

## POLICY STATEMENT

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

St. Joseph County Airport Authority, owner of South Bend International 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. St. Joseph County Airport Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, St. Joseph County Airport Authority has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the St. Joseph County Airport Authority to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also St. Joseph County Airport Authority policy to engage in the following actions on a continuing basis:

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

The Properties Manager has been delegated as the DBE Liaison Officer. In that capacity, the Properties Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the St. Joseph County Airport Authority in its financial assistance agreements with the Department of Transportation.

St. Joseph County Airport Authority has disseminated this policy statement to the Authority and all components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on St. Joseph County Airport Authority DOT-assisted contracts. The distribution was accomplished by mass e-mail and at pre-construction meetings.

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CEO & Executive Director

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Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

St. Joseph County Airport Authority will use terms in this program that have their meanings defined in Part 26, §26.5.

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

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

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT**

St. Joseph County Airport Authority will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FAA as follows:

St. Joseph County Airport Authority will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. St. Joseph

County Airport Authority will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

### Bidders List

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

This information will be collected per **ATTACHMENT 3**.

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

St. Joseph County Airport Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

The St. Joseph County Airport Authority 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 St. Joseph County Airport Authority 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 St. Joseph County Airport Authority 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 St. Joseph County Airport Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: St. Joseph County Airport Authority will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

## **ADMINISTRATIVE REQUIREMENTS**

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

St. Joseph County Airport Authority 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. St. Joseph County Airport Authority is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and St. Joseph County Airport Authority is in compliance with it and Part 26. St. Joseph County Airport Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. St. Joseph County Airport Authority does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for St. Joseph County Airport Authority:

Kerianne Linn, A.A.E.  
Properties Manager  
St. Joseph County Airport Authority  
4477 Progress Drive

South Bend, IN 46628  
Phone: 574-282-4590 ext. 221  
Fax: 574-239-2585  
klinn@sbnair.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the St. Joseph County Airport Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the CEO & Executive Director concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **ATTACHMENT 2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has sufficient support staff including Board attorney and consultant to assist in the administration of the program. The duties and responsibilities include the following:

***[Note: The following are examples. Include only those responsibilities that the DBELO actually performs. Add additional responsibilities if appropriate.]***

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 St. Joseph County Airport Authority progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process. *[certifying agencies only]*
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the St. Joseph County Airport Authority to investigate each 3-year cycle 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 have queried online whether any local DBE financial institutions exist, including reaching out to the local chamber and have found none.

## **Section 26.29 Prompt Payment Mechanisms**

St. Joseph County Airport Authority requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the St. Joseph County Airport Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the St. Joseph County Airport Authority.

St. Joseph County Airport Authority 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, St. Joseph County Airport Authority has selected the following method to comply with this requirement:

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

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

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

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. The Owner must 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, 5 percent 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. The balance – 95% 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.

### **Section 26.31      Directory**

St. Joseph County Airport Authority is a non-certifying member of the Indiana Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

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

St. Joseph County Airport Authority has not identified that over-concentration exists in the types of work that DBEs perform.

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

St. Joseph County Airport Authority has not established a Business Development Program.

### **Section 26.37      Monitoring Responsibilities**

St. Joseph County Airport Authority 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 St. Joseph County Airport Authority DBE program.

St. Joseph County Airport Authority 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

St. Joseph County Airport Authority 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):

1. We 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.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. **ATTACHMENT 7** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by review of work orders, contracts, pay requests and job site visits.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

St. Joseph County Airport Authority requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the St. Joseph County Airport Authority financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of St. Joseph County Airport Authority or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.



- St. Joseph County Airport Authority 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 St. Joseph County Airport Authority by the prime contractor.

#### Prompt Payment Dispute Resolution

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

- During regular monthly progress meetings with all parties (at minimum staff, prime contractor, and consultant representatives) involved in aspects of the project, time will be allowed to identify any matters of dispute.
- Each representative will have authorization to bind their party with authority to take enforcement action.
- All matters shall be discussed and condensed in writing.
- The matter will be brought to the DBELO to determine next steps, i.e. seek advice of an appointed attorney and/or involve the Board.
- A clear next step will be determined as quickly as possible.

