

DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Sioux City, Iowa, owner of the *Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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.

Alvin Lorenzo has been delegated as the DBE Liaison Officer. In that capacity, Alvin Lorenzo 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 City of Sioux City - Sioux Gateway Airport in its financial assistance agreements with the Department of Transportation.

City of Sioux City / Sioux Gateway Airport has disseminated this policy statement to the City of Sioux City / Sioux Gateway Airport / Airport Board of Trustees 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 the City of Sioux City / Sioux Gateway Airport DOT-assisted contracts. The distribution was accomplished by including this statement in our bid documents along with our advertisements in minority and majority publications.



Sioux Gateway Airport Director

4-28-22
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 City of Sioux City / Sioux Gateway Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City of Sioux City / Sioux Gateway Airport will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to DOT/FAA as follows:

The City of Sioux City / Sioux Gateway Airport will transmit to DOT/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 City of Sioux City / Sioux Gateway 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 *FAA* as instructed thereby.

Bidders List

The City of Sioux City / Sioux Gateway 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 the **City of Sioux City / Sioux Gateway**

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(s): By obtaining the Iowa DOT Certified DBE Director, utilizing past record information maintained by the **City of Sioux City / Sioux Gateway Airport** and obtaining information provided by firms quoting the project.

http://www.iowadot.gov/contracts/contracts_eeoaa.htm

Records retention and reporting:

The **City of Sioux City / Sioux Gateway Airport** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** 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 **City of Sioux City / Sioux Gateway Airport**, as a member of the Iowa 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 **City of Sioux City / Sioux Gateway Airport** has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

The **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **City of Sioux City / Sioux Gateway Airport** is in compliance with it and Part 26. **The City of Sioux City / Sioux Gateway Airport** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport**:

Alvin Lorenzo
Airport Manager
2403 Aviation Boulevard
Sioux City, IA 51111
720-365-6312
alorenzo@sioux-city.org

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of legal counsel 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 **City of Sioux City / Sioux Gateway Airport's** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the **City of Sioux City / Sioux Gateway 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.

Section 26.29 Prompt Payment Mechanisms

The City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **Sioux City-Sioux Gateway Airport**.

The City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** has selected the following method to comply with this requirement:

- You may 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 **City of Sioux City / Sioux Gateway Airport** includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the 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:

- (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-03. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.
- (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

Section 26.31 Directory

The **City of Sioux City / Sioux Gateway Airport** is a certifying member of the Iowa 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 **City of Sioux City / Sioux Gateway Airport** has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The **City of Sioux City / Sioux Gateway Airport** has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport's** DBE program.

The City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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):

- 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 our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

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

- **The City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** by the prime contractor.

Prompt Payment Dispute Resolution

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

Meetings between prime and sub, with resident project representative and/or project manager presence as appropriate.

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

(1) Alternative dispute resolution (ADR)

- If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution technique

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. [*Escalation steps should follow prime, Recipient, and Operating*

Administration (OA) in that order, but specific procedures are to be outlined by the Recipient. Procedures and wording below are basic descriptions, and should not be used verbatim.]

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **City of Sioux City / Sioux Gateway Airport** to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA/DOT contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

- *In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor*
- *Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract*
- *Pay subcontractors directly and deduct this amount from the retainage owed to the prime*
- *Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met*

The City of Sioux City / Sioux Gateway Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City of Sioux City / Sioux Gateway 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 **Alvin Lorenzo**. Contracting records are reviewed by **Alvin Lorenzo**. **The City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA.

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

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport** will use a Bidders List, the goal of another DOT recipient, DBE Directory information and Census Bureau Data as a method to determine the base figure. **The City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** market.

In establishing the overall goal, the **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City /Sioux Gateway Airport**. This notice will provide that the **City of Sioux City / Sioux Gateway 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 1st deadline.**

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

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

Project Goals

If permitted or required by the FAA 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** for calculating goals is inadequate, FAA may, after consulting with the **City of Sioux City / Sioux Gateway Airport**, adjust the overall goal or require that the goal be adjusted by the **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway Airport** fails to administer its DBE program in good faith.

The City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport** will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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.

Alvin Lorenzo 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 City of Sioux City / Sioux Gateway 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:
 - (4) Responsiveness

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

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 **City of Sioux City / Sioux Gateway Airport** that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Roger Bierbaum, Office of EEO Contracts, 800 Lincoln Way, Ames, Iowa 50010, (515) 239-1414, roger.bierbaum@dot.iowa.gov. 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 so. 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport 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 City of Sioux City / Sioux Gateway Airport** makes all certification decisions based on the facts as a whole.

