

CITY OF KENAI

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
49 CFR 26**

FOR

Projects assisted with funding from:

United States Department of Transportation (DOT)

including:

Federal Aviation Administration (FAA)

November 2023

CITY OF KENAI DBE PROGRAM

Objectives/Policy Statement (Section 26.1, 26.23)

The City of Kenai, owner of Kenai Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Kenai has received or expects to receive federal financial assistance from the Department of Transportation through the Federal Aviation Administration (FAA), and as a condition of receiving this assistance, the City of Kenai will sign an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as Part "26").

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

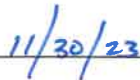
1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully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

Derek Ables, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, he is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Kenai in its financial assistance agreements with the Department of Transportation.

The City of Kenai has disseminated this policy statement to all pertinent components of our organization. We distribute this statement to DBE and non-DBE business communities that may perform work on our DOT-assisted contracts by public advertising the availability of the City's DBE Program and including it on the City's website.



Terry Eubank, City Manager



Date

SUBPART A - GENERAL REQUIREMENTS

Objectives (Section 26.1)

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

Applicability (Section 26.3)

The City of Kenai is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Definitions (Section 26.5)

The City of Kenai will use terms in this program that have their meaning defined in Part 26, §26.5.

Non-discrimination Requirements (Section 26.7)

The City of Kenai will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Record Keeping Requirements (Section 26.11)

Reporting to DOT: 26.11(b)

The City of Kenai will provide data about its DBE program to DOT as directed by DOT operating administrations.

DBE participation will be reported to FAA as follows:

The City of Kenai will transmit to FAA annually, by or before December 1, the information required for the *"Uniform Report of DBE Awards or Commitments and Payments"*, as described in Appendix B to Part 26. The City of Kenai will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List: 26.11(c)

The City of Kenai will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this list, as stated by DOT, is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on City of Kenai DOT-assisted contracts, for use in helping to set overall goals. The bidders list will be substantially similar to the form provided in Attachment 2 and will include the name, address, DBE/non-DBE status, age of firm, and annual gross receipts of firms.

The information will be collected by requiring submittal of an Interested Bidders List Collection Form, on a form substantially similar to the form provided in Attachment 3, with all prime bids for DOT-assisted contracts.

Records retention and reporting:

The City of Kenai will maintain records documenting a firm's compliance with the requirements of this part. These records will be retained in accordance with all applicable record retention requirements of the City of Kenai financial assistance agreement. Other compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Federal Financial Assistance Agreement (Section 26.13)

Assurance 26.13(a)

The City of Kenai has signed or will sign the following assurances, applicable to all DOT-assisted contracts and their administration:

Contract Assurance: 26.13(a) – Each financial assistance agreement the City of Kenai signs with a DOT operating administration (or a primary Recipient) will include the following assurance:

The City of Kenai shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: 26.13(b) - The City of Kenai will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Kenai deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (Section 26.21)

The City of Kenai is required to have a DBE program meeting the requirements of this part as it will or expects to receive grants for airport planning or development and will or expects to award prime contracts, the cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The City of Kenai is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City of Kenai is in compliance with it and Part 26. The City of Kenai will continue to carry out this program until all funds from DOT financial assistance have been expended. The City of Kenai does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Policy Statement (Section 26.23)

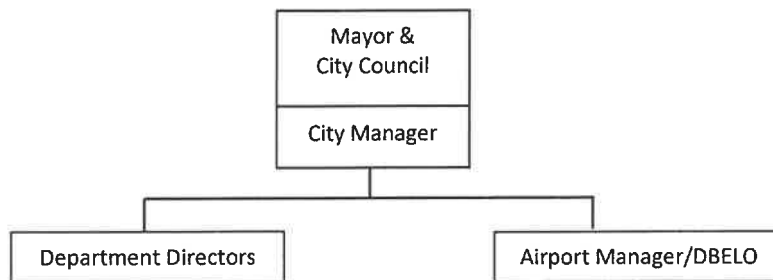
The Policy Statement is elaborated on the first page of this DBE Program.

