

**COLORADO SPRINGS AIRPORT**

**DISADVANTAGED BUSINESS ENTERPRISE PLAN**



**COLORADO SPRINGS  
AIRPORT**

## POLICY STATEMENT

### **Section 26.1, 26.23 Objectives/Policy Statement**

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

It is the policy of the 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. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Environmental Health & Project Specialist has been delegated as the DBE Liaison Officer. In that capacity, the Environmental Health & Project Specialist is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Airport in its financial assistance agreements with the Department of Transportation.

The Airport has disseminated this policy statement to the Colorado Springs Airport and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Airport DOT-assisted contracts. The distribution was accomplished via the Airport website.

  
\_\_\_\_\_  
Gregory S. Phillips, A.A.E.

  
\_\_\_\_\_  
Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The Airport will use terms in this program that have their meanings defined in Part 26, §26.5.

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

The 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, the 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 Record Keeping Requirements**

#### **Reporting to DOT**

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

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

The Airport will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The Airport will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to [*operating administration*] as instructed thereby.

## Bidders List

The Airport will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Airport DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way: the Airport will collect data from all bidders no later than the project end date. The Bidders Information form can be found in Attachment 3 to this program.

## Records retention and reporting:

The Airport will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Airport will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Airport's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

The Airport, as a member of the Colorado UCP established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

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

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

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

The 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. The 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 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 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: The 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.

## **ADMINISTRATIVE REQUIREMENTS**

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

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

The following individual has been designated as the DBE Liaison Officer for the Airport:

Kristine Andrews  
Environmental Health & Project Specialist  
7770 Milton E. Proby Parkway, Ste. 50  
719-550-1915  
[Kristine.Andrews@coloradosprings.gov](mailto:Kristine.Andrews@coloradosprings.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Aviation 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 resources include but are not limited to legal counsel and consultant engineers and are adequate to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all department to set overall annual goals.
3. Works with City Procurement Department to:
  - Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
  - Identify contracts and procurement so that DBE goals are included in solicitations.
4. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.
5. Participates in pre-bid meetings.
6. Advises the governing body on DBE matters and achievement.
7. Determine contractor compliance with good faith efforts.
8. Plans and participates in DBE training seminars.
9. Acts as liaison to the Uniform Certification Process. [*certifying agencies only*]
10. Maintains the agency's updated directory on certified DBEs.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the 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.

Efforts that will be made to identify DBE financial institutions include adding language in bid documents for contractors to make reasonable efforts to use these institutions. DBE financial institution availability will be reviewed each time a project goes out for bid.

## **Section 26.29 Prompt Payment Mechanisms**

The 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.

In accordance with 49 CFR §26.29, the 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 Airport.

The 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, the Airport has selected the following method to comply with this requirement:

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 your payment to the prime contractor.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

To implement this measure, the Airport includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

1. From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

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

2. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment.

Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

### **Section 26.31      Directory**

The Airport is a member of the Colorado Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

### **Section 26.33      Over-concentration**

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

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

The Airport has not established a Business Development Program.

### **Section 26.37      Monitoring Responsibilities**

The Airport implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the Airport's DBE program.

The Airport actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

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

The Airport undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):



- The Airport will require prime contractors to provide, on a quarterly basis, a certified statement indicating the amount and date of payment to subcontractors (all tiers) over the course of the covered contract.
- At the Airport's discretion, interim audits of contract payments to DBEs will be performed. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

The 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 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.

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

#### Prompt Payment Dispute Resolution

The Airport will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

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

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any dispute, claim of any kind, loss, damage, demand, request for equitable adjustment, or controversy should arise out of, or relating to this Contract or relating to any Change Order or other changes or addendums to this Contract. During the dispute resolution procedure provided in this section, Contractor shall continue to perform the work as provided for in this Contract as modified by any Change Order or Contract amendment. Nothing in this section precludes the parties from pursuing any other remedy afforded by the laws of the State of Colorado once the remedies afforded under this Contract have been complied with and exhausted.