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

*Iowa Department of Transportation
Office of EEO Contracts*

800 Lincoln Way
Ames, Iowa 50010
(515) 239-1414
roger.bierbaum@dot.iowa.gov

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 City of Sioux City / Sioux Gateway Airport is the member of a Unified Certification Program (UCP) administered by Iowa Department of Transportation. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. The **City of Sioux City / Sioux Gateway Airport** will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of the **City of Sioux City / Sioux Gateway Airport** that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

"No Change" Affidavits and Notices of Change

The UCP requires all DBEs owners to provide a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with the DBE firm's original application for certification.

The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following: [*This is sample language consistent with the regulatory provision. You may substitute other language consistent with the rule.*]:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which [*name of DBE firm*] has provided written notice to

the **City of Sioux City / Sioux Gateway Airport** pursuant to §26.83(i). [*Name of DBE firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The UCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The UCP will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth, business size), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to a member of this State's UCP ("State B") for DBE certification, the UCP will follow the procedures defined in §26.85 [*specify §26.85(b) or (c) as appropriate*].

Section 26.86 Denials of Initial Requests for Certification

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until [*select number of months up to 12*] have passed from such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Removal of a DBE's Eligibility

In the event the **City of Sioux City / Sioux Gateway Airport** proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. Attachment 7 to this program sets forth these procedures in detail. To ensure separation of functions in a proposal to remove a firm's eligibility, the **City of Sioux City / Sioux Gateway Airport** has determined that IA/DOT will serve as the decision-maker in the required proceedings. **The City of Sioux City / Sioux Gateway Airport** has established an administrative "firewall" to ensure that IA/DOT will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification.

The City of Sioux City / Sioux Gateway Airport will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), the **City of Sioux City / Sioux Gateway Airport** will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension **as long as the DBE is performing a commercially useful function under the existing contract.**

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the **City of Sioux City / Sioux Gateway Airport** information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of the **City of Sioux City / Sioux Gateway Airport** to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of the **City of Sioux City / Sioux Gateway Airport** in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of the **City of Sioux City / Sioux Gateway Airport**, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) the **City of Sioux City / Sioux Gateway Airport** failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights

1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Sioux City / Sioux Gateway Airport

The City of Sioux City / Sioux Gateway Airport understands that if it fails to comply with any requirement of this part, the **City of Sioux City / Sioux Gateway 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. *[Program should summarize applicable state and local law, such as state freedom of information laws and how they apply.]*

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 City of Sioux City / Sioux Gateway 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 City of Sioux City / Sioux Gateway Airport** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

[List and append]

