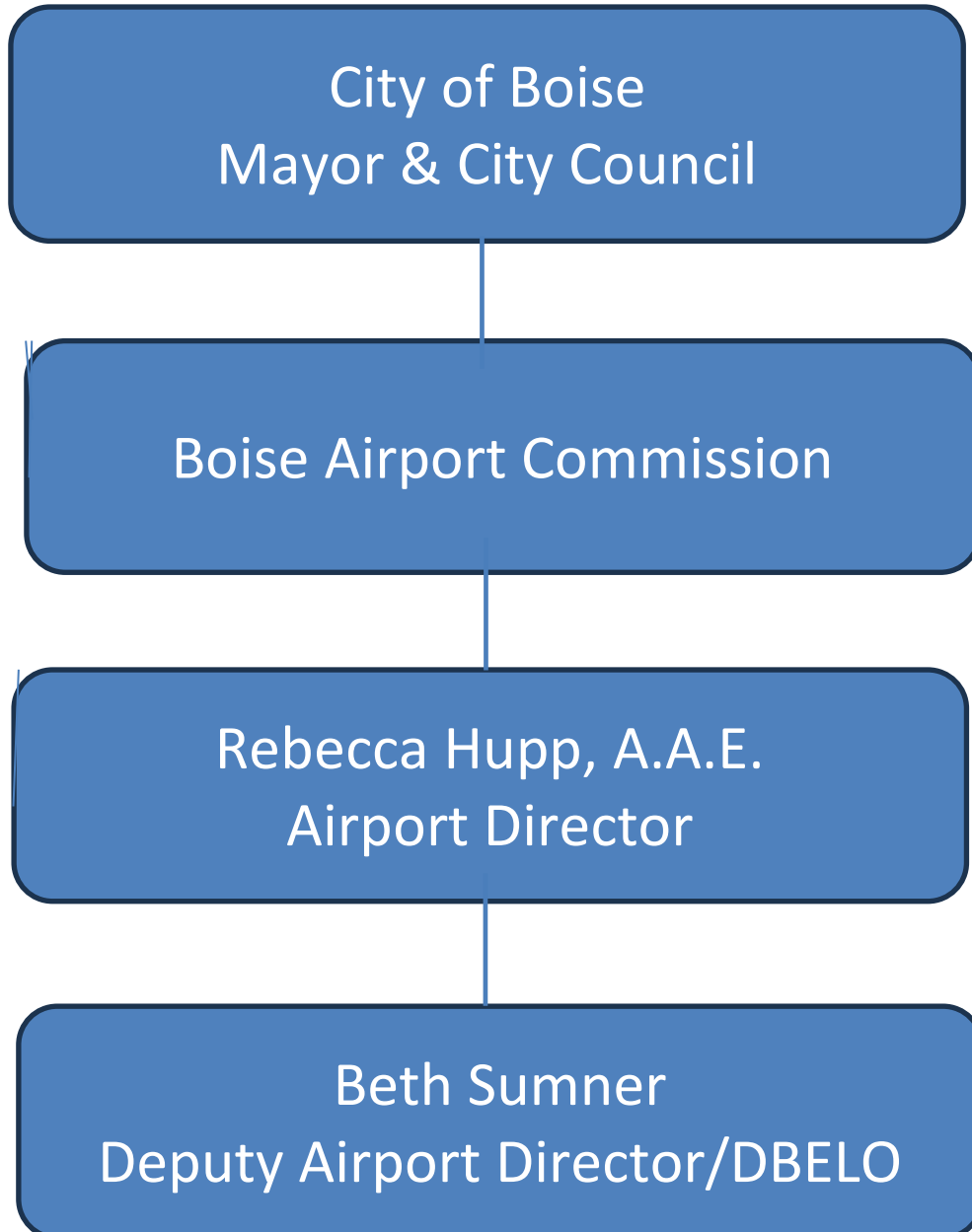
Attachment 1 49 CFR Part 26

The Department of Transportation (DOT) Disadvantaged Business Enterprise Program (DBE) is administered under 49 CFR part 26, PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. The regulation is available at:

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Attachment 2 Organizational Chart

