



# **RAPID CITY REGIONAL AIRPORT**

## **DBE PROGRAM 49 CFR Part 26**

**APPROVED:** October 23, 2012

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**Rapid City Regional Airport  
4550 Terminal Road, Suite 102  
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(605) 394-4195 or (605) 394-6190 Fax**

# **RAPID CITY REGIONAL AIRPORT DBE PROGRAM**

## **POLICY STATEMENT**

### **Objectives/Policy Statement (§§26.1, 26.23)**

The Rapid City Regional 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 Rapid City Regional Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Rapid City Regional Airport has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Rapid City Regional 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 our policy –

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

The Airport Deputy Director for Finance and Administration has been designated as the DBE Liaison Officer. In that capacity, the Airport Deputy Director for Finance and Administration 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 Rapid City Regional Airport in its financial assistance agreements with the Department of Transportation.

The Rapid City Regional Airport has disseminated this policy statement to the Airport Executive Director and the Rapid City Regional Airport Board and all the components of its organization. The airport has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by including this policy statement in all bid documents and posting on our website.

Date: 08/30/2018

\_\_\_\_\_  
Toni Broom, Deputy Director for Finance and Administration



## **SUBPART A – GENERAL REQUIREMENTS**

### **Objectives (§26.1)**

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

### **Applicability (§26.3)**

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

### **Definitions (§26.5)**

The terms used in this program have the meanings defined in 49 CFR §26.5.

### **Nondiscrimination Requirements (§26.7)**

The Rapid City Regional 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 Rapid City Regional 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.

### **Record Keeping Requirements (§26.11)**

#### **Reporting to DOT: 26.11(b)**

Since the Rapid City Regional Airport will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1, as required, if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to DOT as follows: We will transmit to FAA annually on December 1, as required by the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

#### **Bidders List 26.11(c)**

The Rapid City Regional Airport will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quoted on DOT-assisted contracts.



The purpose of this requirement is to allow use of the bidder's list approach in calculating overall goals. The bidders list will include the name, address, and DBE/non-DBE status.

The airport will collect this information in the following ways:

Each low bidder is required to provide the names of all firms they received quotes from for federal-aid contracts at the time of the bid opening on Attachment D (Form 289C, Quoters on DOT Federal-Aid Contracts). Award of the contract will not be made until receipt of this list. This contract requirement is included in Attachment A (Special Provision for Disadvantaged Business Enterprise).

### **Federal Financial Assistance Agreement (§26.13)**

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

#### Assurance: 26.13(a)

Rapid City Regional 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 recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The airport's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the airport of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

#### Contract Assurance 26.13(b)

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;



- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **DBE Program Updates (§26.21)**

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

### **Policy Statement (§26.25)**

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

### **DBE Liaison Officer (DBELO) (§26.25)**

The airport has designated the following individual as its DBE Liaison Officer:

*Toni Broom*  
*Rapid City Regional Airport*  
*4550 Terminal Road, Suite 102*  
*Rapid City, South Dakota 57703-8706*  
*(605) 394-4195 or (605) 394-6190 Fax*  
*Email: [toni.broom@rcgov.org](mailto:toni.broom@rcgov.org)*

In that capacity, Toni Broom is responsible for implementing all aspects of the DBE program and ensuring that the Rapid City Regional Airport complies with all provisions of 49 CFR Part 26. Toni Broom has direct, independent access to the Airport Executive Director concerning DBE program matters. The DBELO works with the Airport Engineer and the State of South Dakota DBE Compliance Office as support personnel on DBE issues. An organization chart displaying the DBELO's position in the organization is found in Attachment K to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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 airport's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Airport Executive Director and Airport Board on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in South Dakota.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the Rapid City Regional Airport's updated directory on certified DBEs.

#### **DBE Financial Institutions (§26.27)**

It is the policy of the Rapid City Regional 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. We contact the State of South Dakota Department of Transportation (SD-DOT) to determine if such firms exist. The SD-DOT through South Dakota Division of Banking has informed the airport that no such firms exist at this time.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer if and when firms become available.

#### **Prompt Payment Mechanisms (§26.29)**

RAP 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, RAP 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 contractors receipt of payment from RAP.

RAP 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, RAP will do the following to comply with this requirement:

RAP will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime



contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

From the total of the amount determined to be payable on a partial payment, ten percent (10%) of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section of AC No. 150/5370-10G. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Directory (§26.31)**

The Rapid City Regional Airport uses the State of South Dakota's directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, fax number, point-of-contact, and the type of work the firm has been certified to perform as a DBE. The State of South Dakota maintains and revises the Directory any time a change is made. The Directory is available by contacting Lance DeMers at (605) 773-4906 or by visiting the web page at <http://www.sddot.com/business/contractors/dbe/Default.aspx>. This directory is also available from the DBELO and Airport Engineer at all times and supplied to bidders at PreBid meetings for all projects.

### **Overconcentration (§26.33)**

*Currently N/A.*



## **Business Development Programs (§26.35)**

*Currently N/A.*

## **Monitoring and Enforcement Mechanisms (§26.37)**

The airport will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.107. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment A (Special Provision for Disadvantaged Business Enterprise) describes the requirements and enforcement means for non-compliance of prime contractors on federal-aid contracts. Attachment G (DBE Application Procedures and Policy Guidelines) describes the requirements and enforcement remedies for non-compliance by DBEs.

RAP 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 RAP's DBE program.

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

### Monitoring Payments to DBEs and Non-DBEs

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

- *Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the 30-day clock for payment.*

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

RAP 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 RAP by the prime contractor.





### Prompt Payment Dispute Resolution

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

RAP will hold meetings between the prime and sub, with resident project representative and/or project manager presence as appropriate. Meetings will include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

RAP has established, as part of its DBE program, the following mechanism to ensure prompt payment and return of retainage. RAP includes the following clause in each FAA-assisted prime contract:

“Retainage – The prime contractor may request a release of retainage from RAP when a subcontractor has satisfactorily completed the contract work. A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented and approved as required in the contract documents. The prime contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the prime contractor has received payment from Rapid City Regional Airport, which includes any release of retainage.”

### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact the RAP DBELO to initiate complaint.
- If filing a prompt payment complaint with the RAP DBELO does not result in timely and meaningful action by RAP to resolve prompt payment disputes, affected subcontractor may contact the Rapid City Finance Officer, 300 Sixth Street, Rapid City, SD 57701; 605-394-4143.

### Enforcement Actions for Noncompliance of Participants

The airport will provide appropriate means to enforce the requirements of §26.29. RAP will actively implement the following enforcement actions:

- 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.



- 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
- Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).

#### Monitoring Contracts and Work Sites

RAP reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the construction site engineer through construction administration and observation. Contracting records are reviewed by the construction manager and the DBELO. RAP will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

#### **Fostering Small Business Participation (§26.39)**

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

In compliance with this policy, the Rapid City Regional Airport's DBE Program in regard to §26.39 Fostering Small Business Participation may include, but is not limited to, the following strategies:

- 1) Establishing a race-neutral small business set aside for prime contracts under a stated amount, depending on the amount of grant funding awarded during the goal reporting period.
- 2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- 3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- 4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or businesses, including DBEs, to compete for and perform prime contracts.
- 5) To meet the portion of our overall goal we 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.

In order to actively implement the Rapid City Regional Airport's program elements to foster small business participation and to comply with the requirement of good faith implementation of our DBE program, the Rapid City Regional Airport will require that the Prime Contractor(s) for



Construction Work Items complete the form entitled, Fostering Small Business Participation, Form 289D, located in Attachment E of this DBE program. The Special Conditions of the Contract will indicate the amount of small business participation as determined by Rapid City Regional Airport.

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

### **Quotas (§26.43)**

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

### **Overall Goals (§26.45)**

The Rapid City Regional Airport will establish 3-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the 3-year goal period. Goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the airport does not anticipate awarding more than \$250,000 in FAA funding annually during the 3-year reporting period, we will not develop an overall goal; however the existing DBE program will remain in effect and the airport will seek to fulfill the objectives outlined in 49 CFR Part 26.1. Individual annual goals may be established based on the type of projects with available opportunities for DBEs.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects. A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment I to this program.

