

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The St. Joseph County Airport Authority, owner of South Bend International Airport (SBN), 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 Airport Manager has been delegated as the DBE Liaison Officer. In that capacity, the Airport 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 all of the 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 notice on the official website.

Executive Director: _____

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 Data Collection and Reporting Requirements

Reporting to DOT

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

DBE participation will be reported to the Federal Aviation Administration (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 Part 26. St. Joseph County Airport Authority will similarly report the required information about participating DBE firms.

All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

St. Joseph County Airport Authority will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

St. Joseph County Airport Authority will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

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

St. Joseph County Airport Authority will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

St. Joseph County Airport Authority will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), St. Joseph County Airport Authority will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Section 26.13 Assurances Recipients and Contractors Must Make

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 to the relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for

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

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 provisions of 49 CFR Part 26. The DBELO has direct, independent access to the President of the St. Joseph County Airport Authority concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **ATTACHMENT 2** to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes St. Joseph County Airport Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of St. Joseph County Airport Authority 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. Availability of such institutions will be investigated on an annual basis.

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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

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 **thirty (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:

1. St. Joseph County Airport Authority 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 St. Joseph County Airport Authority payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, St. Joseph County Airport Authority includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

St. Joseph County Airport Authority clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, St. Joseph County Airport Authority undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

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.

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's 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 monthly or on each contractor Pay Application, whichever is the highest frequency. 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 timely prompt payment and retainage releases are being made as required by § 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.
- All meetings will require legal representation, with minutes and written names of all parties to be kept for reference. 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 contractor in writing.
- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by 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 provides 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.

Section 26.31 Directory of Certified Firms

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 and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS

codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

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 and Mentor-Protégé Programs

St. Joseph County Airport Authority has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

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, and describes and sets forth these mechanisms in this DBE program.

St. Joseph County Airport Authority actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by the entity contractually obligated to do so. This mechanism to maintain a running tally of overall goal attainment will be used to inform St. Joseph County Airport Authority's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

St. Joseph County Airport Authority actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by the entity contractually obligated to do so. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by DBELO/compliance team/project managers/consultant. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by DBELO/compliance team/project managers/consultant. St. Joseph County Airport Authority will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. St. Joseph County Airport Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract. See **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 10** to this DBE Program. The program elements will be actively implemented to foster small business

participation. St. Joseph County Airport Authority acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

St. Joseph County Airport Authority does not use quotas or race-conscious set-asides 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 1st of the year in which the goal is due, as required by the schedule established by **FAA**.

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 Census Bureau Data 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's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by **FAA**, the revised goal will be posted on St. Joseph County Airport Authority's official internet web site or Matchmaker 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 St. Joseph County Airport Authority 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) and the location(s) where the proposed goal may be reviewed. **The public comment period will not extend the August 1st deadline.**

The Overall Three-Year DBE Goal submission to **FAA** will include any information and comments received, who provided the comment, and how St. Joseph County Airport Authority considered and responded to any comments and information received before finalizing the goal.

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**, 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 it must meet all the substantive and procedural requirements 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.

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.

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 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.

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

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:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. 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;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. 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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. 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;
- (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, such as a procurement for professional services, 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 (b)(2) of this section before the final selection for the contract is made by St. Joseph County Airport Authority. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor St. Joseph County Airport Authority will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, St. Joseph County Airport Authority will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which St. Joseph County Airport Authority solicits proposals to design and build a project with minimal project details at time of letting, St. Joseph County Airport Authority may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, St. Joseph County Airport Authority will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. St. Joseph County Airport Authority and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

St. Joseph County Airport Authority will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, St. Joseph County Airport Authority **will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within **seven (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 reconsideration official. If there is a reconsideration request, an official that did not play a role in the original determination will be appointed, who will make a determination whether the bidder/offeror provided documentation of sufficient good faith efforts.

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

Good Faith Efforts procedural requirements (post-solicitation/award)

St. Joseph County Airport Authority will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that St. Joseph County Airport Authority deems appropriate if the prime contractor fails to comply with the requirements of this section.

St. Joseph County Airport Authority will require the awarded contractor 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.

St. Joseph County Airport Authority will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless St. Joseph County Airport Authority causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

St. Joseph County Airport Authority will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains St. Joseph County Airport Authority's written consent as provided in § 26.53(f); and

- (2) Unless St. Joseph County Airport Authority's consent is provided under § 26.53(f), the prime contractor must 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 may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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, nondiscriminatory 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 1200 or applicable state law;
- (6) St. Joseph County Airport Authority has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to 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; and
- (10) Other documented good cause that St. Joseph County Airport Authority determines compels the termination of the DBE subcontractor;

Before transmitting to St. Joseph County Airport Authority the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to St. Joseph County Airport Authority sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising St. Joseph County Airport Authority and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why St. Joseph County Airport Authority should not approve the prime contractor's

request. If required in a particular case as a matter of public necessity (e.g., safety), St. Joseph County Airport Authority may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If St. Joseph County Airport Authority requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (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.

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).

For FAA-funded projects only, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals 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.

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) and relies upon the UCP's determinations of certification eligibility. **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 (INDOT)
Equity Initiative Services Department
DBECertification@indot.IN.gov

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

See **ATTACHMENT 8**.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full **Indiana** UCP agreement. The Indiana UCP agreement is located here: <https://www.in.gov/indot/doing-business-with-indot/files/INDOT-DBE-Manual-March-2021-.pdf>

See **ATTACHMENT 9**.

Section 26.81 Unified Certification Programs

St. Joseph County Airport Authority is a member of a Unified Certification Program (UCP) administered by INDOT. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

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.

St. Joseph County Airport Authority understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs. Paragraphs (1), (3), (4), and (5) have been omitted as they are not applicable to FAA programs.

- (2) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack

of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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.

