

SOUTH CENTRAL REGIONAL AIRPORT AGENCY

Meeting of the Board

May 23, 2013 - 6:00 p.m.

George Daily Auditorium

1800 North 3rd Street

Oskaloosa, Iowa

Agenda

1. Call to Order
2. Approval of the March 26, 2013 minutes
3. Call to the public (limited to 3 minutes per person)
4. Consider a resolution designating "Site A" as the preferred location for continued evaluation and retaining "Site B" as a secondary site for the South Central Regional Airport
5. Consider a resolution approving a Disadvantaged Business Enterprise (DBE) Program
6. Adjourn

ITEM NO: 2

SUBJECT: Approval of the March 26, 2013 meeting minutes

DATE: May 23, 2013

BACKGROUND: Staff has prepared meeting minutes to reflect the general discussion and action items associated with the specific meeting referenced.

ATTACHMENTS: Minutes

REPORT PREPARED BY: Staff

RECOMMENDED ACTION: Approve the minutes

South Central Regional Airport Agency
Meeting Minutes
Tuesday, March 26, 2013
6:00 P.M.

Committee Members Present: David Barnes, Pamela Blomgren, James Hansen, Donna Smith, Steve Van Weelden and Joe Warrick.

SCRAA Staff Present: Mike Nardini, Pella City Administrator; Michael Schrock Jr., Oskaloosa City Manager; Jerry Nusbaum, Mahaska County Engineer.

Fifty members of the public signed the register.

Meeting called to order by Chairman Hansen at 6:00 p.m. in the Oskaloosa City Hall, Council Chambers, 220 South Market Street, Oskaloosa, IA.

It was moved by Blomgren, seconded by Barnes to approve the January 4, 2013 meeting minutes. Motion carried 6-0.

Chairman Hansen provided background on the site selection process to date. He explained the rating criteria to be used to select the primary and secondary site. A public informational meeting will be held in the near future. Once the site selection has been completed, it will take 18-24 months for the Federal Aviation Administration planning studies. Ground rules were also explained for public comment, which were three minutes per person and 30 minutes in total. Chairman Hansen stated that the mission the SCRAA has been charged with is building and constructing a regional airport.

Comments and questions were received from eight members of the public.

It was moved by Barnes, seconded by Blomgren to approve the resolution entitled, "RESOLUTION AUTHORIZING THE CREATION OF COMMITTEES TO SERVE AT THE PLEASURE OF THE SOUTH CENTRAL REGIONAL AIRPORT AGENCY". Two specific committees were recommended for consideration by the SCRAA board. The Communication Committee would be responsible for developing a website for the South Central Regional Airport Agency. The Weighting-Screening Measures Committee would be responsible for discussing and providing their advice to the SCRAA Board on the proposed weighting-screening measures tool developed by Snyder & Associates used to rank the three candidate sites. Appointed to the Communication Committee were Blomgren and Smith and appointed to the Weighting-Screening Measures Committee were Hansen, Barnes, and Van Weelden. Motion carried 6-0.

The Board discussed the 2013 Iowa Aviation Conference which was scheduled for April 24-25, 2013 at West Des Moines. The SCRAA Board discussed the merit of sending one or more representatives to attend the conference this year. A motion was made by Warrick, seconded by Blomgren to appoint Hansen and Barnes to attend. Motion carried 6-0.

Discussion was held on establishing a date, time, location and format for an informational meeting with the public. A motion was made by Blomgren, seconded by Van Weelden to hold the meeting on Thursday, April 18th at 6:00 p.m. Location has not yet been determined.

Mike Schrock discussed the public input process. An informational presentation has been completed jointly by the cities of Oskaloosa and Pella and is currently available on their websites for the public.

There were no staff reports.

The meeting adjourned at 6:54 p.m.

Minutes by Mike Nardini

ITEM NO: 4

SUBJECT: Resolution designating "Site A" as preferred location for continued evaluation and retaining "Site B" as a secondary site for the South Central Regional Airport

DATE: May 23, 2013

BACKGROUND: In March 2012, the City of Pella, Mahaska County and the City of Oskaloosa entered into a 28E Agreement creating the South Central Regional Airport Agency (SCRAA). The SCRAA was created for the purpose of identifying a site for the ultimate development of a public owned airport.

Two (2) conditions were set forth within the 28E Agreement that were to be adhered to. The search area was defined as extending no more than four (4) miles from Iowa Highway 163. Furthermore, the candidate site identified for consideration could not be located more than ten (10) miles from either city. The search area is depicted in Exhibit One of the Agreement.

The 28E Agreement also established several facility development parameters. These were as follows:

- The site must be able to accommodate a primary runway no less than 7,500 feet in length.
- The primary runway must be able to support a precision instrument approach with minimums as low as 200 feet and one half mile forward visibility.
- The site must be able to accommodate a crosswind runway no less than 4,200 feet in length.

Snyder & Associates Inc. was retained by the SCRAA Board in October 2012 to identify candidate sites within the search areas. Nine (9) areas where an airport could possibly be developed were identified. Within the nine (9) areas, eleven concept plans were prepared. The SCRAA staff met on October 31, 2012 to review each of the concept plans. Those conceptual layouts where any part of the runway protection zone extended beyond the search area were discarded. In addition, any part of a concept plan that extended over a known Section 4(f) resource was discarded. The SCRAA staff recommended three (3) sites be retained for continued evaluation and refinement. The three (3) sites were referenced as: Site A, Site B, and Site C.

Snyder & Associates Inc. prepared a refined airport concept plan for each of the three (3) candidate sites. The sites were presented to the SCRAA Board on January 4, 2012. The SCRAA Board directed Snyder & Associates Inc. to submit Sites A, B, and C to the Federal Aviation Administration (FAA) for airspace review.

Airspace comments were received on the three candidate sites on March 8, 2013. Based on the conceptual layouts, the FAA concluded that the proposed layout would not adversely affect the safe and efficient use of navigable airspace. Reference should be made to the following FAA Airspace Case Numbers:

2013 – ACE – 29 – NRA (Site A)

2013 – ACE – 31 – NRA (Site B)

2013 – ACE – 32- NRA (Site C)

Thirty-one (31) scoring criteria were used in the secondary screening process. The SCRAA Board on March 26, 2013 created a committee to review the 31 screening measures and assigned weighted values. Following revisions by the Committee, Snyder & Associates Inc. was directed to score the three (3) sites. Site A received the most points (4,745) followed by Site B (4,605). Site C scored the lowest with 3,030 points. Reference may be made to the site scoring tabulation.

Snyder & Associates Inc. recommends that Site A be carried forward as the “preferred” site for continued evaluation. Site B should be retained as a secondary site.

ATTACHMENTS: Resolution, aerial map of sites, and selection criteria

REPORT PREPARED BY: Staff and Snyder & Associates

RECOMMENDED ACTION: Approve the resolution

RESOLUTION NO. ____

**RESOLUTION DESIGNATING "SITE A" AS THE PREFERRED LOCATION FOR
CONTINUED EVALUATION AND RETAINING "SITE B" AS A SECONDARY SITE FOR
THE SOUTH CENTRAL REGIONAL AIRPORT**

Moved by _____ and seconded by _____ that the following resolution be adopted:

WHEREAS, the South Central Regional Airport Agency is governed by the agreed upon 28E Agreement between the parties; and

WHEREAS, the 28E Agreement delegates to the South Central Regional Airport Agency the responsibility of identifying a preferred and secondary site for continued evaluation for the location of the South Central Regional Airport; and

WHEREAS, the South Central Regional Airport Agency created a committee to work with Snyder & Associates to screen, rank and recommend to the whole Board a preferred site and a secondary site for further evaluation; and

WHEREAS, the recommendation by Snyder & Associates is to designate "Site A" on the map enclosed hereto as the preferred location for continued evaluation; and

WHEREAS, the recommendation by Snyder & Associates is to designate "Site B" on the map enclosed hereto as the secondary site.

NOW, THEREFORE, BE IT RESOLVED that the South Central Regional Airport Agency hereby accepts the recommendations from Snyder & Associates and designates Site A as the preferred location for further evaluation, and retain Site B as a secondary site;

AND BE IT FURTHER RESOLVED that the Board Chairman and South Central Regional Airport Agency staff are hereby authorized and directed to execute any and all documents, instruments and appurtenances necessary to successfully complete the direction of the Board as outlined in this resolution.

Passed and approved this 23rd day of May, 2013.

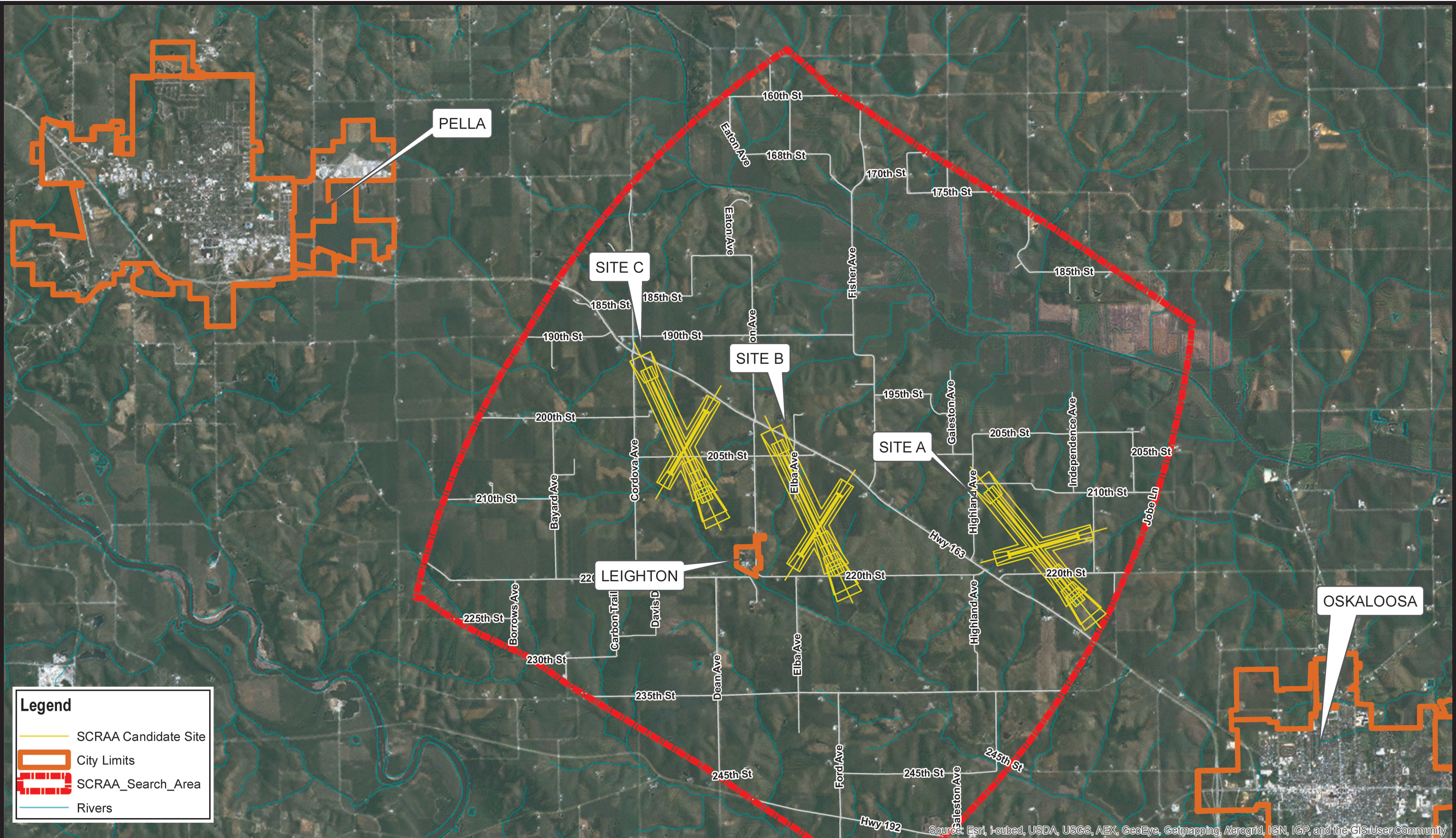
[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

SOUTH CENTRAL REGIONAL AIRPORT AGENCY

Jim Hansen, Board Chairman

ATTEST:

Joe Warrick, Secretary/Treasurer



Site Scoring

Scoring Categories	Weighting*	CANDIDATE AIRPORT SITES					
		Site A		Site B		Site C	
		Rating	Score	Rating	Score	Rating	Score
Facility Components & Accessibility							
1 - Primary Runway	10	0	0	0	0	0	0
2 - Crosswind Runway	3	100	300	100	300	0	0
3 - Terminal Area Expansion	3	100	300	30	90	30	90
4 - Approach Minima	8	70	560	70	560	70	560
5 - Airport Geometry/Wind Coverage	5	100	500	30	150	30	150
6 - Topography	5	70	350	30	150	0	0
7 - Soils	1	30	30	0	0	0	0
9 - Obstructions/Air Space-FAA	2	100	200	100	200	100	200
11 - Power Transmission Lines/Towers	1	0	0	0	0	0	0
12 - Pipelines	0.5	100	50	100	50	100	50
13 - Sanitary Sewer	0.5	30	15	30	15	30	15
14 - Water	0.5	70	35	30	15	30	15
15 - Electrical	0.5	70	35	100	50	100	50
16 - Natural Gas	0.5	0	0	0	0	0	0
17 - Road Access	0.5	100	50	100	50	100	50
18 - Accessibility From Centroid	0.5	70	35	100	50	100	50
19 - Accessibility From U.S./State Hwy, # miles	0.5	100	50	100	50	100	50
20 - Hard Surfaced Road	6	70	420	70	420	30	180
	48	1,180	2,930	990	2,150	820	1,460
Weighted Score							
Environmental/Acquisition Concerns							
21 - Wetland/Floodplain	2	30	60	30	60	0	0
22 - Flora, Fauna	2	0	0	70	140	30	60
23 - Historic/Archaeological	2	30	60	70	140	70	140
24 - Parks and Recreation, Sec. 4(f)	2	100	200	30	60	0	0
25 - Prime Agricultural Land	5	100	500	100	500	100	500
26 - Road Disconnect/Relocation	10	0	0	70	700	0	0
8 - Drainage	1	30	30	30	30	0	0
10 - Distance From Solid Waste Landfill	1	100	100	100	100	100	100
27 - # Property Impacts	10	0	0	0	0	0	0
28 - Residential, Hospital, School	3.5	70	245	30	105	30	105
29 - Adjacent Land Use	1.5	0	0	0	0	30	45
30 - Zoning	2	30	60	30	60	30	60
31 - # Century Farms	2	0	0	0	0	0	0
32 - Potential Relocations	8	70	560	70	560	70	560
	52		1,815		2,455	460	1,570
Total Points Allocated	100		4,745		4,605		3,030
Weighted Score totals							

* Weighting, points and ratings shown above for demonstration purposes only. Actual weighting, points and ratings to be assigned by Task Force.

Instructions

1. Assign percentage weighting to each category (Accommodate Facility Components, Infrastructure Support to Facility, etc.).
2. Assign points weighting to each item within each category. Points per category to add up to 100.
3. Assign rating to each item per Site Selection Criteria.
4. Sites will be ranked based on total points under their respective weighted score columns.

Minimum requirements for all sites:

1. 7,500' primary runway
2. 4,200' crosswind runway
3. Accommodate at least one precision approach

ITEM NO: 5

SUBJECT: Resolution Approving Disadvantaged Business Enterprise Program

DATE: May 23, 2013

BACKGROUND: This resolution adopts a Disadvantaged Business Enterprise (DBE) Program for the South Central Regional Airport Agency. The resolution also authorizes staff to take necessary action to ensure compliance with the DBE program. As background, the Federal Aviation Administration (FAA) requires grant recipients to adopt a DBE program. The purpose of the program is to provide a vehicle for increasing participation by small business enterprises owned by women and individuals belonging to groups that have historically been socially and economically disadvantaged.

A standard three (3) step process was used to establish the proposed DBE goal for the South Central Regional Airport Agency for the three (3) year period from October 1, 2012 through September 30, 2015.

- Step 1 – Determine base figure for available DBEs relative to all available firms.
- Step 2 – Adjust the base figure if necessary by considering all available evidence.
- Step 3 – Calculate the race/gender neutral components of the overall DBE goal.

Details of the methodology used are provided in Attachment F of the DBE program.

The overall three (3) year DBE goal for FY 2013 through FY 2015 is 0.69%. However, it should be noted the overall DBE goal does not represent a quota for any project funded by the FAA.

ATTACHMENTS: Resolution; Proposed DBE program

REPORT PREPARED BY: Staff

RECOMMENDED ACTION: Approve Resolution

RESOLUTION NO. _____

**RESOLUTION APPROVING A DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM**

Moved by _____ and seconded by _____ that the following Resolution be adopted:

WHEREAS, the South Central Regional Airport Agency has received Federal financial assistance from the U.S. Department of Transportation (DOT) for improvements at the South Central Regional Airport Agency and

WHEREAS, as a condition of receiving this assistance, the South Central Regional Airport Agency has signed an assurance that it will comply with the regulations of U.S. DOT, 49 CFR Part 26 regarding a Disadvantaged Business Enterprise (DBE) Program; and

WHEREAS, it is the policy of the South Central Regional Airport Agency to ensure that DBE's, as defined in Part 26, have an equal opportunity to receive and participate in the DOT assisted contracts at the South Central Regional Airport and

WHEREAS, it is necessary to officially adopt a DBE Program containing a Policy Statement to be included in the contract documents for all federally funded projects.