In accordance with Section 26.45(f) the airport will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, the airport will consult with the SD DOT, DBEs and general contractors to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the airport’s efforts to establish a level playing field for the participation of DBEs. The airport is committed to conducting a formal Consultation Meeting for the Overall Goal. This consultation meeting will be scheduled prior to the establishment of the final new goal.

We will publish a notice of the proposed overall goal, informing the public that the proposed goal and our rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that we will accept comments on the goals for 45 days from the date of the notice. We will post the notice at our principal office and on our website. Normally, we will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.



Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and its responses. In addition, the submission will include descriptions of the meetings, locations, dates, and those persons in attendance.

The airport will begin using its overall goal on October 1 of each year, unless it has received other instructions from DOT.

#### **Failure to Meet Overall Goals (§26.497)**

If the airport awards and commitments are less than the goal for that year, we may, but are not limited to the following:

- 1) Analyze the reasons for difference
- 2) Take corrective action if necessary
- 3) Modify the goal and resubmit if necessary
- 4) Retain analysis and any corrective action in records for three years and make available to FAA on request.

#### **Transit Vehicle Manufacturers (§26.49)**

*Currently N/A.*

#### **Breakout of Estimated Race-Neutral and Race-Conscious Participation (§26.51a-c)**

The Rapid City Regional Airport estimates that 0% of the expected DBE participation will be from race-neutral participation and 100% will come from race-conscious measures. Since we began tracking the difference in participation of race-neutral versus race-conscious, we have not received any race-neutral participation. Therefore it is anticipated that 100% participation will be required through race-conscious measures based on recent past experience.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see §26.51(f)) and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains 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.

The Rapid City Regional Airport will use contract goals to meet any portion of the overall goal we do not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of its overall goal that is not projected to be met through the use of race-neutral



means. The breakout of estimated race-neutral and race-conscious participation can be found in Attachment I.

### **Contract Goals** (§26.51d-g)

The Rapid City Regional 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 by making contracts more accessible to small businesses, by means such as those provided under §26.39.

If our approved projection under paragraph (c) of this section estimates that we 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 to meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

### **Good Faith Efforts Procedures** (§26.53)

#### Demonstration of Good Faith Efforts

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 and Attachment A (Special Provision for Disadvantaged Business Enterprise).

The following personnel are 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: DBE Liaison Officer and the Airport Engineer.

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

#### Information to be Submitted

The Rapid City Regional Airport treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness. All solicitations for federal-aid contracts require each bidder to submit a DOT Form 289A, Attachment B (Intended DBE Participation Assurance). The form must be submitted with the proposal, or the proposal is considered non-responsive. Each DOT Form 289A must provide 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 participation;
4. If the contract goal is not met, evidence of good faith efforts.

Good faith effort documentation must be submitted to the Rapid City Regional Airport Administrative Office or the Airport Engineer at the time of the bid opening. At the time of the bid opening, and prior to award of the contract, the low bidder must also submit a DOT Form 289B, Attachment C (DBE Notification of Intent to Subcontract) for each DBE firm listed on the Form 289A providing the following information:

1. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
2. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

#### Administrative Reconsideration

Within three (3) days of being informed by the Rapid City Regional Airport 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:

*City Finance Officer  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4143*

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make and 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 its reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The official 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 when a DBE is Replaced on a Contract

The airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We 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, we will require the prime contractor to obtain its prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our 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 executed 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) We have determined that the listed DBE subcontractor is not a responsible contractor;
- 7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us 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 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 us 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

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



If the contractor fails or refuses to comply with the substitution requirements, or knowingly attempted to circumvent the Special Provision for Disadvantaged Business Enterprise, Attachment A, sanctions may be imposed that may include any or all of the following:

- Assessment of liquidated damages;
- Contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken;
- Suspension of bidding privileges;
- Withholding progress payments;
- Securing additional DBE participation of future federal-aid contracts sufficient to make up for the DBE participation found to be unallowable; and/or
- Referral of the matter for criminal prosecution.

### **Counting DBE Participation (§26.55)**

The Rapid City Regional Airport will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

### **SUBPART D – CERTIFICATION STANDARDS**

#### **Certification Process (§§26.61 – 26.73)**

The Rapid City Regional Airport will use the State of South Dakota Department of Transportation which uses the certification standards of Part 23 and Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine eligibility of firms to participate as DBEs in USDOT-assisted contracts. The SD-DOT will make their certification decisions based on the facts as a whole.

The SD-DOT uses the Uniform Certification Application Form, Appendix F of Part 26. Application Procedures and Policy Guidelines are found in Attachment G to this program. For information about the certification process or to apply for certification, firms should contact:

Lance DeMers  
South Dakota Department of Transportation  
Office of Audit and Compliance  
700 East Broadway Avenue  
Pierre, SD 57501-2486  
(605) 773-4906  
email: [lance.demers@state.sd.us](mailto:lance.demers@state.sd.us)

### **SUBPART E – CERTIFICATION PROCEDURES**





## **Unified Certification Program (§26.81)**

The Rapid City Regional Airport coordinates with the State of South Dakota Department of Transportation in the use of the Unified Certification Program administered through the FHWA. FHWA, FTA, and FAA recipients refer prospective DBE applicants to the FHWA Certification Program. The DBE Directory is maintained by the State and contains firms certified as DBEs for use by all operating administrations.

By October 1, 2001, the SD-DOT had formal agreements in place between the FHWA certification program and other operating administrations.

## **Procedures for Certification Decisions (§26.83)**

### **Re-certifications (§26.83(a&c))**

The SD-DOT will review the eligibility of DBEs that it certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. The SD-DOT may require the firm to complete a new application, and conduct an onsite review if it cannot determine from the records on file whether the firm meets the eligibility requirements of Part 26. There are generally 60-70 firms certified by the SD-DOT at any given time, of which about half (30-35) are in-state firms. The focus of the reviews will be on the ten most active in-state firms the first year, followed by the ten other active in-state firms the second year, and all other in-state firms the third year until all firms that are certified under Part 23 have been reviewed.

For firms that the SD-DOT has certified or reviewed and found eligible under part 26, they will continue to review their eligibility each time the annual affidavit is received. Determinations will be made on a case-by-case basis whether a new application will be required and an onsite review conducted, however reviews will not be conducted more than once during a three-year period.

### **“No Change” Affidavits and Notices of Change (§26.83(i))**

The SD-DOT requires all DBEs to inform us, in 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 in its Initial Application for Determining DBE Certification of Eligibility or Annual Affidavit.

The SD-DOT also requires all owners of all DBEs it has certified to submit, on the anniversary date of their certification, an Annual Affidavit meeting the requirements of §26.83(j), Personal Financial Statement, and documentation of the firm’s size and gross receipts. The SD-DOT notifies all certified DBE firms of these requirements in Attachment G (Application Procedures and Policy Guidelines).

### **Interstate Certification (§26.85)**



When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

### **Denials of Initial Requests for Certification (§26.86)**

If the SD-DOT denies a firm’s application or decertifies it, it may not reapply until 12 months have passed from its action.

### **Removal of a DBE’s Eligibility (§26.87)**

In the event the SD-DOT proposes to remove a DBE’s certification, they will follow procedures consistent with §26.87. Attachment G (Application Procedures and Policy Guidelines) to this program sets forth these procedures in detail. To ensure separation of functions in a decertification, the SD-DOT’s DBE Good Faith Effort Committee will serve as the decision-maker in decertification proceedings. The SD-DOT has established an administrative “firewall” to ensure that none of the committee members will have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

### **Certification Appeals (§26.89)**

Any firm or complainant may appeal its decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Program Division (S-33)  
1200 New Jersey Av., S.E.  
Washington, DC 20590  
Phone: 202-366-4754  
TTY: 202-366-4754  
Fax: 202-366-5575

The SD-DOT will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for its DOT-assisted contracting, such as certify a firm if USDOT has determined that its denial of its application was erroneous.