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

#### (1) Alternative dispute resolution (ADR)

- A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

### (3) Other mechanisms

- Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

#### Prompt Payment Complaints

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

- Subcontractor should first attempt to bring the dispute to the attention of the prime in writing.
- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO in writing to initiate their complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful response by St. Joseph County Airport Authority to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

St. Joseph County Airport Authority will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- 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.

St. Joseph County Airport Authority will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

St. Joseph County Airport Authority reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Project Manager. Contracting records are reviewed by Project Manager. St. Joseph County Airport Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose **ATTACHMENT 7.**

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

St. Joseph County Airport Authority has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as **ATTACHMENT 9** to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for St. Joseph County Airport Authority to be considered by DOT as implementing this DBE program in good faith.

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

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

St. Joseph County Airport Authority does not use quotas in any way in the administration of this DBE program.

#### **Section 26.45      Overall Goals**

St. Joseph County Airport Authority will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), St. Joseph County Airport Authority will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA.

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If St. Joseph County Airport Authority does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and St. Joseph County Airport Authority will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. St. Joseph County Airport Authority will use as a method to determine the base figure. St. Joseph County Airport Authority understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. St. Joseph County Airport Authority will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the St. Joseph County Airport Authority market.

In establishing the overall goal, St. Joseph County Airport Authority will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by St. Joseph County Airport Authority to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before St. Joseph County Airport Authority is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which St. Joseph County Airport Authority

engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, St. Joseph County Airport Authority will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on St. Joseph County Airport Authority official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

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

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

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

### Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

### Prior Operating Administration Concurrence

St. Joseph County Airport Authority understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal

has not been correctly calculated or that the method employed by St. Joseph County Airport Authority for calculating goals is inadequate, FAA may, after consulting with St. Joseph County Airport Authority, adjust the overall goal or require that the goal be adjusted by St. Joseph County Airport Authority. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **ATTACHMENT 5** to this program.

#### **Section 26.47 Failure to meet overall goals**

St. Joseph County Airport Authority cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless St. Joseph County Airport Authority fails to administer its DBE program in good faith.

St. Joseph County Airport Authority understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

St. Joseph County Airport Authority understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) St. Joseph County Airport Authority will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

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

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

St. Joseph County Airport Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to

utilize emerging technology and conduct business through electronic media.

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

The St. Joseph County Airport Authority will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

### Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order to meet the overall goal.

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

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals**

#### Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

St. Joseph County Airport Authority will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.



In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

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

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

#### Administrative reconsideration

Within 7 days of being informed by St. Joseph County Airport Authority that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Executive Director. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

#### Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) St. Joseph County Airport Authority determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides St. Joseph County Airport Authority 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 St. Joseph County Airport Authority has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

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

St. Joseph County Airport Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If St. Joseph County Airport Authority requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7

days, which may be extended for an additional 7 days if necessary at the request of the contractor. St. Joseph County Airport Authority shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

### **Section 26.55      Counting DBE Participation**

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

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

## **SUBPART D – CERTIFICATION STANDARDS**

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

St. Joseph County Airport Authority is a non-certifying member of the Indiana Unified Certification Program (UCP). Indiana UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Indiana UCP members make all certification decisions based on the facts as a whole.

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

Indiana Department of Transportation  
Disadvantaged Business Enterprise (DBE) Certification  
Derrick Casson  
DBE Certification Manager

## **SUBPART E – CERTIFICATION PROCEDURES**

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

St. Joseph County Airport Authority is the member of a Unified Certification Program (UCP) administered by Indiana. The UCP will meet all of the requirements of this section. See **ATTACHMENT 8.**

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

### **Section 26.101 Compliance Procedures Applicable to St. Joseph County Airport Authority**

St. Joseph County Airport Authority understands that if it fails to comply with any requirement of this part, St. Joseph County Airport Authority may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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

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

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews,

investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

St. Joseph County Airport Authority, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. St. Joseph County Airport Authority understands that it is in noncompliance with Part 26 if it violates this prohibition.