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

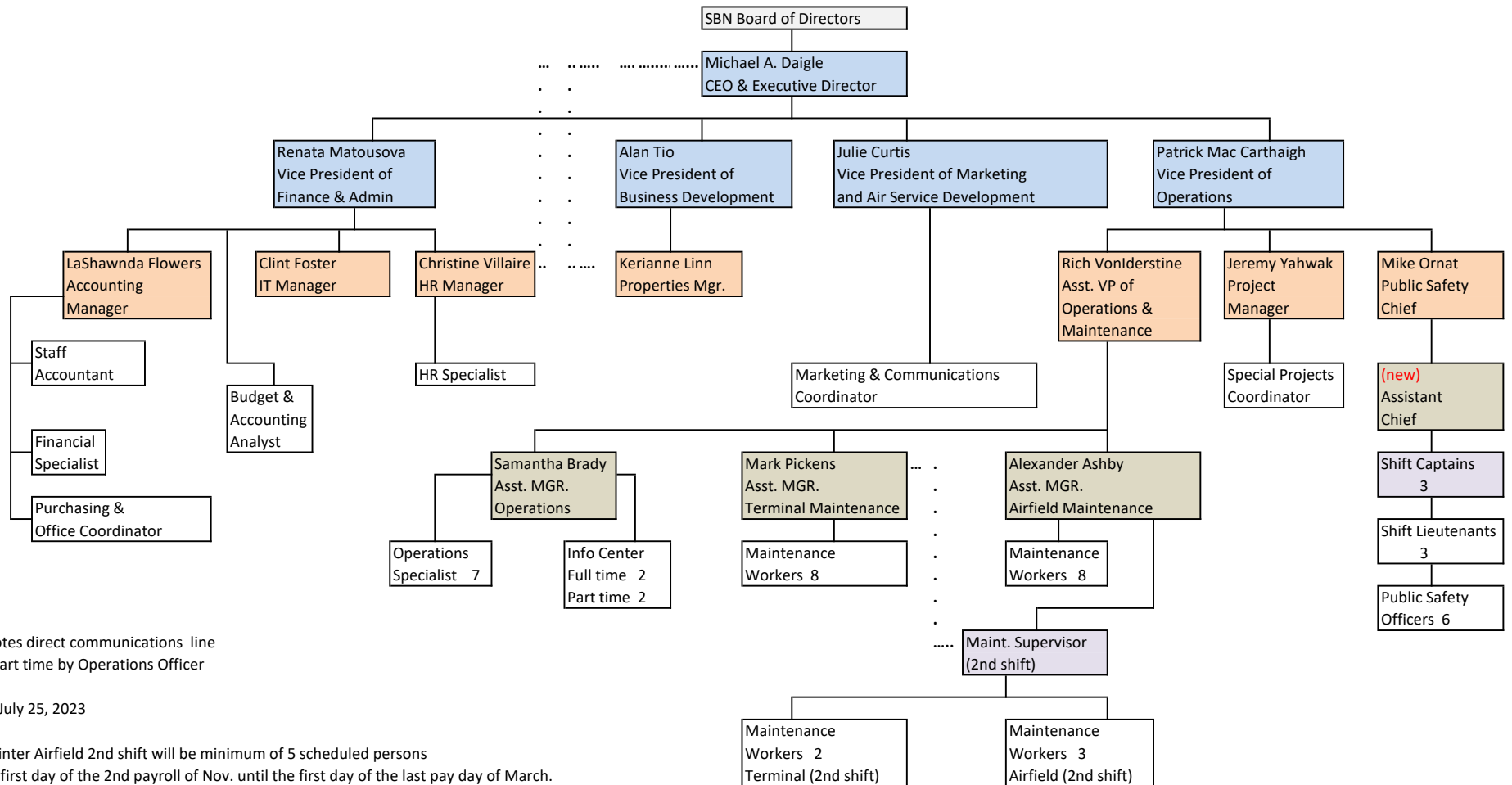
ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

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

ATTACHMENT 2
ORGANIZATIONAL CHART

See Chart Following



..... Denotes direct communications line

* filled part time by Operations Officer

updated July 25, 2023

NOTE: Winter Airfield 2nd shift will be minimum of 5 scheduled persons from the first day of the 2nd payroll of Nov. until the first day of the last pay day of March.

NOTE: Maintenance will also have the 2 positions that are 4 - 10 hour days to ensure coverage on Saturday and Sunday.

ATTACHMENT 4

Indiana DBE Directory may be found here:

<https://entapps.indot.in.gov/DBELocator/>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

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

Goal Period: FY-2025-2026-2027 (Non Hub) – October 1, 2024 through September 30, 2027)

DOT-assisted contract amount:	FY-2025	<u>\$9,840,578</u>
	FY-2026	<u>\$4,038,411</u>
	FY-2027	<u>\$7,246,742</u>
	Total	<u>\$21,125,731</u>

Overall Three-Year Goal: 4.02%, to be accomplished through 4.02% RC and 0.00% RN

Total dollar amount to be expended on DBEs: \$849,254

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

Contracts Fiscal Year #1

1. Runway 18 Object Free Area Improvements: Design and Environmental, Construction and CA
2. Airfield Lighting Rehabilitation (Multiple packages): Design
3. RW 9R/27L Reconstruction Preliminary Engineering
4. Terminal Area Frontage Road
5. Terminal Restroom Improvements, Phase 3

Contracts Fiscal Year #2

6. Concourse Restrooms Design
7. Airfield Lighting Rehabilitation (TW A and TW N): CA and Construction

Contracts Fiscal Year #3

8. Airfield Lighting Rehabilitation (RW 18-36 and PAPI RGL): CA and Construction
9. RW 9R/27L Alternative Analysis
10. Concourse Improvements Restrooms and Gates, Construction

*Listing of projects includes BIL funding.

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:

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

$$BF = \left[0.77 \times \frac{49}{1,059} + 0.23 \times \frac{118}{1,664} \right] \times 100$$

BF= 5.2%

Method (Section 26.45 of 49 CFR Part 26)

Because of the type of work evaluated in this program it is reasonable to expect the market is statewide. The data source or demonstrable evidence used to derive the numerator referenced both 237 and 541330 NAICS codes here:

<https://entapps.indot.in.gov/DBELocator/>

All data was corrected to reflect only DBE’s doing business in the entire State not just limited to a smaller district, multiple company listings were only counted once, and the counting did not include ACDBE’s.

The data source or demonstrable evidence used to derive the denominator are found in 2022 Census NAICS codes 237 and 541330 for Indiana here:

[CBP2020.CB2000CBP - Census Bureau Tables](https://www.census.gov/data/tables/2022/cb2000/cbp-cb2000cbp-census-bureau-tables.html)

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 16							0.00%	
FY 17							3.30%	
FY 18							2.70%	
FY 19							2.00%	
FY 20							3.80%	

<i>FY 21</i>							<i>3.70%</i>	
<i>FY 22</i>							<i>4.00%</i>	
<i>FY 23</i>							<i>3.60%</i>	
<i>FY 24</i>							<i>2.40%</i>	

The average of the above accomplishments is 2.83%. Taking the BF of 5.2% from above and averaging it with the statistical accomplishments over 9 years, the Overall Goal is 4.02%.