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

### **Information, Confidentiality, Cooperation (§26.109)**

The Rapid City Regional Airport will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, it will not release



personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### Monitoring Payments to DBEs

The Rapid City Regional Airport 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 Rapid City Regional Airport or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

### **Attachments**

- A Special Provisions for Disadvantaged Business Enterprise
- B DBE Assurance and Intended DBE Participation, Form 289A
- C DBE Notification of Intent to Subcontract, Form 289B
- D Quoters on DOT Federal-Aid Contracts, Form 289C
- E Fostering Small Business Participation, Form 289D
- F Certification of DBE Payments, Form 289
- G Application Procedures and Policy Guidelines
- H DBE Directory and 49 CFR Part 26 Website Links
- I DBE Goal Methodology
- J DBE Goal Consultation Meeting Documentation
- K Rapid City Airport Organization Chart



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### RAPID CITY REGIONAL AIRPORT Special Provision For Disadvantaged Business Enterprise

The Rapid City Regional Airport shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federal-aid contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Rapid City Regional Airport shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of federal-aid contracts. The Rapid City Regional Airport's DBE program, as required by 49 CFR Part 26 and as approved by FAA and USDOT, is incorporated by reference in this contract.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this contract. Upon notification to the Rapid City Regional Airport of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)

#### I. Bidding Requirements

- a. On federal-aid contracts, all bidders must submit a fully executed Disadvantaged Business Enterprise Assurance and Intended DBE Participation (Form 289A) with their proposal. The Form 289A may not be revised or amended by the bidder once submitted. Failure to submit a fully executed Form 289A will render the bid null and void.
- b. On contracts let with a DBE contract goal, where the low bidder has not met the goal, the bidder must provide a written narrative and supporting documentation describing their good faith efforts to meet the goal. The bidder shall have until the time of the letting (measured by postmark or similar evidence of the date and time of mailing) to provide documentation to the bid letting office to show their efforts. Section II provides a list of the type of actions you should consider as part of your good faith efforts to obtain DBE participation.
- c. On contracts let without a DBE contract goal, or following receipt of a complaint from a DBE, the Rapid City Regional Airport will request the low bidder to submit evidence of their efforts if it appears that the contractor has failed to make reasonable efforts to utilize DBEs.
- d. If the low bidder does not provide documentation as specified in paragraphs B and C above, or the submission is deemed unacceptable, the Rapid City Regional Airport



## Attachment A

will consider award to the second low bidder, or reject all bids. Subsequent to the decision that the low bidder's good faith efforts are unacceptable, the low bidder will be notified by telephone that their bid is not acceptable. The low bidder will have two days from the date of notification to contact the Bid Letting Engineer to arrange a meeting with the DBELO or his designee to present documentation and arguments about why the bid should not be rejected. A decision on award of the contract will be made in writing within two days after the meeting. The Rapid City Regional Airport's decision is not appealable to the USDOT. If the low bid is rejected for failure to meet the good faith effort requirements, the second low bidder shall be notified. If the second low bidder has not met the contract DBE goal, that bidder shall have two days from the date of notification to submit documentation of their good faith efforts to meet the project DBE goal. Award of the contract will be made to the lowest responsible bidder that is able to demonstrate sufficient reasonable efforts were made to utilize DBEs.

- e. For all federal-aid contracts with DBE commitments reported on Form 289A, the low bidder must submit a "DBE Notification of Intent to Subcontract" (Form 289B). This form must be signed by both the prime contractor and the DBE for each DBE subcontractor or supplier listed on the Form 289A. The notification of intent to subcontract must be submitted to the Rapid City Regional Airport bid letting office within five (5) days of the bid opening. Award of the contract is contingent upon receipt of Form 289B.
- f. For each federal-aid contract (with or without contract goals), the low bidder must submit a quoters list (Form 289C) of all subcontractors and suppliers they received quotes from for that contract. Form 289C must be submitted to the Rapid City Regional Airport bid letting office within five (5) days of the bid opening. Award of the contract is contingent upon receipt of Form 289C.

## II. Good Faith Efforts

The following is a list of actions taken by bidders with an honest and sincere intent and purpose to demonstrate their attempt to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Sufficient reasonable efforts shall include, but are not limited to:

- a. The bidder shall provide a written narrative outlining the chronology of their efforts made to achieve DBE participation and documentation of the steps taken in these efforts.
- b. Bidders shall select project work items for which there is DBE participation potential. This includes, where appropriate, breaking out contract work items into economically



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feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- c. Bidders shall solicit to all certified DBEs in the appropriate work classifications by written notification at least seven (7) working days prior to the bid opening. Where appropriate, attendance at pre-bid meetings or advertisements in general circulation media, trade association publications, and/or minority focus media at least five (5) working days prior to the bid opening would be a supplemental means of notification.
- d. The bidder shall determine with certainty, if the DBEs are interested, by taking appropriate steps to follow up initial solicitations. A common method is telephone follow-up with logs documenting names, addresses, telephone numbers, date(s) and results of contacts.
- e. Bidders shall negotiate in good faith with interested DBEs. Evidence of such negotiation shall include a minimum of:
  1. Names, addresses and telephone numbers of DBEs that were considered.
  2. A description of the information provided regarding the plans and specifications for the work selected for subcontracting.
  3. Evidence of why additional agreements could not be reached for DBEs to perform the work.
- f. Bidders shall consider award of subcontracts to capable DBE firms where their quotes are reasonably competitive. If a quote is rejected because it is considered not to be “reasonably competitive,” bidders must provide a work items price matrix comparing DBE quotes and non-DBE quotes. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. In the event a bidder elects to use its own forces over a DBE firm, the bidder must include documentation of the costs for the prime contractor. This can be shown in a number of ways, including portions of the prime contractor’s work sheets used to prepare the bid.
- g. If a DBE quote is rejected because of previous problems with a particular DBE, the bidder must provide a detailed explanation of the problem. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder’s failure to meet the obligation of considering DBEs, as long as those costs are reasonable. Bidders must not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations or associations and political or



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social affiliations are not legitimate causes for rejection or non-solicitation of quotes in the contractor's efforts to utilize DBEs.

- h. The bidder shall provide interested DBEs with adequate information about plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- i. The bidder shall make efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the Rapid City Regional Airport or the prime. Also, assist in obtaining necessary equipment, supplies, materials or related assistance or services.
- j. In determining whether a bidder has made good faith efforts, the Rapid City Regional Airport will take into account the performance of other bidders. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Rapid City Regional Airport may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBEs participation obtained by other bidders, the Rapid City Regional Airport may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

### III. Counting DBE Participation

- a. The total actual dollar amount of the intended DBE participation shown on Form 289A shall count toward contract goals and the annual goal. Subcontract awards to DBEs that were not part of the 289A commitment submitted with the proposal will also count toward the annual goal. Participation percentages for the contract shall be calculated from Form 289A according to the following formula:

$$\text{Percentage} = \frac{\text{dollar amount of work subcontracted to DBEs}^*}{\text{Total dollar amount of prime contract}^*}$$

\*Both figures are adjusted as necessary to reflect any non-participating items included in the proposal.

- b. Count the portion of a contract that is performed by the DBE's own forces. Included is the cost of supplies and materials obtained by the DBE for the contract, including supplies purchase or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchased or leased from the prime contractor or its affiliate).