NOW, THEREFORE, BE IT RESOLVED that the South Central Regional Airport Agency officially adopts the attached Disadvantaged Business Enterprise Program and is hereby authorized to implement all aspects of the DBE Program for Federal DOT assisted projects; and

BE IT FURTHER RESOLVED that the Chairman is hereby authorized to sign the official copy of the DBE Program.

South Central Regional Airport Agency

James M. Hansen, Chairperson

ATTEST:

Mike Nardini, City Administrator

SOUTH CENTRAL REGIONAL AIRPORT AGENCY
DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM

For Three-Year Period
October 1, 2012 through September 30, 2015

ADOPTED SPECIFICALLY FOR PROJECTS
FUNDED IN PART BY THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

MAY 2013

RESOLUTION _____

Moved by _____ and Seconded by _____ that the following Resolution be adopted:

WHEREAS, the **South Central Regional Airport Agency** has received Federal financial assistance from the U.S. Department of Transportation (DOT) for improvements at the **South Central Regional Airport** and

WHEREAS, as a condition of receiving this assistance, the **South Central Regional Airport Agency** has signed an assurance that it will comply with the regulations of U.S. DOT, 49 CFR Part 26 regarding a Disadvantaged Business Enterprise (DBE) Program; and

WHEREAS, it is the policy of the **South Central Regional Airport Agency** to ensure that DBE's, as defined in Part 26, have an equal opportunity to receive and participate in the DOT assisted contracts at the **South Central Regional Airport** and

WHEREAS, it is necessary to officially adopt a DBE Program containing a Policy Statement to be included in the contract documents for all federally funded projects.

NOW, THEREFORE, BE IT RESOLVED that the **South Central Regional Airport Agency** officially adopts the attached Disadvantaged Business Enterprise Program and is hereby authorized to implement all aspects of the DBE Program for Federal DOT assisted projects; and

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to sign the official copy of the DBE Program.

South Central Regional Airport Agency

Jim Hansen, Chairperson

ATTEST:

Mike Nardini, City Administrator

**SOUTH CENTRAL REGIONAL AIRPORT AGENCY, IOWA
DBE PROGRAM – 49 CFR PART 26
MARION COUNTY, IOWA
AUGUST, 2012**

Section 26.1, 26.23

Objectives/Policy Statement

The **South Central Regional Airport Agency** has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (U.S. DOT), 49 CFR Part 26. **The South Central Regional Airport Agency** has received Federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance, the **South Central Regional Airport Agency** has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the **South Central Regional Airport Agency** to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. It is also our policy:

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

Mr. Mike Nardini, City Administrator has been delegated as the DBE Liaison Officer. In that capacity, **Mr. Mike Nardini** 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 **South Central Regional Airport Agency** in its financial assistance agreements with the Department of Transportation.

The **South Central Regional Airport Agency** has disseminated this policy statement to the City Council, Airport Committee and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on U.S. DOT-assisted contracts. This Policy Statement will be included in the contract documents of each FAA funded project.

Jim Hansen, Chairperson

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The **South Central Regional Airport Agency** is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The **South Central Regional Airport Agency** will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The **South Central Regional Airport Agency** will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the **South Central Regional Airport Agency** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to U.S. DOT: 26.11(b)

We will report DBE participation to U.S. DOT as follows:

We will submit annually U.S. DOT Form 4630, as modified for use by FAA recipients.

Bidders List: 26.11(c)

The **South Central Regional Airport Agency** will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on U.S. DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information by requiring prime bidders to report the name, address, DBE non-DBE status of all firms who quote to them on subcontracts.

Section 26.13 Federal Financial Assistance Agreement

The **South Central Regional Airport Agency** has signed the following assurances, applicable to all U.S. DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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

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

Contract Assurance: 26.13b

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of U.S. 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the **South Central Regional Airport Agency** has received a grant of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from U.S. DOT financial assistance have been expended. We will provide to U.S. DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Name: *Mr. Mike Nardini, City Administrator*
Address: *825 Broadway St., P.O. Box 88, Pella, IA 50219* **Telephone:** *641-628-4173*
Email: *mnardini@cityofpella.com*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **South Central Regional Airport Agency** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor Mr. James Mueller, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO will be assisted by the **Snyder & Associates, Inc. staff** in the administration of the program and in fulfilling the following duties and responsibilities:

1. Gather and report statistical data and other information as required by U.S. DOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Work with the **South Central Regional Airport Agency's** staff to set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identify ways to improve progress).
6. Analyze the **South Central Regional Airport Agency's** progress toward attainment and identify ways to improve progress.
7. Participate in pre-bid meetings.
8. Advise the **South Central Regional Airport Agency** on DBE matters and achievement.
9. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plan and participate in DBE training seminars.
11. Provide outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the **South Central Regional Airport Agency** 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 U.S. DOT-assisted contract to make use of these institutions. To date, no such institutions have been found by the **South Central Regional Airport Agency** or Iowa DOT, although the following institution, which is willing to work with the DBE community, has been identified in the Iowa DOT DBE program:

West Bank of Des Moines, IA

Contact person: Ms. Michele Belden, VP

Information on the availability of such institutions can be obtained from the **South Central Regional Airport Agency's** DBE Liaison Officer and Iowa DOT's External Civil Rights Section.

Section 26.29 Prompt Payment Mechanisms

The **South Central Regional Airport Agency** will include the following clause in each U.S. DOT-assisted prime contract:

The Contractor shall promptly pay each subcontractor. Any delay or postponement of payment among the parties may take place only for good cause, with written notification to the subcontractor. A payment, excluding retainage, to a subcontractor for satisfactory performance of the subcontractor's work shall be made by the Contractor no later than one of the following, as applicable:

- 1. Seven calendar days after the Contractor receives payment for the subcontractor's work.***
- 2. Seven calendar days after the Contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.***

Section 26.31 Directory

The **South Central Regional Airport Agency** shall use the Iowa DOT's DBE directory identifying all firms eligible to participate as DBEs in its program. The directory lists each firm's name, address, phone number, fax number, e-mail address, and the type of work it has been certified to perform as a DBE. The directory is reprinted every calendar year and updated every month. This information is also available on the Internet as described in Attachment B and at the Iowa DOT's Office of Contracts, which is located at 800 Lincoln Way, Ames, Iowa.

Section 26.33 Overconcentration

The **South Central Regional Airport Agency** has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The **South Central Regional Airport Agency** has not established a business development program. However, firms will be encouraged to participate in two statewide business development programs offered by the Iowa DOT, the emerging small business (ESB) program and the supportive services program.

Section 26.37 Monitoring and Enforcement Mechanisms

The **South Central Regional Airport Agency** will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- 1. We will bring to the attention of the Iowa DOT and U.S. DOT any false, fraudulent, or dishonest conduct in connection with the program, so that they can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.**
- 2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment C lists the regulation, provisions, and contract remedies available to**

us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring the work site to ensure compliance.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

26.39 Fostering Small Business Participation

This DBE program includes an element to structure contracting requirements that facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation. This element is being submitted to the FAA for approval as a part of this DBE program and can be found in [Attachment E](#).

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **South Central Regional Airport Agency** does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in [Attachment F](#) to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the **South Central Regional Airport Agency** will submit its overall goal to the U.S. DOT on August 1 of each year. Before establishing the overall goal each year, the **South Central Regional Airport Agency** will consult with the **Iowa DOT's External Civil Rights Office**, Central Iowa Regional Transportation Planning Alliance (CIRTPA), **and minority, women's and general contractor groups** to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **South Central Regional Airport Agency's** efforts to establish a level playing field for the participation of DBEs.

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

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from U.S. DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

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

The breakout of estimated race-neutral and race-conscious participation can be found in [Attachment G](#) to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

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

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

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

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

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

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

Information to be submitted (26.53(b))

The **South Central Regional Airport Agency** treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness. Forms 1 & 2 for Demonstration of Good Faith Efforts can be found in Appendix H of this program.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within **15** days of being informed by the **South Central Regional Airport Agency** that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to **Mr. Mike Nardini, City Administrator, 825 Broadway St., P.O. Box 88, Pella, IA 50219, 641-628-4173, mnardini@cityofpella.com**. **Mr. Mike Nardini** will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The **South Central Regional Airport Agency** will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

The **South Central Regional Airport Agency** will apply all rules and administrative remedies included in the Iowa DOT's DBE Program, as they apply to the **South Central Regional Airport Agency**

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Iowa DOT has established a unified certification program (UCP) for all government entities receiving U.S. DOT funds in the State of Iowa. With respect to participation as a DBE on U.S. DOT-assisted contracts, the Iowa DOT makes all DBE certification decisions through the UCP on behalf of these entities including the **South Central Regional Airport Agency**. The purpose of the UCP is to provide "one-stop-shopping" to certification applicants, which means that once they have been certified, their certification will be honored by all other entities in the State that receive U.S. DOT funds including the **South Central Regional Airport Agency**.

A copy of the Unified Certification Application Form and/or information about the certification process can be obtained by contacting:

Craig Russell, Civil Rights Administrator
Iowa DOT
Office of Contracts
800 Lincoln Way
Ames, Iowa 50010

Phone number: (515)-239-1422
Fax number: (515)-239-1325
Craig.Russell@dot.iowa.gov

The Iowa DOT's certification application forms and documentation requirements are found in [Attachment I](#) to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Iowa DOT is the lead organization in Iowa's Unified Certification Program (UCP) as it has the funding and staffing capabilities to do so. Iowa's UCP is meant to be utilized for all projects let in Iowa by any agency receiving funding from Federal Highway Administration, Federal Transit Administration, or Federal Aviation Administration.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

Firms certified with the State of Iowa will be subject to a three-year certification review, which may include an on-site review of the business operations. Supporting documentation may be requested and could be conducted sooner if warranted. A Personal Net Worth Statement will be required during this review.

"No Change" Affidavits and Notices of Change (26.83(j))

All DBEs are required to inform the Iowa DOT, in a written affidavit, of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR part 26. This notification must be provided within 30 days of the occurrence of the change.

Each year, all DBEs are required to submit to the Iowa DOT a "no change" affidavit on the date designated. Each affidavit must be accompanied by documentation of the DBE's size and gross receipts. To meet the requirements of 49 CFR part 26.83(j), the text of each affidavit must read as follows:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Iowa DOT under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern; and its average annual gross receipts do not exceed the maximum dollar limit, as defined by SBA rules (13 CFR 121.402), over the firm's previous three fiscal years. The Secretary of Transportation adjusts this amount for inflation from time to time, and will vary with the type of firm.

Section 26.85 Interstate Certifications

If any firm is currently certified as a DBE in a state other than Iowa, the Error! Reference source not found.will, at its discretion, accept firm's home state's certification as evidence of DBE status, without further procedures.

An applicant, who has been denied certification as a DBE, or whose certification has been removed, will be provided an opportunity to appeal the decision to the Iowa DOT DBE appeal committee as outlined in the Iowa DOT DBE program. DBE firms using certification from outside Iowa as evidence of their DBE status will appeal the denial or removal of their certification using their issuing state's procedures.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will forward our proposal to the Iowa DOT. Procedures set forth under 49 CFR part 26.87 will be followed by the Iowa DOT if it concurs with the removal of a DBE's certification. Attachment J to this program outlines the procedures used by the Iowa DOT. To ensure a separation of functions in such a decision, the Iowa DOT will forward the proposal to the DBE appeal committee. Members of the committee will not have participated in any way in proceedings - or the decision to initiate proceedings - leading to the proposal to de-certify. The Iowa DOT has established an administrative "firewall" to ensure that members of the DBE appeal committee will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Firms seeking to appeal the Iowa DOT's decision in certification matters may follow the procedures for administrative appeals of certification decisions provided in the Iowa DOT's DBE program. Resort to these procedures is not a remedy that a firm needs to exhaust before making a certification appeal to U.S. DOT under 26.89.

Any firm or complainant may appeal the Iowa DOT's decision in a certification matter to U.S. DOT. Such appeals may be sent to:

**US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575**

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter.

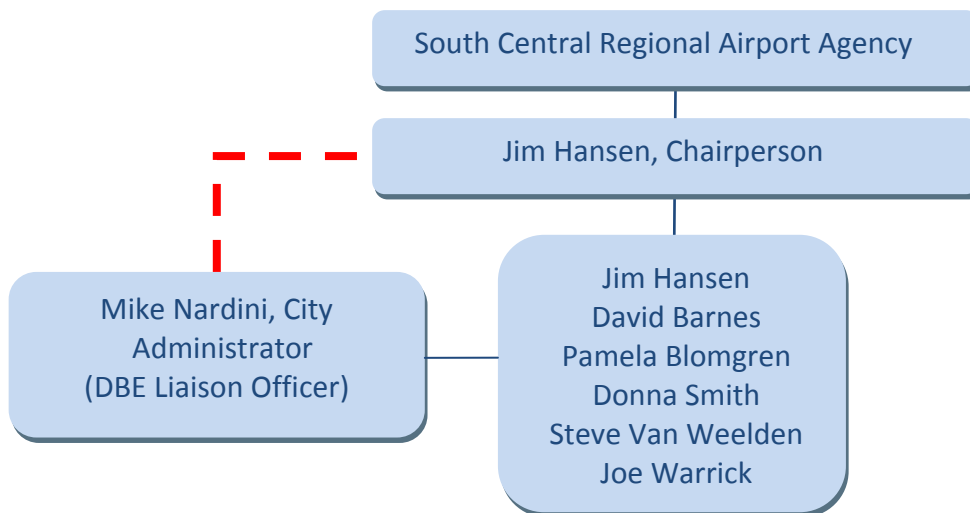
Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the **South Central Regional Airport Agency** or U.S. DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

ATTACHMENTS

Attachment A	Organizational Chart
Attachment B	DBE Directory
Attachment C	Monitoring and Enforcement Mechanisms
Attachment D	Iowa Department of Transportation FY2011 DBE Goal
Attachment E	Fostering Small Business Participation
Attachment F	Overall Goal Calculation
Attachment G	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment H	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment I	Certification Application Forms
Attachment J	Procedures for Removal of DBE's Eligibility
Attachment K	Regulations: 49 CFR Part 26
Attachment L	Sample Public Notice

Organizational Chart

DBE Directory

The Iowa DOT maintains a directory identifying all firms eligible to participate as DBEs in its program. The directory lists each firm's name, address, phone number, fax number, e-mail address, and the type of work it has been certified to perform as a DBE. The directory is reprinted every calendar year, hard copies are sent to all firms that do business with Iowa DOT. The directory is updated every month, any amendment to it is attached to bidding proposals that have a DBE goal. This information is also available on the Internet and at the Iowa DOT's Office of Contracts, which is located at 800 Lincoln Way, Ames, Iowa.

A current listing by name of the Iowa Department of Transportation Certified Disadvantaged Business Enterprises can be found online at the Iowa DOT website using the following link:

<http://www.ia.bidx.com/lettings/dbealpha.pdf>

A current listing by work type of the Iowa Department of Transportation Certified Disadvantaged Business Enterprises can be found online at the Iowa DOT website using the following link:

<http://www.ia.bidx.com/lettings/dbework.pdf>

Monitoring and Enforcement Mechanisms

The **South Central Regional Airport Agency** 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 Iowa Code Section 614 and 616;

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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.

Iowa Department of Transportation FY2012 DBE Goal

To comply with 49 CFR part 26.45, the Iowa Department of Transportation establishes its overall Disadvantaged Business Enterprise (DBE) goal based on the availability of ready, willing, and able DBEs, within Iowa, relative to the availability of all ready, willing, and able businesses within the same industry. Establishing the overall DBE goal involves two primary steps:

1. Determining the annual DBE goal based on the relative availability of DBE firms. Iowa has been making the Step 1 determination of ready, willing and able firms based on three calendar years total of plan-holders data.
2. Examining evidence in the state to determine what adjustments, if any, are necessary to the base figure to arrive at the overall goal.

The Iowa DOT used this methodology to determine its FY2012 DBE goal, as well as all prior annual goals starting in FY2000. Since the Iowa DOT is the only source of these documents, the plan-holders list is considered a statistically representative list of the universe of ready, willing and able firms, including both DBE and non-DBE contractors and subcontractors.

Proposed overall FHWA FY 2012-2014 DBE goal

The Iowa DOT submitted a proposed FFY 2012-2014 DBE goal of 4.5%. Approximately 2.1% will be achieved through race-conscious means and 2.4% through race-neutral means.

Proposed overall FTA 2012 DBE goal

The Iowa DOT's Modal Division submitted a proposed FFY 2011-2013 DBE goal of 0.37%. Approximately 0.29% will be achieved through race-conscious means and 0.08% through race-neutral means.