- 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

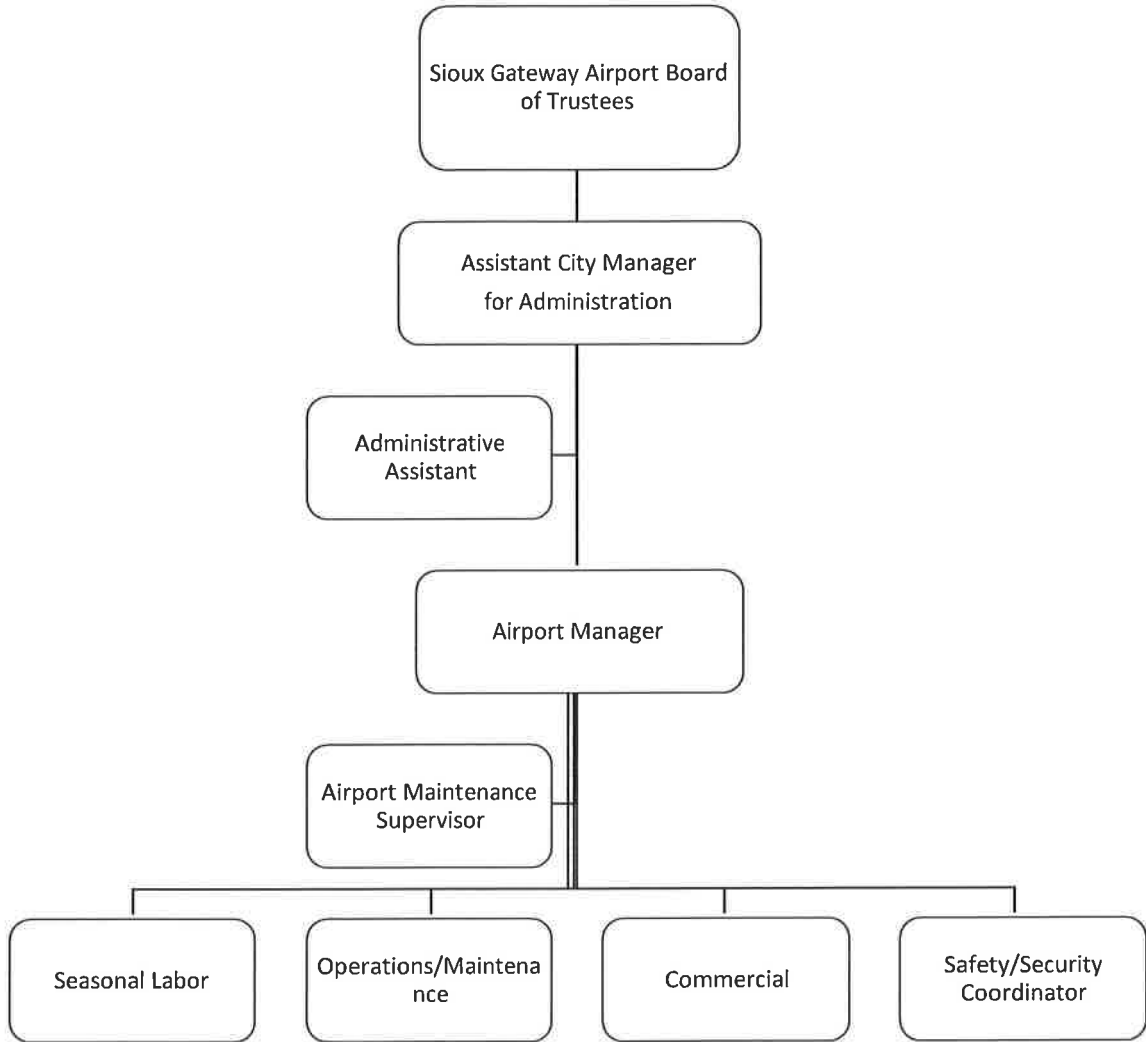
ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

Firm Name	Firm Address/ Phone #	DBE or Non- DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

ATTACHMENT 4

Iowa DBE Directory

<https://secure.iowadot.gov/DBE/Home/Index/>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Sioux City, Sioux Gateway Airport

Goal Period: FY-2022-2023-2024 – October 1, 2021 through September 30, 2024)

DOT-assisted contract amount:	FY-2022	\$ <u>850,000</u>
	FY-2023	\$ <u>2,200,000</u>
	FY-2024	\$ <u>8,750,000</u>
	Total	\$<u>11,800,000</u>

Overall Three-Year Goal: 3.4%, to be accomplished through 1.6% RC and 1.8% RN
(Note: the goal may be reflected as (1) an average of the three years; (2) three-year Median; or (3) weighted percentage)

Total dollar amount to be expended on DBEs: \$3,987,800

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

Contracts Fiscal Year #1

1. Acquire Snow Removal Equipment (Rotary Plow) - \$850,000

Contracts Fiscal Year #2

1. Terminal Apron Rehabilitation – \$1,100,000
2. Master Plan / ALP Update – \$1,100,000

Contracts Fiscal Year #3

1. South GA Apron Reconstruction Phase 1 - \$5,250,000
2. Runway 13-31 Reconstruction Design - \$3,500,000

Market Area: *The market area is the State of Iowa with increased focus on Woodbury County*

Step 1. Actual relative availability of DBEs

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

**SIOUX GATEWAY AIRPORT
Snow Removal Equipment**

FY 2022-2024 DBE GOAL

This project is expected to utilize \$850,000 in AIP FY 2022 funds for the Improvements

Weighted value based on Engineer's Estimate

	NAICS CODE	% of Project	**DBE *RWA	Non-DBE RWA	Anticipated DBE Participation
Snow Removal Equipment	526132	94.1%	0	10	0.00%
Trucking	484220	5.9%	18	90	1.18%
	TOTAL	100%	18	100	1.176%

Total Project Cost	\$	850,000.00
Anticipated DBE Participation		1.18%
***DBE Adjustment Factor		2.00
DBE Project Goal		2.4%
Race/Gender-Neutral		1.4%
Race/Gender-Conscious		1.0%

*RWA = Ready Willing and Able

**DBE= Disadvantaged Business Enterprise

***DBE Adjustment Factor = Factor based on the following

- Previous Years Participation
- Current Bidding Climate
- Project Schedule
- Project Size