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

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

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 4.02%, it will obtain 0.00% from RN participation and 4.02% 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 2025, 2026 and 2027 of 4.02% 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
Properties Manager
St. Joseph County Airport Authority
4477 Progress Drive
South Bend, IN 46628
Phone: 574-282-4590 ext. 221
Fax: 574-239-2585

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

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 documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

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

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

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

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

**DBE Regular Dealer/Distributor
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan. **DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?

YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative 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 Revised 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.

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?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Contact

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

The **Indiana** UCP Information follows.

STATE OF INDIANA
DISADVANTAGED BUSINESS ENTERPRISES
AMENDMENT TO UNIFIED CERTIFICATION AGREEMENT
PURSUANT TO 49 CFR SUBPART E. § 26.81

The Indiana Department of Transportation (INDOT) and the Indiana Recipients of DOT funds (IRDOT) hereby agree to a unified certification program for Indiana's Disadvantaged Business Enterprise (DBE) Program pursuant to administrative rules promulgated by the United States Department of Transportation (DOT) under the terms set forth herein:

WHEREAS,

The INDOT and all other recipients of DOT funds are required to participate in a Unified Certification Program (UCP) pursuant to 49 CFR § 26.81; and

WHEREAS,

The INDOT used the Indiana Department of Administration (IDOA), by and through its Division of Minority and Women's Business Enterprises, to administer the certification process for the DBE Program since 1993, pursuant to an interagency memorandum of understanding. Now, through mutual agreement with IDOA, INDOT will reclaim the certification function of the DBE program and will make certification decisions for DBE and ACDBE applicants and existing DBE firms. INDOT performed the required DBE certifications from 1983 to 1993 and has requisite staff and expertise to administer the certification process pursuant to the applicable Code of Federal Regulations; and

WHEREAS,

In contemplation of the formation of the agreement, INDOT conducted a survey of all IRDOT, and confirmed that there was a unanimous acceptance of this UCP revision.

In recognition of the aforementioned recitals, the parties below stipulate to this amendment to the State of Indiana's Unified Certification Program.

Karl B. Browning, Commissioner
Indiana Department of Transportation

Date _____

Carrie Henderson, Commissioner
Indiana Department of Administration

Date _____

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM

49 CFR PARTS 23 & 26

INDIANA

UNIFIED

CERTIFICATION

PROGRAM

(REVISED)

September 2007

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Section 1. Regulatory Requirement (49 CFR §26.81)

As required under Subpart E of the above part, USDOT recipients in the State of Indiana must participate in a Unified Certification Program (UCP). Recipients must sign an agreement establishing the UCP for Indiana and submit the agreement to the U.S. Secretary of Transportation for approval.

The signed agreement shall provide for the establishment of a UCP that meets all of the requirements of 49 CFR, Part 26, Subpart E. The program, to which each recipient is signatory, shall specify that the UCP will follow all certification procedures and standards of this part on the same basis as the recipients, shall cooperate fully with oversight, review and monitoring activities of DOT and its operating administration, and shall implement and honor DOT directives and guidance concerning certification matters. The agreement commits recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part.

The Indiana recipients of US DOT funds have determined that INDOT will assume the lead role in the UCP as the certifying entity. INDOT has established a certification program and sufficient staff to perform the certification functions.

The UCP will not establish, make recommendation or alter any agency's overall Disadvantaged Business Enterprise (DBE) Program, other than to supplement the certification process of an approved program. The development of DBE goals, program administration, monitoring and reporting will remain the sole responsibility of the agencies with a DBE program that has been approved by US DOT in accordance with 49 CFR Part 26, as appropriate, subject to any oversight requirements of FHWA, FAA or FTA. All US DOT recipients to whom the UCP applies are required to ratify the UCP agreement, and all DBE certifications by the UCP will be binding.

Section 2. Definitions. (49 CFR §26.5)

Certifying Agencies – means agencies that make all certification decisions on behalf of all Recipients in the state with respect to participation in the DOT DBE program. Certifying Agencies are Recipients that have an approved DBE plan, currently certify DBE's under CFR 46 Part 23 as applicable to airport concessions and/or Part 26, and receive DOT funding in excess of \$250,000. The Indiana Department of Transportation is the only Certifying Agency.

Compliance – means that a Recipient has correctly implemented the requirements of 49 CFR Part 23, as applicable to airport concessions, and Part 26.

Contractor – means one who participates, through a contract or subcontract, in a DOT-assisted highway, transit, or airport Program.

Administrative Law Judge (ALJ) -- means an individual who will preside over an internal INDOT hearing pertaining to certification revocation appeals.

Department – (or **DOT**) means the U.S. Department of Transportation.

Disadvantaged Business Enterprise (DBE) - means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged owners.

Firm – means a for-profit small business concern.

FAA – means the Federal Aviation Administration.

FHWA – means the Federal Highway Administration.

FTA – means the Federal Transit Administration.

Non-Certifying Agencies – means agencies that participate only as recipients of the DBE certifying process. All signing agencies are Non-Certifying Agencies.

Program – means any undertaking on a Recipient's part to use DOT financial assistance, authorized by the laws to which 49 CFR Part 23 or Part 26 applies.

Recipient - is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or FTA, or who has applied for such assistance.

Small Business Concern - means, with respect to Firms seeking to participate as DBEs in DOT-assisted contracts, a business as defined pursuant to Section 3 of the Small Business Act and corresponding regulations contained in 13 CFR Part 121 that does also not exceed the cap on average annual gross receipts specified in 49 CFR §26.65 (b).

UCP DBE Directory – means a directory of all UCP approved and certified Firms that is published and maintained by INDOT within the UCP

Section 3. Ratification of One Step Unified Certification Program

All recipients of federal funds administered by the US DOT that are required to have a DBE Program, either directly or indirectly, must ratify and comply with the UCP agreement. Failure to ratify the agreement may result in the loss of federal funds from the UCP members and/or the US DOT.

Prior to the submission of the UCP document to the US DOT, recipients will be required to make an affirmative statement of intent to comply and will be subject to administrative review by the UCP or any branch of the US DOT. If at any time a recipient of federal funds, not previously covered by this agreement becomes eligible to require a DBE Program, the recipient must accept and execute the UCP agreement and participate in accordance with its requirements.