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- c. When a DBE performs as a participant in an approved joint venture, count only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBEs goal. In order to count toward DBE participation, the joint venture must first be approved by the SD-DOT Department's DBE Office after review of Schedule B – Information for Determining Joint Venture Eligibility, which can be obtained by contacting the SD-DOT DBE Office.
- d. A bidder may count toward its DBE participation only that percentage of expenditures to DBEs that perform a commercially useful function (CUF) in the performance of a contract. A DBE performs a CUF when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating prices, determining quality and quantity, ordering and installing (where applicable) the materials, and paying for the material itself. To determine if a DBE is performing a CUF, the Rapid City Regional Airport will evaluate the amount of work subcontracted, industry practice, whether the amount of the DBE is to be paid is commensurate with the work it is actually performing, DBE credit claimed for performance of the work and other relevant factors.
- e. A DBE is not performing a CUF if its role is limited to that of an extra participant in a transaction, project or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is simply an extra participant the Rapid City Regional Airport will examine similar transactions, particularly those in which DBEs do not participate.
- f. DBE participation will be counted for trucking services as follows:
  - 1. The contractor will receive credit toward DBE participation for the total value of the transportation services the DBE provides on the contract using trucks it owns, insures and operates using drivers it employs.
  - 2. A DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. When a DBE leases trucks from another DBE, the contractor can count the total value of the transportation services the lessee DBE provides on the contract toward DBE participation.
  - 3. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. When a DBE leases trucks from a non-DBE, the contractor can count toward DBE participation only the fee or commission the DBE receives as a result of the lease arrangement. The contractor does not receive credit toward DBE





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participation for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- g. The bidder may count toward DBE participation expenditures to DBE firms for materials, supplies or services as follows:
  - 1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
  - 2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
  - 3. For materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count toward DBE participation the entire amount of fees or commissions charged for assistance in the procurement of the materials or supplies, or fees or transportation charges for the delivery of materials or supplies required at the job site. In order to be counted, the Rapid City Regional Airport must determine the fee to be reasonable and not excessive as compared to fees customarily allowed for similar services. However, do not count any portion of the cost of the materials and supplies themselves toward DBEs goals.
  - 4. The Rapid City Regional Airport will not count toward DBE participation materials or services provided by a DBE who is not currently certified.
- h. Any intended or actual subcontracting arrangement which is contrived to artificially inflate DBE participation is not allowed. This includes, but is not limited to, DBE middlemen which serve no commercially useful function, or arrangements where a DBE is acting essentially as a broker of goods or services, but has been counted as a manufacturer, regular dealer or subcontractor.
- i. The DBE will review and monitor projects for compliance with the bidder's intended DBEs participation. Failure by the contractor to fulfill DBE commitments constitutes a breach of contract. The Rapid City Regional Airport may also investigate the form and substance of particular business arrangements between and among DBE firms and prime contractors with regard to specific projects. If, as a result of an



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investigation, the Rapid City Regional Airport determines that a particular business arrangement is not allowable, the dollar amount of the unallowable DBE participation shall be subtracted from the prime contractor's DBE participation on that project. The contractor will be notified if the apparent DBE participation is not adequate to meet the DBE participation stated on the 289A form. The contractor will be directed to seek additional participation from other DBEs to meet the unallowable portion on that contract.

In cases where it is determined that the contractor was a knowing and willing participant in a business arrangement determined by the Rapid City Regional Airport to be unallowable, or in the event of repeated violations, falsification or misrepresentation, the Rapid City Regional Airport shall provide for imposition of sanctions. Sanctions may include, but are not limited to one or more of the following:

1. Assessment of liquidated damages as stated in provision IV below.
  2. Suspension of bidding privileges or debarment.
  3. Withholding progress payments.
  4. Securing additional DBE participation on future federal-aid contracts sufficient to make up for the DBE participation found to be unallowable.
  5. Referral of the matter for criminal prosecution.
- j. The contractor shall maintain records of payments to DBEs under this special provision. Within thirty (30) days of physical completion of the project the contractor shall submit a DOT Form 289 (Certification of DBE Participation) listing all DBE firms that participated in this contract, and report the total dollar amount paid (and anticipated to be paid) to each. The contractor's final payment is not released until receipt of the 289 form.

### **IV. Liquidated Damages**

- a. If the contractor has failed to meet the contract goal or commitment as follows:
1. Payments to DBEs are less than the contract DBE goal (if the commitment reported on the 289A form is higher than the contract goal); or
  2. Payments to DBEs are less than the commitment reported on Form 289A, (if the commitment was the same or lower than the contract DBE goal or there was no contract goal); then:



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The department shall have the contract payments reduced as a liquidated damage and not as a penalty, by an amount according to the following schedule:

For the first \$1,000 DBE deficiency, one hundred percent (100%) of the deficiency.

For the next \$9,000 DBE deficiency, fifty percent (50%) of the deficiency.

For the next \$10,000 DBE deficiency, twenty five percent (25%) of the deficiency.

For any remaining DBE deficiency, ten percent (10%) of the deficiency.

This liquidated damage provision shall not be applicable where actual payment to a DBE is within ninety percent (90%) of the commitment, or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, etc.

- b. If a contractor finds it impossible, for reasons beyond his control, to meet the intended DBE participation stated on Form 289A, he may at any time prior to completion of the project provide a written request to the DBE office for a complete or partial waiver of liquidated damages. Any liquidated damage assessment will not be waived after final acceptance of the project.

### **V. Contractor Utilization of DBE Firms**

- a. All contractors participating in DOT-assisted contracts are expected to cooperate fully and promptly with the Rapid City Regional Airport in compliance reviews, investigations and other requests for information. Failure to do so shall be grounds for appropriate sanctions or action against the party as indicated in provision III-I above.
- b. It is expected that each DBE firm listed on Form 289A will perform the work specified (or provide materials or services as indicated), and at the dollar levels specified.
- c. Substitutions of DBEs reported on Form 289A are not allowed, except for performance or scheduling problems on the part of the DBE, or the DBE has requested to be removed from that particular contract. In order for the substitution to be valid, however, the contractor must provide timely notification to the DBE office the reason for the substitution, providing the DBE Office sufficient time to verify the information. Prior to approval by the DBE Office, the contractor must provide documentation showing their efforts to replace the designated DBE with another DBE. Substitution shall not take place without written approval by the DBE Office.



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- d. In instances where time is critical to project progress, this process may be handled verbally with written confirmation to follow.

If the contractor fails to make payments to DBEs as indicated above, liquidated damages shall be assessed as specified in section IV, above. In addition, if the contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, sanctions referred to in section III-I above will be imposed.



**Attachment B  
DBE Assurance and Intended DBE Participation, Form 289A  
Rapid City Regional Airport**

**BIDDERS MUST EXECUTE THE FOLLOWING**

<b>Disadvantaged Business Enterprise (DBE) Assurance and Intended DBE Participation</b>
---

Project No. \_\_\_\_\_

**Policy:** It is the policy of the City of Rapid City, South Dakota that disadvantaged businesses, as defined in 49 CFR 26, shall have equal opportunity to participate in the performance of contracts financed in whole or part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

DBE Contract Goal \_\_\_\_\_ percent

**Contractors DBE Obligation**

Prime contractors bidding on projects of the Rapid City Regional Airport agree to ensure that DBEs, as defined in 49 CFR Part 26, have equal opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with federal funds. The prime contractor and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and administration or performance of contracts. Each bidder intending to subcontract any portion of the contract shall affirmatively solicit DBE interest, capabilities and prices and shall document such efforts and results that will be provided to the City of Rapid City, South Dakota upon request. The contractor is obligated to consider DBE firms as potential subcontractors throughout the life of the contract, and if a quote is received from a DBE firm, the contractor may use all or part of their quote.

The following section is to be used to list all intended DBE participation for this project regardless of whether it includes a DBE contract goal.

List DBE firms by name. Provide the bid item numbers and a general description of the work performed, or materials to be furnished. The contractor must use the DBEs listed and for the intended work as indicated on the form. The low bidder must submit a "DBE Notification of Intent to Subcontract" form 289B signed by each DBE listed on this form to the engineering consultant within 7 days prior to the bid opening.

For DBE trucking companies, list only the amount of hauling to be performed with each DBE's own trucks. DBE prime contractors list the work you will perform with your own forces, and any worked subcontracted or materials purchased from other DBEs.