City of Boise, Department of Aviation
Organizational Chart



Attachment 3 Bidder List Collection Form

Bidder's List Form

This form is required to be submitted with the bid/proposal. Failure to submit this form may result in a finding of non-responsiveness. The form must include information for every sub bidder/supplier that provided a verbal or written quote to the bidder for this project.

| Prime Contractor (Bidder) Name | Bidder Address/ Phone # | DBE or Non-DBE Status | Race and Gender of Firm's Majority Owner(s) | NAICS Code Applicable to the Work Bid for this Contract | Age of Firm | Annual Gross Receipts |
|--------------------------------|-------------------------|--|---|---|--|---|
| | | <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million |

| Subcontractor/ Supplier Firm Name | Firm Address/ Phone # | DBE or Non-DBE Status (verify via State's UCP Directory) | Race and Gender of Firm's Majority Owner(s) | NAICS Code Applicable to the Work Bid for this Contract (see NAICS.com) | Age of Firm | Annual Gross Receipts |
|-----------------------------------|-----------------------|--|---|---|--|---|
| | | <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million |

| Subcontractor/ Supplier Firm Name | Firm Address/ Phone # | DBE or Non- DBE Status (verify via State's UCP Directory) | Race and Gender of Firm's Majority Owner(s) | NAICS Code Applicable to the Work Bid for this Contract (see NAICS.com) | Age of Firm | Annual Gross Receipts |
|---|-----------------------------|---|--|---|--|--|
| | | <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million |
| | | <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million |
| | | <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million |

(add pages as necessary)

Attachment 4 Link to UCP Directory of Certified Firms

The UCP DBE Directory can be found at:

<https://itd.dbesystem.com/?TN=itd>

Attachment 5 Overall Goal Methodology

The overall goal methodology for Boise Airport can be found at:

https://www.iflyboise.com/media/2086/dbe_goals_2023-2025.pdf

Attachment 6 Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

☐ Bidder/offeror has met the DBE contract goal

The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

☐ Bidder/offeror has not met the DBE contract goal

The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

| Description of Work | NAICS | Dollar Amount / %* | Manufacturer/Regular Dealer/Distributor/Broker** |
|---------------------|-------|--------------------|---|
| | | | |
| | | | |
| | | | |

*Percentage is to be used only in negotiated procurements

**For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

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

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

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

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? ☐ YES² ☐ NO³

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

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

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

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

Printed Name and Signature of DBE Owner/Authorized Representative:

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

Printed Name and Signature of Bidder's Authorized Representative:

Attachment 7 DBE Monitoring and Enforcement Mechanisms

Monitoring and Enforcement Mechanisms

Monitoring

Boise Airport will include a contract clause requiring the prime contractor to list all DBE subcontractor work on the project schedule. This will allow Boise Airport representatives to schedule site visits to monitor DBE site work. DBE work will be further confirmed by periodically reviewing the contractor submitted certified payrolls. A written certification will be completed for each monitoring activity. Boise Airport will include a contract clause requiring the prime contractor to submit subcontractor lien releases with each pay application. The subcontractor lien release will ensure that subcontractors are being paid per the prompt payment requirements.

Enforcement

Boise Airport has available remedies to enforce the DBE requirements contained in its contracts, including, but not limited to:

Issuing a cure notice, withholding of payment to prime contractor, contacting the bonding company, breach of contract action, pursuant to the terms of the contract, and termination of contract.

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

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

Attachment 8 Link to Certification Application Form and Personal Net Worth Statement

The USDOT DBE/ACDBE Certification Application and Personal Net Worth Statement can be found at:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

Attachment 9 Idaho UCP Agreement

CITY OF BOISE

Resolution NO. RES-597-17

BY THE COUNCIL

CLEGG, LUDWIG, MCLEAN, SANCHEZ,
THOMSON AND WOODINGS

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF BOISE CITY AND THE IDAHO TRANSPORTATION DEPARTMENT, FOR PARTICIPATION IN THE IDAHO UNIFIED CERTIFICATION PROGRAM FOR THE DISADVANTAGED BUSINESS PROGRAM IN THE STATE OF IDAHO; AUTHORIZING THE MAYOR AND CITY CLERK TO RESPECTIVELY EXECUTE AND ATTEST SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, as a recipient of federal transportation funding dollars, the Airport is required to have a Disadvantaged Business Enterprise (DBE) program; and