Section 4. Administration (49CFR §26.2)

4.1 DBE Program and Participation in Unified Certification Program

If you are in one of the following categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of 49 CFR §26.21.

- All FHWA Recipients receiving funds authorized by a statute to which 49 CFR § 26.21 applies;
- FTA Recipients that receive \$250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year, exclusive of transit vehicle purchases and transit vehicle manufacturers who must submit an overall goal under 49 CFR § 26.49;
- FAA Recipients that receive a grant of \$250,000 or more for airport planning or development.

4.2 Indiana Unified Certification Program

The Indiana Unified Certification Program is established according to an agreement of the Certifying and Non-Certifying Agencies to certify all DBEs on DOT-assisted contracts in Indiana in accordance with 49 CFR Subparts D and E, and Part 23 as applicable to airport concessions.

4.3 Certifying Agency

The Certifying Agency for Indiana is the agency that will receive and process DBE applications on behalf of all Recipients in the state with respect to participation in the DOT DBE program. The certifying agency, the Indiana Department of Transportation, has an approved DBE Plan, in accordance with 49 CFR Part 23 as applicable to airport concessions and/or Part 26. The Certifying Agency for the Indiana UCP is the INDOT, who has the resources to adequately perform the certification responsibilities.

4.31 Regulatory Requirement

The UCP shall make all certification decisions on behalf of all DOT recipients in Indiana with respect to participation in the DBE Program. The UCP shall notify each recipient of applications and all actions taken regarding applicants. In the event of removal of certification, the applicant recipient shall be notified of the pending decision.

Certification decisions by the UCP will be binding on all DOT recipients in Indiana.

The UCP provides “One-Stop-Shopping” to applicants for DBE certification. An applicant for certification is required to apply only once for a DBE certification that, if approved, will be honored by all Indiana DOT recipients.

All obligations of DOT recipients with respect to certification and non-discrimination within the certification process as required in 49 CFR §26.81(b) (3) will be carried out by the UCP, and recipients may only use the UCP that complies with the certification and non-discrimination requirements of 49 CFR Part 26.

All certifications by the UCP shall be made final prior to the due date for bids or offers on a contract on which a Firm seeks to participate as a DBE.

The UCP is not required to process an application for certification from a Firm having its principal place of business outside of the State of Indiana UCP if the Firm is not certified by the UCP in the state in which it maintains its principal place of business. INDOT will contact the home state UCP to request on-site information and documents concerning the Firm.. The Indiana UCP shall share certification information with other states upon request.

4.32 Certification Resources

The resources required to perform Indiana's UCP shall be provided by INDOT. Staffing and monetary resources shall be adjusted periodically depending on projected workloads and past workforce utilization data. INDOT shall maintain staff with certification experience and/or appropriate qualifications to address each phase of the certification process.



4.33 Directory`

The UCP will maintain a Unified DBE Directory that contains all Firms certified by the UCP, which will include, at a minimum, Firm name, address, phone number, fax number, e-mail address, and type of work each DBE is certified to perform. The INDOT shall update the Directory as often as feasible, but not less than once a month. The Directory is available electronically on the INDOT DBE website www.in.gov/dot/div/legal/DBE and in print, if requested.

4.34 Consolidation into UCP

Only Firms certified in accordance with 49CFR Part 23 and Part26 by INDOT will be recognized as certified DBEs in the State of Indiana.

4.4 Non-Certifying Agencies

Non-Certifying Agencies are agencies, with US DOT approved DBE Programs, that participate only as recipients of the DBE certifying process. Non-Certifying Agencies may have input during any appeals of decisions affecting their programs.

4.5 Appeals

The INDOT Commissioner shall appoint an Administrative Law Judge (ALJ) to preside over internal INDOT certification revocation appeals. The ALJ shall be an individual who is knowledgeable about the certification requirements of the DBE Program and shall be an independent, impartial and disinterested party who had no involvement in the actions leading to the DBE certification revocation.

Section 5. UCP Certification Procedures (49CFR §26.83)

.5.1 Application and Decision

To become a certified DBE, a Firm must submit an application to the Certifying Agency, INDOT, which will follow the requirements of 49 CFR §26.83. INDOT shall:

A. Review the unified certification application completed by the applicant Firm to ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

B. Review all information on the form and supporting documentation before determining the eligibility of the Firm

C. The following steps shall be accomplished, subsequent to the information review when determining whether an applicant Firm meets the standards for certification under this UCP:

- 1) Perform an on-site visit to the offices of the Firm. The agent(s) must interview the principal officer(s) of the Firm and review their resumes and/or work histories;
- 2) If the Firm is a corporation, analyze the ownership of stock in the Firm;
- 3) Analyze the bonding and financial capacity of the Firm;
- 4) Determine the work history of the Firm, including contracts it has received and work it has completed;
- 5) Obtain a statement from the Firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- 6) Obtain or compile a list of the equipment owned by or available to the Firm and the licenses the Firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.

D. INDOT shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

E. Once a DBE is certified under the UCP, it will remain certified until its certification has been removed through the procedures of this UCP.

F. If through regulatory requirement or procedure, certified DBE Firms must be considered for re-certification, re-certification procedures shall be in accordance with the procedures for removal of eligibility (Section 5.3), that are incorporated as part of this UCP.

G. Every certified DBE must give written notice to INDOT of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this UCP or any material change in the information provided in the UCP application form.

- 1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
- 2) The DBE must attach supporting documentation describing in detail the nature of such changes.
- 3) The notice must take the form of an affidavit sworn to by the owners of the Firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 7 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, it will be deemed to have failed to cooperate under Section 7.1 of this UCP.

H. Every DBE must provide to INDOT, on the anniversary of the date of its DBE certification, an affidavit sworn to by the Firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the Firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified INDOT under paragraph (f) of this section. The affidavit shall specifically affirm that the Firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, providing this affirmation with supporting documentation of the Firm's size and gross receipts. If the DBE fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate under Section 7.1 of this UCP.

I. INDOT must make decisions on applications for certification within (90) days of receiving from the applicant Firm all information required under this part. INDOT may extend this time period once, for no more than an additional 60 days, upon written notice to the Firm, explaining fully and specifically the reasons for the extension. INDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the Firm may appeal to DOT under Section 5.4 (A) of this UCP.

