

DBE PROGRAM
2016-2018

ERIE MUNICIPAL AIRPORT

ERIE, COLORADO

DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The Town of Erie, Colorado, hereafter referred to as the Sponsor, 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 Sponsor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Sponsor 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 policy:

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

The Deputy Director of Public Works, Russell Pennington, has been named the DBE Liaison Officer. In that capacity, he 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 Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor has disseminated this policy statement to the Town Council and all of the components of the organization. The Sponsor has distributed this statement to DBE and non-DBE business communities that perform work for them on DOT – assisted contracts. The Sponsor accomplished this by advertising the policy statement on the local website and at the Airport.

Tina Harris, Mayor

Date:_____

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The Sponsor will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

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

The Sponsor will report DBE participation to DOT/FAA as follows:

The Sponsor will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. The Sponsor will also report the DBE Contractor firms contact information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

Bidders List: 26.11(c)

The Sponsor 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 DOT-assisted contracts for use in helping to set overall goals. The bidders list will include the name, address, DBE-non-DBE status, age of firm, and annual gross receipts of firms to be submitted as part of the bid package.

The Sponsor will collect this information by placing a clause in all bid solicitations requiring prime bidders to report the name, address, DBE non-DBE status, age of firm, and annual gross receipts of firms. A copy of the bidders list can be reviewed as Attachment 3.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) – Each financial assistance agreement the Sponsor signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Sponsor 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 Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Sponsor's DBE Program, as required by 49 CFR 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 Sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

The Sponsor will ensure that the following clause is included in every DOT-assisted contract the Sponsor 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 Sponsor 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

The Sponsor 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 Sponsor is not eligible to receive DOT financial assistance unless DOT has approved the DBE program and it is in compliance with it and this part. The Sponsor will continue to carry out the program until all funds from DOT financial assistance have been expended. The Sponsor does not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program 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 (DBELO)

The Sponsor has designated the following individual as the DBE Liaison Officer:

Russell Pennington
Deputy Director of Public Works for the Town of Erie
P.O. Box 750
Erie, Colorado 80516
(303) 926-2878
E-Mail: rpennington@erieco.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Sponsor complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Town Council concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found 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 consultant engineers 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. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.

6. Analyzes the Sponsor's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determines Contractor compliance with good faith efforts.
11. Provides DBEs with information.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Sponsor's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the Sponsor 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. To date the Sponsor has been unable to identify and use any such institutions. The State DBE Directory was used to try and locate DBE Financial Institutions but none were found. The Sponsor makes an effort annually to investigate the availability of such institutions.

Section 26.29 Prompt Payment Mechanisms

The Sponsor has established, as part of the DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Sponsor makes to the prime contractor.

The Sponsor will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The Sponsor will use the following method to comply with this requirement:

The Sponsor 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 the Sponsor's payment to the prime contractor.

The Sponsor will consider 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 Sponsor. When the Sponsor 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. The Sponsor will provide appropriate means to enforce the requirements of this section. The Sponsor also provides that any delay or postponement of payment among the parties may take place only for good cause, and only with the Sponsor's written approval.

The Sponsor will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 working days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

The Sponsor uses the State of Colorado's DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Colorado revises the directory at least annually. The Sponsor makes the Directory available at the office of the DBELO. The Directory may be obtained at the Civil Rights & Business Resource Center, 4201 East Arkansas Avenue, Room 150, Denver, Colorado 80222, (303)757-9303 and also found on their website at the following address:

<https://coucp.dbesystem.com/FrontEnd/VendorSearchPublic.asp?XID=4207&TN=coucp>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The Sponsor has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Sponsor will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The Sponsor will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT/FAA can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT/FAA Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26.107. The Sponsor also will implement similar action under its own legal authorities, including responsibility determinations in future contracts and possible prosecution under applicable Colorado State Law.

2. The Sponsor will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 1 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.

3. The Sponsor will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. The monitoring and enforcement will include written certification that the Sponsor has reviewed contracting records and monitored work sites for this purpose.

4. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In the reports of DBE participation to DOT/FAA, the Sponsor, will show both commitments and attainments, as required by the DOT/FAA uniform reporting form.

Section 26.39 Fostering Small Business Participation

The Sponsor 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 Sponsor's small business program element is incorporated as Attachment 10 to this DBE Program. The Sponsor will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of the Sponsor's DBE Program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The Sponsor will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Sponsor will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1, 2014 (2015/2016/2017)	August 1, 2017 (2018/2019/2020)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Sponsor does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the Sponsor will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use DBE Directories and Census Bureau Data as a method to determine our base figure. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose 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 our market. We understand 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.]

(d) Step 2. Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the Sponsor 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 Sponsor's efforts 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 Sponsor's goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the Sponsor will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site or in any other sources (e.g., minority-focused media, local newspaper, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the Sponsor and DOT/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.