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_

\$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_

\$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_



**Attachment B**

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_  
 \$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_  
 \$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_  
 \$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_

DBE \_\_\_\_\_  
 Bid Item(s) \_\_\_\_\_  
 Work \_\_\_\_\_  
 Description \_\_\_\_\_  
 \$ value = \$ \_\_\_\_\_  
 If regular dealer X 60% \$ \_\_\_\_\_

(Add all DBE dollar values) **Total dollar value of DBE** \$ \_\_\_\_\_

**Total bid amount** \$ \_\_\_\_\_

(Copy additional pages if necessary) **Percent DBE participation** \_\_\_\_\_ %

**Assurance**

For this contract, and each subcontract signed with a subcontractor, I, acting in my capacity as an officer of the undersigned bidder, assure the Rapid City Regional Airport that I shall not discriminate on the basis of race, color, national origin or sex in the performance of the contract. I shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other remedy as the Rapid City Regional Airport deems appropriate.

I understand if a DBE subcontractor/supplier is unable to perform successfully any part of the intended work, my company is required to make sufficient reasonable efforts to utilize an alternate DBE firm, to provide written documentation of efforts to find an alternate, and to secure prior approval of any substitution from the Rapid City Regional Airport DBE Liaison Office (605-394-4195).

\_\_\_\_\_  
 Name of Company (print or type) Date

By \_\_\_\_\_  
 Signature of Company Official Title



**Attachment C**  
**DBE Notification of Intent to Subcontract, Form 289B**  
**Rapid City Regional Airport**

<b>DBE Notification of Intent to Subcontract</b>
--

Project No. \_\_\_\_\_ Letting Date \_\_\_\_\_

Contractor \_\_\_\_\_

Hereby intends to subcontract or purchase materials for the following work items to:

DBE \_\_\_\_\_

Item No	Item	Unit	Quantity	Unit Cost	Amount

Continue on back side if needed

Total amount of subcontract \$ \_\_\_\_\_

Amount counting toward DBE participation (60 percent for regular dealers and hauling performed by DBE trucks).  
 \$ \_\_\_\_\_

DBE Sub or Supplier Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Prime Contractor Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

This form must be signed by the DBE and the prime contractor and returned to the Rapid City Regional Airport within **five (5) days of the bid opening** for each DBE commitment on the 289A form. It may be mailed to 4500 Terminal Rd, Suite 102, Rapid City, SD 57703 or faxed to (605) 394-6190. *Award will be contingent upon receipt of this form.*



**Attachment D  
 Quoters on DOT Federal-Aid Contracts, Form 289C  
 Rapid City Regional Airport**

**Quoters on DOT Federal-Aid Contracts**

Project # \_\_\_\_\_ Letting Date \_\_\_\_\_

Contractor \_\_\_\_\_

Address \_\_\_\_\_

Obtained quotes from the following companies:

Company Name	Quote for (seeding, hauling, dowels, etc)

Continue on back side if needed

This form must be completed by the low bidder on each federal-aid contract and submitted to the Rapid City Regional Airport within **five (5) days of the bid opening**. It does not have to be submitted on this form. This information may be provided in any format, as long as it includes all information requested on this form. It may be mailed to Rapid City Regional Airport, 4550 Terminal Road., #102, Rapid City, SD 57703 or faxed to (605) 394-6190. **NOTE: Award of contract will be contingent upon receipt of this form.**





**Attachment E  
Fostering Small Business Participation Form, Form 289D**

<u>Fostering Small Business Participation</u>	
<b>Sponsor's Name:</b>	
<b>Airport Name:</b>	
<b>City, State:</b>	
<b>AIP Number:</b>	
<b>Federal Fiscal Year:</b>	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

Small Business Firms to be Utilized (Name, Address, Phone)		Work to be Performed	Total Estimated Cost of Work
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Name</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Telephone</b>			
<b>Is the firm a Certified DBE?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Continue on back side if needed

**The following notation is for Sponsor Use Only:**

**Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_**



## ATTACHMENT F

### RECORD OF FAA FUNDED CONSTRUCTION PROJECT PAYMENTS

**Form 289**

Prime contractors are required to submit a record of project payments for each subcontractor in order to determine actual Disadvantaged Business Enterprise (DBE) accomplishment on construction projects. If no payments have been made, please indicate "none" on the form.

Project Sponsor: Rapid City Regional Airport  
 Project Location: Rapid City Regional Airport  
 Project Number: \_\_\_\_\_

**Submit to:** Rapid City Regional Airport  
 Toni Broom  
 4550 Terminal Road, #102  
 Rapid City, SD 57703  
 Phone: 605-394-4195, ext 2  
 Fax: 605-394-6190

**Submit as follows:**

The 15<sup>th</sup> of the month following each quarter or end of project, which ever occurs sooner.

[toni.broom@rcgov.org](mailto:toni.broom@rcgov.org)

**List All Subcontractors and Amounts Contracted.**

**Please verify that you have sent copies of all sub-contracts and their payrolls to the Airport Engineer**

Prime Contractor:						
Work Description:						
Contract Amount:	Name of Subcontract Firm / Location	Type of Work Provided & NAICS	MBE/DBE Goal:	Amount of Contract	Amount of Payment(s)	Date of Payment(s)
DBE Status & Type Y or N	Name of Subcontract Firm / Location	Type of Work Provided & NAICS	Amount of Contract	Amount of Payment(s)	Date of Payment(s)	Submitted Sub-Contracts & Payrolls
	TOTALS:		\$ -	\$ -		

The undersigned prime contractor/subcontractor listed above hereby certifies that payments have been made to the DBE firms listed in the amounts shown for work performed or materials furnished under the respective contract(s).

\_\_\_\_\_  
 Prime Contractor Signature & Title

\_\_\_\_\_  
 Date

Attach additional sheet if necessary.



**Attachment G**  
**SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**Disadvantaged Business Enterprise Program**  
*South Dakota Firms*

<b>Application Procedures and Policy Guidelines</b>
---

*Please read the following before submitting an application for DBE certification.*

Firms interested in applying for and continuing certification as a Disadvantaged Business Enterprise (DBE) in South Dakota must follow the procedures outlined in this document.

Mail the completed packet to:  
Department of Transportation  
DBE Program  
700 E Broadway Avenue  
Pierre SD 57501

**NEW APPLICATIONS**

To be considered for initial certification, you must complete the Uniform Certification Application. Before completing this form, read the DBE Definitions and Eligibility Standards so that you understand the eligibility criteria.

Your completed application must include a notarized affidavit of certification and a personal financial statement/declaration of social disadvantage for each disadvantaged owner. Your application will not be processed until we receive all relevant information indicated on the “DBE Uniform Certification Application Supporting Documents Checklist.”

Mail your completed and notarized application and all relevant documentation indicated on the checklist to the DOT at the address above. Be sure to keep a copy for your records.

An onsite review at your office will be conducted prior to approval. The review will consist of an interview with the principal officer to discuss information in the application and company operations.

If the results of the review determine that your firm meets the eligibility standards, you will be notified in writing. Your company will be certified to perform only work you, as disadvantaged owner, have the ability to control. The letter will show the anniversary date of your certification and North American Industry Classification System (NAICS) code that most accurately describes your line of work. Once certified, information about your firm will be included in the DBE directory, including the most applicable NAICS code(s). The directory is updated as changes occur and is posted on the DOT’s website.



## **Attachment G**

Your firm must be certified by the date of a DOT bid letting to be counted toward a DBE commitment.

### **CERTIFICATION DENIAL**

If after reviewing your application and all supporting documentation we determine that you do not meet the eligibility standards set forth in 49 CFR Parts 23 or 26, certification will be denied.

You will be notified of the decision in writing. The letter will explain the reasons for the denial, and your right to appeal the decision. Once denied certification you may not re-apply for twelve (12) months after the date the denial letter was signed.

### **CHANGES IN COMPANY CIRCUMSTANCES**

Once certified, you must inform the DOT in writing of any material change in the information contained in the original application within thirty (30) calendar days of the change.

You must attach supporting documentation describing the nature of the change if you wish to continue your certification.

### **ANNUAL AFFIDAVIT**

Approximately sixty (60) days prior to the anniversary of the date of your certification you will be sent an annual affidavit.

The annual affidavit and documentation of firms size and gross receipts must be returned by the anniversary date of your certification. Failure to return the affidavit will be cause for decertification and your firm's name will then be removed from the DBE directory.