WHEREAS, as required by federal law, the state of Idaho operates a Unified Certification Program (UCP), which provides for the certification, renewal and decertification of firms as DBE; and

WHEREAS, the Airport participates in the UCP as part of its ongoing compliance with its DBE program; and

WHEREAS, the Director of Aviation recommends approval of such Agreement.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That the Agreement between the city of Boise City and the Idaho Transportation Department, attached hereto and incorporated herein by reference, be, and the same is hereby, approved as to both form and content.

Section 2. That the Mayor and City Clerk be, and they hereby are, authorized to respectively execute and attest said Agreement for and on behalf of the city of Boise City.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

CITY OF BOISE

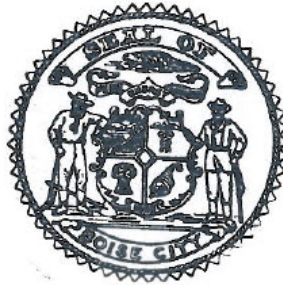
ADOPTED by the Council of Boise City, Idaho, on November 28, 2017.

APPROVED by the Mayor of the Boise City, Idaho, on November 28, 2017.

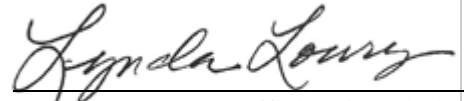
APPROVED:



David H. Bieter, Mayor



ATTEST:



Lynda Lowry, Ex-Officio City Clerk

**Agreement Establishing
The Idaho Unified Certification Program
For the Disadvantaged Business Enterprise Program
in the State of Idaho**

THIS AGREEMENT is made and entered into by and between the attached listed Recipients and the Idaho Transportation Department (ITD), each a recipient as that term is defined by 49 CFR §26.81 and in accordance with the ITD approved Disadvantaged Business Enterprise (DBE) Program.

WHEREAS, 49 CFR §26.81 requires federal transportation fund recipients of a state to create a Unified Certification Program (UCP) as part of each recipient's DBE program; and

WHEREAS, the parties require certification, renewal, and decertification of firms as a DBE; and

WHEREAS, all recipients of federal transportation funds in this state are covered by the requirements of 49 CFR §26.81, and are also required to participate in a Unified Certification Program; and

WHEREAS, the parties desire to join together for cooperative action pursuant to carrying out the requirements of 49 CFR §26 and to establish an Idaho Unified Certification Program (IUCP); and

WHEREAS, the governing board of each party has by resolution authorized the entering into of the Agreement and the establishment of the IUCP; and

WHEREAS, by that agreement each current recipient and/or future recipients identified by the ITD are bound by the requirements of the IUCP and agree to abide by the requirements of the IUCP which is a continuation of the ITD current and previous process.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive therefrom, the parties agree as follows:

ARTICLE I: PURPOSES

The parties have entered into this Agreement for the purposes of creating an Idaho Unified Certification Program (IUCP) to be administered by the Idaho Transportation Department Office of Civil Rights (OCR). The ITD OCR will oversee the process for designation of a Certification Committee as stated in the approved ITD DBE Program under section III DBE Certification Process, A. Certification Committee. This Certification Committee will perform DBE certification, renewal, and decertification for Idaho recipients.

ARTICLE II: SERVICES

Section 2.1. Idaho Unified Certification Program

The IUCP is hereby created and implemented in accordance with 49 CFR §26.81, as amended.