**SIOUX GATEWAY AIRPORT
TERMINAL APRON REHAB**

FY 2022-2024 DBE GOAL

This project is expected to utilize \$1,100,000 in AIP FY 2023 funds for the Improvements

Weighted value based on Engineer's Estimate

	NAICS CODE	% of Project	**DBE *RWA	Non-DBE RWA	Anticipated DBE Participation
Architect/Engineering	541330	16.4%	0	10	0.00%
Geotechnical Engineering	541330	0.2%	0	10	0.00%
Erosion Sediment Control	561730	0.2%	14	55	0.05%
Site Work/Demolition	238910	39.8%	8	45	7.08%
Concrete Paving	23731	37.5%	1	6	6.26%
Trucking	484220	5.5%	18	90	1.09%
Survey	213112	0.5%	6	30	0.09%
Total		100%	47	246	14.564%

Total Project Cost	\$ 1,100,000.00
Anticipated DBE Participation	14.56%
***DBE Adjustment Factor	0.25
DBE Project Goal	3.6%
Race/Gender-Neutral	2.0%
Race/Gender-Conscious	1.6%

*RWA = Ready Willing and Able

**DBE= Disadvantaged Business Enterprise

***DBE Adjustment Factor = Factor based on the following

- Previous Years Participation
- Current Bidding Climate
- Project Schedule
- Project Size

**SIOUX GATEWAY AIRPORT
MASTER PLAN / ALP**

FY 2022-2024 DBE GOAL

This project is expected to utilize \$1,100,000 in AIP FY 2023 funds for the Improvements

Weighted value based on Engineer's Estimate

	NAICS CODE	% of Project	**DBE *RWA	Non-DBE RWA	Anticipated DBE Participation
Architect/Engineering Survey	541330	75.0%	0	10	0.00%
	213112	25.0%	6	30	5.00%
	Total	100%	6	40	5.000%

Total Project Cost	\$ 1,100,000.00
Anticipated DBE Participation	5.00%
***DBE Adjustment Factor	0.75
DBE Project Goal	3.8%
Race/Gender-Neutral	2.6%
Race/Gender-Conscious	1.2%

*RWA = Ready Willing and Able

**DBE= Disadvantaged Business Enterprise

***DBE Adjustment Factor = Factor based on the following

- Previous Years Participation
- Current Bidding Climate
- Project Schedule
- Project Size

**SIOUX GATEWAY AIRPORT
SOUTH GENERAL AVIATION APRON RECONSTRUCTION PHASE 1**

FY 2022-2024 DBE GOAL

This project is expected to utilize \$5,250,000 in AIP FY 2024 funds for the Improvements

Weighted value based on Engineer's Estimate

	NAICS CODE	% of Project	**DBE *RWA	Non-DBE RWA	Anticipated DBE Participation
Architect/Engineering	541330	16.2%	0	10	0.00%
Geotechnical Engineering	541330	1.0%	0	10	0.00%
Erosion Sediment Control	561730	1.1%	14	55	0.29%
Site Work/Demolition	238910	51.8%	8	45	9.21%
Asphalt Paving	237310	26.4%	0	4	0.00%
Trucking	484220	2.3%	18	90	0.46%
Survey	213112	1.2%	6	30	0.25%
Total		100%	46	244	10.205%

Total Project Cost	\$ 5,250,000.00
Anticipated DBE Participation	10.21%
***DBE Adjustment Factor	0.33
DBE Project Goal	3.4%
Race/Gender-Neutral	1.8%
Race/Gender-Conscious	1.6%

*RWA = Ready Willing and Able

**DBE= Disadvantaged Business Enterprise

***DBE Adjustment Factor = Factor based on the following

Previous Years Participation

Current Bidding Climate

Project Schedule

Project Size

**SIOUX GATEWAY AIRPORT
RUNWAY 13-31 RECONSTRUCTION DESIGN**

FY 2022-2024 DBE GOAL

This project is expected to utilize \$3,500,000 in AIP FY 2024 funds for the Improvements

Weighted value based on Engineer's Estimate

	NAICS CODE	% of Project	**DBE *RWA	Non-DBE RWA	Anticipated DBE Participation
Architect/Engineering	541330	98.2%	0	10	0.00%
Geotechnical Engineering	541330	0.4%	0	10	0.00%
Survey	213112	1.4%	6	30	0.29%
Total		100%	6	50	0.286%

Total Project Cost	\$	3,500,000.00
Anticipated DBE Participation		0.29%
***DBE Adjustment Factor		6.00
DBE Project Goal		1.7%
Race/Gender-Neutral		1.2%
Race/Gender-Conscious		0.7%

