



CITY OF DURANGO

and

LA PLATA COUNTY

AIRPORT

DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Durango has established a Disadvantaged Business Enterprise (DBE) program for the Durango-La Plata County Airport in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Durango has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Durango 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 Durango-La Plata County Airport to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate DOT- FAA – assisted contracts. It is also the policy of the City of Durango and the and La Plata County:

1. to ensure nondiscrimination in the award and administration of DOT/FAA - assisted contracts;
2. to create a level playing field on which DBEs can compete fairly for DOT/FAA-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/FAA - assisted contracts;
6. to assist the development of firms that can compete successfully in the marketplace outside the DBE Program;
7. to promote the use of DBEs in all types of federally – assisted contracts and procurement activities;
8. to provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Contracts and Grants Specialist, Andrea Hespe, of the City of Durango Finance Department has been designated as the DBE Liaison Officer (DBELO) for the Durango-La Plata County Airport . In that capacity, the Contracts and Grants Manager 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 Durango

in its financial assistance agreements with the Department of Transportation and the Federal Aviation Administration.

The City of Durango has disseminated this policy statement to the City Council, the Airport Advisory Board, all departments, and components of the City organization, as well as to stakeholders ~ including airport customers. The City will ensure distribution of this statement and the program as a whole to DBE and non-DBE business communities that perform work for the Durango-La Plata County Airport under DOT / FAA-assisted contracts by advertising on the Durango-La Plata County Airport social media platforms. The documents will be uploaded in their entirety on to the City's website at <https://www.durangogov.org>



José Madrigal, City Manager

6.9.21

Date

SUBPART A – GENERAL REQUIREMENTS

NOTE 1: *This Program is numbered by Sections. The Section numbers and topics therein correlate directly to the Code of Federal Regulations (CFR). Specifically, they correlate with 49 CFR Part 26. For that reason, the program's numbering in this document will jump sequentially at times. For instance, Section 26.5 (immediately below) is followed by Section 26.7. This is intentional for creating a document that parallels the Code of Federal Regulations as closely as possible. This document is not incomplete or mis-numbered.*

NOTE 2: *While the City of Durango and La Plata County share governance of the airport at issue, adoption and administration of this program is done through the City of Durango.*

Wherever the City of Durango is identified in this document or its attachments, it should be interpreted to include La Plata County, and vice versa, except where personnel or positions are given specific responsibilities.

Section 26.1 Objectives

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

Section 26.3 Applicability

The Durango-La Plata County Airport is the recipient of Federal Aviation Administration funds authorized under 49 USC 47101, et seq.

Section 26.5 Definitions

The City of Durango and La Plata County will adopt the definitions contained in Part 26, §26.5 for this program.

Section 26.7 Non-discrimination Requirements

The City of Durango 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 Durango 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.

The City of Durango acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE Airport grant assurances.

Section 26.11 Record Keeping Requirements

Reporting. §26.11 (b)

The City of Durango will report DBE participation to the DOT / FAA as follows:

The City will transmit to the FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, as described in Appendix B to Part 26. The City will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format.

Bidders List: §26.11(c)

The City of Durango will create and maintain bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on FAA-assisted contracts.

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 our DOT – assisted contracts for use in helping to set our overall goals.

The bidder list will include the name, address, DBE (or) non-DBE status, age, and annual gross receipts of firms.

The City of Durango, through its finance and airport management staff, will collect this information in the following way(s):

- A contract clause that requires the bidder to supply information on DBE contractors that provided quotes.
- A recipient directed survey to obtain additional information not obtained at the time of bid.
- A notice in all solicitations, and widely disseminated request to firms quoting on subcontracts to report information directly to the recipient.