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## **ATTACHMENTS**

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

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**ATTACHMENT 1**

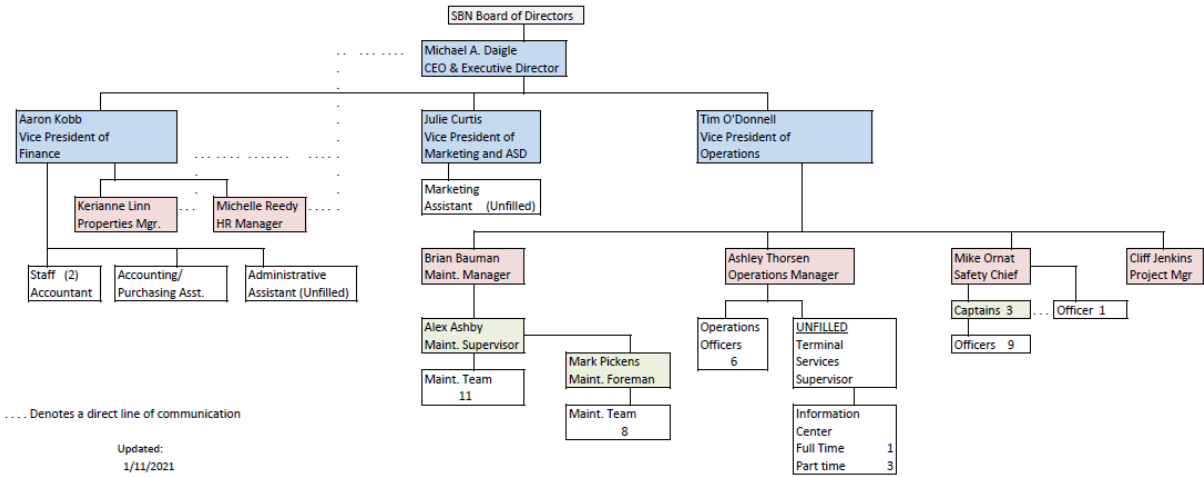
Regulations: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

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## ATTACHMENT 2

### Organizational Chart



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**ATTACHMENT 3**  
Bidder's List and Letter of Intent Collection Form

**Bidder/Offer** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 IRS Number: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_, Telephone No.: \_\_\_\_\_

Was the following firm selected by lowest bid? (check one) Yes: \_\_\_ No: \_\_\_

**Firm:** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

What is the Age of Firm? \_\_\_\_\_

Firms annual Gross Receipts?  <\$500,000  \$500,000 - \$1Mill.  \$1 - \$2 Mill.  \$2 - \$5 Mill.

Is firm a Small Business Enterprise (SBE)? (check one) Yes: \_\_\_ No: \_\_\_

Is firm a Disadvantaged Business Enterprise (DBE)? (check one) Yes: \_\_\_ No: \_\_\_

**Classification:**  Prime Contractor  Subcontractor  Joint Venture  
 Manufacturer  Supplier

Work item(s) to be performed by Firm	Description of Work Item	Quantity	Total

The bidder/offeror is committed to utilizing the above-named firm for the work described above. The estimated participation is as follows:

Firm's contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION:**

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

By: \_\_\_\_\_  
 (Signature) (Title) Following for DBE Only

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
 Each DBE Firm shall submit evidence (such as a photocopy) of their certification status

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

**ATTACHMENT 4**

Indiana DBE Directory <https://entapps.indot.in.gov/DBELocator/>

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**ATTACHMENT 5**

**Overall DBE Three-Year Goal Methodology**

**Name of Recipient:** St. Joseph County Airport Authority, owner of the South Bend International Airport

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

<b>DOT-assisted contract amount:</b>	FY-2022	<u>\$16,000,000</u>
	FY-2023	<u>\$16,640,000</u>
	FY-2024	<u>\$20,249,067</u>
	<b>Total</b>	<b><u>\$52,889,067</u></b>