*RWA = Ready Willing and Able

**DBE= Disadvantaged Business Enterprise

***DBE Adjustment Factor = Factor based on the following

- Previous Years Participation
- Current Bidding Climate
- Project Schedule
- Project Size

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 in order 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:

Snow Removal Equipment – Goal 1.18% Actual 2.0%

Terminal Apron Rehab – Goal 14.56% Actual 3.6%

Mater Plan / ALP Update – Goal 5.00% Actual 3.8%

South GA Apron Reconstruction – Goal 10.21% Actual 3.4%

Runway 13-31 Reconstruction Design – Goal 0.29% Actual 1.7%

Arranging this historical data from low to high, the median is 0.75% Actual Participation.

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of 3.4%. The **City of Sioux City / Sioux Gateway 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.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

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

The City of Sioux City / Sioux Gateway Airport will meet the maximum feasible portion of the overall goal by using RN means of facilitating 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;
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

The City of Sioux City / Sioux Gateway Airport estimates that in meeting the established overall goal of 3.4%, it will obtain 2.6% from RN participation and 0.8% through RC measures.

This breakout is based on:

- a) In FY-16, the **City of Sioux City / Sioux Gateway Airport** accomplishments exceeded the goal by 2.6%, which may be construed as evidence of race-neutral participation. Therefore, 2.6% of the 3.4% goal is expected through race-neutral means and the remaining 0.8% is to be obtained by race-conscious measures.

The City of Sioux City / Sioux Gateway Airport will adjust the estimated breakout of RN and RC 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 **City of Sioux City / Sioux Gateway 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 **City of Sioux City / Sioux Gateway 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 *face-to-face meeting*, which was held on February 24, 2022 at 9:00 A.M. CST at the Sioux Gateway Airport, 2nd floor conference room, 2403 Aviation Boulevard, Sioux City, Iowa, 51111

The following comments were received during the course of the consultation:
No comments were received.

A notice of the proposed goal was published on the **City of Sioux City / Sioux Gateway Airport** official website before the methodology was submitted to FAA.

Following the consultation, a notice was published in the Sioux Journal regarding the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the **City of Sioux City / Sioux Gateway Airport** offices for 30 days following the date of the notice, and informing the public that the **City of Sioux City / Sioux Gateway Airport** will accept comments on the goals for 30 days from the date of the notice.

If the proposed goal changes following review by FAA, the revised goal will be posted on the **City of Sioux City / Sioux Gateway Airport** official website.

Notwithstanding paragraph (f)(4) of §26.45, the **City of Sioux City / Sioux Gateway Airport** proposed goals will not be implemented until this requirement has been met.

PUBLIC NOTICE

The **City of Sioux City / Sioux Gateway Airport** hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 3.4% for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2022 through 2024.

The proposed goal and its attendant methodology are available for inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the Sioux Gateway Airport, 2403 Aviation Boulevard, Sioux City, Iowa, 51111 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Alvin Lorenzo, Airport Manager
City of Sioux City / Sioux Gateway Airport
2403 Aviation Boulevard
Sioux City, IA 51111
720-365-6312
alorenzo@sioux-city.org

AND

Ofelia Medina
FAA Western-Pacific Regional Office - Office of Civil Rights
777 S. Aviation Blvd, Suite #150
El Segundo, CA 90245
424-405-7205
Ofelia.Medina@faa.gov

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:

Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

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

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Dealer/Manufacturer**

**Percentage is to be used only in negotiated procurements, including design-build contracts*

***For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

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

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, 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 **City of Sioux City / Sioux Gateway Airport** 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.

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 Form
(New form October 2, 2014)

For UCP certification and application procedures contact:

Iowa DOT-Office of Contracts
800 Lincoln Way
Ames, Iowa 50010
515-239-1414

<https://forms.iowadot.gov/FormsMgt/External/650194.pdf>

ATTACHMENT 9
State's UCP Agreement

<https://iowadot.gov/civilrights/documents/DBEProgram.pdf>

ATTACHMENT 10
Small Business Element

1. Objective/Strategies

- To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

- Small Business: Any enterprise which is located in the state of Iowa, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years.

3. Verification

- Small Businesses will be verified using the State DBE / TSB Directory

4. Monitoring/Record Keeping

- The **City of Sioux City / Sioux Gateway Airport** will monitor the Small Business Element of this DBE and collect records on the participation in program.

5. Assurance

1. The program is authorized under state law;
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. No limits are placed 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; and
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).