A Sample Bidders List is found at **Attachment 3.**

Section 26.13 Federal Financial Assistance Agreement

The City of Durango has signed the following assurances, applicable to all DOT/FAA -assisted contracts and their administration:

Assurance: §26.13(a). Each financial assisted agreement the City of Durango signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The City of Durango shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT/FAA assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT/FAA - assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT/FAA, 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 Durango of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: §26.13b

The City of Durango will ensure that the following clause is placed in every DOT / FAA- assisted contract and subcontract, including 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 FAA/DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Durango 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. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates to our program so long as we remain in compliance. However, we will submit significant changes in the program for FAA/DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The City of Durango have designated the following individual as our DBE Liaison Officer (DBELO):

Andrea Hespe
Grants and Contracts Specialist
Finance Department
City of Durango
949 E. 2nd Avenue
Durango, CO 81301
Phone: 970-375-5043
Fax: (970) 375-5038
Email: drea.hespe@durangogov.org

The DBELO is responsible for developing, implementing, and monitoring all aspects of the DBE program and ensuring that the City of Durango complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has multiple finance staff, a purchasing agent, the grants coordinator, the airport director, and legal counsel to assist in the administration of the program. The duties and responsibilities of the DBELO include, but are not limited to, the following:

1. Gathering and reporting statistical data and other information as required by FAA/DOT.
2. Reviewing third party contracts and purchase requisitions for compliance with this program.
3. Working with all departments to set overall annual goals.
4. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifying contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).

6. Analyzing City of Durango's progress toward goal attainment and identify ways to improve progress.
7. Participating in pre-bid meetings.
8. Advising the CEO\governing body on DBE matters and achievement.
9. Chairing the DBE Advisory Committee, if such a committee is appointed by the City Manager.
10. Determining contractor compliance with good faith efforts.
11. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Planning and participating and participate in DBE training seminars.
13. Acting as liaison to the Uniform Certification Process in Colorado. The Colorado Department of Transportation will certify the DBEs.
14. Providing outreach to DBEs and community organizations to advise them of opportunities.
15. Maintaining the City of Durango's updated directory on certified DBEs. (This shall be based on the Uniform Certification Process in Colorado and the State program's determination and record updates.)

Section 26.27 DBE Financial Institutions

It is the policy of the City of Durango 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 City of Durango is not aware of any such institutions in Southwestern Colorado. The City of Durango will review DBE registrations for Durango and surrounding areas once per year when reviewing and updating this program for the purpose of identifying possible DBE Financial Institutions.

Section 26.29 Prompt Payment Mechanisms

The City of Durango 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 (Colorado C.R.S. 24-91-103(2)), and local law.

In accordance with 49 CFR §26.29, the City of Durango 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 City of Durango.

The City of Durango 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 Durango has selected the following method to comply with this requirement:

- The City of Durango 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.

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

a. From the total of the amount determined to be payable on a partial payment, five percent (5%) 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 City of Durango in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the City of Durango for partially accepted work.

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

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

c. When at least 95% of the work has been completed to the satisfaction of the

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

Monitoring Payments to DBEs.

The City of Durango 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 City of Durango or DOT/FAA. This reporting requirement also extends to any certified DBE subcontractor.

The City of Durango 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.

Section 26.31 Directory

The City of Durango uses the State of Colorado DBE Directory maintained by the State's Unified Certification Program.

The directory identifies 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, Unified Certification Program updates the DBE Directory at least once every year.

The City of Durango makes the DBE Directory available by providing the directory web address information, which is as follows: <https://coucp.dbesystem.com>.

The City of Durango will further personally assist any contractor in identifying DBEs by providing a printed directory for DBEs in Durango and the surrounding areas. To obtain this printed list from the City of Durango, please contact:

Andrea Hespe
Grants and Contracts Specialist
Finance Department
City of Durango
949 E. 2nd Avenue
Durango, Colorado 81301
Phone: (970) 375-5043
Fax: (970) 375-5038
Email: drea.hespe@durangogov.org

Finally, a comprehensive, Colorado statewide list is available from:

CDOT Civil Rights & Business Resource Center
2829 W. Howard Place, 1st Floor
Denver, CO 80204
303-757-9234
800-925-3427 (toll free)
303-952-7088 (fax)

Section 26.33 Over-concentration

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

The City of Durango has identified that there exists a shortages of both DBEs to perform work, as well as a shortage of the types of work DBEs perform in the Durango, La Plata County area as a whole (not just the airport) – which is a rural, mountain area.

The airport is small with limited airline service and business opportunities; the airport's composition in structure and footprint, projects, and business opportunities mirror the nature of its rural, mountain location.

Section 26.35 Business Development Programs

The City of Durango provides Business Development resources to assist firms in gaining the ability to compete successfully in the marketplace. These resources are shown on the City of Durango's website:

<https://www.durangogov.org/857/Business-Development>

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Durango 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 Durango's DBE program.