- a. The IUCP will follow all certification, renewal, and decertification procedures in accordance with the certification standards of CFR 49, Subpart D of §26, the certification procedures of Subpart E of §26 and Subpart C of §23 as applied by the ITD in its DBE Program. This is addressed in the DBE Program Plan in Subpart E – DBE Certification Procedures. The Application Procedure for Certification as follows:
 - i. Applications are conducted online at: <https://itd.dbesystem.com>
 - ii. The ITD DBE Program Coordinator reviews the application and documentation to verify that the information is complete and then requests that the appropriate district Safety Compliance Officer (SCO) perform an on-site review.
 - iii. The Certification Committee will meet every thirty (30) days or sooner if necessary. The Certification Committee will make eligibility decisions within 90 days of receipt of all required information.
 - iv. Out of state firms applying for certification must be certified within their home state to qualify for the Idaho program. On-site-reviews from the out-of-state applicant will be accepted from the home state certification entity. See Subpart E.4, “Interstate Certification”, in the DBE Program Plan.
 - v. A firm that believes that they have been wrongly denied certification may appeal in writing to the United States Department of Transportation, Departmental Office of Civil Rights, External Civil Rights Program Division, 1200 New Jersey Avenue SE, Washington, D.C. 20590. Appeals must be submitted within ninety (90) days after certification has been denied.
 - vi. A firm that receives a Notice of Intent to Decertify may request an informal hearing by the selected Hearing Officer. Requests for an oral hearing must be submitted within 10 days of the notification and will be conducted within 30 days of receipt of the request. A hearing request for written arguments must be submitted within 30 days and then the selected Hearing Officer will make a decision within 30 days from receipt of the request. Any request for a hearing must be directed to Office of Civil Rights Manager (OCRM) at the Idaho Transportation Department, 3311 West State Street, Boise, Idaho 83703-1129.
 - vii. The Idaho electronic DBE Directory located on the ITD website will be updated with additions, deletions, and other changes as they occur. In addition to this update, upon request interested members of the IUCP will be notified of changes as they occur.
- b. The IUCP will cooperate fully with oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.

- c. The IUCP will implement USDOT directives and guidance concerning certification, renewal, and decertification procedures in accordance with the certification standards of CFR 49, Subpart D of §26, the certification procedures of Subpart E of §26 and Subpart C of §23 as applied by the approved ITD DBE Program Plan.
- d. Each recipient party to this Agreement shall ensure that the IUCP has sufficient resources and expertise to carry out the requirements of 49 CFR §26 and §23. The ITD Office of Civil Rights is currently receiving appropriate resources to provide the needed actions to meet the requirements of 49 CFR §26 in the establishment and implementation of the IUCP.
- e. The IUCP will be fully implemented within 120 days of the Secretary's approval of the IUCP on the following schedule:
 - i. Within 90 days of the Secretary's approval of the IUCP, each party to this agreement will begin to utilize the unified procedures set forth in the IUCP Agreement.
 - ii. Within 120 days after the Secretary's approval of the IUCP, the Committee will begin to meet on a regular basis as required to certify DBE applicants.
 - iii. Within 60 days after the Secretary's approval the IUCP will post the unified DBE Directory on its website.

Section 2.2. Idaho Unified Certification Committee

The ITD/OCRM is identified as the administrator of the IUCP and responsible for the process for designation of the Certification Committee (Committee) which is established to administer the IUCP certifications as required by the approved ITD DBE Program Plan and CFR 49 §26, Subpart D and Subpart E and §23, Subpart C.

Section 2.3. DBE Directory

An online DBE Directory will be maintained by the ITD/OCR at <https://itd.dbesystem.com>.

Section 2.4. Classification of Business and Financial Information

Each recipient under this Agreement shall safeguard from disclosure to unauthorized person information that may reasonably be considered confidential business information consistent with Federal, State and local law.

ARTICLE III: TERM AND SCOPE OF AGREEMENT

Section 3.1. Term

This agreement shall be effective immediately upon its execution by all the parties hereto and the approval of the IUCP by the Secretary of the USDOT. This Agreement

and the IUCP shall continue in force as long as required by federal laws and regulations, unless terminated pursuant to Section 3.2. of the Agreement.

Section 3.2. Early Termination

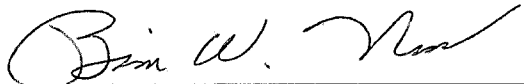
Any party to this Agreement may terminate its relationship to the IUCP upon a showing of non-recipient status, provided approval is given by USDOT for such termination.