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator we will express our overall goals 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 should 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 your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The Sponsor understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. 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 Sponsor will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the Sponsor 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 Sponsor will do the following in order to be regarded by the Department as implementing the 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 the Sponsor has identified in the analysis and to enable the Sponsor to meet fully the goal for the new fiscal year;
3. The Sponsor will retain the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section in records for three years and make it available to FAA on request.

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

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

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

The Sponsor 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 49 CFR Part 26.39.

If the Sponsor's approved projection under paragraph (c) of this section estimates that the Sponsor can meet the overall goal for a given year through race-neutral means, the Sponsor will implement the program without setting contract goals during that year, unless it becomes necessary in order to meet the Sponsor's overall goal.

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

The Sponsor will express the contract goals as a percentage of total amounts of a DOT-assisted contract.

Section 26.53

Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 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 responsible.

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

Information to be submitted (26.53(b))

The Sponsor treats bidder/offers' compliance with good faith efforts requirements as a matter of responsibility. Final information and documentation is due within 5 days of the bid opening.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and;
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five working days of being informed by the Sponsor that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Gary Behlen
Public Works Director of Town of Erie
645 Holbrook Street
PO Box 750
Erie, Colorado 80516
(303) 926-2871

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or

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

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

The Sponsor will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

In this situation, the Sponsor will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but 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 with another DBE firm.

The Sponsor will provide such written consent only if the Sponsor 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 Sponsor has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Sponsor 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 the work on the contract;
- (10) Other documented good cause that the Sponsor 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 Sponsor its 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 Sponsor, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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.

The Sponsor 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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We 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 the Sponsor deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, the Sponsor 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 Sponsor may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Sponsor to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

Section 26.55 Counting DBE Participation

The Sponsor will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55. The Sponsor will not count the participation of a DBE subcontract 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.

If the 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, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Sponsor 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. The Sponsor will make certification decisions based on the facts as a whole.

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

Colorado Department of Transportation
Civil Rights & Business Resource Center
4201 East Arkansas Avenue, Room 150
Denver, Colorado 80222
(303)757-9303

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Sponsor is a member of a Unified Certification Program (UCP) administered by the Colorado Department of Transportation. The UCP will meet all of the requirements of this section. The UCP document may be found in Attachment 9.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any provision of Federal or state law, the Sponsor will not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the Sponsor must transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85 of this part.

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 Sponsor, 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. If we violate this prohibition, we are in noncompliance with this part.

Monitoring Payments to DBEs

The Sponsor will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized

representative of the Sponsor or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

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
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

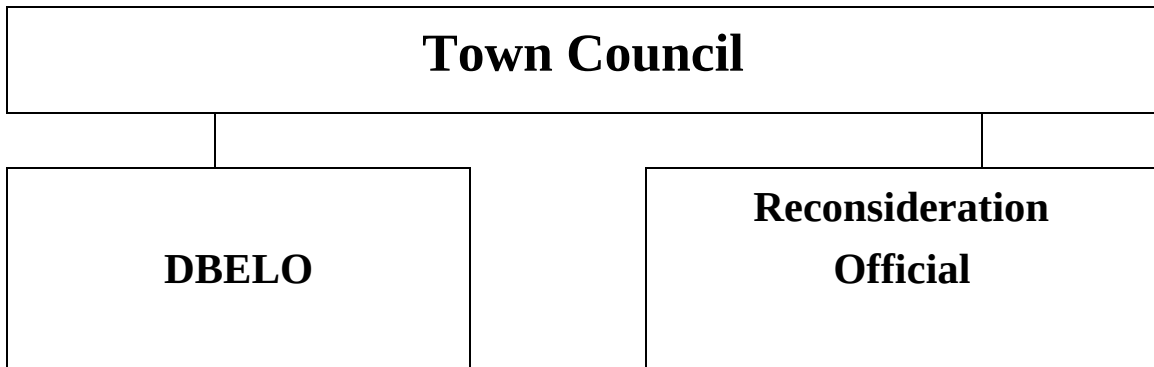
Attachment 1

Regulation 49 CFR Part 26 can be found at the following website:

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

Attachment 2

Organizational Chart



ATTACHMENT 3

BIDDERS LIST

Project Title: _____

Date: _____

Prime Contractor: _____

Address: _____

Phone/Fax: _____

Name of Firm	Address	Type of Work to be Performed on Contract	Certified DBE		Date Firm Established	AGR*
			YES	NO		

***AGR – Annual Gross Receipts**

Enter 1 for Less than \$1 Million

Enter 2 for More than \$1 Million, Less than \$5 Million

Enter 3 for More than \$5 Million, Less than \$10 Million

Enter 4 for More than \$10 Million, Less than \$15 Million

Enter 5 for More than \$15 Million

Attachment 4

The Colorado DBE directory can be found at the following website:

<https://coucp.dbesystem.com/FrontEnd/VendorSearchPublic.asp?XID=4207&TN=coucp>

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology **Erie Municipal Airport**

The Sponsor's overall three-year goal for the time period October 1, 2015 through September 30, 2018 is 0.70% of the federal financial assistance the Sponsor will expend in DOT-assisted contracts. This goal is 0.0% Race-Neutral and 0.70% Race-Conscious.