5.2 Denials (49 CFR § 26.85)

If, after final and conclusive reviews of an initial application, it is determined that a Firm does not qualify for DBE certification and certification be denied, the applicant will be sent a letter of denial, return receipt requested. The letter will include, without limitation, the following:

- A. An explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for denial;
- B. Instructions on the appeal process, under Part 26.89, Section 5.4(A) of the UCP; and

C. The time frame for re-application. (Nine months)

5.3 Removal from Eligibility (49CFR § 26.87)

If a Firm has been identified as no longer qualifying for the program and the time of that identification is within the three (3) year certification period, the Firm may be removed from eligibility. Sources for information and the process for dealing with the information include the following.

A. Ineligibility (Third-party) complaints

Any person may file with INDOT a written complaint alleging that a currently-certified Firm is ineligible. The complaint may include specific allegations as to why the Firm should be ineligible and any information or arguments supporting the complainant's assertion that the Firm is ineligible. Confidentiality of the complainant's identity will be protected. All written complaints will receive a review.

INDOT will review its records concerning the Firm, any material provided by the complainant, and other available information. It may request information from the Firm or conduct any other investigation deemed necessary.

If it is determined, based on this review, that there is reasonable cause to believe that the Firm is ineligible, INDOT will provide written notice to the Firm that it proposes to find the Firm ineligible. In the notice, INDOT will set forth the reasons for the proposed determination.

If it is determined, based on this review, that reasonable cause does not exist, INDOT will notify the complainant and the Firm in writing of this determination, including the reasons.

All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based.

Should INDOT provide written notice to the Firm that it proposes to find it ineligible, the Firm shall have the right to appeal as set forth in Section 5.4 (A) of this UCP.

B. INDOT-initiated proceedings

If based on the notification by the Firm of a change in its circumstances or other information that comes to the attention of INDOT, and INDOT determines that there is reasonable cause to believe that a currently-certified Firm is ineligible,

INDOT will provide written notice to the Firm that it proposes to find the Firm ineligible, setting forth the reasons for the proposed determination.

All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record upon which each reason is based.

Should INDOT provide written notice to the Firm that it proposes to find it ineligible, the Firm shall have the right to appeal as set forth in Section 5.4 (B) of this UCP.

C. DOT directive to initiate proceedings

If the concerned operating administration (DOT, FHWA, FAA or FTA) determines that information in INDOT certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a currently-certified Firm does not meet the criteria for eligibility, the concerned operating administration may direct INDOT to initiate a proceeding to remove the Firm's certification.

The concerned operating administration must provide INDOT and the Firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

In each case where there has been factual evidence presented for the potential removal of the eligibility of a DBE Firm, INDOT will immediately commence and prosecute a proceeding to remove eligibility. INDOT will provide written notice to the Firm that it proposes to find it ineligible, setting forth the reasons for the proposed determination.

All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based.

Should INDOT provide written notice to the Firm that it proposes to find ineligible, the Firm shall have the right to appeal as set forth in Section 5.4 (B) of this UCP.

5.4 Appeals

A. Denial of Initial Application for Certification Appeal Procedure (49CFR §26.86)

A Firm that has been denied initial DBE certification by INDOT shall be notified in writing by certified mail, return receipt requested. The notice shall include the reasons for the decision with reference to the specific sections of 49 CFR, Part 23 or 26, as

appropriate, and information pertaining to the Firm's right to appeal the determination to the USDOT. Firms will have ninety (90) calendar days from the date of receipt of the notice of certification denial to make a written request for appeal with USDOT that includes the basis for its appeal and any supporting documentation. If an appeal is requested by the Firm, INDOT will provide a copy of the applicant's file to USDOT upon request.

B. Certification Revocation Appeal Procedures (49CFR § 26.87)

When new or additional information makes it necessary to notify a Firm that there is reasonable cause to remove it from eligibility, INDOT will provide written notification of the revocation to the Firm by certified mail, return receipt requested. The notice shall include the reasons for the decision with reference to the specific sections of 49 CFR Part 23 or 26, as appropriate, and information pertaining to its right to an internal INDOT appeal. Firms will have thirty (30) calendar days from the date of receipt of the notice proposing removal of eligibility to make a written request for hearing or review of written information and arguments. The request or information should be sent to: Deputy Commissioner, Chief Legal Counsel, Indiana Department of Transportation, N755 Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

Upon timely receipt of a Firm's written request for appeal, the Deputy Commissioner, Chief Legal Counsel shall appoint an ALJ to hear and/or review written records pertaining to the revocation. The ALJ will follow the procedures set forth in the Indiana Administrative Orders and Procedures Act, Ind. Code 4.21.5-1 et seq. In such a proceeding, INDOT bears the burden of proving, by a preponderance of the evidence, that the Firm does not meet the certification standards of 49 CFR, Part 23 and/or Part 26, as appropriate. If the Firm elects to present information and arguments in writing, in lieu of a hearing, INDOT bears the same burden of proof.

The ALJ will create and INDOT shall maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. After such hearing or arguments have been made, the ALJ shall review the rationale for the certification revocation and issue a written determination to both parties of its decision and rationale therefor.

If the ALJ determines that the evidence provided by INDOT does not provide, beyond a preponderance of the evidence, that the certification revocation of the DBE is justified, INDOT shall be directed to reinstate the certification within three (3) work days, effective as of the date of the ALJ determination. If, the ALJ determines that the evidence provided by INDOT does provide, by a preponderance of the evidence, that the certification revocation was justified, INDOT's determination shall be upheld.

The Firm shall remain active in the DBE database until a final administrative decision is issued that upholds INDOT's determination. In such case, INDOT shall remove a Firm's eligibility under from the DBE database, and the Firm may appeal the decision to the USDOT as provided in 49 CFR §26.89.

Should INDOT disagree with the determination of the ALJ, it may appeal the decision of the ALJ to USDOT. In the event of an appeal regardless of the initiating party, INDOT will retain the original record of the hearing and provide the Firm and USDOT with a copy of the transcript upon request. Any charge to the Firm will be for the cost of their copy of the record only.

5.5 Separation of Functions (49CFR § 26.87 (e))

The ALJ shall not be involved in a certification or recertification decision made during the INDOT certification review and decision process to ensure that all appeal determinations are separate and independent from those who had a part in the certification decision. The ALJ is not subject, with respect to the matter, to direction from INDOT or personnel within or related to INDOT, who had a part in the INDOT decision.