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

- The City of Durango will notify project subcontractors, via email, when issuing prime contractor payments to alert them to the start of the 30-day clock for payment.

The City of Durango will require a monthly payment summary form from prime contractors with the submission of each monthly pay application. The purpose of the monthly payment summary form is for the prime contractor to show all payments due to subcontractors, including suppliers. Failure to submit a complete and accurate monthly payment summary form shall be grounds for the Owner to withhold subsequent payments or retainage to the Contractor. The form will require the following information:

- Subcontractor
- Payment date to subcontractor
- Subcontractor invoice amount
- Payment amount
- Whether work is completed
- Whether retainage is released

The City of Durango 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 Durango'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 Durango or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

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

Prompt Payment Dispute Resolution

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

- To initiate the dispute resolution process the Contractor shall provide a written notice of dispute to the Project Engineer/Manager upon the failure of the Parties to resolve the issue through negotiation.
- Disputes from subcontractors, material suppliers, or any other entity not party to the Contract shall be submitted through the Contractor. Review of a pass-through dispute does not create privity of Contract between Owner and the subcontractor.
- All disputes and claims shall be submitted in writing within 45 days following payment to prime contractor and shall include:
 - The date of the dispute
 - The nature of the circumstances which caused the dispute
 - A statement explains in detail the specific provisions of the Contract and any basis, legal or factual, which support the dispute
- Within 15 days after receipt of the dispute, the Project Engineer/Manager will meet with the Contractor and subcontractor to discuss the merits of the dispute. Within 7 days after this meeting the Project Engineer will issue a written decision on the merits of the dispute.
- If the dispute is determined to have merit, the Contractor and Project Engineer/Manager will determine the adjustment in payment, schedule, or both within 30 days.

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

- (1) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
 - The Contractor shall submit the monthly payment form, along with the project schedule updates. Failure to submit a complete and accurate monthly payment form shall be grounds for the Owner to withhold subsequent payments or retainage to the Contractor and may make payments to subcontracts on behalf of the Owner out of the withheld retainage.
 - The Owner will monitor the progress of the Contractor throughout the project to ensure that the Contractor's DBE commitments are being fulfilled. Modifications to the commitments must be approved by the Owner. The Owner may withhold payment or seek other contractual remedies if the Contractor is not complying with the requirements of this

provision. Upon completion of the Contract, the Owner may reduce the final payment to the Contractor if the Contractor has failed to fulfill the commitments.

Prompt Payment Complaints

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

- The affected subcontractor should inform both the DBELO, Project Engineer/Manager and Contractor regarding payment issues. If the Contractor is unresponsive the DBELO will handle payment discrepancies directly with the Contractor on behalf of the subcontractor.
- If the DBELO is unable to resolve the complaint in a timely and meaningful manner, the affected subcontractor may contact the Finance Director.
- 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 Durango 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
- Contract termination

The City of Durango will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City of Durango 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 DBELO, Project Engineer/Manager, Inspectors, and Engineering Consultants. Contracting records are reviewed by DBELO, Project Engineer/Manager, Finance Department, City Attorney and City Manager. The City of Durango 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 Durango-La Plata County Airport has adopted the Colorado Department of Transportation's Emerging Small Business Program. The details of the program may be found on the following website:

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

The Small Business Program will 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. We will actively implement the program elements to foster small business participation, doing so is a requirement of good faith implementation of our DBE program.

The Durango-La Plata County Airport will utilize the ESB directory and small businesses will be verified through this directory.

As program is developed by the state and is authorized under state law. No geographic preferences are given to bidders. There are no limits to the number of contracts awarded to firms. The Durango-La Plata County Airport will make efforts to encourage small business participation and encourage those small businesses eligible to become DBE certified.

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.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City of Durango will establish an overall DBE goal covering a three-year federal fiscal year period if the City is believed to be the recipient of DOT /FAA – funded prime contracts the cumulative total of which exceeds \$250,000.00 during any one or more of the reporting fiscal years within the three-year goal period.

The Durango-La Plata County Airport is a Non-Hub Primary Airport.