**Overall Three-Year Goal:** 3.91%, to be accomplished through 3.91% RC and 0.00% RN

**Total dollar amount to be expended on DBEs:** \$2,067,963

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

Contracts Fiscal Year #1

1. Reconstruct Terminal Apron and Reconstruct/Realign Taxiway B: Phase 3 Construction \$15,040,000 and CA - \$960,000

Contracts Fiscal Year #2

2. Design Bid Package 4 Reconstruct Terminal Apron and Reconstruct/Realign Taxiway B – \$640,000
3. Reconstruct Terminal Apron and Reconstruct/Realign Taxiway B: Phase 4 Construction \$15,040,000 and CA - \$960,000

Contracts Fiscal Year #3

4. Reconstruct Terminal Apron and Reconstruct/Realign Taxiway B: Phase 5 Construction \$13,160,000 and CA - \$840,000
5. D&E - Rehabilitate Lighting - Phase 1 and 2 - \$523,000
6. Rehabilitate Lighting - Phase 1 - \$2,667,000
7. D&E for Runway 9R/27L Reconstruction - \$3,059,067

**Market Area:** Because the work evaluated in this program it is reasonable to expect the market is statewide.

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

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

$$BF = \left[ \text{Construction \% of Project} \times \frac{\text{Ready, willing and able DBE construction firms}}{\text{All construction firms ready, willing and able}} + \text{Professional Services \% of Project} \times \frac{\text{Ready, willing and able DBE professional services}}{\text{All professional services firms ready, willing and able}} \right] \times 100$$

$$BF = \left[ 0.87 \times \frac{36}{645} + 0.13 \times \frac{26}{979} \right] \times 100$$

$$BF = 5.2\%$$

The data source or demonstrable evidence used to derive the numerator was: <https://entapps.indot.in.gov/DBELocator/> searching for ready willing and able Indiana Certified DBE's with NAICS codes 237990 and 541330

The data source or demonstrable evidence used to derive the denominator was: [http://www2.census.gov/econ/susb/data/2012/state\\_id-ia\\_6digitnaics\\_2012.txt](http://www2.census.gov/econ/susb/data/2012/state_id-ia_6digitnaics_2012.txt) searching for ready willing and able universe of DBE's with NAICS codes 237990 and 541330

## Step 2: Adjustments to Step 1 base figure

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

### Past History Participation

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

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 13							0.00%	
FY 14							2.42%	
FY 15							0.00%	
FY 16							0.00%	
FY 17							3.30%	
FY 18							2.72%	
FY 19							2.00%	

The average of the above accomplishments is 2.61%. Taking the BF of 5.2% from above and averaging it with the statistical accomplishments over 7 years, the Overall Goal is 3.91%.

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

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

St. Joseph County Airport Authority will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

St. Joseph County Airport Authority estimates that in meeting the established overall goal of 3.91%, it will obtain 0.00% from RN participation and 3.91% through RC measures.

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

## PUBLIC PARTICIPATION

### **Consultation:**

In establishing the overall goal, St. Joseph County Airport Authority provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the St. Joseph County Airport Authority efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct or web-link interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

Notice sent to the following potential interested parties:

Local newspaper  
Indiana Small Business Development Center Network Lead Center  
Economic Opportunity Division  
South Bend Chamber of Commerce

The consultation engaged in may be a face-to-face open meeting or via web-link video meeting.

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

If the proposed goal changes following review by FAA the revised goal will be posted on St. Joseph County Airport Authority official website.

Notwithstanding paragraph (f)(4) of §26.45, St. Joseph County Airport Authority proposed goals will not be implemented until this requirement has been met.



## PUBLIC NOTICE

The St. Joseph County Airport Authority hereby announces its goal covering the period 2022, 2023 and 2024 of 3.91% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goal and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at St. Joseph County Airport Authority, 4477 Progress Drive, South Bend, IN 46628 for 30 days from the date of this publication.