5.6 Grounds For Decision

Neither INDOT, nor the ALJ will make or base a decision to remove the eligibility of a DBE Firm, on a re-interpretation or changed opinion on information available at the time the Firm was initially certified. Decisions shall be based solely on the administrative record, as supplemented with relevant information and information not available to INDOT prior to the previous determination(s).

5.7 Status of Firm During Appeals

A previously certified Firm that has appealed a Removal of Eligibility determination shall:

- a. Remain an eligible DBE during any internal INDOT appeal proceeding.
- b. Become ineligible should the ALJ issue a notice of decision upholding INDOT's determination, regardless of any further appeal.
- c. Remain ineligible unless and until US DOT issues a judgment requiring DBE certification reinstatement.

Section 6. Availability and Confidentiality of Records

49CFR § 26.109 (a) (b)

6.1 Availability of records

In responding to requests for information concerning any aspect of the DBE program, the INDOT complies with provisions of the Federal Freedom of Information (5 U.S.C. §552) and Privacy Acts (5 U.S.C. §552a). INDOT may make available to the public any information concerning the DBE program, release of which is not prohibited by Federal law. INDOT shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with federal, state, and local laws.

6.2 Confidentiality of Information on Complainants

Notwithstanding the provisions of paragraph 6.1 of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process to other parties, INDOT shall advise the complainant that the privilege must be waived and the reasons therefor. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR Part 16 with respect to confidentiality of information in complaints.

Section 7. – Cooperation and Intimidation / Retaliation

49CFR § 26.109 (c) (d)

7.1 Cooperation

All participants in the Unified Certification Program (including, but not limited to, Committees, 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 USDOT and Committee compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved (e.g., with respect to Recipients, and findings 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).

7.2 Intimidation and Retaliation

Recipients, contractors, or any other participant in the Unified Certification Program shall not intimidate, threaten, coerce, or discriminate against any individual or Firm for the purpose of interfering with any right or privilege, secured by this part or because the individual or Firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If this part is violated, the violator and UCP are in noncompliance of this part.

Section 8. – Conflict of Interpretation

Any inconsistency or ambiguity in the agreement shall be resolved by giving precedence to the following in the following order:

- 49 CFR Parts 23 & 26
- USDOT Directives
- INDOT USDOT approved DBE Program
- Indiana Code
- Indiana Administrative Code

In Witness Whereof, INDOT agrees to administer and provide the necessary certification requirements of the above Indiana Unified Certification program, in accordance with 49 CFR Parts 23 and 26.

Karl Browning
Commissioner
Indiana Department of Transportation

Date: _____

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STATE OF INDIANA
UNIFIED CERTIFICATION AGREEMENT
FOR
DISADVANTAGED BUSINESS ENTERPRISES
PURSUANT TO 49 CFR SUBPART E, SECTION 26.81

Comes now the Indiana Department of Transportation (INDOT) and the Indiana Department of Administration (IDOA), acting by and through its Division of Minority and Women Business Enterprises and Indiana Recipients of DOT funds (IRDOT) hereby agree to a unified certification process pursuant to administrative rules promulgated by the United States Department of Transportation (DOT) under the terms and conditions set forth herein:

WHEREAS,

The Indiana Department of Transportation and all other Indiana Recipients of DOT funds are required to participate in a Unified Certification Program pursuant to 49 CFR Subpart 26, Section 26.81.

WHEREAS,

The Indiana Department of Administration (IDOA), by and through its Division of Minority and Women's Business Enterprises, has administered certification process for the INDOT DBE Program, pursuant to a memorandum of understanding, since 1993. IDOA currently hosts a centralized certification program, which includes the certification of DBE firms that are recipients of Federal Highway Administration (FHWA) funds. Further, that IDOA has the requisite expertise to administer the certification process pursuant to the applicable Code of Federal Regulations.

WHEREAS,

The Division of Equal Opportunity for the City of Indianapolis, the Northwestern Indiana Regional Planning Commission, and the Northern Indiana Commuter Transportation District currently provide DBE certification in the State of Indiana. That these organizations agree to relinquish responsibility for the certification process to IDOA effective upon the approval of this agreement by the Secretary, U.S. Department of Transportation (Secretary). Further, IRDOT and all others with certification authority agree to relinquish their authority to certify and decertify DBE firms.

WHEREAS,

INDOT and IDOA, in contemplation of the formation of this agreement, conducted a survey of all IRDOT. Further, that INDOT and IDOA hosted a meeting to discuss and review a draft of the UCP agreement on October 16, 2001, and no objections to the proposed plan were lodged by any recipient in attendance.

WHEREAS,

INDOT, IDOA and all IRDOT agree that a one-stop-shop certification process is best suited for the State of Indiana.

In recognition of the aforementioned recitals, the Parties and each of them hereby agree and stipulate as follows:

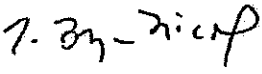
1. The Indiana Department of Transportation (INDOT) will establish a Unified Certification Program (UCP), which will commence operations immediately upon the approval from the Secretary. Further, this process shall be operational within thirty days of final approval.
2. The Indiana Department of Administration (IDOA) will host the UCP. IDOA currently hosts the State of Indiana's centralized certification process, including DBE certification for FHWA recipients. All agencies, which have performed DBE certifications in the past, will relinquish this responsibility. They have agreed to be a part of the UCP, and agree with the certification process of the UCP.
3. The UCP will meet all the requirements of 49 CFR Subpart E. Section 26.81.
4. The UCP will follow all certification procedures and standards of 49 CFR Subparts D and E, and the INDOT DBE program on the same basis as INDOT.
5. The UCP shall cooperate fully with oversight, review, and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
6. The UCP shall be responsible for implementing USDOT directives and guidance concerning certification matters.
7. IRDOT shall ensure that the UCP has sufficient resources and expertise to carry out the requirements of a Unified Certification Program.
8. The UCP shall make all certification decisions on behalf of all IRDOT in the State of Indiana, with respect to participation in the DOT DBE Program.
 - a. Certification decisions by the UCP shall be binding on all DOT recipients within the state.
 - b. The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
 - c. All obligations of INDOT, with respect to certification and nondiscrimination (not to include EEO/Affirmative Action) will be carried out by the UCP.
9. All certifications by the UCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
10. The UCP will not process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The Indiana UCP will call on the "home state" UCP to share its information and documents concerning the firm while the Indiana UCP is considering the firm's application. This is consistent with the FHWA program submission regarding 49 CFR Part 26, Subparts D and E.