Section 3.3. Limited Agreement

This Agreement is limited in scope and nothing contained in this Agreement shall imply any relationship between any of the signing parties beyond the creation and implementation of the IUCP.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below and attached:

IDAHO TRANSPORTATION DEPARTMENT

BY: 
BRIAN W. NESS, Director

DATE: 10/12/2017

STATEMENT OF AGREEMENT
Idaho Unified Certification Program
Attachment to IUPC Agreement

The Unified Certification Program process developed and implemented by the Idaho Transportation Department for the State of Idaho has been reviewed by the agency listed below. We acknowledge the IUPC Agreement is made and entered into by and between the participating agency noted below and the Idaho Transportation Department.

We recognize this program as the authorizing process for certification, recertification and decertification of firms in the Disadvantaged Business Enterprise Program for the State of Idaho as required by 49 CFR §26.81.

BY: David H. Bieter, Mayor

DATE: November 28, 2017


AGENCY: City of Boise

ADDRESS: 3201 W Airport Way, Suite 1000, Boise, Idaho 83705

PHONE: (208) 383-3110

EMAIL: mpetaja@cityofboise.org (Matt Petaja)

SIGNATURE:  11/28/17

ATTEST: 
City Clerk, Lynda Lowry

RETURN STATEMENT OF AGREEMENT TO:

civilrights@itd.idaho.gov

Office of Civil Rights
Idaho Transportation Department
P.O. Box 7129
Boise, Idaho 83703-1129



Attachment 10 Small Business Element

City of Boise
Department of Aviation

Small Business Element

I. SMALL BUSINESS ELEMENT

The City of Boise (“Boise Airport”) is committed to ensuring that small businesses are offered an equitable opportunity to participate in the contracting and procurement process. Boise Airport has a long history of supporting small businesses, including DBEs for projects that include federal funding. This Small Business Element was created as part of the DBE Program to provide additional opportunities for small businesses to participate in contracting at airports operated by Boise Airport.

Boise Airport’s Small Business Element as described herein, applies to federally funded contracts and expenditures. The Small Business Element does not replace the DBE Program. It operates as a race-and gender-neutral tool that may assist small businesses, including DBEs, in contracting opportunities on federally funded airport projects.

This Small Business Element is not intended to discriminate against any company or groups of companies. The Small Business Element is open to participation without regard to race, color, sex, religion, national or ethnic origin, age, disability or geographic location and is designed to foster small businesses while maintaining race and gender-neutral measures in their operations.

II. AUTHORIZATION

In accordance with the regulations governing the U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) Program, Boise Airport is required to set triennial overall DBE goals for contracts that are funded in whole or in part with federal funds. Boise Airport is obligated to meet the maximum feasible portion of its overall goal through race and gender-neutral means of facilitating DBE participation (49 CFR § 26.51). In January 2011, 49 CFR part 26 was amended and the following section entitled “Fostering Small Business Participation” was added:

§ 26.39 Fostering small business participation.

- (a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.*
- (b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:*
 - (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).*
 - (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring 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.*
 - (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*
 - (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*
 - (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*
- (c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.*

This Small Business Element has been developed in compliance with the above stated sections of 49 CFR part 26 and further guidance issued by DOT in December 2011.

III. NON-DISCRIMINATION

It is the policy of Boise Airport, that their contractors and subcontractors shall not discriminate on the basis of race, color, religion, national origin, or sex in the award and performance of contracts and subcontracts and to remove barriers for small businesses, including businesses owned by minority, women and disadvantaged individuals, to compete for contracts and subcontracts awarded by the Airport.

It is the policy of Boise Airport to support the growth and development of small businesses, including those owned by minority, women and disadvantaged individuals that can successfully compete for prime contracting opportunities at the Airports.

This Small Business Element has been developed in furtherance of these policies.

IV. SMALL BUSINESS ENTERPRISE DEFINITION

A Small Business Enterprise (SBE) shall be defined as follows:

An SBE, is a small business concern as defined pursuant to 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 49 CFR part 26, §26.65(b).

CFR Part 26, §26.65(b) states as follows:

Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.

The SBA size standards may be found at:

www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html

V. SMALL BUSINESS ENTERPRISE VERIFICATION

A firm who wishes to participate as an SBE on a Boise Airport project and has not been certified as a DBE or verified as an SBE within the preceding 12 months may apply for verification as an SBE by filing a SMALL BUSINESS ENTERPRISE (SBE) VERIFICATION FORM and submitting the form along with all required attachments at the time of bid.