In accordance with §26.45(f), the City of Durango will submit its Overall Three-year DBE Goal to the FAA by August 1 of the applicable year, as required by and posted to the website of:

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the two-step process specified in §26.45. If the City of Durango 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, the City of Durango will not develop an overall goal; however, this DBE program will remain in effect and the City of Durango will seek to fulfill the objectives outlined in §26.1.

STEP 1: Pursuant to §26.45(c), the first step is to determine the relative availability of DBEs in the market area, “Base Figure”. The City of Durango will use Colorado UCP DBE Directory and US Census Bureau Data as a method of determining its base figure.

STEP 2: Once the City has calculated a base figure, the City will examine all of the evidence available in its 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.

If an adjustment is deemed 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 based on past participation. The City may conduct a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts. Such a study would factor into adjustments deemed appropriate.

If the City of Durango uses a bidders list, it will do the following: (1) Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on the DOT-assisted prime contracts or subcontracts in the past three years. (2) Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. (3) 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 the market.

When using this approach, the City 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 the City of Durango chooses to use 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 market. The City 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 §26.45(c)(2) is not an acceptable alternative means of determining the availability of DBEs.

Pursuant to §26.45(g)(1), in establishing the overall goal, the City of Durango will provide for consultation and publication.

Consultation will include minority, women's and general contractors' groups, community organizations, and other officials or organizations which could be expected to have information concerning availability of disadvantaged and non – disadvantaged businesses, and the effects of discrimination on opportunities for DBEs and the City of Durango'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 City of Durango's goal setting process, and it will occur before the City is required to submit its goal methodology to the operating administration for review pursuant to paragraph (f) of this section.

The City will document in its goal submission the consultation process that was undertaken.

Notwithstanding paragraph §26.45(f)(4), the City will not implement our proposed goal until the City has complied with this requirement.

In addition, the City of Durango will publish a notice announcing its proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on the City's official internet web site and may be posted in any other sources, including minority – focused media, trade associations, etc. If the proposed goal changes following review by the operating administration, the revised goal will be posted on the City's internet web site. The City will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at its principal office and that the City of Durango and DOT / FAA will accept comments on the goals for 30 days from the date of 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 City's overall three – year goal submission to DOT / FAA include a summary of information and comments received, if any, during this public participation process and the City's responses.

The City will begin using its 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, the City will express its 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. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year addressed in 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 project goal, is calculated.

If the City of Durango establishes a goal on a project – basis, the City 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 City of Durango understands that it is not required to obtain prior operating administration concurrence with its overall goal. However, if the operating administration's review suggests that the City's overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting, adjust the City's overall goal or require that the City adjust it. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the US DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to Section 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 and will be submitted separately to FAA on the 3-year goal cycle.

Section 26.47 Failure to meet overall goals

The City of Durango 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 Durango fails to administer its DBE program in good faith.

The City of Durango 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 Durango will maintain an approved DBE Program and overall DBE goal, if applicable, as well as administer its DBE Program in good faith to be considered in compliance with this part.

If the City of Durango awards and commitments shown on its Uniform Report of Awards of Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the City will do the following in order to be regarded by the DOT/FAA as implementing its DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems the City has identified in its analysis and to enable us to meet fully its goal for the new fiscal year.

(3) The City of Durango will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph [c] (1) and (2) of this section. The City will retain a copy of the analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

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

The City of Durango will meet the maximum feasible portion of its overall goals 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 includes, but is not limited to:

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.
2. Providing assistance in overcoming limitations such as inability to obtain bonding and financing 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 communication programs on contracting procedures and specific contract opportunities.
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capabilities 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 which DBE participation has been historically low.
8. Ensuring distribution of the City DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

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 at Attachment 5 and will be submitted separately to the FAA on the 3-year goal cycle.

The City of Durango 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.

Section 26.51(d-g) Contract Goals

If the City's approved projection under paragraph (c) of §26.51 of this section estimates that it can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order to meet the City's overall goal.