11. The UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), which will include the information required by 49 CFR Section 26.31. The UCP shall make the directory available to the public electronically, on the Internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made. Further, that all IRDOT recipients agree to exclusively utilize this directory for the purposes of determining whether firms are DBE certified.
12. Except as otherwise specified, all provisions of 49 CFR 26, Subpart D and Subpart E pertaining to recipients also apply to the Indiana Department of Transportation's Unified Certification Program.
13. IDOA will review all files transferred from other certifying authorities. In the event, that a firm has received inconsistent decisions regarding certification from one or more certifying authorities, IDOA will submit the firm's files to USDOT to resolve the conflict. Further, USDOT's determination regarding these firms will be final.
14. Any certifying authority shall produce all of their files pertaining to DBE certification to IDOA within thirty days of the effective date of this agreement. Further, all certifying authorities shall submit copies of their current directories to IDOA.
15. That Exhibit A represents a listing of all Indiana Recipients of DOT funds who will be a part of this agreement.
16. Indiana Department of Administration, Division of Minority and Women's Business Enterprises, shall administer and coordinate the UCP in the State of Indiana.

The official point of contact for the Indiana UCP is:
 Indiana Department of Administration
 Division of Minority and Women's Business Enterprises
 402 W. Washington, W474
 Indianapolis, IN 46204
 (317) 232-3061

17. Any inconsistency or ambiguity in the agreement shall be resolved by giving precedence to the following in this order: 49 CFR parts 23 and 26, USDOT directives, INDOT DBE program, Indiana Code, and Indiana Administrative Code.

Signatures


 J. Bryan Nicol
 Commissioner
 Indiana Department of Transportation

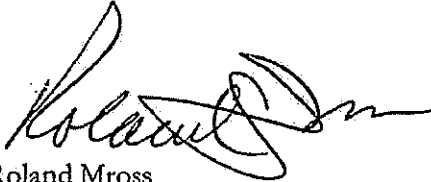

 Glenn R. Lawrence
 Commissioner
 Indiana Department of Administration



Lacy M. Johnson
Board President
Indianapolis International Airport Authority

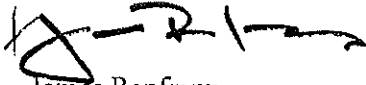


David J. Roberts
President
BAA Indianapolis



Roland Mross
Acting CEO
IndyGo
(Indianapolis Public Transportation Corp.)

Brenda L. Burke
Director
Department of Administration
City of Indianapolis



James Ranfranz
Executive Director
Northwestern Indiana Regional Planning
Commission

Gerald R. Hanas
General Manager
Northern Indiana Commuter Transportation
District



**U.S Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

400 Seventh Street S.W.
Washington, D.C. 20590

September 2, 2004

Mr. F. Daniel Gettelfinger
Staff Attorney
Department of Administration
Office of the Administrator
Indiana Government Center South
402 West Washington Street, Room W479
Indianapolis, Indiana 42604

Dear Mr. Gettelfinger:

The Department of Transportation (DOT) has reviewed the Unified Certification Program (UCP) submitted to us on behalf of the State of Indiana. Your most recent submission has satisfactorily incorporated our earlier comments.

Consequently, I have approved the Indiana UCP as provided by the Department's disadvantaged business enterprise regulations (49 CFR §26.81(a)(4)). Please remember that any inconsistency or ambiguity in the UCP agreement shall be resolved by giving precedence to the following in this order: 49 CFR 26/23, USDOT Directives, the DBE Program as approved by DOT and applicable Indiana regulations.

DOT looks forward to working with you as you implement the UCP.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeffrey A. Rosen".

Jeffrey A. Rosen

AMENDMENT TO
STATE OF INDIANA
DISADVANTAGED BUSINESS ENTERPRISES
UNIFIED CERTIFICATION AGREEMENT

Comes now the Indiana Department of Transportation (INDOT) and the Indiana Department of Administration (IDOA), and hereby agree that the State of Indiana Disadvantaged Business Enterprises Unified Certification Program (UCP) shall be amended pursuant to the terms set forth herein.

WITNESSETH:

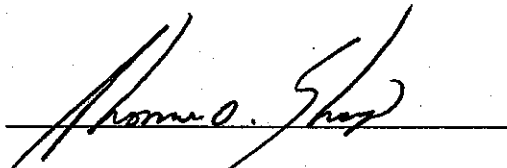
WHEREAS, INDOT and IDOA have entered into a UCP as required pursuant to 49 CFR 26.81, which received approval from the U.S. Department of Transportation on September 2, 2004; and

WHEREAS, INDOT and IDOA now desire to amend certain sections of the UCP.

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained and intending to be legally bound, INDOT and IDOA hereby covenant and agree to amend the UCP as follows:

The Certification Review/Appeal Committee as referred to in Sections 4.5, 5.4B, 5.5, 5.6, and 5.7 of the UCP shall be eliminated and replaced with an administrative law judge (ALJ) appointed by the Commissioner of the Indiana Department of Administration. As required pursuant to 49 CFR 26.87, the ALJ shall be an individual who is knowledgeable about the certification requirements of the DBE Program. The ALJ shall be an independent, disinterested party who had no involvement in the actions leading to or seeking to implement the proposal to remove a DBE firm's eligibility. The ALJ shall be an attorney familiar with the Indiana Administrative Orders and Procedures Act as set forth in Ind. Code 4.21.5-1 et seq. The ALJ shall perform those same functions assigned to the Certification Review/Appeal Committee as set forth in the UCP.

In Witness Whereof, INDOT, and IDOA by the signatures of their respective Commissioners, hereby agree to this amendment of the UCP.



Thomas O. Sharp, Commissioner

Indiana Department of Transportation

Date: 6/9/05



Earl Goode, Commissioner

Indiana Department of Administration

Date: 6/13/05

**U.S. Department
of Transportation**Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

August 3, 2005

Thomas O. Sharp
Commissioner
Indiana Department of Transportation
100 North Senate Avenue
Room N758
Indianapolis, Indiana 46204

Re: Amendment to State of Indiana Unified Certification Program

Dear Mr. Sharp:

We have received Indiana's request to amend its Unified Certification Program (UCP) to include administrative law judges (ALJs). After reviewing the proposed amendment, we approve of the new process for reviewing decisions to remove a Disadvantaged Business Enterprise's (DBE) eligibility.