Proposed overall FAA FY2012 DBE goal

The Iowa DOT's Modal Division submitted a proposed FAA 2012 DBE goal of 1.2%. This will be obtained through 0.55% race-neutral means and 0.65% through race-conscious means.

Section 26.39: Fostering Small Business Participation

A. Objectives

The **South Central Regional Airport Agency** has developed this Small Business element in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. We consider it to be a race- and gender-neutral means for providing additional contracting opportunities for small businesses, including DBEs, to fairly compete for contracts.

The objective of this program is to eliminate obstacles that by nature preclude small business participation in procurements as prime contractors or subcontractors. We will also consider this program to be a tool that has the potential to positively address procurement concerns relating to costs, innovation, quality, and customer satisfaction.

Work performed by DBE's under the Small Business Element will be counted towards race neutral DBE participation.

B. Small Business Size Standards

All contractors wishing to participate as small businesses (DBEs and non-DBEs alike) are subject to the same size standards. Iowa Code 314.14 defines a "Small Business" as any enterprise which is operated for profit, under a single management, and which has either fewer than twenty (20) employees or an annual gross income of less than four (4) million dollars computed as the average of the three preceding fiscal years. There are no ethnic or gender limitations. The Personal Net Worth (PNW) of any owners should not exceed \$1.32 million.

C. Small Business Verification Procedures

The **South Central Regional Airport Agency** will accept the following certifications or documents for participation in the small business element of the DBE Program with applicable stipulations:

- (1) Disadvantaged Business Enterprise (DBE) Certification – DBE Certification is issued by the Iowa DOT.
- (2) Targeted Small Business (TSB) Certification – Businesses owned, operated, and actively managed by women, minority group members, or persons with disabilities are eligible for certification as TSB's. TSB Certification is issued by the Iowa Department of Inspections and Appeals (DIA).
- (3) Other Small Businesses – Will require submittal of three years of business tax returns.
- (4) All Small Businesses (DBE and non-DBE) – Will require submittal of the "*SMALL BUSINESS VERIFICATION*" form attached at the end of the small business element of the DBE Program.

D. Strategies for Increasing Participation by Small Businesses

The **South Central Regional Airport Agency** will take the following proactive steps to increase contracting opportunities for small businesses at the South Central Regional Airport.

- (1) We will require contractors bidding on projects without DBE goals to solicit quotations from small businesses. Contractors must use the "*PRE-BID SMALL BUSINESS CONTACT INFORMATION*" form attached at the end of the small business element of the DBE Program and may submit additional documentation that demonstrates reasonable positive efforts toward encouraging participation in the contract by Small Businesses.
- (2) We will contact Small Businesses in the market area at least 2 business days prior to the general release of bid documents to notify them of upcoming projects.
- (3) We will post the **South Central Regional Airport Agency's** bids online at the "*FAA dbE-Connect System*" (<https://faa.dbesystem.com>) to make information about bid opportunities more readily available to Small Business concerns.
- (4) We will include language in our public notices that encourages consortia or joint ventures consisting of small businesses to compete for prime contracts (e.g. "*joint ventures consisting of small businesses are encouraged to submit proposals as prime contractors*").

(5) We will review each FAA-assisted contract to identify individual phases or elements of a project that can be “unbundled” or bid separately to make them more accessible to small businesses. The resulting work will be advertised for sealed bids in accordance with Iowa Code 26.3.

(6) We will review each contract to develop provisions that eliminate barriers to the participation of new, emerging, or untried businesses in procurements.

(7) We will contact and strongly encourage minority and women owned businesses that participate in the small business element to seek Iowa DOT DBE certification. We will count their work towards race neutral DBE participation if they are successfully certified.

E. Monitoring and Enforcement Mechanisms

The **South Central Regional Airport Agency** will take the following monitoring and enforcement mechanisms to ensure compliance with the small business element of the DBE program.

(1) False, fraudulent, or dishonest conduct in connection with Small Business participation will be brought to the attention of the Iowa DOT and U.S. DOT so that appropriate steps can be taken (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Regulations, provisions, and contract remedies available to us in the events of non-compliance are provided in Section 26.37 of the DBE program.

(2) We will verify that work committed to Small Businesses at contract award is actually performed by the Small Business by monitoring the work site to ensure compliance.

(3) We will perform interim audits of contract payments to Small Businesses to ensure that the actual amount paid to Small Business subcontractors equals or exceeds the dollar amounts stated in the “*PRE-BID SMALL BUSINESS CONTACT INFORMATION*” form submitted with the contractor’s bid.

(4) We will require prime contractors to maintain records and documents of payments to Small Business subcontractors for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the **South Central Regional Airport Agency**. This reporting requirement also extends to any participating Small Business.

F. Small Business Directory

Contractors can find current listings of certified Iowa DIA TSBs, Iowa DOT DBEs, and other state DOT DBE listings at the following links:

(1) Iowa DIA TSB Directory: <https://dia.iowa.gov/tsb/index.php/search>

(2) Iowa DOT DBE Directory listings by name: <http://www.ia.bidx.com/lettings/dbalpha.pdf>

(3) Iowa DOT DBE Directory listings by work: <http://www.ia.bidx.com/lettings/dbework.pdf>

(4) FAA dbE-Connect System listings: <https://faa.dbesystem.com>

G. Implementation Schedule

The **South Central Regional Airport Agency** will implement this small business element within nine months of the FAA’s approval of this document describing the small business element.

PRE-BID SMALL BUSINESS CONTACT INFORMATION

Contractor Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

In order for your bid to be considered responsive, you are required to provide information on this form showing the Small Business contacts made with your bid submission. This information is subject to verification and confirmation.

TABLE OF INFORMATION SHOWING BIDDERS PRE-BID SMALL BUSINESS CONTACTS

NAME OF SMALL BUSINESS CONTACTED	DATE CONTACTED	QUOTE RECEIVED? (YES/NO)	DOLLAR AMOUNT (IF ANY)

AMOUNT TO BE SUBCONTRACTED TO SMALL BUSINESSES

SMALL BUSINESS VERIFICATION

To be considered a Small Business, a company must meet the requirements of Iowa Code 314.14 or be certified as a Disadvantaged Business Enterprise (DBE) or a Targeted Small Business (TSB). This form allows a contractor to self certify that their company meets the requirements of a Small Business as defined by Iowa Code 314.14 or through their status as a certified DBE or TSB. This form must accompany the bid submission.

_____ of _____
 Company Name City and State

(1) The following two must apply:

Is this business operated for a profit and under a single management? (single management for the purpose of certification means the business cannot be a subsidiary of another business)

☐ Yes

☐ No

Do the owners have a Personal Net Worth (PNW) **less than** \$1.32 million each?

☐ Yes

☐ No

(2) At least one of the following three must apply:

Does this business have fewer than twenty (20) employees during its peak seasonal employment?

☐ Yes

☐ No

OR

Does this firm have an annual gross income of less than four (4) million dollars computed as the average of the three preceding fiscal years?

☐ Yes

☐ No

OR

Does this firm have a DBE or TSB certification? (A response of "No" will require submittal of most recent three years of business tax returns after award of contract)

☐ Yes

☐ No

I, _____, give this unsworn declaration executed under penalty of perjury of the laws of the United States and the State of Iowa that all the statements in this Small Business Certification are true and correct.

Dated _____

Section 26.45: Overall Goal Calculation

Name of Recipient: South Central Regional Airport Agency

Goal Period: FY 2013 through FY 2015 (October 1, 2012 through September 30, 2015)

DBE Goal: 0.69%

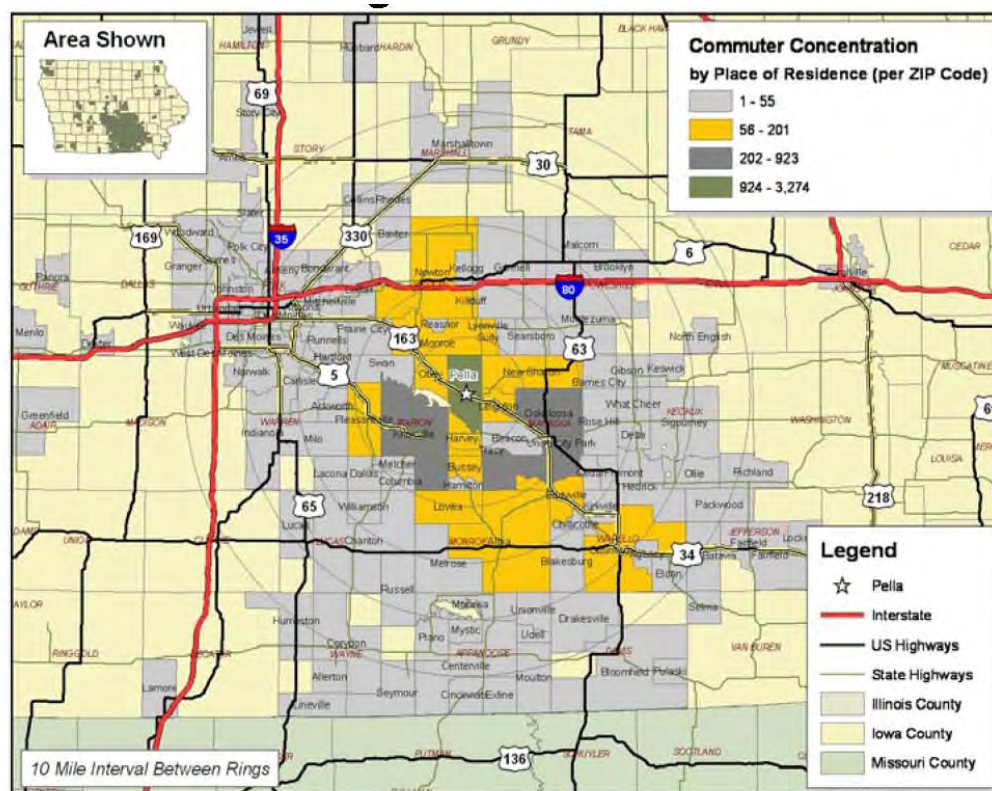
Number and Type of Projects for the 3-Year Period:

- a. FY 2013 - None
- b. FY 2014 – AGIS ALP/Master Plan (\$500,000)
- c. FY 2015 – None
- d. Total: \$500,000
- e. Proportion: FY 2013 (0.00), FY 2014 (1.00), FY 2015 (0.00)

Market Area: Central Iowa as follows:

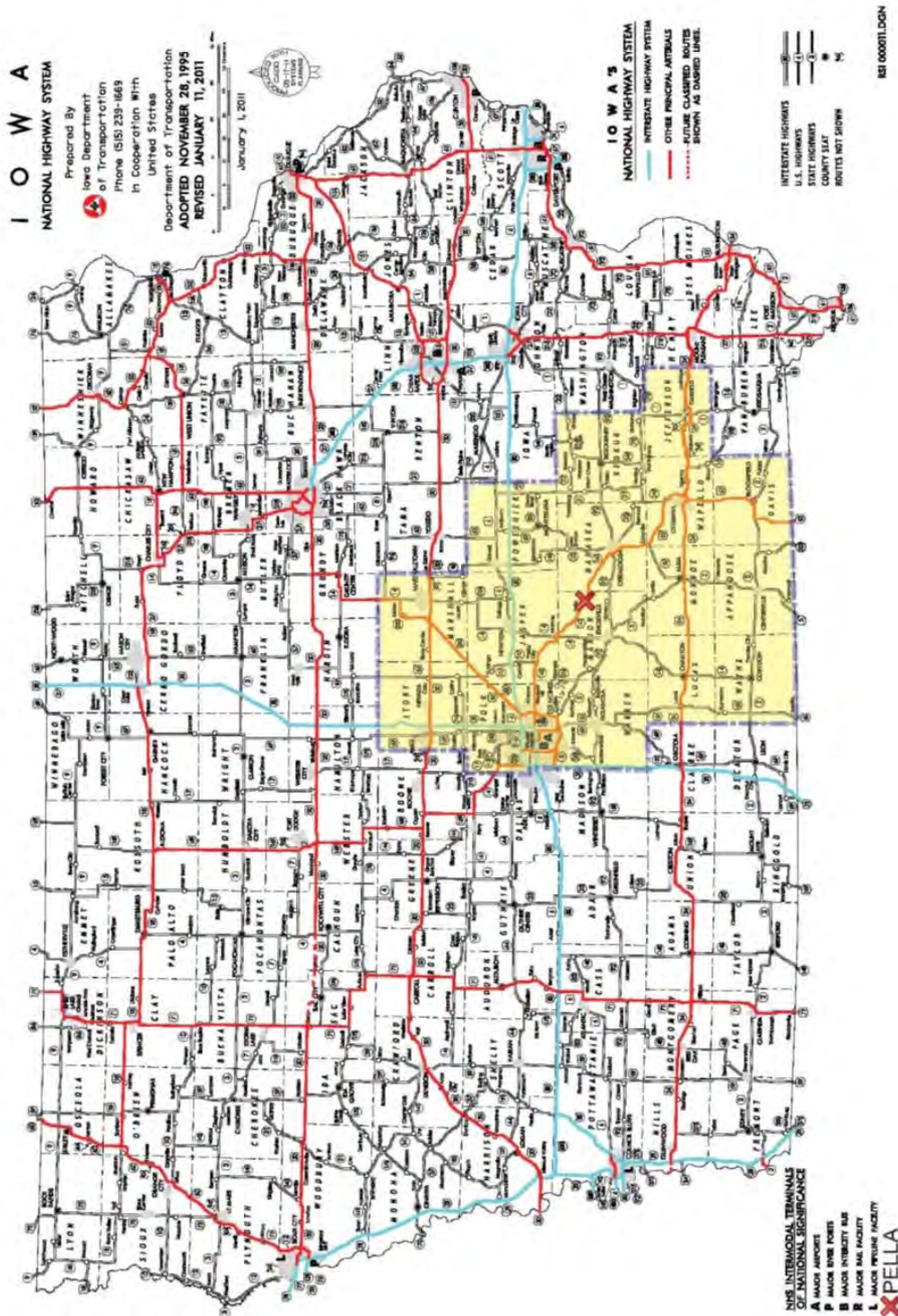
- Appanoose, Davis, Jasper, Jefferson, Keokuk, Lucas, Mahaska, Marion, Marshall, Monroe, Polk, Poweshiek, Story, Wapello, Warren and Wayne Counties.

Exhibit F1: Commuting Patterns into Pella



Source: Iowa Workforce Development (April 2009), <http://www.iowaworkforce.org/lmi/labsur/>

Determination of Market Area: The entire boundaries or parts of these Counties are located within the **Pella** laborshed area as determined from laborshed studies released in **April 2009** by the Iowa Workforce Development Labor Market & Workforce Information Division. The market area is assumed to consist of the counties in which commuters for the **Pella** laborshed area live.



- a. Substantial majority (at least 99% of the contractors and subcontractors come from this area), and
- b. Substantial majority (at least 100% of the contracting dollars will be spent in this area.)

Iowa Workforce Development Labor Market & Workforce Information Division Laborshed studies can be found on the internet at <http://www.iowaworkforce.org/lmi/labsur/>

Step 1. Analysis: Actual relative availability of DBE's

Method: The base figure for the relative availability of DBE's, the substantial money spent, and majority of bidders was calculated as follows:

$$\text{Base Figure} = \frac{\text{Total No. of Ready, Willing and Able DBEs}}{\text{Total No. of Firms Ready, Willing and Able to Perform the Work}}$$

**TABLE F1: Ready, Willing and Able DBE Firms for FY 2014 Projects.
AGIS ALP / Master Plan.**

Type of Work	Engineering Services	Surveying and Mapping (except Geophysical) Services	Environmental Consulting Services	TOTAL
NAICS Codes	541330	541370	541620	
Appanoose	0	0	0	0
Davis	0	0	0	0
Jasper	0	0	0	0
Jefferson	0	0	0	0
Keokuk	0	0	0	0
Lucas	0	0	0	0
Mahaska	0	0	0	0
Marion	0	0	0	0
Marshall	0	0	0	0
Monroe	0	0	0	0
Polk	1	0	0	1
Poweshiek	0	0	0	0
Story	0	0	0	0
Wapello	0	0	0	0
Warren	0	0	0	0
Wayne	0	0	0	0
Total All DBE Firms Only	1	0	0	1

The data source or demonstrable evidence used to derive the numerator for **FY 2014** projects was the Iowa DOT's Directory of Certified Disadvantaged Business Enterprises and the FAA's nationwide DBE directory found at <https://faa.dbesystem.com>. The number of ready, willing, and able DBE's in the **Pella** market area amounted to **1**. From this **all ready, willing and able DBE firms** were tallied under the NAICS codes listed in Table F2 above.