The City will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The City 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 City of Durango will express our contract goals as a percentage of the Federal share 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 following City staff 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:

Andrea Hespe
Grants and Contracts Specialist
DBELO
Finance Department
City of Durango
949 E. 2nd Street

Durango, CO 81301
Phone: (970) 375-5043
Fax: (970) 375-5038
Email: drea.hespe@durangogov.org

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

Information to be submitted (§26.53(b))

In City solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, the City will require the following:

- (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 the 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 (see 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 City will require that the bidder / offeror present the information required by paragraph (2) of this section:
 - (i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; City of Durango treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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 contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (§26.53(d))

Within 5 working days of being informed by the City of Durango that it is not responsive 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:

Devon Schmidt
Budget and Strategic Planning Manager
Finance Department
City of Durango
949 E. 2nd Avenue
Durango, CO 81301
Phone: (970) 375-5040
Email: devon.schmidt@durangogov.org

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the Director of Finance to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

The Director of Finance 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 and when a DBE is replaced on a contract (§26.53(f) & (g))

The City of Durango will include in each prime contract a provision stating:

The contractor shall utilize the specific DBE(s) listed to perform work and supply materials for which each is listed, unless the contractor obtains your written consent as provided in this paragraph (§26.53(f)); and

That, unless our consent is provided under this paragraph (§26.53(f)), 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 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 City will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good faith efforts.

The City will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of §26.53(or an approved substitute DBE Firm) without the City's prior written consent. 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 for those of an affiliate, a non-DBE firm, or with another DBE firm.

The City will provide such written consent only if the City agrees, for reasons stated in its 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 the 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 work projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The City has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to the City a 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 we have determined compels the termination of the DBE contractor. 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 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 City, of its intent to request to terminate and/or substitute, as well as the reason for the request

The Prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise the City and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the prime contractor's action. If required in a particular case, as a matter of public necessity (e.g., safety), the City 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.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor

obtains prior written consent of The City of Durango 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 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 the City requests documentation from the contractor under this provision, the contractor shall submit the documentation to the City within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the contractor, and the recipient shall provide a written to the contractor stating whether or not good faith efforts have been demonstrated.

The City will include in each prime contract the contract clause required by Section 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 we deem 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 City's Grants and Management Office will 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.

Sample Bid Specification

The requirement of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Durango to practice nondiscrimination based on race, color, sex, or national origin in the award of performance of this contract. All firm 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 .4% [as determined in the goal calculation at Attachment 5] 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 City of Durango 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 the City established for the procurement. The good faith efforts shall be documented by the contractor.

If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation to the City within five (5) days, which may be extended for an additional five (5) 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.

The City of Durango will include in each prime contract the contract clause required by §26.13(b) wherein it states 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 City deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply with the time specified, the City's grants and contracts management will issue a "stop order", stopping all or part of payments/work etc. until satisfactory action is taken (to the extent needed to meet the contract goal). The City will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

If the contractor fails or refuses to comply in the time specified, the City's contracts and grants office will issue a "stop order", stopping all or part of payment/work, etc. until satisfactory action is taken. If the contractor still fails to comply, the Contracts and Grants Manager, or the Finance Director, may issue a termination notice for default proceeding.

A 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 City of Durango will count DBE participation toward overall and contract goals as provided in §26.55.

The City of Durango will not count the participation of a DBE subcontract toward the contractor’s final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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 City will not count the firm’s participation toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in §26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for the category, as adjusted by the United States Small Business Administration .

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Durango does not certify DBEs. The City of Durango relies upon the certifications of the Colorado Unified Certification Program for determining DBE eligibility and status.

To be certified as a DBE by the Colorado Unified Certification Program, an applicant must satisfy the certification standards found at Subpart D of Part 26,

For information on Certification Standards, please contact:

CDOT Civil Rights & Business Resource Center
2829 W. Howard Place, 1st Floor
Denver, CO 80204
Phone: (303) 757-9234
Toll Free: (800) 925-3427
Fax: (303) 952-7088

The Uniform Certification Application form and documentation requirements are found in Attachment 9 to this program.

SUBPART E- CERTIFICATION PROCEDURES

The City of Durango will confirm registration with the Colorado Unified Certification Program during the review process when considering responses to RFPs or IFBs, or otherwise contracting (including renewing, extending or amending an existing contract) with an entity asserting DBE qualifications.

The City will re-confirm certification with the Department of Transportation and Colorado Unified Certification Program annually in all cases.

A change in status may be grounds for cancellation of the contract with a once –certified DBE.