### **DECERTIFICATION**

DOT may decertify your company. The decision will be based on one or more of the following:

- Changes have occurred in your firm's circumstances since initial certification that render your company unable to meet the eligibility standards.
- Information or evidence that was not available to us at the time your firm was certified.
- Information that was concealed or misrepresented.
- A change in the certification standards or requirements since your firm was initially certified.
- A documented finding that our initial determination to certify your firm was factually erroneous.
- Your failure to cooperate in providing information relevant to the certification process.



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- Violations of the commercially useful function regulations demonstrating the existence of a pattern of conduct indicating your involvement in attempts to evade or subvert the intent or requirements of the DBE program.
- Fraud in connection with any violation of the DBE regulations.

If we acquire information that indicates that you are no longer eligible for certification as a DBE, we will notify you in writing of our preliminary intent to remove certification. The notification will include reasons for that determination, and provide you with an opportunity to provide information for us to consider before making a final decision. You may present information in writing or at an informal meeting. If you do not respond to the letter of intent or request a meeting by the designated date, the DOT will interpret this to mean that you accept the DOT's decision, and certification will be removed.

If you do provide additional information, that information will be reviewed before the DOT takes final action. On the basis of our review, the DOT may modify its preliminary decision, rescind its preliminary decision or sustain its decision and revoke certification. Regardless of our decision, you will be advised of that decision and the reasons for it in writing. If the decision is to revoke certification, you will be advised of the appeal process. This process is described in detail in the section titled "Hearings and Appeals."

### COUNTING DBE PARTICIPATION ON DOT CONTRACTS

Only firms certified at the time of the letting will count toward DBE participation. When participating in a federal-aid contract, only the value of the work actually performed by your firm will count toward DBE participation as follows:

- The entire amount of the portion of the contract that is performed with your own work force. Included will be the cost of supplies and materials obtained by you for the work of the contract, including equipment you lease (except materials or equipment you purchase or lease from the prime contractor or its affiliate).
- The entire amount of fees or commissions charged by you for providing a bona fide service such as professional, technical, consultant or managerial, or for providing bonds or insurance specifically required for the performance of a federal-aid contract. The DOT must determine, however, the fee to be reasonable and not excessive when compared to fees customarily charged for other similar services.
- If you subcontract out a portion of the work of your contract to another firm, the value of the subcontracted work will count toward DBE participation only if the subcontractor is also a DBE. Any subcontracting must also meet the DOT's requirements for subletting of contracts found in the Standard Specifications for Roads and Bridges. Work that you subcontract to a non-DBE will not count toward DBE participation. **It is your responsibility to ensure that quotes you submit to prime contractors clearly indicate**



## Attachment G

**the amount of work intended to be performed with your own work force so DBE participation is correctly counted toward the Department's overall DBE goal.**

In addition to the above, DOT will count expenditures to you toward DBE participation only if you perform a commercially useful function (CUF) on a contract as follows:

- When you are responsible for actually performing, managing and supervising the work involved. For materials, you must also be responsible for negotiating the price, determining quality and quantity, ordering and installing (when applicable) and paying for the products yourself. To determine if you are performing a CUF, the DOT will evaluate the amount of work subcontracted to you, if the amount paid to you is commensurate with the work you actually performed, the DBE credit claimed for performance of your work, industry practice and other relevant factors.
- You are not performing a CUF if your role is limited to that of an extra participant in a transaction where funds are merely passed through your company in order to create an illusion of DBE participation. In determining whether you are such a participant, the DOT will examine similar transactions, particularly those in which DBEs do not participate.
- If the DOT finds you are not performing a CUF we will notify you in writing, outlining the basis for this finding. You may present evidence to rebut this finding. The DOT may determine that you are performing a CUF given the type of work involved and normal industry practice. Repeated violations of CUF requirements may lead to loss of DBE certification if it indicates a pattern of conduct indicating attempts to evade or subvert DBE program requirements.

DBE Trucking. The DOT will use the following factors to determine whether you, as a DBE trucking company, are performing a CUF:

- You must be responsible for managing and supervising the entire trucking operation for which you are responsible on a particular project. There cannot be a contrived arrangement for using non-DBE trucks for the purpose of meeting DBE participation.
- You must own and operate at least one fully licensed, insured and operational truck which is used on that contract.
- The prime contractor will receive DBE credit only for the value of the trucking you provide using trucks you own, insure and operate, and drivers you employ.
- You may lease trucks from other DBE firms, including owner-operators who are certified as DBEs. If you lease trucks from other DBEs, the prime contractor will also receive credit for the value of the trucking service the lessee DBE provides on the



## Attachment G

contract. However, if you lease trucks from a non-DBE, the prime contractor will be entitled to credit only for the fee or commission you receive as a result of the lease arrangement. In this instance the prime contractor will not receive credit for the value of the trucking service provided by the lessees, since these services are not provided by a DBE. **It is your responsibility to ensure that quotes you submit to prime contractors clearly indicate the amount of hauling intended to be performed with DBE trucks so DBE participation is correctly counted toward the Department's overall DBE goal.**

The DOT will count expenditures for materials or supplies toward DBE participation as follows:

- If materials or supplies are purchased from you, as a certified DBE manufacturer, the DOT will count 100 percent of the cost of the materials or supplies toward DBE participation. A manufacturer is a firm that operates a factory that produces, on the premises, materials or equipment required under the contract, and of the general character described by specification.
- If materials are purchased from you, as a certified DBE regular dealer, the DOT will count 60 percent of the cost of the materials toward DBE participation. A regular dealer is a firm that owns and maintains a store or warehouse where materials of the general character described by the specifications, and required under the contract, are bought, kept in stock and regularly sold or leased to the public in the usual course of business. To be a regular dealer, your firm must be an established business that engages in, as its principal business and under its own name, the purchase and sale of the product(s) in question.
- Packagers, brokers, manufacturers' representatives or other persons who merely arrange or expedite transactions are not regular dealers.
- With respect to materials purchased from a DBE who is neither a manufacturer, nor a regular dealer, we will count toward DBE participation only the amount of the fee or commission charged for assistance in the procurement of the materials. We must, however, determine the fee to be reasonable and not excessive when compared to fees customarily allowed for similar services. In this instance, we will not count any portion of the cost of the materials and supplies themselves toward DBE participation.

### THIRD-PARTY CHALLENGES

Any individual may file a complaint with the DOT that you are not eligible for certification, specifying the reasons. The DOT is not required to accept general allegations that a firm is ineligible, or an anonymous complaint. The complaint may include any information supporting the complainant's assertion that your firm is ineligible. Confidentiality of the complainants' identity shall be protected at their election. If such confidentiality will hinder the proceeding, or result in denial of appropriate administrative due process to other parties, the complainant will be



## **Attachment G**

advised of the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in closure of the investigation or dismissal of the proceeding.

The Federal Highway Administration (FHWA) may also review our certification records. If they determine that you do not meet the eligibility criteria, they may direct us to remove your certification. Should this occur, the DOT will start a proceeding to remove your eligibility.

In responding to requests for information concerning any aspect of the DBE program, we shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information consistent with federal, state and local law. The Department will not release any information regarding your application for DBE certification and supporting documents or personal financial information submitted in response to the personal net worth requirement to a third party (other than to USDOT) without your written consent.

We shall review our records and any material provided by the complainant concerning your firm. We may request additional information from you or conduct any other investigation we deem necessary.

If we determine there is reasonable cause to believe that your firm is ineligible, we will provide written notice to you of our preliminary finding that your firm is ineligible, stating the reasons. If we determine that reasonable cause does not exist, we will notify the complainant and you in writing of our determination and the reasons for it. All statements of findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based.

If changes in circumstances come to our attention and we determine there is reasonable cause to believe that you are no longer eligible, we will provide you written notice of that finding. The notice will set forth the reasons for the proposed determination, specifically referencing the evidence in the record on which each reason is based.