**TABLE F2: All Ready, Willing and Able Firms (DBE and non-DBE) for FY 2014 Projects.
AGIS ALP / Master Plan.**

	Type of Work	Engineering Services	Surveying and Mapping (except Geophysical) Services	Environmental Consulting Services	TOTAL
NAICS Codes		541330	541370	541620	
Appanoose		1	3	0	4
Davis		0	0	0	0
Jasper		0	1	0	1
Jefferson		4	1	2	7
Keokuk		0	0	0	0
Lucas		1	0	0	1
Mahaska		3	0	0	3
Marion		4	0	0	4
Marshall		4	0	0	4
Monroe		1	0	0	1
Polk		79	3	16	98
Poweshiek		0	1	0	1
Story		14	1	4	19
Wapello		0	0	0	0
Warren		1	1	0	2
Wayne		0	0	0	0
Total All DBE Firms Only		108	11	22	145

The data source or demonstrable evidence used to derive the denominator for **FY 2014** projects was the Census Bureau County Business Patterns Data for the **Pella** market area found at www.census.gov/econ/cbp/. This research of the Census Bureau Business Patterns Database for these counties obtained information on the number of available contractors of which the most recent data is from 2009. From this **141** were tallied under the NAICS codes listed in Table F4 above.

$$\text{FY 2014 DBE Participation} = \frac{1}{145} = 0.69\%$$

The above goals were weighted as follows to obtain a base figure for FY 2013 to FY 2015:

Project	Fraction of All Costs 0.00	Operator	DBE Availability (%)	Weighted Goal (0.00%)
FY 2013 – None	0.00	x	0.00%	0.00%
FY 2014 – AGIS ALP / Master Plan	1.00	x	0.69%	0.69%
FY 2015 – None	0.00	x	0.00%	0.00%
Base Figure:				0.69%

Step 2. Analysis: Adjustment to Step 1 base figure to make it more precise.

Three factors were considered in the adjustment of Step 1 base figure:

- a. First, the recipient researched its market area for any disparity studies that may have been conducted in the last 7 years and found none. We contacted the Iowa Commission on the Status of African-Americans (ICSAA) – Department of Human Rights. To date, the Iowa Department of Human Rights has published only one disparity study titled “**City of Davenport Disparity Study Regarding Minority and Women Participation In Contracting**” dated June 2009, no other studies were found. This study was specific to the City of Davenport only and does not apply to the Pella market area. No other local, regional, or statewide disparity studies have been completed to date.

- b. Second, the recipient addressed other factors by researching and contacting the following offices:

1. **Iowa DOT’s Office of Aviation**

800 Lincoln Way

Ames, IA 50010

Phone: 515-239-1691, Fax: 515-233-7983

Contact: Kay Thede, Program Manager

- The Office of Aviation advocates for and delivers services that promote and enhance a healthy air transportation system. Emphasis is placed on building cooperative working relationships, advocating for opportunities to strengthen aviation in Iowa, coordinating outreach programs, maintaining a comprehensive data collection system, and managing programs that promote a safe and secure air transportation system in Iowa.
- The Iowa DOT Office of Aviation has annual statewide DBE goal of **1.2%** for Iowa DOT administered FAA funds (Appendix D) is only applicable to planning studies and AWOS construction projects. Individual goals need to be set for all other projects.

2. **Iowa Department of Economic Development**

200th Grand Avenue

Des Moines, IA 50309

Phone: 515-725-3000

Contact: Debi Durham, Director

- The Iowa Department of Economic Development has a Targeted Small Business (TSB) Program designed to help women, minorities, and the disabled overcome some of the major hurdles of starting or growing a small business in Iowa. Since its inception the TSB program has issued hundreds of loans to Iowa small business owners totaling millions of dollars.
- The TSB program assists certified TSBs financially by providing access to loans amounting to as much as \$50,000 that carry interest rates of no more than 5% (can range from 0%-5%), and a five (5) year repayment period. Applicants must have 10% equity in cash to qualify for the loans. Loan funds may be used for most business purposes such as purchasing equipment and machinery, acquiring inventory and supplies, marketing costs, etc. However, loan funds cannot be used to refinance or consolidate existing debts, travel or training, or for purchase of real estate.
- The Iowa Department of Economic Development does not have a DBE program in place for member communities.
- The Iowa Department of Economic Development had no additional information as it relates to DBE programs in the state of Iowa.

3. Central Iowa Regional Transportation Planning Alliance (CIRTPA)
6200 Aurora Avenue, Suite 300 W
Urbandale, IA 50322
Phone: 515-334-0075
Contact: Tom Kane, Program Coordinator

- CIRTPA organized in 1994 to carry out transportation planning for eight counties in central Iowa. It serves as the designated regional transportation planning agency for the Iowa Department of Transportation's Region 11. The CIRTPA coordinates planning and programming efforts in the region and fosters new partnerships with state and local officials.
- The CIRTPA does not have a DBE program in place for member communities. It does not have any information as it relates to DBE programs administered by individual member communities.c. Third, the recipient examined the historic overall DBE goals accomplishments at the airport in recent years, i.e., 3-4 years, specifically, the annual Uniform Report of DBE Awards or Commitments and Payments supplemented by contractual closeout information, and summarized below:

The Pella Municipal Airport's Historic DBE Accomplishments for U.S. DOT-Assisted Contracts are as follows:

Fiscal Year	Goal	Accomplishments	Type of Work
2011	0.00%	0.00%	None
2010	0.00%	0.00%	Rehabilitate Runway - 16/34
2009	0.00%	0.00%	Acquire Snow Removal Equipment
2008	0.00%	0.00%	Acquire Snow Removal Equipment
2007	0.69%	0.00%	Airport Master Plan Study

Source: AIP Grant Histories at http://www.faa.gov/airports/aip/grant_histories/

After all of the above factors were considered, we determined that there was a lack of sufficient state, regional, local, and historical data or trends that could provide a basis for adjusting the Step 1 base figure. Therefore, the base figure of **0.69%** remains unchanged and will be used as the FY 2013 through FY 2015 DBE goal for U.S. DOT assisted projects at the Pella Municipal Airport.

**Section 26.51: Breakout of Estimated
Race-Neutral & Race Conscious Participation**

The **South Central Regional Airport Agency** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. **The South Central Regional Airport Agency** will adopt the race-neutral means established by the Iowa DOT as they may apply to specific FAA grants or projects. These means may include, but are not limited to:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of the work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing 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 their small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;
5. 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;
6. Ensuring distribution of the Iowa DOT DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
7. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

We estimate that, in meeting our overall goal of **0.69%**, we will obtain **0.23%** from race-neutral participation and **0.46%** through race-conscious measures.

The basis of our estimated breakout of race-neutral and race-conscious DBE participation is that a Contractor needs to have accrued enough points to exceed **67%** of the Iowa DOT's Annual DBE Goal to be eligible for the Iowa DOT's DBE Good Faith Efforts (GFE) Program.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award; and DBE participation in the small business element of the DBE program.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Forms 1 & 2 for Demonstration of Good Faith Efforts**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and also submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Certification Application Forms



Iowa Department of Transportation

**Disadvantaged Business Enterprise Program
49 C.F.R. Part 26**

Uniform Certification Application

Please return this entire document, when completed, to:

EEO Section
Office of Contracts
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) **Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- ☐ Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$22.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

④ Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ____ / ____ / ____ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	<input checked="" type="checkbox"/> STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ____ / ____ / ____ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:
--

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:	(5) Fax #:			
(6) E-mail:		(7) Website (if have one):			
(8) Street address of firm (No P.O. Box):		City:	County/Parish:	State:	Zip:
(9) Mailing address of firm (if different):		City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ____ / ____ / ____		(4) I/We have owned this firm since: ____ / ____ / ____	
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe:		
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain:		
(9) Number of employees:	Full-time	Part-time
		Total
(10) Specify the gross receipts of the firm for the last 3 years:		
Year		Total receipts \$
Year		Total receipts \$
Year		Total receipts \$

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____	
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):	
<u>Name</u>	<u>Address</u>
<u>Type of Business</u>	
1.	
2.	
3.	

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, then list (attach extra sheets, if needed):				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date acquired</u> <u>Method Acquired</u>			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet):*

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet):*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____			
(b) Name of agent/broker: _____		(c) Phone No: () _____	
(d) Address of agent/broker: _____		City: _____	State: _____ Zip: _____
(e) Bonding limit: Aggregate limit \$ _____		Project limit \$ _____	

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian-Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.


I further certify that my personal net worth does not exceed \$1,320,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

	PERSONAL FINANCIAL STATEMENT	OMB APPROVAL NO. 3245-0188 EXPIRATION DATE: 3/31/2008
U.S. SMALL BUSINESS ADMINISTRATION		As of _____, _____
Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.		
Name _____		Business Phone _____
Residence Address _____		Residence Phone _____
City, State, & Zip Code _____		
Business Name of Applicant/Borrower _____		
ASSETS	(Omit Cents)	LIABILITIES
(Omit Cents)		(Omit Cents)
Cash on hand & in Banks	\$ _____	Accounts Payable
Savings Accounts	\$ _____	Notes Payable to Banks and Others
IRA or Other Retirement Account	\$ _____	(Describe in Section 2)
Accounts & Notes Receivable	\$ _____	Installment Account (Auto)
Life Insurance-Cash Surrender Value Only	\$ _____	Mo. Payments \$ _____
(Complete Section 8)		Installment Account (Other)
Stocks and Bonds	\$ _____	Mo. Payments \$ _____
(Describe in Section 3)		Loan on Life Insurance
Real Estate	\$ _____	Mortgages on Real Estate
(Describe in Section 4)		(Describe in Section 4)
Automobile-Present Value	\$ _____	Unpaid Taxes
Other Personal Property	\$ _____	(Describe in Section 6)
(Describe in Section 5)		Other Liabilities
Other Assets	\$ _____	(Describe in Section 7)
(Describe in Section 5)		Total Liabilities
Total	\$ _____	Net Worth
		Total
Section 1. Source of Income		Contingent Liabilities
Salary	\$ _____	As Endorser or Co-Maker
Net Investment Income	\$ _____	Legal Claims & Judgments
Real Estate Income	\$ _____	Provision for Federal Income Tax
Other Income (Describe below)*	\$ _____	Other Special Debt
Description of Other Income in Section 1.		
*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.		
Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)		
Name and Address of Noteholder(s)	Original Balance	Current Balance
	Payment Amount	Frequency (monthly, etc.)
	How Secured or Endorsed	Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)			
	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)	

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)	

Section 7. Other Liabilities. (Describe in detail.)	

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)	

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature:	Date:	Social Security Number:
Signature:	Date:	Social Security Number:

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503, **PLEASE DO NOT SEND FORMS TO OMB.**

Procedures for Removal of DBE's Eligibility

Complaints: Iowa DOT will accept written complaints from any person alleging that a currently certified DBE firm is ineligible and stating specific reasons for ineligibility. Anonymous or general complaints will not be accepted. The Iowa DOT will thoroughly investigate the complaint and if reasonable cause is found, will notify the DBE and the complainant in writing.

Iowa DOT Initiated: When Iowa DOT has reason to believe a certified DBE firm is ineligible, the DBE will be notified of the finding in writing. The letter will state the reason and cite the evidence.

USDOT Initiated: The USDOT may notify Iowa DOT of reasonable cause to find a certified DBE firm to be ineligible. The Iowa DOT must immediately initiate removal procedures.

Hearing: When a DBE firm receives written notice of intent to remove eligibility, the firm has 15 days to request an informal hearing to refute the allegations. The Iowa DOT must prove by a preponderance of evidence that the firm is ineligible. The Iowa DOT will provide a Tape Recorder to record the hearing and prepare a transcript. The decision-maker for the appeal hearing will be the Iowa DOT Appeal Committee.

Decision: The decision to remove eligibility will be based on circumstances that have changed since certification, evidence that was not available at certification, evidence that was concealed or misrepresented, a change in certification standards or a documentation of erroneous facts.

Notice of Decision: Following the decision, the Iowa DOT will notify the DBE firm in writing of the decision and any consequences. The firm remains an eligible DBE throughout the investigation and hearing process. The removal of eligibility becomes effective on the date of the decision letter.

Effects: The prime contractor will receive DBE credit for all DBE work that is currently under contract. If there was a bid commitment but no written subcontract was executed yet, the prime contractor must make a good faith effort to find another DBE firm for all or part of the committed amount.

US DOT Appeals

Who May Appeal: Any applicant who has been denied certification by the Iowa DOT or a previously certified firm whose eligibility was removed by the Iowa DOT may appeal. Any complainant in an ineligibility complaint to the Iowa DOT may appeal if the Iowa DOT does not remove eligibility and they believe the finding to be in error.

Where: Send appeals to:

**US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575**

When: The complete appeal must be filed within 90 days of the decision letter date.

What: The appeal must contain a narrative as to why the Iowa DOT decision was in error and documents to show or prove the error. If you are an applicant who was denied or a DBE whose eligibility was removed, you must disclose in the appeal all other denials or rejections within one year of the date of the appeal. Failure to do so is a failure to cooperate.

Recipient: The Iowa DOT will provide to USDOT the administrative record and hearing transcript within 20 days.

DEPARTMENT OF TRANSPORTATION

49 CFR PART 26

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

FINAL RULES

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map Date	Date certain federal assistance no longer available in SFHAs
Taft, Town of, Muskogee County	400128	June 26, 1976, Emerg; August 25, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Wainwright, Town of, Muskogee County	400129	March 9, 1976, Emerg; August 8, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Warner, Town of, Muskogee County	400130	December 29, 1976, Emerg; May 25, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Webbers Falls, Town of, Muskogee County.	400131	November 28, 1975, Emerg; May 1, 1980, Reg; February 4, 2011, Susp.	.....do*	Do.
Texas:				
Bandera County, Unincorporated Areas	480020	January 21, 1974, Emerg; November 1, 1978, Reg; February 4, 2011, Susp.	.....do*	Do.
Benavides, City of, Duval County	480792	July 24, 1975, Emerg; March 4, 1986, Reg; February 4, 2011, Susp.	.....do*	Do.
Colorado County, WCID Number 2	481489	October 28, 1977, Emerg; June 1, 1988, Reg; February 4, 2011, Susp.	.....do*	Do.
Colorado County, Unincorporated Areas	480144	February 29, 1980, Emerg; September 19, 1990, Reg; February 4, 2011, Susp.	.....do*	Do.
Columbus, City of, Colorado County	480145	February 19, 1975, Emerg; June 19, 1985, Reg; February 4, 2011, Susp.	.....do*	Do.
Duval County, Unincorporated Areas	480202	July 24, 1975, Emerg; May 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Eagle Lake, City of, Colorado County ...	480146	July 30, 1975, Emerg; April 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.
Lamesa, City of, Dawson County	480191	February 25, 1972, Emerg; April 30, 1976, Reg; February 4, 2011, Susp.	.....do*	Do.
San Diego, City of, Duval and Jim Wells Counties.	481199	December 26, 1975, Emerg; March 1, 1987, Reg; February 4, 2011, Susp.	.....do*	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 19, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011–1930 Filed 1–27–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2010–0118]

RIN 2105–AD75

Disadvantaged Business Enterprise: Program Improvements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This rule improves the administration of the Disadvantaged Business Enterprise (DBE) program by increasing accountability for recipients with respect to meeting overall goals, modifying and updating certification requirements, adjusting the personal net worth (PNW) threshold for inflation, providing for expedited interstate certification, adding provisions to foster small business participation, improving

post-award oversight, and addressing other issues.

DATES: *Effective Dates:* This rule is effective February 28, 2011.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94–302, 202–366–9310, bob.ashby@dot.gov.

SUPPLEMENTARY INFORMATION: The Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) concerning several DBE program issues on April 8, 2009 (74 FR 15904). The first issue raised in the ANPRM concerned counting of items obtained by a DBE subcontractor from its prime contractor. The second concerned ways of encouraging the “unbundling” of contracts to facilitate participation by small businesses, including DBEs. The third was a request for comments on potential improvements to the DBE application form and personal net worth (PNW) form. The fourth asked for suggestions related to program oversight. The fifth concerned potential regulatory action to facilitate certification for firms seeking to work as DBEs in more than one state.

The sixth concerned additional limitations on the discretion of prime contractors to terminate DBEs for convenience, once the prime contractor had committed to using the DBE as part of its showing of good faith efforts. The Department received approximately 30 comment letters regarding these issues.

On May 10, 2010, the Department issued a notice of proposed rulemaking (NPRM) seeking further comment on proposals based on the ANPRM and proposing new provisions (75 FR 25815). The NPRM proposed an inflationary adjustment of the PNW cap to \$1.31 million, the figure that would result from proposed Federal Aviation Administration (FAA) reauthorization legislation then pending in both Houses of Congress. The Department proposed additional measures to hold recipients accountable for their performance in achieving DBE overall goals.

The NPRM also proposed amendments to the certification-related provisions of the DBE regulation. Those proposals resulted from the Department’s experience dealing with certification issues and certification appeal cases during the years since the last major revision of the DBE rule in 1999. The proposed amendments were intended to clarify issues that have arisen and avoid problems with which

recipients (*i.e.*, state highway agencies, transit authorities, and airport sponsors who receive DOT grant financial assistance) and the Department have had to grapple over the last 11 years.

The Department received approximately 160 comments on the NPRM from a variety of interested parties, including DBE and non-DBE firms, associations representing them, and recipients of DOT financial assistance. A summary of comments on the major issues in the rulemaking, and the Department's responses to those comments, follows.

Counting Purchases From Prime Contractors

Under current counting rules, a DBE subcontractor and its prime contractor may count for DBE credit the entire cost of a construction contract, including items that the DBE subcontractor purchases or leases from a third party (*e.g.*, in a so-called "furnish and install" contract). There is an exception to this general rule: A DBE and its prime contractor may not count toward goals items that the DBE purchases or leases from its own prime contractor. The reason for this provision is that doing so would allow the prime contractor to count for DBE credit items that it produced itself.