Disputes Arising from Unanticipated Circumstances: If Contractor disputes, disagrees with, or considers any decision, order, ruling, demand, request, directive, Change Order, or Contract amendment, related to the Unanticipated Circumstances provision of this Contract, and issued by the City, whether verbally or in writing, then Contractor shall:

1. Within 10 days of the City issuing any written or verbal decision, order, ruling, demand, request, directive, Change Order, or Contract amendment, Contractor shall provide written notice to the Project Manager identifying, with specific detail, each disputed matter. Any Unanticipated Circumstance dispute or matter of any kind or nature whatsoever, which Contractor does not identify in detail shall be waived and the City is released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from any matter not explicitly set forth in the written notice and described in detail;

2. Contractor shall provide to the City all evidence of any claim of whatsoever kind, loss, damages, delay cost, or other costs, including, but not limited to payroll

reports, daily logs, invoices, accounting file, receipts, email, or other relevant record or document. Any item claimed by Contractor shall be supported by verifiable evidence described herein. If Contractor requires additional time to obtain or compile such evidence, then the Contractor shall have an additional 30 days, but must identify the exact document(s) or other evidence needed, where it is maintained, and explain why it is not available. The City shall not be responsible for any delay or other damage arising from Contractor's request for additional time to obtain documents. Any item unsupported by verifiable evidence shall be waived and Contractor agrees to release and fully discharge the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand related to such unsupported item.

3. Upon receipt of Contractor's written notice, the Project Manager will investigate the disputed matter(s) and issue a written decision, ruling, order, and/or directive to Contractor. If Contractor does not dispute the Project Manager's decision, ruling, order, or directive, or a compromise has been reached, then Contractor shall sign Form A. If Contractor disputes or disagrees with the Project Manager's Ruling, then within 20 days of receiving the Project Manager's decision, ruling, order, and/or directive, Contractor must file with the City a written request for review to the City Engineer or City's Manager of the Procurement Services Division. The written request for review shall (a) state in detail the exact issue raised to the Project Manager and the issue(s) related to those matters raised to be reviewed by the City Engineer or Procurement Services Manager; (b) provide an analysis, detailing the basis, reason therefore and the how and why Contractor disagrees with the Project Manager's decision, ruling, order, or directive; and (c) attach all evidence supporting Contractor's dispute. If Contractor fails to provide a timely written request for review to the City Engineer or Procurement Services Manager, then Contractor agrees that it waives, releases, and forever discharges the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand arising from or related to the Project Manager's decision, ruling, order, or directive.

4. The City Engineer's or Procurement Services Manager's decision shall be final

and conclusive for the City of Colorado Springs. If Contractor disputes, disagrees with, or considers such decision unfair, then Contractor shall be free to pursue any other remedy afforded by the laws of the State of Colorado. If Contractor does not dispute the City Engineer's or Procurement Services Manager's decision, ruling, order, or directive or a compromise is reached, then Contractor shall sign Form A.

5. Contractor shall pay the City reasonable attorney's fees and costs associated with its failure to comply with any part of this alternate dispute process.  
All Other Claims: If a dispute, disagreement, or controversy of any kind, other than those covered in the Unanticipated Circumstances section of this Contract, arises from or is related to the Contract, shall be resolved under the Disputes section in the Contract.

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

If the Contractor fails to make timely payments to the subcontractor as required by this section, the Contractor shall pay the subcontractor interest as specified by Contract or at the rate of fifteen percent (15%) per annum, whichever is higher, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made.

#### Prompt Payment Complaints

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

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.
- A subcontractor with any complaint regarding payment discrepancies with prime contractor shall contact the Airport Project Manager to resolve any complaints. The DBELO shall be copied on any correspondence.
- A subcontractor may reach out to the responsible FAA contact if any complaint is not promptly resolved with the Airport Project Manager or DBELO.

#### Enforcement Actions for Noncompliance of Participants

The Airport will provide appropriate means to enforce the requirements of §26.29. These means include:

- If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the Contract within the specified time limit set forth in the Contract, including any extensions granted hereto, the Contractor may be

subject to a stop work order,

- The Contractor shall pay to the City for each Calendar Day of delay until such time the Contract is complete, liquidated damages at the applicable daily rate specified in Section 80-08 of the General Provisions, Special Conditions & Technical Specifications. The amounts are considered to be liquidated damages to reimburse the City for the additional cost of construction engineering and Contract administration services and in no case are considered a penalty.
- The following justifies Termination for Cause with additional causes outlined in Contract:
  - Contractor's disregard of the laws or regulations of any public body having jurisdiction.
  - Contractor's disregard of the authority of Project Manager.
  - Contractor's violation in any material provision of the Contract Documents.
  - Contractor's failure to make prompt payments to its subcontractors, and suppliers of any tier, or laborers or any person working on the work by, through, or under the Contractor or any of them, any all of their employees, officers, servants, members, and agents.

The Airport will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The 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. Work site monitoring is performed by project managers and consultants. Contracting records are reviewed by project managers and consultants. The Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

#### **Section 26.39      Fostering small business participation**

The 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 small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation.

**Implementation of the small business element is required in order for the Airport to be considered by DOT as implementing this DBE program in good faith.**

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

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

The Airport does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The 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), the Airport will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA: [https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the 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 the 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. The Airport will use the U.S. Census Bureau through American Fact Finder and the Colorado Department of Transportation's Unified Certification DBE directory as a method to determine the base figure. The 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. The 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 Airport's market.