Given the amount of DBE eligible DOT-assisted contracts the Sponsor expects to have during this period, which is:

Fiscal Year	Project	Total Amount	FAA Amount	Total DBE Amount	FAA DBE Amount
2016	SRE Building	\$466,666.00	\$420,000.00	\$13,440.00	\$12,096.00
2017	N/A	\$0.00	\$0.00	\$0.00	\$0.00
2018	N/A	\$0.00	\$0.00	\$0.00	\$0.00
Total		\$466,666.00	\$420,000.00	\$13,440.00	\$12,096.00

The only anticipated project exceeding \$250,000 in Federal funding over the next three-year period is the 2016 SRE Building project. The Sponsor has set a goal of expending \$12,096.00 FAA dollars with DBE's during this period

Methodology Used to Calculate Overall Goal

Step 1. 26.45(c) Actual relative availability of DBE's

To calculate the base figure for the goals, the Sponsor will determine the number of contractors in the State of Colorado, in the following NAICS codes found in the Census Bureau's CBP database. The Sponsor has found that a substantial majority of contractors and subcontractors that perform work for them are located within the State, and the Sponsor spends a substantial amount of their contracting dollars in the State.

For the fiscal year 2016 SRE Building project, the Sponsor anticipates awarding the following:

NAICS	Type of Work	Total DBE's (Numerator)	Total All Firms (Denominator)	DBE %	Estimated Cost / % of Total Cost	DBE for this project (DBE% x % of Total Cost)
212321	Gravel Sales	2	51	3.92	\$40,000 / 8.57	0.34
238910	Highway Contractor	24	811	2.96	\$35,000 / 7.50	0.22
236220	Commercial Building Contractor	0	774	0	\$321,666 / 68.93	0.0
238210	Electrical	1	1,717	0.06	\$45,000 / 9.64	0.01
484110	Trucking	1	403	0.25	\$10,000 / 2.14	0.01
541330	Engineering	61	2,297	2.66	\$5,000 / 1.07	0.03

541370	Construction Survey	13	255	5.10	\$5,000 / 1.07	0.05
541380	Material Testing	6	149	4.03	\$5,000 / 1.07	0.04
Base Figure						0.70

To determine the base figure for each project, the percentage of DBE's was determined using data from the State DBE Directory and the Census Business Bureau County Business Pattern database. That figure was multiplied by the percentage of work specific to each DBE for each project.

Step 2. 26.45(d): Adjustments to Step 1 base figure.

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

The Sponsor will adjust the base figure due to disparity studies in the area, the capacity of DBE's to perform the types of work the Sponsor has available, past DBE participation on similar projects, and other factors that may affect the number of DBE's available for the project.

Past History Participation

There is no available data of previously completed projects similar to anticipated projects which would contribute to DBE projections. Therefore, the DBE goal will be taken as the average of the base figures.

The proposed Overall DBE Goals are as follows:

- Fiscal Year 2016 – 0.70
- Fiscal Year 2017 – No DBE eligible projects
- Fiscal Year 2018 – No DBE eligible projects

Our proposed overall three year goal will be reflected as an average of the three years. Since there are no DBE eligible projects in 2017 or 2018, those years will be excluded from the calculation.

- Average of the three years = 0.70%

To arrive at an overall goal, we averaged the Step 1 base figure and the Step 2 adjustment figure for each fiscal year. In this case, there was no history of relevant past participation. Those values were averaged over the three-year goal period to arrive at an overall goal of 0.70%. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of work being awarded during this three-year period.

Further, there are no applicable disparity studies for the local market area or recent legal case information available for the State of Colorado to show any evidence of barriers to entry or competitiveness of DBEs, therefore the Sponsor found no reason to adjust the figure for this area. However, the Sponsor will continue to contact state and local

agencies to determine when a disparity study or legal case information becomes available.

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

26.51(b) (1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. The Sponsor uses the following race-neutral means to increase 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 (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work they might have otherwise performed with their own forces)
2. Providing technical assistance and other services;
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 maligning 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 State DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

The recipient estimates that in meeting its overall goal 0.70%, it will obtain 0.0% from RN participation and 0.70% through RC measures.

- *The Recipient does not have a history of over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, we are applying the entire goal of 0.70 to race-conscious participation.*

The Sponsor will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 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: Section 26.45(g)(1).