As noted in the ANPRM, one DBE subcontractor and a number of prime contractors objected to this approach, saying that it unfairly denies a DBE in this situation the opportunity to count credit for items it has obtained from its prime contractor rather than from other sources. Especially in situations in which a commodity might only be available from a single source—a prime contractor or its affiliate—the rule would create a hardship, according to proponents of this view. The ANPRM proposed four options (1) keeping the rule as is; (2) keeping the basic rule as is, but allowing recipients to make exceptions in some cases; (3) allowing DBEs to count items purchased from any third party source, including the DBE's prime contractor; and (4) not allowing any items obtained from any non-DBE third party to be counted for DBE credit. Comment was divided among the four alternatives, which each garnering some support. For purposes of the NPRM, the Department decided not to propose any change from the current rule.

Comment on the issue was again divided. Seven commenters favored allowing items obtained from any source to be counted for credit, including the firm that was the original proponent of the idea and another DBE, two prime contractors' associations, a

prime contractor, and two State Departments of Transportation (DOTs). These commenters generally made the same arguments as had proponents of this view at the ANPRM stage. Thirteen commenters, among which were several recipients, a DBE contractors' association, and DBE contractors, favored the NPRM's proposed approach of not making any change to the existing rule, and they endorsed the NPRM's rationale. Sixteen commenters, including a recipient association and a number of DBE companies, supported disallowing credit for any items purchased or leased from a non-DBE source. They believed that this approach supported the general principle of awarding DBE credit only for contributions that DBEs themselves make on a contract.

DOT Response

The Department remains unconvinced that it is appropriate for a prime contractor to produce an item (*e.g.*, asphalt), provide it to its own DBE subcontractor, and then count the value of the item toward its good faith efforts to meet DBE goals. The item—asphalt, in this example—is a contribution to the project made by the prime contractor itself and simply passed through the DBE. That is, the prime contractor, on paper, sells the item to the DBE, who then charges the cost of the item it just bought from the prime contractor as part of its subcontract price, which the prime then reports as DBE participation. In the Department's view, this pass-through relationship is inconsistent with the most important principle of counting DBE participation, which is that credit should only be counted for value that is added to the transaction by the DBE itself.

As mentioned in the ANPRM and NPRM, the current rule treats counting of items purchased by DBEs from non-DBE sources differently, depending on whether the items are obtained from the DBE's prime contractor or from a third-party source. The Department's current approach is a reasonable compromise between the commonly accepted practice of obtaining items from non-DBE sources as part of the contracting process and maintaining the principle of counting only the DBE's own contributions for credit toward goals, which is most seriously violated when the prime contractor itself is the source of the items. This compromise respects the dual, somewhat divergent, goals of accommodating a common way of doing business and avoiding a too-close relationship between a prime contractor and a DBE subcontractor that distorts the counting of credit toward DBE goals.

This compromise has been part of the regulation since 1999 and, with the exception of the proponent of changing the regulation and its prime contractor partners, has never been raised by program participants as a widespread problem requiring regulatory change. For these reasons, the Department will leave the existing regulatory language intact.

Terminations of DBE Firms

The NPRM proposed that a prime contractor who, in the course of meeting its good faith efforts requirements on a procurement involving a contract goal, had submitted the names of one or more DBEs to work on the project, could not terminate a DBE firm without the written consent of the recipient. The firm could be terminated only for good cause. The NPRM proposed a list of what constituted good cause for this purpose.

Over 40 comments addressed this subject, a significant majority of which supported the proposal. Two recipients said the proposal was unnecessary and a third expressed concern about workload implications. Several recipients said that they already followed this practice.

However, commenters made a variety of suggestions with respect to the details of the proposal. A DBE firm questioned a good cause element that would allow a firm to be terminated for not meeting reasonable bonding requirements, noting that lack of access to bonding is a serious problem for many DBEs. A DBE contractors' association said that a DBE's action to halt performance should not necessarily be a ground for termination, because in some cases such an action could be a justified response to an action beyond its control (*e.g.*, the prime failing to make timely payments). A DBE requested clarification of what being "not responsible" meant in this context. A number of commenters, including recipients and DBEs, suggested that a prime could terminate a DBE only if the DBE "unreasonably" failed to perform or follow instructions from the prime.

A prime contractors' association suggested additional grounds for good cause to terminate, including not performing to schedule or not performing a commercially useful function. Another such association said the rule should be consistent with normal business practices and not impede a prime contractor's ability to remove a poorly performing subcontractor for good cause. A recipient wanted a public safety exception to the time frame for a DBE's reply to a prime contractor's notice

proposing termination, and another recipient wanted to shorten that period from five to two days. A State unified certification program (UCP) suggested adopting its State's list of good cause reasons, and a consultant suggested that contracting officers, not just the DBE Liaison Officer (DBELO), should be involved in the decision about whether to concur in a prime contractor's desire to terminate a DBE. A recipient wanted to add language concerning the prime contractor's obligation to make good faith efforts to replace a terminated DBE with another DBE.

DOT Response

The Department, like the majority of commenters on this issue, believes that the proposed amendment will help to prevent situations in which a DBE subcontractor, to which a prime contractor has committed work, is arbitrarily dismissed from the project by the prime contractor. Comments to the docket and in the earlier stakeholder sessions have underlined that this has been a persistent problem. By specifying that a DBE can be terminated only for good cause—not simply for the convenience of the prime contractor—and with the written consent of the recipient, this amendment should help to end this abuse.

With respect to the kinds of situations in which “good cause” for termination can exist, the Department has modified the language of the rule to say that good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. We note that industry standards may vary among projects, and could be higher for some projects than others, a matter the recipient could take into account in determining whether to consent to a prime contractor's proposal to terminate a DBE firm. However, 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 (*e.g.*, the failure of the prime contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work).

Good cause also does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that it can self-perform the work in question or substitute another DBE or non-DBE firm. This approach responds to commenters who were concerned about prime contractors imposing unreasonable demands on DBE subcontractors while offering recipients a more definite standard than simple

reasonableness in deciding whether to approve a prime contractor's proposal to terminate a DBE firm. We have also adopted a recipient's suggestion to permit the time frame for the process to be shortened in a case where public necessity (*e.g.*, safety) requires a shorter period of time before the recipient's decision.

In addition to the enumerated grounds, a recipient may permit a prime contractor to terminate a DBE for “other documented good cause that the recipient determines compels the termination of the DBE subcontractor.” This means that the recipient must document the basis for any such determination, and the prime contractor's reasons for terminating the DBE subcontractor make the termination essential, not merely discretionary or advantageous. While the recipient need not obtain DOT operating administration concurrence for such a decision, FHWA, FTA, and FAA retain the right to oversee such determinations by recipients.

Personal Net Worth

The NPRM proposed to make an inflationary adjustment in the personal net worth (PNW) cap from its present \$750,000 to \$1.31 million, based on the consumer price index (CPI) and relating back to 1989, as proposed in FAA authorization bills pending in Congress. The NPRM noted that such an adjustment had long been sought by DBE groups and that it maintained the status quo in real dollar terms. The Department also asked for comment on the issue of whether assets counted toward the PNW calculation should continue to include retirement savings products. The rule currently does include them, but the pending FAA legislation would move in the direction of excluding them from the calculation.

Of the 95 commenters who addressed the basic issue of whether the Department should make the proposed inflationary adjustment, 71—representing all categories of commenters—favored doing so. Many said that such an adjustment was long overdue and that it would mitigate the problem of a “glass ceiling” limiting the growth and development of DBE firms. A few commenters said that such adjustments should be done regionally or locally rather than nationally, to reflect economic differences among areas of the country. A number of the commenters wanted to make sure the Department made similar adjustments annually in the future. A member of Congress suggested that the PNW should be increased to \$2.5 million, while a few recipients favored a smaller

increase (*e.g.*, to \$1 million). A few commenters also suggested that the Department explore some method of adjusting PNW other than the CPI, but they generally did not spell out what the alternative approaches might be.

The opponents of making the adjustment, mostly recipients and DBEs, made several arguments. The first was that \$1.31 million was too high and would include businesses owners who were not truly disadvantaged. The second was that raising the PNW number would favor larger, established, richer DBEs at the expense of smaller, start-up firms. These larger companies could then stay in the program longer, to the detriment of the program's aims. Some commenters said that the experience in their states was that very few firms were becoming ineligible for PNW reasons, suggesting that a change in the current standard was unnecessary.

With respect to the issue of retirement assets, about 28 comments, primarily from DBE groups and recipients, favored excluding some retirement assets from the PNW calculation, often asserting that this was appropriate because such funds are illiquid and not readily available to contribute toward the owners' businesses. Following this logic, some of the comments said that Federally-regulated illiquid retirement plans (*e.g.*, 401k, Roth IRA, Keough, and Deferred Compensation plans, as well as 529 college savings plans) be excluded while other assets that are more liquid (CDs, savings accounts) be counted, even if said to be for retirement purposes. A number of these commenters said that a monetary cap on the amount that could be excluded (*e.g.*, \$500,000) would be acceptable.

The 17 comments opposing excluding retirement accounts from the PNW calculation generally supported the rationale of the existing regulation, which is that assets of this kind, even if illiquid, should be regarded as part of an individual's wealth for PNW purposes. A few commenters also said that, since it is most likely wealthier DBE owners who have such retirement accounts, excluding them would help these more established DBEs at the expense of smaller DBEs who are less likely to be able to afford significant retirement savings products. Again, commenters said that this provision, by effectively raising the PNW cap, would inappropriately allow larger firms to stay in the program longer. Some of the commenters would accept exclusion of retirement accounts if an appropriate cap were put in place, however.

Finally, several commenters asked for a revised and improved PNW form with

additional guidance and instructions on how to make PNW calculations (*e.g.*, with respect to determining the value of a house or business).

DOT Response

To understand the purpose and effect of the Department's proposal to change the PNW threshold from the long-standing \$750,000 figure, it is important to keep in mind what an inflationary adjustment does. (Because of the passage of time from the issuance of the NPRM to the present time, the amount of the inflationary adjustment has changed slightly, from \$1.31 million to \$1.32 million.) The final rule's adjustment is based on the Department of Labor's consumer price index (CPI) calculator. This calculator was used because, of various readily available means of indexing for inflation, CPI appears to be the one that is most nearly relevant to an individual's personal wealth. Such an adjustment simply keeps things as they were originally in real dollar terms.

That is, in 1989, \$750,000 bought a certain amount of goods and services. In 2010, given the effects of inflation over 21 years, it would take \$1.32 million in today's dollars to buy the same amount of goods and services. The buying power of assets totaling \$750,000 in 1989 is the same as the buying power of assets totaling \$1.32 million in 2010. Notwithstanding the fact that \$1.32 million, on its face, is a higher number than \$750,000, the wealth of someone with \$1.32 million in assets today is the same, in real dollar or buying power terms, as that of someone with \$750,000 in 1989.

Put another way, if the Department did not adjust the \$750,000 number for inflation, our inaction would have the effect of establishing a significantly lower PNW cap in real dollar terms. A PNW cap of \$750,000 in 2010 dollars is equivalent to a PNW cap of approximately \$425,700 in 1989 dollars. This means that a DBE applicant today would be allowed to have \$325,000 less in real dollar assets than his or her counterpart in 1989.

The Department believes, in light of this understanding of an inflationary adjustment, that making the proposed adjustment at this time is appropriate. This is a judgment that is shared by the majority of commenters and both Houses of Congress. We do not believe that any important policy interest is served by continuing to lower the real dollar PNW threshold, which we believe would have the effect of further limiting the pool of eligible DBE owners beyond what is intended by the Department in adopting the PNW standard.

The Department is using 1989 as the base year for its inflationary adjustment for two reasons. First, doing so is consistent with what both the House and Senate determined was appropriate in the context of FAA authorization bills that both chambers passed. Second, while the Department adopted a PNW standard in 1999, the standard itself, which was adopted by the Small Business Administration (SBA) before 1989, has never been adjusted for inflation at any time. By 1999, the real dollar value of the original \$750,000 standard had already been eroded by inflation, and the Department believes that it is reasonable to take into account the effect of inflation on the standard that occurred before as well as after the Department adopted it.

We appreciate the concerns of commenters who opposed the proposed inflationary adjustment. Some of these commenters, it appears, may not have fully understood that an inflationary adjustment simply maintains the status quo in real dollar terms. The concern that making the adjustment would favor larger, established DBEs over smaller, start-up companies has some basis, and reflects the longstanding tension in the program between its role as an incubator for new firms and its purpose of allowing DBE firms to grow and develop to the point where they may be in a better position to compete for work outside the DBE program. Allowing persons with larger facial amounts of assets may seem to permit participation of people who are less disadvantaged than formerly in the program, but disadvantage in the DBE program has always properly been understood as relative disadvantage (*i.e.*, relative to owners and businesses in the economy generally), not absolute deprivation. People who own successful businesses are more affluent, by and large, than many people who participate in the economy only as employees, but this does not negate the fact that socially disadvantaged persons who own businesses may well, because of the effects of discrimination, accumulate less wealth than their non-socially disadvantaged counterparts. Consequently, the concerns of opponents of this change are not sufficient to persuade us to avoid making the proposed inflationary adjustment.

We do not believe that it is practical, in terms of program administration, to have standards that vary with recipient or region. We acknowledge that one size may not fit all to perfection, but the complexity of administering a national program with a key eligibility standard that varies, perhaps significantly, among

jurisdictions would be, in our view, an even greater problem. Nor do we see a strong policy rationale for a change to some fixed figure (*e.g.*, \$1 million, \$2.5 million) that is not tied to inflation. We do agree, however, that an improved PNW form would be an asset to the program, and we will propose such a form for comment in the next stage NPRM on the DBE program, which we hope to issue in 2011. This NPRM may also continue to examine other PNW issues.

Whenever there is a change in a rule of this sort, the issue of how to handle the transition between the former rule and the new rule inevitably arises. We provide the following guidance for recipients and firms applying for DBE certification.

- For applications or decertification actions pending on the date this amendment is published, but before its effective date, recipients should make decisions based on the new standards, though these decisions should not take effect until the amendment's effective date.

- Beginning on the effective date of this amendment, all new certification decisions must be based on the revised PNW standard, even if the application was filed or a decertification action pertaining to PNW began before this date.

- If a denial of an application or decertification occurred before the publication date of this amendment, because the owner's PNW was above \$750,000 but not above \$1.32 million, and the matter is now being appealed within the recipient's or unified certification program's (UCP's) process, then the recipient or UCP should resolve the appeal using the new standard. Recipients and UCPs may request updated information where relevant. In the case of an appeal pending before the Departmental Office of Civil Rights (DOCR) under section 26.89, DOCR will take the same approach or remand the matter, as appropriate.

- If a firm was decertified or its application denied within a year before the effective date of this amendment, because the owner's PNW was above \$750,000 but not above \$1.32 million, the recipient or UCP should permit the firm to resubmit PNW information without any further waiting period, and the firm should be recertified if the owner's PNW is not over \$1.32 million and the firm is otherwise eligible.

- We view any individual who has misrepresented his or her PNW information, whether before or after the inflationary adjustment takes effect, as having failed to cooperate with the DBE

program, in violation of 49 CFR 26.109(c). In addition to other remedies that may apply to such conduct, recipients should not certify a firm that has misrepresented this information.

The Department is not ready, at this time, to make a decision on the issue of retirement assets. The comments suggested a number of detailed issues the Department should consider before proposing any specific provisions on this subject. We will further consider commenters' thoughts on this issue at a future time.

Interstate Certification

In response to longstanding concerns of DBEs and their groups, the NPRM proposed a mechanism to make interstate certification easier. The proposed mechanism did not involve pure national reciprocity (*i.e.*, in which each state would give full faith and credit to other states' certification decisions, with the result that a certification by any state would be honored nationwide). Rather, it created a rebuttable presumption that a firm certified in its home state would be certified in other states. A firm certified in home state A could take its application materials to State B. Within 30 days, State B would decide either to accept State A's certification or object to it. If it did not object, the firm would be certified in State B. If State B did object, the firm would be entitled to a proceeding in which State B bore the burden of proof to demonstrate that the firm should not be certified in State B. The NPRM also proposed that the DOT Departmental Office of Civil Rights (DOCR) would create a database that would be populated with denials and decertifications, which the various State UCPs would check with respect to applicants and currently certified firms.

This issue was one of the most frequently commented-upon subjects in the rulemaking. Over 30 comments, from a variety of sources including DBEs, DBE organizations, and a prime contractors' association. Members of Congress and others supported the proposed approach. They emphasized that the necessity for repeated certification applications to various UCPs, and the very real possibility of inconsistent results on the same facts, were time-consuming, burdensome, and costly for DBEs. In a national program, they said, there should be national criteria, uniformity of forms and interpretations, and more consistent training of certification personnel. The proposed approach, they said, while not ideal, would be a useful step toward those goals.