In establishing the overall goal, the 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 The 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 the 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, the Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the 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 the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the Airport. This notice will provide that the Airport and FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1<sup>st</sup> deadline.**

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the Airport responses.

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

### Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base

from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### Prior Operating Administration Concurrence

The 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 the Airport for calculating goals is inadequate, the FAA may, after consulting with the Airport, adjust the overall goal or require that the goal be adjusted by the 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**

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

The 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.

The 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) The 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 the FAA upon request.

**Section 26.49      How are overall goals established for transit vehicle manufacturers?**

The Airport will not use the procedures of this Section 26.49.

**Section 26.51      Means Recipients Use to Meet Overall Goals**

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

The 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) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;



(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

The 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.

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.

The 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:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) 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;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) 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.
  - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration

Within (7) days of being informed by the Airport that it is not responsible 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:

Director of Aviation  
Colorado Springs Airport  
7770 Milton E. Proby Parkway, Ste. 50  
Colorado Springs, CO 80916  
Telephone: 719-550-1900

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)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Airport. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Airport agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.

- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The Airport determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the 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;
- (10) Other documented good cause that the Airport has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Airport, a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Airport, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the Airport and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

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

The Airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least

the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. The Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the Airport may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### **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).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

## **SUBPART D – CERTIFICATION STANDARDS**

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

The Airport is a non-certifying member of the Colorado Unified Certification Program (UCP). Colorado 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 Colorado 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:

[dot\\_certifications@state.co.us](mailto:dot_certifications@state.co.us)  
303-757-9234

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The Airport is the member of a Unified Certification Program (UCP) administered by Colorado Department of Transportation and City/County of Denver which will make certification decisions on behalf of the Airport for DBEs and ACDBEs. The UCP will meet all the requirements of this section.

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

### **Section 26.101 Compliance Procedures Applicable to Airport**

The Airport understands that if it fails to comply with any requirement of this part, the 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, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

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).

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

## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

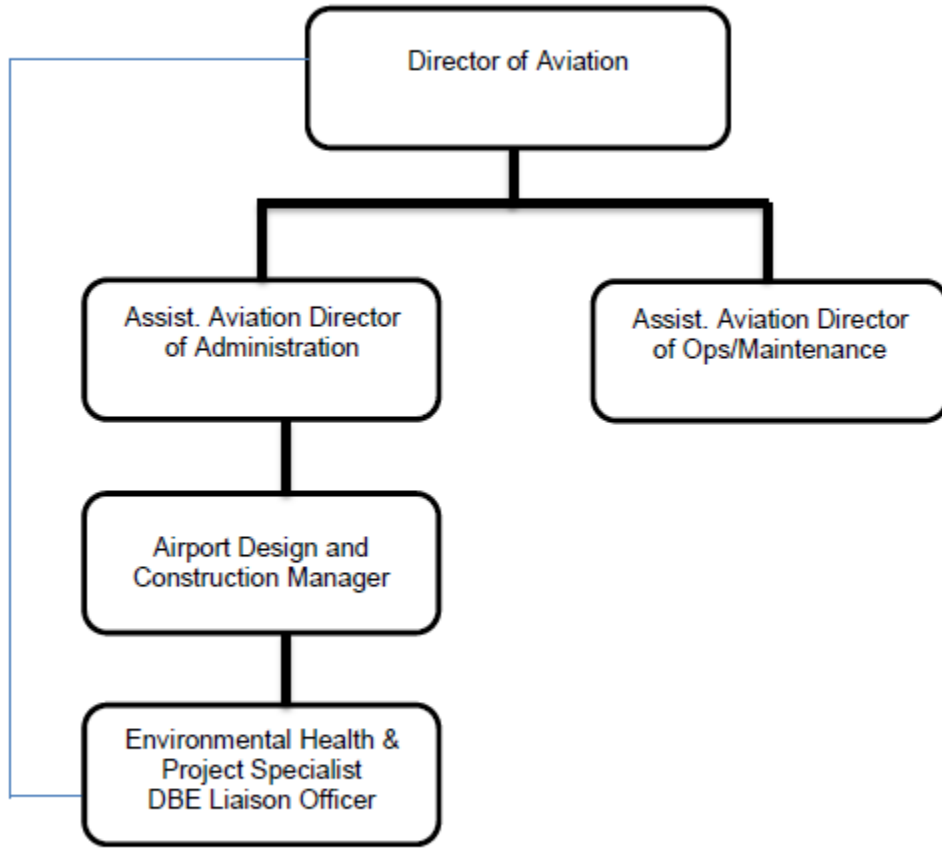


**ATTACHMENT 1**

**Regulations: 49 CFR Part 26**

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d269ba880cc0ea3bb2af39bf19b9c5&mc=true&n=pt49.1.26&r=PART&ty=HTML>