If FHWA determines that information in our records, or other information available to them, provides reason to believe that your firm does not meet the eligibility criteria of 49 CFR 23 or 26, FHWA may direct us to initiate a proceeding to remove your firm's certification. FHWA must provide you and us a notice stating the reasons for their directive, including any relevant documentation or other information. If FHWA determines that you do not meet the eligibility criteria, we shall immediately start a proceeding to remove your certification.

### **HEARINGS AND APPEALS**

If we notify you there is cause to remove certification, you will be provided an opportunity for an informal hearing. At the hearing you may present arguments why your firm should remain certified.





## **Attachment G**

The DOT shall maintain a complete verbatim record of the hearing. If you file an appeal to USDOT following a de-certification hearing, a copy of the transcript of the hearing will be provided to USDOT. You may also request a copy of the transcript. We may charge you the cost of copying the record.

You may also elect to present information and arguments in writing, without going to a hearing. The final decision in a proceeding to remove your eligibility will be made by individuals that did not participate in the intended de-certification decision.

Following the determination, you will be provided a written notice of the decision and the reasons for it. The decision will include specific references to the evidence in the record that supports each reason. The notice will inform you of the consequences of the decision and your right to appeal the decision to the USDOT. An appeal must be filed within ninety (90) calendar days of the date of our final decision.

You will remain an eligible DBE during the review of the proceeding to remove your certification. You do not become ineligible until the issuance of the final notice to remove your certification.

If you appeal our certification decision to USDOT, your appeal letter must include the name(s) and address(es) of any other agency(ies) that have rejected certification of your firm within one year of the appeal. Your appeal must also include any agency where an application for certification or a removal of eligibility of your firm is pending. Failure to provide this information may be deemed a failure to cooperate.

### **DBE NONDISCRIMINATION COMPLAINT PROCEDURE**

Department policies and procedures have been designed and implemented in accordance with applicable federal and state nondiscrimination statutes and regulations. The following process has been established to provide for the orderly and timely resolution of any complaints alleging discrimination.

The Civil Rights Compliance Officer will make him/her known to all office and program managers with the Department and, with the assistance of these managers, will attempt to resolve all Civil Rights complaints arising from Department activities.

In addition, the Civil Rights Compliance Officer will make periodic visits to any locations and/or areas determined to be problematic in an attempt to alleviate any problems in advance of a complaint.

The following complaint procedures are applicable to all Department program areas:

1. Any person or group claiming to be aggrieved by an unlawful discriminatory practice based on race, color, national origin, sex, age or disability may by himself/herself or through his/her



## Attachment G

legally authorized representative, make and sign a complaint and should file such complaint with the Department within 300 calendar days (180 days if a company has less than 15 employees or if this involves age discrimination) following the date of the alleged discriminatory action. All complaints will be filed with the Department Civil Rights Compliance Officer who will evaluate the complaint and gather additional information from the complainant if necessary. The appropriate program area manager and division director will be notified of the complaint.

2. The Civil Rights Compliance Officer or designee has 60 calendar days to conduct an investigation of the allegations and prepare preliminary findings. The Civil Rights Compliance Officer or designee may refer the matter to the appropriate program area to make every reasonable effort to resolve the complaint as quickly as possible or attempt informal resolution through other methods

3. All complaints that cannot be quickly (within 30 calendar days from the preliminary findings being issued) resolved will be reviewed by a committee consisting of the Secretary of the Department or his or her designee, the Civil Rights Compliance Officer and the program manager involved. The committee will hold an informal hearing with the complainant seeking resolution and will render a decision regarding the complaint within 15 working days of the hearing.

4. When the Department arrives upon a final decision regarding the complaint filed with the Department, it will notify the complainant in writing of the decision and of the complainant's rights, if dissatisfied with the decision, to bring the matter to the attention of the appropriate federal agency, typically the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). The Department will advise the complainant of the name and address of the agency and/or individual to contact.

5. The Department will provide the federal agency with a copy of the complaint along with any investigatory report within 60 calendar days of the filing of the complaint. The Department will also furnish the federal agency a report indicating final disposition of the complaint within 5 working days of advising the complainant of the disposition.

The Department, acting through the Civil Rights Compliance Officer, will expedite all discrimination complaints filed by individuals, business, group or institution. Information regarding the complaint process will be provided through Department publications, Department program activities, and individual personal contact with persons affected by Department activities.

### **FRAUD IN THE DBE PROGRAM**

The DOT will monitor the activities of DBE firms to ensure that they meet all requirements regarding ownership, economic disadvantage, management, control and commercially useful function standards. Those requirements are included above, in the initial application for certification, the annual affidavit, in 49 CFR Parts 23 or 26, and in the Definitions and Eligibility



## Attachment G

Standards provided with the initial application for certification.

Any DBE firm violating these requirements may be subject to the following:

- Decertification from the DBE program
- Enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies
- Referral to the Department of Justice for prosecution under 18 USC 1001 or other applicable provisions of law.

### **JOINT CHECKS TO DBEs**

A joint check is a check issued by a prime contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. For a prime contractor to receive DBE credit the DBE must perform a commercially useful function and be responsible for negotiating price, determining quality and quality, ordering materials and installing (where applicable) and paying for materials.

To ensure that the DBE is independent of the prime contractor and in compliance with the regulation, use of joint checks will be reviewed and allowed only under certain circumstances.