An approximately equal number of commenters, predominantly recipients but also including some DBEs and associations, opposed the proposal, preferring to keep the existing rules (under which recipients can, but are not required to, accept certifications made by other recipients) in place. Many of these commenters said that their certification programs frequently had to reject out-of-state firms that had been certified by their home states because the home states had not done a good job of vetting the qualifications of the firms for certification. They asserted that there was too much variation among states concerning applicable laws and regulations (*e.g.*, with respect to business licensing or marital property laws), interpretations of the DBE rule, forms and procedures, and the training of certifying agency personnel for something like the NPRM proposal to work well. Before going to something like the NPRM proposal, some of these commenters said, DOT should do more to ensure uniform national training, interpretations, forms etc.

Commenters opposed to the NPRM proposal were concerned that the integrity of the program would be compromised, as questionable firms certified by one state would slip into the directories of other states without adequate vetting. Moreover, the number of certification actions each state had to consider, and the number of certified firms that each state would have to manage, could increase significantly, straining already scarce resources.

A smaller number of commenters addressed the idea of national reciprocity. Some of these commenters said that, at least for the future, national reciprocity was a valuable goal to work toward. Some of these commenters, including an association that performs certification reviews nationally for MBE and WBE suppliers (albeit without on-site reviews) and a Member of Congress, supported using such a model now. On the other hand, other commenters believed national reciprocity was an idea whose time had not come, for many of the same reasons stated by commenters opposed to the NPRM proposal. Some of the commenters on the NPRM proposal said that the proposal would result in *de facto* national reciprocity, which they believed was bad for the program.

Two features of the NPRM proposal attracted considerable adverse comment. Thirty-one of the 34 comments addressing the proposed 30-day window for "State B" to decide whether to object to a home state certification of a firm said that the proposed time was too short. These

commenters, mostly recipients, suggested time frames ranging from 45–90 days. They said that the 30-day time frame would be very difficult to meet, given their resources, and would cause States to accept questionable certifications from other States simply because there was insufficient time to review the documentation they had been given. Moreover, the 30-day window would mean that out-of-state firms would jump to the front of the line for consideration over in-state firms, concerning which the rule allows 90 days for certification. This would be unfair to in-state firms, they said.

In addition, 22 of 28 commenters on the issue of the burden of proof for interstate certification—again, predominantly recipients—said that it was the out-of-state applicant firm, rather than State B, that should have the burden of proof once State B objected to a home state certification of the firm. These commenters also said that it was more sensible to put the out-of-state firm in the same position as any other applicant for certification by having to demonstrate to the certifying agency that it was eligible, rather than placing the certification agency in the position of the proponent in a decertification action for a firm that it had previously certified. Again, commenters said, the NPRM proposal would favor out-of-state over in-state applicants.

A few comments suggested trying reciprocal certification on a regional basis (*e.g.*, in the 10 Federal regions) before moving to a more national approach. Others suggested that only recent information (*e.g.*, applications and on-site reports less than three years old) be acceptable for interstate certification purposes. Some states pointed to state laws requiring local licenses or registration before a firm could do business in the State: Some commenters favored limiting out-of-state applications to those firms that had obtained the necessary permits, while one commenter suggested prohibiting States from imposing such requirements prior to DBE certification. Some comments suggested limiting the grounds on which State B could object to the home state certification of a firm (*i.e.*, "good cause" rather than "interpretive differences," differences in state law, evidence of fraud in obtaining home state certification).

There was a variety of other comments relevant to the issue of interstate certification. Most commenters who addressed the idea of the DOCR database supported it, though some said that denial/decertification data should be available only to certification agencies, not the general

public. Some also said that having to input and repeatedly check the data base would be burdensome. One commenter suggested including a firm's Federal Taxpayer ID number in the database entry. One commenter suggested a larger role for the database: Applicants should electronically input their application materials to the database, which would then be available to all certifying agencies, making individual submissions of application information to the States unnecessary. Some commenters wanted DOT to create or lead a national training and/or accreditation effort for certifier personnel.

DOT Response

Commenters on interstate were almost evenly divided on the best course of action for the Department to take. Most DBEs favored making interstate certification less difficult for firms that wanted to work outside their home states; most recipients took the opposite point of view. This disagreement reflects, we believe, a tension between two fundamental objectives of the program. On one hand, it is important to facilitate the entry of DBE firms into this national program, so that they can compete for DOT-assisted contracting wherever those opportunities exist, while reducing administrative burdens and costs on the small businesses that seek to participate. On the other hand, it is important to maintain the integrity of the program, so that only eligible firms participate and ineligible firms do not take unfair advantage of the program.

The main concern of proponents of the NPRM proposal was that failing to make changes to facilitate interstate certification would leave in place unnecessary and unreasonable barriers to the participation of firms outside of their home states. The main concern of opponents of the NPRM proposal was that making the proposed changes would negatively affect program integrity. Their comments suggest that there is considerable mistrust among certification agencies and programs. Many commenters appear to believe that, while their own certification programs do a good job, other states' certification programs do not. Much of the opposition to facilitating interstate certification appears to have arisen from this mistrust, as certification agencies seek to prevent questionable firms certified by what they perceive as weak certification programs in other states from infiltrating their domains.

The Department does not believe that it is constructive to take the position that certification programs nationwide

are so hopelessly inadequate that the best response is to leave interstate barriers in place to contain the perceived contagion of poorly qualified, albeit certified, firms within the boundaries of their own states. To the contrary, we believe that, under a system like that proposed in the NPRM, if firms certified by State A are regularly rebuffed by States B, C, D, etc., State A firms will have an incentive to bring pressure on their certification agency to improve its performance.

The Department also believes that suggestions made by commenters, such as improving training and standardizing forms and interpretations, can improve the performance of certification agencies generally. In the follow-on NPRM the Department hopes to issue in 2011, one of the subjects we will address is improvements in the certification application and PNW forms, which certification agencies then would be required to use without alteration. DOT already provides many training opportunities to certification personnel, such as the National Transportation Institute courses provided by the Federal Transit Administration, presentations by knowledgeable DOT DBE staff at meetings of transportation organizations, and webinars and other training opportunities provided by Departmental Office of Civil Rights personnel. The Department will consider further ways of fostering training and education for certifiers (e.g., a DOT-provided web-based training course for certifiers). The Department also produces guidance on certification-related issues to assist certifiers in making decisions that are consistent with this regulation, and we will continue that practice.

While we will continue to work with our state and local partners to improve the certification process, we do not believe that steps to facilitate interstate certification should be taken only after all recipients achieve an optimal level of performance. The DBE program is a national program; administrative barriers to participation impair the important program objective of encouraging DBE firms to compete for business opportunities; provisions to facilitate interstate certification can be drafted in a way that permits "State B" to screen out firms that are not eligible in accordance with this regulation. Consequently, the Department has decided to proceed with a modified form of the NPRM proposal. However, the final rule will not make compliance with the new section 26.85 mandatory until January 1, 2012, in order to provide additional time for recipients and UCPs to take advantage of training

opportunities and to establish any needed administrative mechanisms to carry out the new provision. This will also provide time for DOCR to make its database for denials and decertifications operational.

As under the NPRM, a firm certified in its home state would present its certification application package to State B. In response to commenters' concerns about the time available, State B would have 60 days, rather than 30 as in the NPRM, to determine whether it had specific objections to the firm's eligibility and to communicate those objections to the firm. If State B believed that the firm was ineligible, State B would state, with particularity, the specific reasons or objections to the firm's eligibility. The firm would then have the opportunity to respond and to present information and arguments to State B concerning the specific objections that State B had made. This could be done in writing, at an in-person meeting with State B's decision maker, or both. Again in response to commenters' concerns, the firm, rather than State B, would have the burden of proof with respect, and only with respect, to the specific issues raised by State B's objections. We believe that these changes will enhance the ability of certification agencies to protect the integrity of the program while also enhancing firms' ability to pursue business opportunities outside their home states.

We emphasize that State B's objections must be specific, so that the firm can respond with information and arguments focused clearly on the particular issues State B has identified, rather than having to make an unnecessarily broad presentation. It is not enough for State B to say "the firm is not controlled by its disadvantaged owner" or "the owner exceeds the PNW cap." These are conclusions, not specific, fact-based objections. Rather, State B might say "the disadvantaged owner has a full-time job with another organization and has not shown that he has sufficient time to exercise control over the day-to-day operations of the firm" or "the owner's property interests in assets X, Y, and Z were improperly valued and cause his PNW to exceed \$1.32 million." This degree of specificity is mandatory regardless of the regulatory ground (e.g., new information, factual errors in State A's certification: See section 26.85(d)(2)) on which State B makes an objection. For example, if State B objected to the firm's State A certification on the basis that State B's law required a different result, State B would say something like "State B Revised Statutes Section xx.yyyy

provides only that a registered engineer has the power to control an engineering firm in State B, and the disadvantaged owner of the firm is not a registered engineer, who is therefore by law precluded from controlling the firm in State B.”

On receiving this specific objection, the owner of the firm would have the burden of proof that he or she does meet the applicable requirements of Part 26. In the first example above, the owner would have to show that either he or she does not now have a full-time job elsewhere or that, despite the demands of the other job, he or she can and does control the day-to-day operations of the firm seeking certification. This burden would be to make the required demonstration by a preponderance of the evidence, the same standard used for initial certification actions generally. This owner would not bear any burden of proof with respect to size, disadvantage, ownership, or other aspects of control, none of which would be at issue in the proceeding. The proceeding, and the firm’s burden of proof, would concern only matters about which State B had made a particularized, specific objection. This narrowing of the issues should save time and resources for firms and certification agencies alike.

The firm’s response to State B’s particularized objections could be in writing and/or in the form of an in-person meeting with State B’s decision maker to discuss State B’s objections to the firm’s eligibility. The decision maker would have to be someone who is knowledgeable about the eligibility provisions of the DBE rule.

We recognize that, in unusual circumstances, the information the firm provided to State B in response to State B’s specific objections could contain new information, not part of the original record, that could form the basis for an additional objection to the firm’s certification. In such a case, State B would immediately notify the firm of the new objection and offer the firm a prompt opportunity to respond.

Section 26.85(d)(2) of the final rule lists the grounds a State B can rely upon to object to a State A certification of a firm. These are largely the same as in the NPRM. In response to a comment, the Department cautions that by saying that a ground for objection is that State A’s certification is inconsistent with this regulation, we do not intend for mere interpretive disagreements about the meaning of a regulatory provision to form a ground for objection. Rather, State B would have to cite something in State A’s certification that contradicted

a provision in the regulatory text of Part 26.

The final rule also gives, as a ground for objecting to a State A certification, that a State B law “requires” a result different from the law of State (see the engineering example above). To form the basis for an objection on this ground, a difference between state laws must be outcome-determinative with respect to a certification. For example, State A may treat marital property as jointly held property, while State B is a community property state. The laws are different, but both, in a given case, may well result in each spouse having a 50 percent share of marital assets. This would not form the basis for a State B objection.

With respect to state requirements for business licenses, the Department believes that states should not erect a “Catch 22” to prevent DBE firms from other states from becoming certified. That is, if a firm from State A wants to do business in State B as a DBE, it is unlikely to want to pay a fee to State B for a business license before it knows whether it will be certified. Making the firm get the business license and pay the fee before the certification process takes place would be an unnecessary barrier to the firm’s participation that would be contrary to this regulation.

The Department believes that regional certification consortia, or reciprocity agreements among states in a region, are a very good idea, and we anticipate working with UCPs in the future to help create such arrangements. Among other things, the experience of actually working together could help to mitigate the current mistrust among certification agencies. However, we do not believe it would be appropriate to mandate such arrangements at this time.

The Department believes that the DOCR database of decertification and denial actions would be of great use in the certification process. However, the system is not yet up and running. Consequently, the final rule includes a one-year delay in the implementation date of requirements for use of the database.

Other Certification-Related Issues

The NPRM asked for comment on whether there should be a requirement for periodic certification reviews and/or updates of on-site reviews concerning certified firms. The interval most frequently mentioned by commenters on this subject was five years, though there was also some support for three-, six-, and seven-year intervals. A number of commenters suggested that such reviews should include an on-site update only when the firm’s circumstances had

changed materially, in order to avoid burdening the limited resources of certifying agencies. Having a standardized on-site review form would reduce burdens, some commenters suggested. Other commenters suggested that the timing of reviews should be left to certifying agencies’ discretion, or that on-site updates should be done on a random basis of a smaller number of firms.

The NPRM also asked about the handling of situations where an applicant withdraws its application before the certifying agency makes a decision. Should certifying agencies be able to apply the waiting period (e.g., six or 12 months) used for reapplications after denials in this situation? Comments on this issue, mostly from recipients but also from some DBEs and their associations, were divided. Some commenters said that there were often good reasons for a firm to withdraw and correct an application (e.g., a new firm unaccustomed to the certification process) and that their experience did not suggest that a lot of firms tried to game the system through repeated withdrawals. On the other hand, some commenters said that having to repeatedly process withdrawn and resubmitted applications was a burden on their resources that they would want to mitigate through applying a reapplication waiting period. One recipient said that, even in the absence of a waiting period, the resubmitted application should go to the back of the line for processing. Still others wanted to be able to apply case-by-case discretion concerning whether to impose a waiting period on a particular firm. A few commenters suggested middle-ground positions, such as imposing a shorter waiting period (e.g., 90 days) than that imposed on firms who are denied or applying a waiting period only for a second or subsequent withdrawal and reapplication by the same firm.

Generally, commenters were supportive of the various detail-level certification provision changes proposed in the NPRM (e.g., basing certification decisions on current circumstances of a firm). Commenters did speak to a wide variety of certification issues, however. One commenter said that in its state, the UCP arbitrarily limited the number of NAICS codes in which a firm could be certified, a practice the commenter said the regulation should forbid. In addition, this commenter said, the UCP inappropriately limited certification of professional services firms owned by someone who was not a licensed professional in a field, even in the

absence of a state law requiring such licensure. A number of commenters said that recipients should not have to automatically certify SBA-certified 8(a) firms, while another commenter recommended reviving the now-lapsed DOT-SBA memorandum of understanding (MOU) on certification issues. A DBE association said that certifying agencies should not count against firms seeking certification (e.g., with respect to independence determinations) investments from or relationships with larger firms that are permitted under other Federal programs (e.g., HubZone or other SBA programs). One commenter favored, and another opposed, allowing States to use their own business specialty classifications in addition to or in lieu of NAICS codes.

One recipient recommended a provision to prevent owners from transferring personal assets to their companies to avoid counting them in the PNW calculation. Another said the certification for the PNW statement should specifically say that the information is "complete" as well as true. Yet another suggested that a prime contractor who owns a high percentage (e.g., 49 percent) of a DBE should not be able to use that DBE for credit. There were a number of suggestions that more of the certification process be done electronically, rather than on paper. A few comments said that getting back to an applicant within 20 days, as proposed in the NPRM, concerning whether the application was complete was too difficult for some recipients who have small staffs.

DOT Response

The Department believes that regularly updated on-site reviews are an extremely important tool in helping avoid fraudulent firms or firms that no longer meet eligibility requirements from participating in the DBE program. Ensuring that only eligible firms participate is a key part of maintaining the integrity of the program. We also realize that on-site reviews can be time- and resource-intensive. Consequently, while we believe that it is advisable for recipients and UCPs to conduct updated on-site reviews of certified companies on regular and reasonably frequent basis, and we strongly encourage such undated reviews, we have decided not to mandate a particular schedule, though we urge recipients to regard on-site reviews as a critical part of their compliance activities. When recipients or UCPs become aware of a change in circumstances or concerns that a firm may be ineligible or engaging in misconduct (e.g., from notifications of changes by the firm itself, complaints,

information in the media, etc.), the recipient or UCP should review the firm's eligibility, including doing an on-site review.

When recipients in other states (see discussion of interstate certification above) obtain the home state's certification information, they must rely on the on-site report that the home state has in its files plus the affidavits of no change, etc. that the firm has filed with the home state. It is not appropriate for State B to object to an out-of-state firm's certification because the home state's on-site review is older than State B thinks desirable, since that would unfairly punish a firm for State A's failure to update the firm's on-site review. However, if an on-site report is more than three years old, State B could require that the firm provide an affidavit to the effect that all the facts in the report remain true and correct.

While we recognize that reports that have not been updated, or which do not appear to contain sufficient analysis of a firm's eligibility, make certification tasks more difficult, our expectation is that the Department's enhanced interstate certification process will result in improved quality in on-site reviews so that recipients in various states have a clear picture of the structure and operation of firms and the qualifications of their owners. To this end, we encourage recipients and UCPs to establish and maintain communication in ways that enable information collected in one state to be shared readily with certification agencies in other states. This information sharing can be done electronically to reduce costs.

Firms may withdraw pending applications for certification for a variety of reasons, many of them legitimate. A withdrawal of an application is not the equivalent of a denial of that application. Consequently, we believe that it is inappropriate for recipients and UCPs to penalize firms that withdraw pending applications by applying the up-to-12 month waiting period of section 26.86(c) to such withdrawals, thereby preventing the firm from resubmitting the application before that time elapses. We believe that permitting recipients to place resubmitted applications at the end of the line for consideration sufficiently protects the recipients' workloads from being overwhelmed by repeated resubmissions. For example, suppose that Firm X withdraws its application in August. It resubmits the application in October. Meanwhile, 20 other firms have submitted applications. The recipient must accept Firm X's resubmission in October, but is not

required to consider it before the 20 applications that arrived in the meantime. Recipients should also closely examine changes made to the firm since the time of its first application.