**ATTACHMENT 2**  
**Organizational Chart**



**ATTACHMENT 3**  
Bidder's List Collection Form



Planning & Development Office  
7770 Milton E. Proby Parkway, Suite 50  
Colorado Springs, CO 80916-4928  
TEL 719.550.1931 • FAX 719.550.1991  
FlyCOS.com

**Bidders Information**

Firm Name, Phone Number and Address <small>(Include all contractors and subcontractors)</small>	DBE or Non-DBE Status <small>(If DBE, include NAICS Code)</small>	Age of Firm <small>(Select only the option that applies)</small>	Annual Gross Receipts <small>(Select only the option that applies)</small>
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000
		<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 \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> Greater than \$5,000,000

Submitted by: \_\_\_\_\_  
(Company Name)

Signature: \_\_\_\_\_

**ATTACHMENT 4**

***DBE/ACDBE Directory Website Link***

<https://coucp.dbesystem.com/>

**ATTACHMENT 5**

**Overall DBE Three-Year Goal Methodology**

**Name of Recipient:** The Colorado Springs Airport

**DBE Goal Methodology:** To be submitted separately.

**ATTACHMENT 6**

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

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

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

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

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

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

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

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

**FORM 2: LETTER OF INTENT**

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

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

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

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

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

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

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

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

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

Date:

\_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Submit this page for each DBE subcontractor.**

## **ATTACHMENT 7**

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

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

- The Airport will require prime contractors to provide, on a quarterly basis, a certified statement indicating the amount and date of payment to subcontractors (all tiers) over the course of the covered contract.
- At the Airport's discretion, interim audits of contract payments to DBEs will be performed. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

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

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



**ATTACHMENT 8**  
DBE Certification Application Form  
*(New form October 2, 2014)*

<https://www.codot.gov/business/civilrights/smallbusiness/dbe>

**ATTACHMENT 9**

**State's UCP Agreement**

<https://coucp.dbesystem.com/>

**ATTACHMENT 10**  
Small Business Element

**1. Objective/Strategies**

The Colorado Springs Airport shall provide the Small Business Element Program to assist and increase opportunities for certified small businesses to participate in U.S. Department of Transportation (DOT) assisted contracts and create a level playing field on which SBEs can compete fairly on DOT assisted contracts.

The Airport shall:

- A. Advertise these projects in various media formats.
- B. Continue to make Requests for Proposals and Invitations for Bids attractive to small businesses and DBEs.
- C. Send solicitation notices to certified DBEs and other small businesses so they are aware of subcontracting opportunities.

**2. Definitions**

The Airport will use terms in this program that have the meaning defined under Title 13 CFR Part 121, Small Business Size Regulations.

**3. Verification**

The Airport will diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying eligibility of firms.

**4. Monitoring/Record Keeping**

- A. The Airport will retain small business information during the program year.
- B. All records will be made available for inspection upon request by any authorized representative of the Airport or DOT.

**5. Assurance**

The Airport certifies the following:

- A. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;

- B. The program is open to small businesses regardless of their location. There are no local or other geographic preferences or limitations imposed on any federally assisted procurement included in the program; and
- C. There are no limits on the number of contracts awarded to firms participating in the program but every effort will be made to avoid creating barriers to the use of new, emerging or untried businesses.

## ATTACHMENT 5

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** The Colorado Springs Airport

**Goal Period:** FY-2024-2025-2026 – October 1, 2023 through September 30, 2026)

<b>DOT-assisted contract amount:</b>	FY-2024	\$30,458,000
	FY-2025	\$13,033,000
	FY-2026	<u>\$14,500,000</u>
	<b>Total</b>	<b>\$57,991,000</b>

**Overall Three-Year Goal:** 6.61%, to be accomplished through 4.63% RC and 1.98% RN

**Total dollar amount to be expended on DBEs:** \$3,452,066.23

**Describe the Number and Type of Contracts that the airport anticipates awarding:**

Contracts Fiscal Year 2024

1. Taxiway A Realignment A7-A5 Construction - *\$15,000,000*
2. Runway Analysis - *\$1,200,000*
3. Concourse Modernization - *\$14,268,000*

Contracts Fiscal Year 2025

1. Terminal Study - *\$1,760,000*
2. Taxiway A Realignment A4-A1 Design - *\$1,715,000*
3. Concourse Modernization - *\$9,558,000*