DBE Liaison Officer (Section 26.25)

The following individual has been designated as the DBE Liaison Officer (DBELO) for the City of Kenai:

Derek Ables, Airport Manager
305 N. Willow St., Suite 200
Kenai, Alaska 99611
(907) 283-8282
e-mail: dables@kenai.city

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Kenai complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is below:



The DBELO is responsible for developing, implementing, and monitoring the DBE program in coordination with other appropriate officials. One administrative assistant and engineering consultant(s), as may be retained from time to time by the City of Kenai for work on DOT-assisted projects, assist the DBELO in the administration of the program. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City of Kenai's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Participates in DBE training seminars.
12. Refers potential DBE firms to the Alaska Unified Certification Program – Alaska Department of Transportation & Public Facilities (ADOT&PF) Civil Rights/DBE Office for firms to apply for DBE certification.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the Interested Bidders List.

DBE Financial Institutions (Section 26.27)

It is the policy of the City of Kenai to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Through online research, the City has not identified any financial institutions that are owned and controlled by socially and economically disadvantaged individuals in the community. The City of Kenai also researched the State DBE Directory; no such entities were located. The City will research this annually when reviewing goals.

Prompt Payment Mechanisms (Section 26.29)

The City of Kenai relies upon Alaska Statute 36.90.210 Required Contractual Terms as a basis for compliance with this Section. Alaska Statute 36.90.210 (a) states:

“The prime contractor and a subcontractor on a public construction or public works contract must include in a subcontract between the prime contractor and subcontractor for the public construction or public works a clause that requires the prime contractor to pay (1) the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid....”

Alaska Statute 36.90.210 (b) states:

“A subcontractor on a public construction or public works contract must include in each subcontract under which a person agrees to provide the subcontractor with services, other than as an employee, or supplies to be used in the public construction or public works project a clause that requires the subcontractor to pay (1) the person for satisfactory performance under the subcontract within eight working days after receiving payment from which the person is to be paid....”

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

The City of Kenai ensures prompt and full payment of retainage from the prime contractor to the subcontractor within eight days after payment is received for the subcontractor's work that is satisfactorily completed. Pursuant to §26.29, the City of Kenai has selected the following method to comply with this requirement:

The City of Kenai will not hold retainage from prime contractors and will require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within eight days after payment is received for the subcontractor's work that is satisfactorily completed.

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

No retainage will be held by the Owner from Progress payments due the prime.

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

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

Directory (Section 26.31)

The City of Kenai is a non-certifying member of the Alaska Unified Certification Program (UCP). The Alaska UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. Refer to <http://www.dot.state.ak.us/cvlrts/directory.shtml> for the Alaska DBE Directory.

Over-concentration (Section 26.33)

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

Business Development Programs (Section 26.35)

The City of Kenai has not established a Business Development Program.

Monitoring Responsibilities (Section 26.37)

The City of Kenai implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the City of Kenai's DBE program.

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

Monitoring Payments to DBE and Non-DBEs

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

1. The City of Kenai randomly contacts subcontractors to verify payments are being received and are timely.
2. The City of Kenai may notify subcontractors when payment is made to prime contractors.

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

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

Prompt Payment Dispute Resolution

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

The City of Kenai will facilitate a meeting between the prime contractor and the subcontractor, with the resident project representative and or project manager present. The City of Kenai resident project representative will determine if work was satisfactorily completed and will complete his findings at the meeting, which shall be binding between the prime contractor and the subcontractor. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of Kenai.

The City of Kenai has established, as part of its DBE program, the following mechanism to ensure prompt payment and return of retainage.

The City of Kenai has a monitoring and enforcement mechanism that includes written certification that it has reviewed contracting records and monitored work sites for this purpose. This is accomplished by site visits to project worksites, open communication between the DBELO, project

managers, prime contractors, and DBE subcontractors, and monitoring of the DBE Utilization Reports.