We agree with commenters that it is not appropriate for recipients to limit NAICS codes in which a firm is certified to a certain number. Firms may be certified in NAICS codes for however many types of business they demonstrate that they perform and concerning which their disadvantaged owners can demonstrate that they control. We have added language to the regulation making this point. We also agree that it is not appropriate for a recipient or UCP to insist on professional certification as a *per se* condition for controlling a firm where state law does not impose such a requirement. We have no objection to a recipient or UCP voluntarily using its own business classification system in addition to using NAICS codes, but it is necessary to use NAICS codes.

SBA has now gone to a self-certification approach for small disadvantaged business, the SBA 8(a) program differs from the DBE program in important respects, and the SBA-DOT memorandum of understanding (MOU) on certification matters lapsed over five years ago. Under these circumstances, we have decided to delete former sections 26.84 and 26.85, relating to provisions of that MOU.

DBE firms in the DBE program must be fully independent, as provided in Part 26. If a firm has become dependent on a non-DBE firm through participation in another program, then it may be found ineligible for DBE program purposes. To say otherwise would create inconsistent standards that would enable firms already participating in other programs to meet a lower standard than other firms for DBE participation.

We believe that adding a regulatory provision prohibiting owners from transferring personal assets to their companies to avoid counting them in the PNW calculation would be difficult to implement, since owners of businesses often invest assets in the companies for legitimate reasons. However, as an interpretive matter, recipients are authorized to examine such transfers and, if they conclude that the transfer is a ruse to avoid counting personal assets toward the PNW calculation rather than a legitimate investment in the company and its growth, recipients or UCPs may continue to count the assets toward PNW.

We agree that the certification for the PNW statement should specifically say

that the information is “complete” as well as true and that a somewhat longer time period would be appropriate for recipients and UCPs to get back to applicants with information on whether their applications were complete. We have added a regulatory text statement on the former point and extended the time period on the latter point to 30 days.

If a prime contractor who owns a high percentage of a DBE that it wishes to use on a contract, issues concerning independence, affiliation, and commercially useful function can easily arise. For this reason, recipients should closely scrutinize such relationships. This scrutiny may well result, in some cases, in denying DBE credit or initiating decertification action.

We encourage the use of electronic methods in the application and certification process. As in other areas, electronic methods can reduce administrative burdens and speed up the process.

Accountability and Goal Submissions

The NPRM proposed that if a recipient failed to meet its overall goal, it would, within 60 days, have to analyze the shortfall, explain the reasons for it, and come up with corrective actions for the future. All State DOTs and the largest transit authorities and airports would have to send their analyses and corrective action plans to DOT operating administrations; smaller transit authorities and airports would retain them on file. While there would not be any requirement to meet a goal—to “hit the number”—failure to comply with these requirements could be regarded as a failure to implement a recipient’s program in good faith, which could lead to a finding of noncompliance with the regulation.

In a related provision, the Department asked questions in the NPRM concerning the recent final provision concerning submitting overall goals on a three-year, rather than an annual, basis. In particular, the NPRM asked whether it should be acceptable for a recipient to submit year-to-year projections of goals within the structure of a three-year goal and how implementation of the accountability proposal would work in the context of a three-year goal, whether or not year-to-year projections were made.

About two-thirds of the 64 comments addressing the accountability provision supported it. These commenters included DBEs, recipients, and some associations and other commenters. Some of these commenters, in fact, thought the proposal should be made

stronger. For example, a commenter suggested that a violation “will” rather than “could” be found for failure to provide the requested information. Another suggested that, beyond looking at goal attainment numbers, the accountability provisions should be broadened to include the recipient’s success with respect to a number of program elements (e.g., good faith efforts on contracts, outreach, DBE liaison officer’s role, training and education of staff).

Commenters also presented various ideas for modifying the proposal. These included suggestions that the Department should add a public input component, provide more guidance on the shortfall analysis and how to do it, delay its effective date to allow recipients to find resources to comply, ensure ongoing measurement of achievements rather than just measuring at the end of a year or three-year period, ensure that there is enough flexibility in explaining the reasons for a shortfall, or lengthen the time recipients have to submit the materials (e.g., 90 days, or 60 days after the recipient’s report of commitments and achievements is due). One commenter suggested that an explanation should be required only when there is a pattern of goal shortfalls, not in individual instances. There could be a provision for excusing recipients who fell short of their goal by very small amount, or even if the recipient made 80 percent of its goal.

Opponents of the proposal—mostly recipients plus a few associations—said that the proposal would be too administratively burdensome. In addition, they feared that making recipients explain a shortfall and propose corrective measures would turn the program into a prohibited set-aside or quota program, a concern that was particularly troublesome in states affected by the *Western States* decision. Moreover, a number of commenters said, the inability of recipients to meet overall goals was often the result of factors beyond their control. In addition, recipients might unrealistically reduce goals in order to avoid having to explain missing a more ambitious target.

With respect to the reporting intervals for goals, 28 of the 39 commenters who addressed the issue favored some form of at least optional yearly reporting of goals, either in the form of annual goal submissions or, more frequently, of year-to-year projections of goals within the framework of a three-year overall goal. The main reason given for this preference was a concern that projects and the availability of Federal funding for them were sufficiently volatile that making a projection that was valid for

a three-year period was problematic. This point of view was advanced especially by airports. Some other commenters favored giving recipients discretion whether to report annually or triennially. Commenters who took the point of view that the three-year interval was preferable agreed with original rationale of reducing repeated paperwork burdens on recipients. One commenter asked that the rule specify that, especially in a three-year interval schedule of goal submission, a recipient “must” submit revisions if circumstances change.

There was discussion in the NPRM of the relationship between the goal submission interval and the accountability provision. For example, if a recipient submitted overall goals on a three-year basis, would the accountability provision be triggered annually, based on the recipient’s annual report (as the NPRM suggested) or only on the basis of the recipient’s performance over the three-year period? If there were year-to-year projections within a three-year goal, would the accountability provision relate to accountability for the annual projection or the cumulative three-year goal? Commenters who favored year-to-year projections appeared to believe that accountability would best relate to each year’s projection, though the discussion of this issue in the comments was often not explicit. Some comments, including one from a Member of Congress, did favor holding recipients accountable for each year’s separate performance.

There was a variety of other comments on goal-related issues. Some commenters asked that the three DOT operating administrations coordinate submitting goals so that a State DOT submitting goals every three years would be able to submit its FHWA, FAA, and FTA goals in the same year. A DBE group wanted the Department to strengthen requirements pertaining to the race-neutral portion of a recipient’s overall goal. A commenter who works with transit vehicle manufacturers requested better monitoring of transit vehicle manufacturers by FTA. A group representing DBEs wanted recipients to focus on potential, and not just certified, DBEs for purposes of goal setting. The same group also urged consideration of separate goals for minority- and women-owned firms.

DOT Response

Under Part 26, the Department has always made unmistakably clear that the DBE program does not impose quotas. No one ever has been, or ever will be, sanctioned for failing to “hit the number.” However, goals must be

implemented in a meaningful way. A recipient's overall goal represents its estimate of the DBE participation it would achieve in the absence of discrimination and its effects. Failing to meet an overall goal means that the recipient has not completely remedied discrimination and its effects in its DOT-assisted contracting. In the Department's view, good faith implementation of a DBE program by a recipient necessarily includes understanding why the recipient has not completely remedied discrimination and its effects, as measured by falling short of its "level playing field" estimate of DBE participation embodied in its overall goal. Good faith implementation further means that, having considered the reasons for such a shortfall, the recipient will devise program actions to help minimize the potential for a shortfall in the future.

Under the Department's procedures for reviewing overall goals and the methodology supporting them, the Department has the responsibility of ensuring that a recipient's goals are well-grounded in relevant data and are derived using a sound methodology. The Department would not approve a recipient's goal submission if it appeared to understate the "level playing field" amount of DBE participation the recipient could rationally expect, whether to avoid being accountable under the new provisions of the rule or for other reasons.

For these reasons, the Department is adopting the NPRM's proposed accountability mechanism. We do not believe that the concerns of some commenters that this mechanism would create a quota system are justified: No one will be penalized for failing to meet an overall goal. Moreover, promoting transparency and accountability is not synonymous with imposing a penalty and should not be viewed as such. Understanding the reasons for not meeting a goal and coming up with ways of avoiding a shortfall in the future, while not creating a quota system, do help to ensure that recipients take seriously the responsibility to address discrimination and its effects.

Moreover, the administrative burden of compliance falls only on those recipients who fail to meet a goal, not on all recipients. Understanding what is happening in one's program, why it is happening, and how to fix problems is, or ought to be, a normal, everyday part of implementing a program, so the analytical tasks involved in meeting this requirement should not be new to recipients. We do not envision that recipients' responses to this requirement

would be book-length; a reasonable succinct summary of the recipient's analysis and proposed actions should be sufficient though, like all documents submitted in connection with the DBE program, it should show the work and reasoning leading to the recipient's conclusions.

For example, a recipient might determine that its process for ascertaining whether prime bidders who failed to meet contract goals had made adequate good faith efforts was too weak, and that prime bidders consequently received contracts despite making insufficient efforts to find DBEs for contracts. In such a case, the recipient could take corrective action such as more stringent review of bidder submissions or meeting with prime bidders to provide guidance and assistance on how to do a better job of making good faith efforts.

We agree that there may be circumstances in which a recipient's inability to meet a goal is for reasons beyond its control. If that is the case, the recipient's response to this requirement can be to identify such factors, as well as suggesting how these problems may be taken into account and surmounted in the future. We also agree with those commenters who said that good-faith implementation of a DBE program involves more than meeting an overall goal. Factors like those cited by commenters are important as part of an overall evaluation of a recipient's success. This accountability provision, however, is intended to focus on the process recipients are using to achieve their overall goals, rather than to act as a total program evaluation tool. The operating administrations will continue to conduct program reviews that address the breadth of recipients' program implementation.

The Department believes that a clear, bright-line trigger for the application of the accountability provision makes the most sense administratively and in terms of achieving the purpose of the provision. Consequently, we are not adopting suggestions that the provision be triggered only by a pattern of missing goals, or an average of missing goals over the period of a three-year overall goal, or a shortfall of a particular percentage. Any shortfall means that a recipient has dealt only incompletely with the effects of discrimination, and we believe that it is appropriate in any such case that the recipient understand why that is the case and what steps to take to improve program implementation in the future.

The three-year goal review interval was intended to reduce administrative burdens on recipients. Nevertheless, we

understand that some recipients, especially airports, may be more comfortable with annual projections and updates of overall goals. We have no objection to recipients making annual projections, for informational purposes, within the three-year overall goal. It is still the formally submitted and reviewed three-year goal, however, and not the informal annual projections, that count from the point of view of the accountability mechanism. For example, suppose an airport has a three-year annual overall goal of 12 percent. For informational purposes, the airport chooses to make informal annual projections of 6, 12, and 18 percent for years 1–3, respectively (which, by the way, are not required to be submitted to the Department). The accountability mechanism requirements would be triggered in each of the three years covered by the overall goal if DBE achievements in each year were less than 12 percent.

The Department agrees that recipients should be accountable for effectively carrying out the race-neutral portion of their programs. If a recipient fell short of its overall goal because it did not achieve the projected race-neutral portion of its goal, then this is something the recipient would have to explain and establish measures to correct (e.g., by stepping up race-neutral efforts and/or concluding that it needed to increase race-conscious means of achieving its goal). We also agree that it is reasonable, in calculating goals and in doing disparity studies, to consider potential DBEs (e.g., firms apparently owned and controlled by minorities or women that have not been certified under the DBE program) as well as certified DBEs. This is consistent with good practice in the field as well as with DOT guidance. Separate goals for various groups of disadvantaged individuals are possible with a program waiver of the DBE regulation, if a sufficient case is made for the need for group-specific goals.

In the section of the rule concerning goal-setting (49 CFR 26.45), the Department is also taking this opportunity to make a technical correction. In the final rule establishing the three year DBE goal review cycle, the Department inadvertently omitted from § 26.45(f)'s regulatory text paragraphs (3), (4), and (5), which govern the content of goal submissions, operating administration review of the submission, and review of interim goal setting mechanisms. It was never the intent of the Department to remove or otherwise change those provisions of section 26.45(f) of the rule. This final rule corrects that error by restructuring

paragraphs (1) and (2) of section 26.45(f) and restoring the language of paragraphs (3), (4), and (5) of that section of the rule. We apologize for any confusion that this error may have caused.

The Department supports strong outreach efforts by recipients to encourage minority- and women-owned firms to become certified as DBEs, so that recipients can set and meet realistic goals. However, we caution recipients against stating or implying that minority- and women-owned firms can participate in recipients' contracts only if they become certified as DBEs. It would be contrary to nondiscrimination requirements of this part and of Title VI for a recipient to limit the opportunity of minority- or women-owned firms to compete for any contract because the firm was not a certified DBE.

Program Oversight

The NPRM proposed to require recipients to certify that they have monitored the paperwork and on-site performance of DBE contracts to make sure that DBEs actually perform them. Comment was divided on this proposal, with 21 comments favoring either the proposal or stronger oversight mechanisms and 18 opposed.

Commenters who favored the proposal, including DBEs and some associations and recipients, generally believed that the provision would make it less likely that post-award abuse of DBEs by prime contractors would occur. One recipient noted that it already followed this approach with respect to ARRA grants. Some commenters wanted the Department to require additional steps, such as requiring recipients to make periodic visits to the job site and keeping records of each visit, to ensure that the DBELO did in fact have direct access to the organization's CEO concerning DBE matters, and to maintain sufficient trained staff to do needed monitoring. DBE associations wanted mandatory monitoring of good faith efforts (e.g., by keeping records of all contacts made by prime contractors) and terminations of DBEs by prime contractors, as well as to have certifications signed by persons higher up in the organization than the DBELO (e.g., the CEO). Another commenter sought further checking concerning counting issues. A consultant and a recipient suggested that recipient certifications should be more frequent than a one-time affair, (e.g., monthly or quarterly).

Commenters who opposed the NPRM proposal, most of whom were recipients, said that the workload the certification requirement would create would be too administratively

burdensome, particularly for recipients with small staffs. The certification requirement could duplicate existing commercially useful function reviews. They also doubted the payoff in terms of improved DBE program implementation would be worth the effort. Some recipients said that they did monitor post-award performance and that the proposed additional paperwork requirement step would add little to the substance of their processes. One recipient noted that it would be very difficult to perform an on-site review of contract performance in the case of professional services consultants whose work was performed out of state.

One recipient suggested that a middle ground might be to have the recipient certify monitoring of a sample of contracts, since it lacked the staff for field monitoring of all contracts. A consultant suggested selecting contracts for monitoring based on a "risk-based analysis" of contracts or by focusing on contracts where prime contractors' achievements did not measure up to their commitments. One recipient suggested limiting the certification requirement to one commercially useful function review per year on a contract. A few recipients asked for guidance on what constituted adequate staffing for the DBE program.

DOT Response

The Department's DBE rule already includes a provision (49 CFR 26.37(b)) requiring recipients to have a monitoring and enforcement mechanism to ensure that work committed to DBEs is actually performed by DBEs. The trouble is that, based on the Department's experience, this provision is not being implemented by recipients as well as it should be. The FHWA review team that has been examining state implementation of the DBE program found that many states did not have an effective compliance monitoring program in place. DBE fraud cases investigated by the Department's Office of Inspector General and criminal prosecutions in the Federal courts have highlighted numerous cases in which recipients were unaware, often for many years, of situations in which non-DBE companies were claiming DBE credit for work that DBEs did not perform.

The Department believes that, for the DBE program to be meaningful, it is not enough that prime contractors commit to the use of DBEs at the time of contract award. It is also necessary that the DBEs actually perform the work involved. Recipients need to know whether DBEs are actually performing the work involved, lest program effectiveness suffer and the door be left open to fraud.

Recipients must actually monitor each contract, on paper and in the field, to ensure that they have this knowledge. Monitoring DBE compliance on a contract is no less important, and should be no more brushed aside, than compliance of with project specifications. This is important for prime contracts performed by DBEs as well as for situations in which DBEs act as subcontractors, and the monitoring and certification requirements will apply to both situations.

Consequently, the Department believes that the proposed requirement that recipients memorialize the monitoring they are already required to perform has merit. Its intent is to make sure that the monitoring actually takes place and that the recipient stands by the statement that DBE participation claimed on a contract actually occurred. This monitoring, and the recipient's written certification that it took place, must occur with respect to every contract on which DBE participation is claimed, not just a sample or percentage of such contracts, to make sure that the program operates as it is intended. It applies to contracts entered into prior to the effective date of this rule, since the obligation to monitor work performed by DBEs has always been a key feature of the DBE program.

With respect to concerns about administrative burden, the Department believes that monitoring is something that recipients have been responsible for conducting since the inception of Part 26. Therefore, we are not asking recipients to do something with which they can claim they are unfamiliar. Moreover, as the final rule version of this provision makes clear, recipients can combine the on-site monitoring for DBE compliance with other monitoring they do. For example, the inspector who looks at a project to make sure that the contractor met contract specifications before final payment is authorized could also confirm that DBE requirements were honestly met.