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

Kerianne Linn, A.A.E  
Properties Manager  
St. Joseph County Airport Authority  
4477 Progress Drive  
South Bend, IN 46628  
Phone: 574-282-4590 ext. 221  
Fax: 574-239-2585

AND

Ms. Nancy Cibic  
Compliance Specialist and  
Contracting Officer Representative  
Federal Aviation Administration  
Office of Civil Rights  
2300 E. Devon Avenue, Room 440  
Des Plaines, Illinois 60018

**ATTACHMENT 6**

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

**Forms 1 and 2 should be provided as part of the solicitation documentation.**

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

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

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

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT 7

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

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

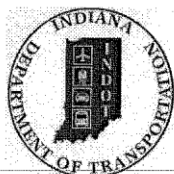
1. Breach of contract action, pursuant to the terms of the contract
2. Breach of contract action, pursuant to Indiana Code

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

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

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**ATTACHMENT 8**  
State's UCP Agreement



**INDIANA DEPARTMENT OF TRANSPORTATION**  
100 North Senate Avenue  
Room N758  
Indianapolis, Indiana 46204-2216  
(317) 232-5533 FAX: (317) 232-0238  
An Equal Opportunity Employer • <http://www.in.gov/dot>

MITCHELL E. DANIELS, JR., Governor  
THOMAS O. SHARP, Commissioner

Writer's Direct Line  
(317)232-5328

August 31, 2005

Mr. Kenneth Woodruff  
Civil Rights Program Manager  
U.S. Department of Transportation  
Federal Highway Administration, Indiana Division  
575 N. Pennsylvania St., Room 254  
Indianapolis, Indiana 46204

Re: Amendment to State of Indiana Unified Certification Program

Dear Mr. Woodruff:

The U.S. Department of Transportation, by letter from Jeffrey Rosen dated August 3, 2005, attached hereto, accepted the request made by the Indiana Department of Transportation and the Indiana Department of Administration to amend the State of Indiana Unified Certification Program. As you are aware, the amendment will replace the current Certification Review and Appeal Committee with an Administrative Law Judge who will be an attorney familiar with Indiana's DBE program. We plan to educate a group of attorneys from the Office of Attorney General on the DBE program and federal regulations so that they may effectively serve as administrative law judges for recertification DBE appeals.

While I understand that INDOT must amend the DBE Program Manual to reflect this change, I respectfully request permission to schedule these trainings and hearings with the AG's office immediately as we have some recertification appeal requests waiting for a hearing. The written changes to the manual and the UCP will be forthcoming. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha G. Kenley".

Martha G. Kenley  
Director  
Economic Opportunity Division

c.c. Mark Ahearn, Chief Legal Counsel

**ATTACHMENT 9**  
Small Business Element

**1. Objective/Strategies**

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. Also, 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.

**2. Definition**

Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.

Personal Net Worth standards (optional) – should be consistent with 49 CFR Part 26 thresholds.

**3. Verification**

Should diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms

**4. Monitoring/Record Keeping**

The information will be organized by the project manager and will be monitored by the DBELO

**5. Assurance**

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

## ATTACHMENT 10

### Commercially Useful Function (CUF) Log

We have monitored all DBE program participants (including professional services) to ensure they are complying with 49 CFR Part 26 and that work performed by the DBE is the work that has been committed to and we have reviewed contracting records and monitored work/sites for this purpose.

We have determined that each DBE has performed a commercially useful function (CUF) per 26.55(c) by identifying their scope of work, observations of the DBE performing work on the work site with its own resources, and recorded the information in the log below.

Monitoring will take place throughout the project not just at close out, and begin early in the process to allow for identification and correction of any compliance issues detected.

Project: \_\_\_\_\_

Date	DBE Name	Work Element	Is DBE performing a CUF?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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Contact \_\_\_\_\_

\_\_\_\_\_

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