For information regarding the Certification Procedures for the Colorado DOT Unified Certification Program, please contact:

CDOT Civil Rights & Business Resource Center
2829 W. Howard Place, 1st Floor
Denver, CO 80204
Phone: (303) 757-9234
Toll Free: (800) 925-3427
Fax: (303) 952-7088

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Durango

The City of Durango understands that if it fails to comply with any requirement of this part, the City of Durango 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

The City of Durango will safeguard from disclosure to third party 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 City of Durango will not release any 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 (*which Durango does not accept because Durango does not do certifications*) and any supporting documentation. However, should Durango have DBE application materials, and should those materials be requested by DOT in any certification appeal proceeding under §26.98 of this part, or by another state in which the individual's firm has applied for certification under 26.85, the City of Durango will share the information.

All participants in the City's DBE program are required to cooperate fully and promptly with DOT and recipient compliance reviews, investigations, and other requests for information.

Failure to do so shall be grounds for appropriate action against the party involved.

The City of Durango, 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 the City of Durango violates this prohibition, the City of Durango is in noncompliance with this part.

Monitoring Payments to DBEs

The City of Durango will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. Any authorized representative of the City of Durango or FAA/DOT will make these records available for inspection upon request. This reporting requirement also extends to any certified DBE subcontractor.

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

ATTACHMENTS

Attachment 1	Link to 49 CFR Part 26
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory
Attachment 5	DBE Goal Methodology to be submitted separately
Attachment 6	Demonstration of Good Faith Efforts; Forms 1 and 2
Attachment 7	Enforcement Mechanisms
Attachment 8	Certification of DBEs
Attachment 9	State's UCP Agreement
Attachment 10	Small Business Element Program