Firms applying for verification as an SBE must provide all required information and documentation necessary to verify that they meet the definition of a Small Business Enterprise.

VI. SCOPE

The intent of Boise Airport's Small Business Element is to provide fair opportunities for equal participation by small businesses in federally-funded Airport contracting and procurement opportunities.

The Small Business Element requires contractors to make good faith efforts to use small businesses in certain contracting and procurement opportunities. Good faith efforts will be measured utilizing guidance provided in 49 CFR part 26, Appendix A.

All construction, professional services, goods and general services solicitations that include federal funding shall be reviewed by the DBE Liaison Officer to determine opportunities for Small Business Enterprise (SBE) participation, when a race conscious contract goal is not set and race neutral measures are used.

A decision to use race-neutral goals will be made in accordance with 49 CFR part 26.51, including a determination that race neutral methods are sufficient to meet Boise Airport's overall DBE goal. Boise Airport may determine that an SBE goal is an appropriate race neutral measure to be used for certain contracts. The criteria used to set a race neutral SBE goal shall include small business capacity, small business availability, nature of the contract, past experiences with small business participation with similar contracts, price competitiveness, and subcontracting opportunities. Procedures for implementation, including good faith efforts requirements and information submitted with bid and reporting procedures shall be consistent with procedures utilized in Boise Airport's DBE Program under a race neutral environment. Good faith efforts to achieve a race neutral goal shall apply only when an SBE goal has been set for a project. Other race neutral methods, including those listed in 49 CFR part 26, §26.51, are not subject to good faith efforts on the part of the bidder.

The program also requires airport staff to consider unbundling of contracts when feasible. Boise Airport seeks to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation in procurements as prime contractors. To achieve this, multi-trade projects estimated to exceed \$5 million will be reviewed for potential unbundling to provide for a reasonable number of opportunities available to facilitate participation by small businesses. The DBE Liaison Officer, in coordination with project management, will provide a recommendation for unbundling based on a determination that there are a sufficient number of qualified SBE firms available to perform the contract(s) which would result from unbundling. The Project Manager will have the opportunity to review the recommendation for unbundling to validate that the recommendation provides a viable economic opportunity for potential bidders and to assess the impact on the overall project cost. If the recommendation is determined to be cost prohibitive, does not represent viable opportunities to potential bidders, or cannot be unbundled for other reasons, the Project Manager will document the reasons for not implementing the recommendation.

VII. TRACKING SBE PARTICIPATION

Boise Airport will monitor and track participation by SBEs in federally-funded projects. Only small businesses that are also certified as DBEs will be counted, as race-neutral participation, towards the Airport's overall DBE goal. Participation by SBEs who are not certified as DBEs will be tracked, but not reported to the FAA. Race- and gender- neutral DBE participation obtained through the Small Business Program will be included in the Airport's Annual Report of Accomplishments and will be calculated by dividing the total dollars to DBEs achieved through the small business program by the total federal dollars.

VIII. COMPLIANCE PROCEDURES

Monitoring and enforcement procedures applicable to a race neutral environment for this element of the DBE Program will be implemented as indicated in the Airport's DBE Program as they pertain to a race neutral environment.

IX. TECHNICAL ASSISTANCE/BUSINESS DEVELOPMENT RESOURCES

ITD provides technical assistance and business development resources to assist small businesses under its technical assistance program. In addition, the following resources are available to assist small businesses in Idaho:

1. Idaho Small Business Development Center
<http://idahosbdc.org>
2. U.S. Small Business Administration Idaho Office
<https://www.sba.gov/offices/district/id/boise>

X. ASSURANCES

Boise Airport provides the following assurances regarding the development and implementation of the Small Business Element described herein:

1. The development of this Small Business Element is not prohibited by Idaho state law.
2. Certified DBEs are presumptively eligible to participate on any federally assisted procurement.
3. There will be no geographic preferences or limitations imposed on any federally assisted procurement.
4. There will be no limits on the number of contracts awarded to firms participating.
5. The Airport's Small Business Element is open to small businesses regardless of their location. There will be no local or other geographic preference.