Contracts Fiscal Year 2026

1. Taxiway A Realignment - *\$14,500,000*

**Market Area:** Six Colorado counties were identified as the Airport's primary source for DBE firms: Douglas, Elbert, El Paso, Fremont, Pueblo, Teller

**Step 1.** Actual relative availability of DBEs

NAICS	Type of Work	Total DBE Firm's	Total All Firms
236220	Construction Management	16	180
237310	Roadway Construction Contractors	20	39
237990	Drainage	7	10
238110	Foundation	9	125
238210	Electrical Contractors	9	382
238910	Site Preparation	8	121
238990	Fence, Site cleanup, Equipment rentals	19	198
541330	Professional Design Services	15	484
541370	Surveying Services	4	46
541380	Geotechnical Testing Services	4	23

NAICS	Type of Work	Total DBE Firm's	Total All Firms
561612	Security Guard Services	0	106
<b>Total</b>		111	1,714

The base figure for the relative availability was calculated as follows:

Divide the total number of DBE's by the total number of All Firms =  $111/1,714 = 6.48\%$

Base Figure = 6.48% of all firms ready, willing, and able.

The data source or demonstrable evidence used to derive the numerator was: All firms within the 6 surrounding counties.

The data source or demonstrable evidence used to derive the denominator was: All DBE firms within the 6 surrounding counties.

### Step 2: Adjustments to Step 1 base figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed to arrive at the overall goal.

#### Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments		
		RC	RN	Total	RC	RN	Total
FY 20	1,851,894.00	3.89%	1.30%	5.19%	0.20%	0.80%	1.00%
FY 21	2,434,328.00	3.23%	1.39%	4.62%	0.00%	5.80%	5.80%
FY 22	9,423,859.00	3.23%	1.39%	4.62%	6.50%	0.00%	6.50%
<b>Median</b>	<b>2,434,328.00</b>	<b>3.23%</b>	<b>1.39%</b>	<b>4.62%</b>	<b>0.20%</b>	<b>0.80%</b>	<b>5.80%</b>

FYs 17, 18, 19	Total Grant \$ Amount	DBE Goals			Accomplishments		
		RC	RN	Total	RC	RN	Total
Median	10,542,329.00	2.40%	2.51%	4.91%	5.90%	1.70%	7.70%

Arranging this historical data (median total accomplishments) (5.80% and 7.70%) the median is 6.75%.

Step 1 Base averaged with historical median:  $(5.80 + 7.70)/2 = 6.75\%$

To arrive at an overall goal, the Step 1 base figure (6.48%) was added to the Step 2 adjustment figure (6.75%) and the total was averaged, arriving at an overall goal of 6.61%. The Airport believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

## **Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.**

The Airport will meet the maximum feasible portion of the overall goal by using RC as the best means of facilitating DBE participation as historically RN DBE participation has averaged 30%. The RC 4.63% was derived from using seven tenths (7/10) of the overall goal of 6.61%.

The Airport estimates that in meeting the established overall goal of 6.61%, it will obtain 4.63% from RC participation and 1.98% through RN measures. The following will be used in facilitating RC DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities; and
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The Airport will adjust the estimated breakout of RC and RN DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

## **PUBLIC PARTICIPATION**

### **Consultation:**

In establishing the overall goal, the Airport provided for consultation and publication. This process included 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 Airport’s efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was a Microsoft Teams meeting which was held on July 28, 2023 at 11:00 a.m.

The following comments were received during the course of the consultation:

- **Does the Airport provide a meet and greet for prime contractors and DBE's?** The Airport does not currently schedule a meet and greet. This is something that the Airport will consider scheduling in the future.
- **How is the use of DBE firms monitored, is it based on good faith efforts?** The DBE is monitored via contracts and use of DBE companies to meet goals. The program outlines good faith efforts to achieve goals.
- **Historically the use of Race Conscious DBEs is low.** The Airport has had some years with a high percent of RC DBEs utilized in contracts under prime contractors and as prime contractors with some years that have lower numbers.
- **Is the Bidder's list posted?** Yes, a Bidder's List is posted on BidNet for posted projects.
- **How are terminal projects bid for DBE, is the Airport DBE only used for airfield?** The Airport DBE Program is specifically for federally funded projects for any Airport construction project.
- **Does City utilize DBE's outside of federal projects, does City use small businesses/DBE for construction?** Yes.

A notice of the proposed goal was published on the Airport's official website before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on the Airport's official website.

Notwithstanding paragraph (f)(4) of §26.45, the Airport's proposed goals will not be implemented until this requirement has been met.