While we believe that more intensive and more frequent monitoring of DBE performance on contracts is desirable, we encourage recipients to monitor contracts as closely as they can. However, we do not, for workload reasons, want to mandate more pervasive monitoring at this time. We agree with commenters that it would be difficult to do on-site monitoring of contracts performed outside the state (e.g., an out-of-state consulting contract), and we have added language specifying that the requirement to monitor work sites pertains to work sites in the recipient's state. In reference to what constitutes adequate staffing of

a DBE program, we believe that it is best to look at this question in terms of a performance standard. The Department's rule requires certain tasks (e.g., responding to applications for DBE eligibility, certification and monitoring of DBE performance on contracts) to be performed within certain time frames. If a recipient has sufficient staff to meet these requirements, then its staffing levels are adequate. If not (e.g., applications for DBE certification are backlogged for several months), then staffing is inadequate.

Small Business Provisions

The NPRM proposed that recipients would add an element to their DBE programs to foster small business participation in contracts. The purpose of this proposal was to encourage programs that, by facilitating small business participation, augmented race-neutral efforts to meet DBE goals. The program element could include items such as race-neutral small business set-asides and unbundling provisions. The NPRM did not propose to mandate any specific elements, however.

The majority of commenters addressing this part of the NPRM—38 of 55—favored the NPRM's approach. Commenters approving the proposal were drawn from DBEs, associations, and recipients. Generally, they agreed that steps to create improved opportunities for small business would help achieve the objectives of the DBE program. Specific elements that various commenters supported included unbundling (which some commenters suggested should be made mandatory), prohibiting double-bonding, small business set-asides, expansions of existing small business development programs and mentor-protégé programs.

Commenters who did not support the NPRM proposal, most of whom were recipients, were concerned that having small business programs would draw focus from programs targeted more directly at DBEs. They were also concerned about having sufficient resources to carry out the programs they might include in a small business program element. One commenter thought that a small business program element would duplicate existing supportive services programs. Another thought unbundling would not work. A number of recipients thought it would be better for DOT to issue guidance on this subject rather than to create regulatory language. A recipient association characterized the proposal as burdensome and not productive.

Eight commenters addressed the issue of bonding and insurance requirements. A bonding company association

explained that both performance and payment bonds had an appropriate place in contracting and believed that subcontractor bonds were not duplicative of prime contractor bonds. A DBE wanted to prohibit prime contractors from setting bonding requirements for subcontractors. A recipient said the Department should treat prime contractors and subcontractors the same for bonding purposes. One DBE association said the combination of payment bonds, performance bonds, and retention was burdensome for subcontractors and Another DBE association said that it was inappropriate to require bonding of the subcontractor when the prime contractor was already bonded for the overall work of the contract. This association suggested that a prime contractor could not demonstrate good faith efforts to meet a goal if it insisted on such a double bond.

DOT Response

DBEs are small businesses. Program provisions that help small businesses can help DBEs. By facilitating participation for small businesses, recipients can make possible more DBE participation, and participation by additional DBE firms. Consequently, we believe that a program element that pulls together the various ways that a recipient reaches out to small businesses and makes it easier for them to compete for DOT-assisted contracts will foster the objectives of the DBE program. Because small business programs of the kind suggested in the NPRM are race-neutral, use of these programs can assist recipients in meeting the race-neutral portions of their overall goals. This is consistent with the language that under Part 26, recipients are directed to meet as much as possible of their overall goals through race-neutral means.

It is important to keep in mind that race-neutral programs should not be passive. Simply waiting and hoping that occasional DBEs will participate without the use of contract goals does not an effective race-neutral program make. Rather, recipients are responsible for taking active, effective steps to increase race-neutral DBE participation, by implementing programs of the kind mentioned in this section of the NPRM and final rule. The Department will be monitoring recipients' race-neutral programs to make sure that they meet this standard.

In adopting the NPRM proposal requiring a small business program element, the Department believes that this element—which is properly viewed as an integral part of a recipient's DBE

program—need not distract recipients from other key parts of recipients' DBE programs, such as certification and the use of race-conscious measures. There are different ways of encouraging DBE participation and meeting DBE overall goals, and recipients' programs need to address a variety of these means. Many of the provisions that recipients can use to implement the requirements of the new section (e.g., unbundling, race-neutral small business set-asides) are already part of the regulation or DOT guidance, and carrying out these elements should not involve extensive additional burdens.

With respect to bonding, the Department believes that commenters made a good point with respect to the burden of duplicative bonding. By duplicative bonding, we mean insistence by a prime contractor that a DBE provide bonding for work that is already covered by bonding or insurance provided by the prime contractor or the recipient. Like duplicative bonding, excessive bonding—a requirement, which according to participants in the Department's stakeholder meetings, is sometimes imposed to provide a bond in excess of the value of the subcontractor's work—can act as an unnecessary barrier to DBE participation. While we believe that additional action to address these problems may have merit, there was not a great deal of comment on the implications of potential regulatory requirements in these areas. Consequently, we will defer action on these issues at this time and seek additional comment and information in the follow-on NPRM the Department is planning to issue.

Miscellaneous Comments

Several commenters expressed general support for the DBE program and/or the NPRM, while two commenters opposed the DBE program in general. A large number of comments from an advocacy organization's members supported additional bonding assistance and more frequent data reporting. A commenter wanted to add DBE coverage for Federal Railroad Administration (FRA) grants. Commenters also suggested such steps as increasing technical assistance, using project labor agreements to increase DBE participation, an SBA 8(a) program-like term limit on participation in the DBE program, a better uniform reporting form, greater ease in complaining to DOT and recipients about noncompliance issues, and putting current joint check guidance into the rule's text.

DOT Response

The Department already has programs in place concerning bonding and data reporting. There is not currently a direct, specific statutory mandate for a DBE program in FRA financial assistance programs, though the Department is considering ways of ensuring nondiscrimination in contracting in these programs. For example, like all recipients of Federal financial assistance, FRA recipients are subject to requirements under Title VI of the Civil Rights Act of 1964. Existing programs, such as the FHWA supportive services program and various initiatives by the Department's Office of Small and Disadvantaged Business Utilization, are in place to assist DBEs in being competitive. Given the language of the statutes authorizing the DOT DBE program, we do not believe that a term limit on the participation of DBE companies would be permissible. The Department is working on improvements on all its DBE forms, and we expect to seek comment on revised forms in the follow-on NPRM we anticipate publishing. At this point, we think that the joint check guidance is sufficient without codification, but we can look at this issue, among other certification issues, in the next round of rulemaking.

The Continuing Compelling Need for the DBE Program

As numerous court decisions have noted,¹ the Department's DBE regulations, and the statutes authorizing them, are supported by a compelling need to address discrimination and its effects. This basis for the program has been established by Congress and applies on a nationwide basis. Both the House and Senate FAA reauthorization bills contained findings reaffirming the compelling need for the program. We would also call to readers' attention the additional information presented to the House of Representatives in a March 26, 2009, hearing before the Transportation and Infrastructure Committee and made a part of the record of that hearing and a Department of Justice document entitled "The Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: A Decade Later An Update to the May 23, 1996 Review of Barriers for Minority- and Women-

Owned Businesses" and the information and documents cited therein. This information confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This is a nonsignificant regulation for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Its provisions involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation. The rule does not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

Regulatory Flexibility Act

A number of provisions of the rule reduce small business burdens or increase opportunities for small business, notably the interstate certification process and the small business DBE program element provisions. Small recipients would not be required to file reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken. Only State DOTs, the 50 largest transit authorities, and the 30–50 airports receiving the greatest amount of FAA financial assistance would have to file these reports. The task of sending copies of on-site review reports to other certification entities fall on UCPs, which are not small entities, and in any case can be handled electronically (e.g., by emailing PDF copies of the documents). While all recipients would have to input information about decertifications and denials into a DOT database, this would be a quick electronic process that would not be costly or burdensome. In any case, this requirement will be phased in as the Department prepares to put the database online. The rule does not make major policy changes that would cause recipients to expend significant resources on program modifications. For these reasons, the Department certifies that the rule does not have a significant economic effect on a substantial number of small entities.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under the Order and have determined that it does not have implications for federalism, since it merely makes administrative modifications to an existing program. It does not change the relationship between the Department and State or local governments, pre-empt State law, or impose substantial direct compliance costs on those governments.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collections of information in this rule should direct them to the Office of Management and Budget, *Attention*: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department will not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The Department intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

It is estimated that the total incremental annual burden hours for the information collection requirements in this rule are 47,450 hours in the first year, 83,370 in the second year, and 51,875 thereafter. The following are the information collection requirements in this rule:

Certification of Monitoring (49 CFR 26.37(b))

Each recipient would certify that it had conducted post-award monitoring of contracts which would be counted for

¹ See for instance *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003), *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).

DBE credit to ensure that DBEs had done the work for which credit was claimed. The certification is for the purpose of ensuring accountability for monitoring which the regulation already requires.

Respondents: 1,050.

Frequency: 13,400 (i.e., there are about 13,400 contracts per year that have DBE participation, based on 2009 data).

Estimated Burden per Response: 1/2 hour.

Estimated Total Annual Burden: 6,700 hours.

Small Business Program Element (49 CFR 26.39)

Each recipient would add a new DBE program element, consisting of strategies to encourage small business participation in their contracting activities. No specific element would be required, and many of the potential elements are already part of the existing DBE regulation or implementing guidance (e.g., unbundling; race-neutral small business set-asides). The small business program element is intended to pull a recipient's small business efforts into a single, unified place in this DBE Program. This requirement goes into effect a year from the effective date of the rule.

Respondents: 1,050.

Frequency: Once (for a one-time task).

Estimated Burden per Response: 30 hours.

Estimated Total Annual Burden Hours: 31,500 (one time).

Accountability Mechanism (49 CFR 26.47(c))

If a recipient failed to meet its overall goal in a given year, it would have to determine the reasons for its failure and establish corrective steps.

Approximately 150 large recipients would transmit this analysis to DOT; smaller recipients would perform the analysis but would not be required to submit it to DOT. We estimate that about half of recipients would be subject to this requirement in a given year.

Respondents: 525 (150 of which would have to submit reports to DOT).

Frequency: Once per year.

Estimated Average Burden per Response: 80 hours + 5 for recipients sending report to DOT.

Estimated Total Annual Burden Hours: 42,750.

Affidavit of Completeness (49 CFR 26.45(c)(4))

When a firm certified in its home state seeks certification in another state ("State B"), the firm must provide an affidavit that the information the firm

provides to State B is complete and is identical to that submitted to the home state. The calculation of the burden for this item assumes that there will be an average 2600 interstate applications each year to which this requirement would apply. This requirement takes effect a year from the effective date of this rule.

Respondents: 2,600.

Frequency: Once per year to a given recipient.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,600 hours.

Transmittal of On-Site Report (49 CFR 26.85(d)(1))

When a "State B" receives a request for certification from a firm certified in "State A," State A must promptly send a copy of that report to State B. This would involve simply emailing a PDF or other electronic copy of an existing report. This requirement takes effect one year from the effective date of this rule.

Respondents: 52.

Frequency: An average of 50 per year per recipient.

Estimated Average Burden per Response: 1/2 hour.

Estimated Total Annual Burden Hours: 1,300.

Transmittal of Decertification/Denial Information (49 CFR 26.85(f)(1))

When a unified certification program (UCP) in a state denies a firm's application for certification or decertifies the firm, it must electronically notify a DOT database of the fact. The information in the database is then available to other certification agencies for their reference. The calculation of the burden of this requirement assumes that there would be an average of 100 such actions per year by each UCP.

Respondents: 52.

Frequency: An average of 100 per year per recipient.

Estimated Average Burden per Response: 1/2 hour.

Estimated Total Annual Burden Hours: 2,600.

Transmittal of Denial/Decertification Documents (49 CFR 26.85(f)(3))

When a UCP notes, from the DOT database, that a firm that has applied or been granted certification was denied or decertified elsewhere, the UCP would request a copy of the decision by the other state, which would then have to send a copy. The Department anticipates that this would be done by an email exchange, the response attaching a PDF or other electronic copy

of an existing document. This requirement goes into effect a year from the effective date of the rule.

Respondents: 52.

Frequency: An average of 75 per year per recipient.

Estimated Average Burden per

Response: five minutes for the request; 1/2 hour for the response.

Estimated Total Annual Burden Hours: 2,625.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and record keeping requirements.

Issued this 11th day of January, 2011, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR Part 26 as follows:

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

■ 1. The authority citation for part 26 is amended to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

■ 2. In section 26.5, add a definition of "Home state" in alphabetical order to read as follows:

§ 26.5 What do the terms used in this part mean?

* * * * *

"Home state" means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

* * * * *

■ 3. In § 26.11, add paragraph (a) to read as follows:

§ 26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

* * * * *

■ 4. Revise § 26.31 to read as follows:

§ 26.31 What information must you include in your DBE directory?

(a) In the directory required under § 26.81(g) of this Part, you must list all

firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

■ 5. Revise § 26.37 (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism 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. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

* * * * *

■ 6. Add § 26.39 to subpart B to read as follows:

§ 26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(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.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

■ 7. In § 26.45:

■ a. Revise paragraphs (e)(2), (e)(3), (f)(1), and (f)(2);

■ b. Redesignate paragraphs (f)(3) and (f)(4) as (f)(6) and (f)(7), respectively; and

■ c. Add new paragraphs (f)(3), (4), and (5).

The revisions and addition read as follows:

§ 26.45 How do recipients set overall goals?

* * * * *

(e) * * *

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating

administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

* * * * *

■ 8. In § 26.47, add paragraphs (c) and (d) to read as follows:

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) If the awards and commitments shown on your 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, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

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

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

■ 9. In § 26.51, revise paragraphs (b)(1) and (f)(1) to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

* * * * *

(b) * * *

(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 of this part.

* * * * *

(f) * * *

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract

goals during that year, unless it becomes necessary in order to meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

* * * * *

■ 10. In § 26.53:

■ a. Redesignate paragraph (g) as paragraph (i);

■ b. Redesignate paragraphs (f)(2) and (3) as paragraphs (g) and (h), respectively;

■ c. Revise paragraph (f)(1); and

■ d. Add new paragraphs (f)(2) through (6) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) 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;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's

reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vii) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

* * * * *

■ 11. In § 26.67, revise paragraphs (a)(2)(i) and (iv), and in paragraphs (b), (c), and (d), remove "\$750,000" and add in its place "\$1.32 million".

The revisions read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

* * * * *

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

* * * * *

■ 12. Revise § 26.71(n) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm

in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

* * * * *

■ 13. Revise § 26.73(b) to read as follows:

§ 26.73 What are other rules affecting certification?

* * * * *

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of

this Part, the firm is eligible for certification.

* * * * *

§ 26.81 [Amended]

■ 14. Amend § 26.81(g) by removing the word “section” and adding in its place the word “part” and by removing the period at the end of the last sentence and adding the words “and shall revise the print version of the Directory at least once a year.”

■ 15. In § 26.83, remove and reserve paragraph (e), revise paragraph (h), and add paragraphs (l) and (m) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require “recertification” of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm’s most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.*, of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm’s eligibility. If you have grounds to question the firm’s eligibility, you may conduct an on-site review on an unannounced basis, at the firm’s offices and jobsites.

* * * * *

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the “end of the line,” behind other applications that have been made since the firm’s previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of

frequently withdrawing applications before you make a decision.

§ 26.84 [Removed]

■ 16. Remove section 26.84.

■ 17. Revise § 26.85 to read as follows

§ 26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

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

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A’s electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A’s certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm’s certification. This includes affidavits of no change (*see* § 26.83(j)) and any notices of changes (*see* § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A’s UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (*see* § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT’s response to State B.

(4) You must submit 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.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by “State A” or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A’s certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A’s certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A’s certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you

must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the

Departmental Office of Civil Rights under s§ 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

- (i) The name of the firm;
- (ii) The name(s) of the firm's owner(s);
- (iii) The type and date of the action;
- (iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the

UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

§ 26.87 [Amended]

■ 18. In § 26.87, remove and reserve paragraph (h).

§ 26.107 [Amended]

■ 19. In § 26.107, in paragraphs (a) and (b), remove "49 CFR part 29" and add in its place, "2 CFR parts 180 and 1200".

■ 20. In § 26.109, revise paragraph (a)(2) to read as follows:

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) * * *

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

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[FR Doc. 2011-1531 Filed 1-27-11; 8:45 am]

BILLING CODE 4910-9X-P

SAMPLE PUBLIC NOTICE

PUBLIC NOTICE

The South Central Regional Airport Agency hereby announces its fiscal year 2013 through 2015 goal of 0.69% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goal and rationale is available for inspection between 8:00 a.m. and 4:30 p.m., Monday through Friday at the City Hall, 825 Broadway Street, Pella, IA 50219 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

Mike Nardini, City Administrator

825 Broadway Street

Pella, IA 50219

or

Patricia A. Wright, DBE Program Specialist

Federal Aviation Administration

Civil Rights Staff, AWP-9

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