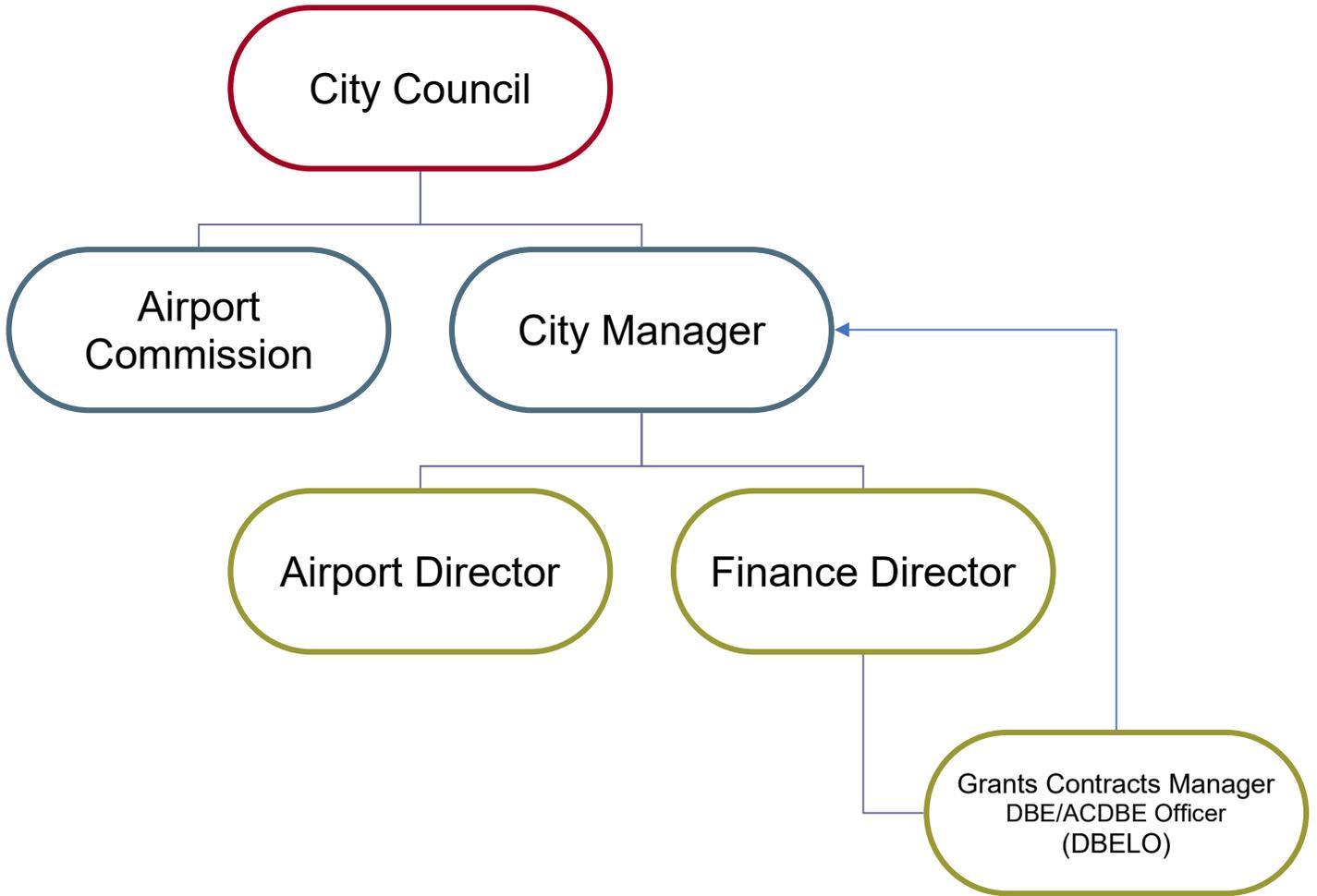
Attachment 1

The Federal Register 49 CFR Part 26: Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule can be found at the following website:

<https://www.govinfo.gov/content/pkg/CFR-2018-title49-vol1/pdf/CFR-2018-title49-vol1-part26.pdf>

Attachment 2

Organizational Chart



Attachment 3

Bidder's List Collection Form

(SAMPLE BIDDERS 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

DBE Directory

For a list of Colorado certified DBEs go to:

[*www.coloradodbe.org*](http://www.coloradodbe.org)

Or, contact:

CDOT Civil Rights & Business Resource Center
2829 W. Howard Place, 1st Floor
Denver, CO 80204
303-757-9234
800-925-3427 (toll free)
303-952-7088 (fax)

Attachment 5

DBE Goal Methodology to be submitted separately

Attachment 6

Demonstration of Good Faith Efforts- FORMS 1 and 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 a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (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

DBE Monitoring and Enforcement Mechanisms

The City of Durango 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 of Colorado, statutes annotated.

In addition, the Federal government has 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; and
3. Prosecution pursuant to 18 USC 1001.

Attachment 8

Certification Applications

The City of Durango does not certify DBEs. The City of Durango is a member of the Colorado Unified Certification Program.

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

Colorado Department of Transportation

Center for Equal Opportunity
2829 W. Howard Place, 1st Floor
Denver, CO 80204
(303) 757-9303

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

Attachment 9

State's UCP Agreement

The City of Durango and the Durango-La Plata County Airport are both members of the State of Colorado's UCP. The certification may be viewed on the following website:

<http://www.coloradodbe.org/>

Attachment 10

Small Business Element

1. Objective/Strategies

The City of Durango has adopted the Colorado Department of Transportation's Emerging Small Business Program (ESB). The details of the program may be found on the following website:

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

The Small Business Program will 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. We will actively implement the program elements to foster small business participation, doing so is a requirement of good faith implementation of our DBE program.

As program is developed by the state, is authorized under state law. No geographic preferences are given to bidders. There are no limits to the number of contracts awarded to firms. The City of Durango will make efforts to encourage small business participation and encourage those small businesses eligible to become DBE certified.

The City of Durango is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participated in procurements as contractor or subcontractors. The City of Durango will meet its objectives using a combination of the following methods and strategies:

1. In large contracts (e.g., for "megaprojects") requesting bidders on the prime contract specify elements of the contract of specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. On prime contracts not having DBE contract goals, requesting 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.

3. Definition

Small Business:

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

In order to qualify for the ESB program, the average annual gross receipts of the firm (including affiliates) cannot exceed one half of U.S. Small Business Administration's (SBA) size tables (See 13 CFR part 121) for the primary industry of the firm. Regardless of this size standard, no firm that exceeds one half of the DBE program cap shall be allowed to participation in the ESB program.

4. Verification

The Colorado Department of Transportation is responsible for verifying the eligibility of firms with the State of Colorado.

2. Monitoring/Record Keeping

The Colorado Department of Transportation will monitor and retain documentation of the small business element.

5. Assurance

The City of Durango makes the following assurances for this small business element:

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).