As we understand the amendment, the Indiana Department of Transportation will replace the current Certification Review and Appeal Committee with an ALJ who will be an attorney familiar with Indiana's DBE program and Indiana's administrative procedures. In addition, you will ensure that the person selected did not participate in the decision to remove the DBE's eligibility.

We agree with your assessment that this arrangement should improve response time for the review of such decisions and provide greater independence.

Indiana's amendment is hereby approved.

Sincerely,


Jeffrey A. Rosen

STATE OF INDIANA
DISADVANTAGED BUSINESS ENTERPRISES
AMENDMENT TO UNIFIED CERTIFICATION AGREEMENT
PURSUANT TO 49 CFR SUBPART E. § 26.81

The Indiana Department of Transportation (INDOT) and the Indiana Recipients of DOT funds (IRDOT) hereby agree to a unified certification program for Indiana's Disadvantaged Business Enterprise (DBE) Program pursuant to administrative rules promulgated by the United States Department of Transportation (DOT) under the terms set forth herein:

WHEREAS,

The INDOT and all other recipients of DOT funds are required to participate in a Unified Certification Program (UCP) pursuant to 49 CFR § 26.81; and

WHEREAS,

The INDOT used the Indiana Department of Administration (IDOA), by and through its Division of Minority and Women's Business Enterprises, to administer the certification process for the DBE Program since 1993, pursuant to an interagency memorandum of understanding. Now, through mutual agreement with IDOA, INDOT will reclaim the certification function of the DBE program and will make certification decisions for DBE and ACDBE applicants and existing DBE firms. INDOT performed the required DBE certifications from 1983 to 1993 and has requisite staff and expertise to administer the certification process pursuant to the applicable Code of Federal Regulations; and

WHEREAS,

In contemplation of the formation of the agreement, INDOT conducted a survey of all IRDOT, and confirmed that there was a unanimous acceptance of this UCP revision.

In recognition of the aforementioned recitals, the parties below stipulate to this amendment to the State of Indiana's Unified Certification Program.

Karl B. Browning, Commissioner
Indiana Department of Transportation

Date _____

Carrie Henderson, Commissioner
Indiana Department of Administration

Date _____

ATTACHMENT 10

Small Business Element

An element to structure contracting requirements has been created to facilitate competition by small business concerns per 49 CFR Part 26.39, 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. For clarification purposes, 49 CFR Part 26.5 states, “*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).” 13 CFR 121.402 defines “What size standards are applicable to Federal Government Contracting programs”

1. Objective/Strategies

- (1) Prime contracts under \$1 million will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.
- (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 joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

- DBE firms should be identified in the Small Business element of the recipient’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.
- 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.
- Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

3. Verification

St. Joseph County Airport Authority will diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms by consulting with the closest Small Business Development Center network office.

4. Monitoring/Record Keeping

- A list of small businesses will be kept on file for a minimum of 3 years from the time of bid.
- The list will be referenced in cases where there may have been opportunity for small business participation and contact made with eligible firms for bidding opportunities.

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).

Fostering Small Business Participation	
Sponsor's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	

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
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(Duplicate form as necessary.)

The following notation is for Sponsor Use Only:

Accepted by: _____ Date: _____

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

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

Goal Period: FY-2025-2026-2027 (Non Hub) – October 1, 2024 through September 30, 2027)

DOT-assisted contract amount:	FY-2025	<u>\$9,840,578</u>
	FY-2026	<u>\$4,038,411</u>
	FY-2027	<u>\$7,246,742</u>
	Total	<u>\$21,125,731</u>

Overall Three-Year Goal: 4.02%, to be accomplished through 4.02% RC and 0.00% RN

Total dollar amount to be expended on DBEs: \$849,254

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

Contracts Fiscal Year #1

1. Runway 18 Object Free Area Improvements: Design and Environmental, Construction and CA
2. Airfield Lighting Rehabilitation (Multiple packages): Design
3. RW 9R/27L Reconstruction Preliminary Engineering
4. Terminal Area Frontage Road
5. Terminal Restroom Improvements, Phase 3

Contracts Fiscal Year #2

6. Concourse Restrooms Design
7. Airfield Lighting Rehabilitation (TW A and TW N): CA and Construction

Contracts Fiscal Year #3

8. Airfield Lighting Rehabilitation (RW 18-36 and PAPI RGL): CA and Construction
9. RW 9R/27L Alternative Analysis
10. Concourse Improvements Restrooms and Gates, Construction

*Listing of projects includes BIL funding.

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:

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

$$BF = \left[0.77 \times \frac{49}{1,059} + 0.23 \times \frac{118}{1,664} \right] \times 100$$

$$BF = 5.2\%$$

Method (Section 26.45 of 49 CFR Part 26)

Because of the type of work evaluated in this program it is reasonable to expect the market is statewide. The data source or demonstrable evidence used to derive the numerator referenced both 237 and 541330 NAICS codes here:

<https://entapps.indot.in.gov/DBELocator/>

All data was corrected to reflect only DBE's doing business in the entire State not just limited to a smaller district, multiple company listings were only counted once, and the counting did not include ACDBE's.

The data source or demonstrable evidence used to derive the denominator are found in 2022 Census NAICS codes 237 and 541330 for Indiana here:

[CBP2020.CB2000CBP - Census Bureau Tables](https://www.census.gov/data/tables/2020/cb2000/cbp.html)

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 16							0.00%	
FY 17							3.30%	
FY 18							2.70%	
FY 19							2.00%	
FY 20							3.80%	

<i>FY 21</i>							<i>3.70%</i>	
<i>FY 22</i>							<i>4.00%</i>	
<i>FY 23</i>							<i>3.60%</i>	
<i>FY 24</i>							<i>2.40%</i>	

The average of the above accomplishments is 2.83%. Taking the BF of 5.2% from above and averaging it with the statistical accomplishments over 9 years, the Overall Goal is 4.02%.

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

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

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 4.02%, it will obtain 0.00% from RN participation and 4.02% 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 2025, 2026 and 2027 of 4.02% 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
Properties Manager
St. Joseph County Airport Authority
4477 Progress Drive
South Bend, IN 46628
Phone: 574-282-4590 ext. 221
Fax: 574-239-2585