In establishing the overall goal, the Sponsor 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 Sponsor's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the Sponsor's goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

Before establishing the overall goal, a consultation meeting was held for Colorado Small Business Development Center without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor efforts to establish a level playing field for the participation of DBEs. The consultation meeting was held November 15, 2015.

Following the consultation, we published a notice on the Town of Erie website of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at town hall for 30 days following the date of the notice, and informing the public that the Sponsor and DOT will accept comments on the goals for 30 days from the date of the notice.

The following comments were received:

No comments have been received. Attached is the consultation letter that was sent to the above-noted groups.



November 20, 2015

Colorado Small Business Development Center
Otero Junior College
Humanities Building, Room 108
1802 Colorado Avenue
La Junta, Colorado 81050

RE: DBE Program and Goal Setting

We are assisting the following Colorado airports with the task of developing a DBE Program and setting goals for upcoming projects, meeting the requirements of Federal Law, 49 CFR Part 26.

- Craig-Moffat Airport
- Fremont County Airport
- La Junta Municipal Airport

We are sending you this letter as part of the consultation requirements. If you have any input for our use in preparing the program or developing goals, please provide it to us at your earliest convenience. We will be hosting a consultation teleconference on November 15, 2015 at 10:00 am. The conference call number is (605) 475-3220, with a participant access code: 1071027#. If you know of other organizations that might wish to comment or provide input to us, please provide that information as well.

Sincerely,

A handwritten signature in blue ink, appearing to read "Colin Sterns", with a long horizontal flourish extending to the right.

Colin Sterns, EIT

Airport Engineer

CC: AGC of Colorado
1114 West 7th Avenue, Suite 200
Denver, Colorado 80204

Hispanic Chamber of Commerce
924 West Colfax Avenue, Suite 201
Denver, Colorado 80204

National Association of Women in Construction
P.O. Box 7455
Colorado Springs, Colorado 80933



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 _____
(Signature) Title

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 _____
(Signature)

Date: _____

(Title)

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

Submit this page for each DBE subcontractor.

Attachment 7

Monitoring and Enforcement Mechanisms

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

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

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

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

Attachment 8

DBE Certification Application

DBE certification application can be completed online at the following link:
<https://cdot.dbesystem.com/FrontEnd/StartCertification.asp?TN=cdot&XID=2823>

Attachment 9
Colorado's UCP Agreement

Attachment 10

Small Business Participation

SMALL BUSINESS ELEMENT

The objective of the Small Business Element for the Erie Municipal Airport is to ensure that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform work for the Airport. The Airport's small business element is not a Race/Gender-Conscious program.

DBE program regulations, CFR § 26.39, that became effective on February 28, 2011, require that a *"DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors."*

For the purpose of the Airport's Small Business Element; a small business is defined as a company and/or firm in whom annual revenue does not exceed 1.5 million dollars. DBE firms are eligible for the program.

The Airport will diligently attempt to minimize fraud and abuse in the Small Business Element of the DBE Program by verifying program eligibility of firms. The Small Business Element will be reasonably monitored by the Airport.

Prime contracts and subcontracts valued under \$20,000.00 are available to small businesses as a result of the Airport Improvement Program. The Airport believes that it is currently meeting the objectives of its construction contracting activities by ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform. Quantities, specifications, and delivery schedules are arranged to facilitate small business participation. Large contracts are divided into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract. The Airport will put into place monitoring of consultant-design projects for possible small business participation and encouraging use of small businesses in projects. The Airport seeks ways to include all available contractors in its contracts. This may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases, jobs usually performed by subcontractors can be performed as an unbundled contract as a prime contract, especially if the outcome of the overall project will not be effected by the unbundled contracting opportunity.

The Airport provides opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state and local requirements. Through small business outreach, the Airport, with the assistance of the State Department of Transportation DBE program, will assist small firms to become a prime and in growing their business to eventually compete on larger contracts. The Airport will maintain a contact list comprised of businesses, partners and economic development contacts established through various educational opportunities and affiliations. Through this contact list, the Airport will be able to communicate to small businesses about upcoming contracting and subcontracting opportunities.

The Airport will maintain contacts with the Small Business Administration, area economic development companies and associations, and the State Department of Labor and the Department of Commerce in order to offer small businesses assistance in various business growing services. These partnerships will be instrumental in allowing small businesses to grow and learn more about becoming larger companies and being able to bid larger jobs at the Airport.

In addition to the above strategies, the Airport will, when possible:

- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, require 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.
- Identify 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.

The Airport will provide the following assurances:

1. That the program is authorized under state law;
2. That certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. That there are no geographical preferences or limitations imposed on any federally assisted procurement included in the program;
4. That there are no limits on the number of contracts awarded to firms participating in the program, but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
5. That aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified; and
6. That the program is open to small businesses regardless of their location (i.e., that there is no local or other geographical preference.