If a contractor requests to issue a joint check to you, you may be contacted to verify the circumstances described in the contractor's request.

~~~~~  
**DBE firms must understand that certification confers a privilege that is not extended to all firms wishing to do business in the FAA airport improvement program. This privilege is the right to compete for a position, not the right to have a position.**

**DBE firms must be reasonably competitive in their costs, perform work of acceptable quality, and meet project timelines. DBE certification does not suspend or eliminate any of these requirements. DBE firms are not exempt from any of the regular and normal expectations that the contractor might have of other subcontractors or suppliers.**



**Attachment H**

**IMPORTANT WEBSITE LINKS:**

**1. Title 49: Transportation**

**PART 26 – PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

The Code of Federal Regulation is available for full review at the GPO Access website:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

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**2. SD DBE Directory – Updated List Available at:**

<http://www.sddot.com/business/contractors/docs/DBEDirectory.pdf>

Additionally, the Rapid City Regional Airport Administration Office has a copy of each available for review during normal business hours.



**ATTACHMENT I**  
**Methodology for Determination of the Overall DBE Goal**  
**FFY 2019 – 2021**

**Over all 3 Year Race Conscious Goal – 3.47%**  
**Race Conscious Goal 2019 – 3.82%**  
**Race Conscious Goal 2020 – 3.16%**  
**Race Conscious Goal 2021 – 3.29%**  
**Race Neutral All Years – 0.0%**

**Methodology**

**Step 1. Determining the Base Figure:**

The Rapid City Regional Airport utilized the SD-DOT information on DBE firms and participation efforts as it has a more comprehensive program and data available from all firms certified to perform DBE work. The SD-DOT did not use DBE Directory and Census Bureau data as described in §26.45 c. Example (1) as this would provide an inappropriately low DBE percentage. It used Example (2) to base its data.

The Rapid City Regional Airport reviewed the SD-DOT DBE Goals and used only firms that had been active during the period of January 1, 2015, to January 11, 2018. There were 49 active DBE firms and 854 overall active contractors including DBE's, Prime Contractors, Subcontractors, and Suppliers. Dividing the 854 firms on the bidders list into the 49 DBE firms gave us a relative availability of 5.74% ( $49/854 = .0574$  or 5.74% rounded). The SD-DOT adjusted the goal based on past participation on highway work. The established SD-DOT DBE goal with adjustments is 6.57% for FFY 2019-2021; 5.42% through race neutral means and 1.15% through race conscious means.

**Step 2. Adjustment to the Base Figure**

To adjust the base figure by examining all evidence in our jurisdiction, the airport used the actual DBE participation amounts from FY13 through FY17, and found the mean DBE participation is 2.36%.

| FY   | AIP Dollars | DBE Part. Dollars | DBE % |
|------|-------------|-------------------|-------|
| 2017 | \$1,522,104 | \$35,213          | 2.3%  |
| 2016 | \$2,776,944 | \$75,209          | 2.7%  |
| 2015 | \$2,455,782 | \$21,234          | .9%   |
| 2014 | \$1,217,872 | \$28,705          | 2.36% |
| 2013 | \$3,035,175 | \$191,641         | 6.31% |



Past performance percentages in ascending order are as follows:

| FY          | AIP Dollars        | DBE Part. Dollars | DBE %        |
|-------------|--------------------|-------------------|--------------|
| 2013        | \$3,035,175        | \$191,641         | 6.31%        |
| 2016        | \$2,776,944        | \$75,209          | 2.70%        |
| <b>2014</b> | <b>\$1,217,872</b> | <b>\$28,705</b>   | <b>2.36%</b> |
| 2017        | \$1,522,104        | \$35,213          | 2.30%        |
| 2015        | \$2,455,782        | \$21,234          | .90%         |

The Rapid City Regional Airport also looked at the SD-DOT's eligible bidders and the type of work they are willing to participate and the locations they are willing to work within the state. The SD-DOT Certified DBE Roster has a total of 78 firms listed; of the firms listed only 20 of the firms do the type of work related to the Rapid City Regional Airport's anticipated 2019-2021 projects and are willing to do work in Rapid City, making only 25% of Certified DBE's eligible to work on the 2019-2021 projects.

|     |                                                                                               |
|-----|-----------------------------------------------------------------------------------------------|
| 78  | Number of DBEs on SD-DOT List                                                                 |
| 20  | Total willing to do work in Rapid City & eligible with proposed 2019 – 2021 Projects          |
| 25% | Percentage of DBEs in the State willing and able to participate in the RAP Airport's projects |

The airport anticipates (6) construction contracts being let during the 2019 – 2021 federal fiscal year using federal grants. Some DBE contractor and sub-contractor participation is anticipated for the construction projects equaling an anticipated \$6,881,860 of \$7,961,860 worth of projects. However, the remaining projects will involve Engineering Services for which the airport does not typically have DBE participation. Bringing the anticipated percentage of DBE participation down 14% =  $((7,961,860 - 6,881,860) / 7,961,860)$ .

The final goal can be figured by adjusting the Base Figure of 6.57% by a reduction of .89% for the amount of DBE's in the state which are willing and able to participate in the 2019-2021 projects to 5.68%. Then a simple average of 5.68% to the average mean of 2.36% from 2013-2017 creates 4.02%. This number is then reduced by 14% to create a new DBE Goal of 3.47% for Federal Fiscal Years 2019-2021.

However, based on the variety and complexity of each year's projects, it is necessary to consider the DBE goal on a year to year basis for Federal Fiscal Years 2019-2021. The final annual goals were determined as follows:

| <b>Goal Determination:</b>      | <b>2019</b>   | <b>2020</b>   | <b>2021</b>   |
|---------------------------------|---------------|---------------|---------------|
| Total Projects                  | \$3,447,000   | \$2,313,000   | \$2,201,860   |
| Less Construction               | (\$3,150,000) | (\$1,890,000) | (\$1,841,860) |
| Engineering, Equipment Projects | \$ 297,000    | \$ 423,000    | \$ 360,000    |



|                                                                   |              |              |              |
|-------------------------------------------------------------------|--------------|--------------|--------------|
| DBE Participation Reduction Rate (EngEquip / (Construction))      | 8.62%        | 18.29%       | 16.35%       |
| State Goal                                                        | 6.57%        | 6.57%        | 6.57%        |
| Reduction Rate (State Goal * DBE Participation Reduction Rate)    | 0.57%        | 1.20%        | 1.07%        |
| SD DBEs Willing & Able (State Goal Less Reduction Rate)           | 6.00%        | 5.37%        | 5.50%        |
| Rapid City Mean (2013-2017 Actual DBE %)                          | 2.36%        | 2.36%        | 2.36%        |
| Average Rate (Average of Willing & Able # and RC Mean)            | 4.18%        | 3.86%        | 3.93%        |
| Final Reduction Rate (Average * DBE Participation Reduction Rate) | 8.62%        | 18.29%       | 16.35%       |
| <b>Revised DBE Goal (Average Rate less Final Reduction Rate)</b>  | <b>3.82%</b> | <b>3.16%</b> | <b>3.29%</b> |

## Process

The Rapid City Regional Airport submits its overall goal to DOT on August 1 of each year. As set forth in Section 26.45 (g)(1), consultation will include, but not necessarily be limited to minority, women's and general contractor groups, community organizations, and other officials or organizations.

Rapid City Regional Airport held a goal consultation meeting on July 13, 2018, at 9:00 am. Local contractors and DBEs were mailed invitations to attend the meeting, however, no one attended. The proposed goal was also sent to the SDDOT with no response given. Following the consultation meeting, the notice of the proposed overall goal was posted on the Airport's website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the airport administration building. The notice was posted for 30 days informing the public that the Rapid City Regional Airport will accept comments on the goals for 45 days from the date of the notice. The notice included the address to which comments could be sent and where the proposal may be reviewed.

In an effort to include more entities in the consultation process, Rapid City Regional Airport will conduct a second concurrent goal setting consultation meeting in December for the FY2019-FY2021 DBE Goals. Attachment J-DBE Goal Consultation Meeting Documentation will then be resubmitted documenting all required items under 26.45. Rapid City Regional Airport plans to invite the DBE Firms listed on the current SD DOT website, local contractors and local DBE outreach organizations.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses, if any.

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



## **Race-Neutral and Race Conscious Breakout**

After carefully considering the scope of this year's projects and getting the latest revised Certified DBE Firm Listing from the SD-DOT, the Rapid City Airport felt it was necessary to set our race conscious versus race neutral breakout based on the following information:

Since breaking out Race Conscious versus Race Neutral goals, we have not received Race Neutral participation on any Federally Assisted Contract.

Therefore, we feel that we can meet the newly established goals through the use of Race-Neutral and Race Conscious means by the following:

|       |                                     |
|-------|-------------------------------------|
| 0.0%  | Race-Neutral                        |
| 3.47% | Over all 3 Year Race Conscious Goal |
| 3.82% | Race-Conscious 2019                 |
| 3.16% | Race-Conscious 2020                 |
| 3.29% | Race-Conscious 2021                 |

Race Neutral means will include:

- a. DBE Prime Contract Awards
- b. DBE Participation on Contracts Without Contract Goals
- c. DBE Participation that Exceeds a Contract Goal

In addition, we set contract goals only on federal-aid contracts that have subcontracting possibilities. Other considerations will be the type of work to be performed and the availability of DBE firms for the work of the contracts.

## **Contract Goals**

The Rapid City Regional Airport will use contract goals to meet any portion of the overall goal that the Rapid City Regional Airport does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goals applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract.

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.





**Attachment J**  
**DBE Goal Consultation Meeting Documentation**

Meeting Date: July 13, 2018

Meeting Time: 9:00 AM

Meeting Location: Rapid City Regional Airport Board Room, 4550 Terminal Road, #102,  
Rapid City, SD 57703

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Description of Meeting:

Concurrent goal setting consultation meeting with interested DBEs and general contractors.

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Meeting Attendance Roster:

No Attendees

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Summary of Discussions:

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This document shall be submitted tri-annually with the following additional information attached:

- Notice of Proposed Disadvantaged Business Enterprise Goal for Federally-Assisted Projects.
- Responses and/or changes to the goals and/or DBE Program.

As set forth in Section 26.45(g)(1), consultation will include, but not necessarily be limited to minority, women's and general contractor groups, community organizations, and other officials or organizations.

Since the annual DBE Goal Consultation was not conducted and documented as required by Section 26.45(g)(1), the Rapid City Regional Airport will conduct a concurrent goal setting consultation meeting in December for the FY2019-FY2021 DBE Goals. Attachment J-DBE Goal Consultation Meeting Documentation will then be resubmitted documenting all required items under 26.45. The Rapid City Regional Airport is planning to invite the DBE Firms listed on the current SD DOT website and any local DBE outreach organizations.