Once work has begun, the prime contractor will be required to file a Monthly Summary of DBE Participation Report every 30 days or with each progress payment. This report shows, for each DBE, the contract amount, the amount paid the DBE this report, and the total amount paid the DBE to date. This form contains the following statement: "For monitoring purposes, attach a copy of your check to each DBE subcontractor for payment(s) made this reporting period."

Prompt Payment Complaints

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

1. If the affected subcontractor cannot resolve payment discrepancies for work that has been satisfactorily performed with the prime contractor, then the subcontractor should contact the resident project representative.
2. If the subcontractor does not feel comfortable contacting the resident project representative about payment discrepancies, or if the complaint is not resolved, the subcontractor should contact the DBELO to initiate a formal complaint.
3. If filing a formal prompt payment complaint does not result in timely and meaningful action by the City of Kenai, the subcontractor may contact the FAA.

Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Prime Contractors

The City of Kenai will provide appropriate means to enforce the requirements of §26.29. These means include:

1. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
2. Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
3. Issue stop work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
4. Breach of contract action pursuant to the terms of the specific contract.
5. Determination as a non-responsible bidder pursuant to bidder qualification criteria, which allows a bidder to be determined non-responsible based on the bidder's record for honesty and integrity.

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

Monitoring Contracts and Work Sites

The City of Kenai reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result as modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is

performed by the resident project representative. Contracting records are reviewed by the project manager. The City of Kenai will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Fostering Small Business Participation (Section 26.39)

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

The small business element is incorporated as Attachment 9 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required for the City of Kenai to be considered by DOT as implementing this DBE program in good faith.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas (Section 26.43)

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

Overall Goals (Section 26.45)

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

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

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City of Kenai will use DBE Directory Information and Census Bureau Data as a method to determine the base figure. The City of Kenai understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City of Kenai would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent that it is not already accounted for in the base goal), and/or information about barriers to

entry to past competitiveness of DBEs on contracts. The City of Kenai will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology chosen by the City of Kenai will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the City of Kenai market area.

In establishing the overall goal, the City of Kenai will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Kenai's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g. a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City of Kenai's goal setting process, and it will occur before the City of Kenai is required to submit its goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City of Kenai engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City of Kenai will publish a notice of the proposed overall goals before submission to the FAA. The notice will be posted on the City of Kenai website. If the proposed goal changes following review by the FAA, the revised goal will also be posted on the City of Kenai website.

The Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and the City of Kenai's responses.

The City of Kenai will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

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

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

Prior Operating Administration Concurrence

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

A description of the methodology to calculate the overall goal and the goal calculations is in Attachment 5 to this program.

Failure to meet overall goals (Section 26.47)

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

The City of Kenai understands that to be considered to be in compliance with this part, an approved DBE program and overall DBE goal, if applicable, must be maintained and this DBE program must be administered in good faith.

The City of Kenai understands that if the awards and commitments shown on its *Uniform Report of Awards or Commitments and Payments* at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing the DBE Program in good faith:

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

Means Recipients Use to Meet Overall Goals (Section 26.51)

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.;
2. Providing information on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders, ensuring the dissemination to prime bidders lists of potential subcontractors.)
3. Providing technical assistance and other services.
4. Providing services to help DBE's 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;
5. Utilizing the AUCP program and state-wide DBE directory and making the directory location known to prime contractors;
6. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
7. Assisting DBE's, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation is in Attachment 5 to this program.

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

Contract Goals

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

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts Procedures in Situations where there are Contract Goals (Section 26.53)

Demonstration of good faith efforts (pre-award)

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

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

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

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

1. Award of the contract is conditioned on meeting the requirements of this section.
2. All bidders or offerors will be required to submit the following information to the City of Kenai, at the time provided below.
 - i. The names and addresses of DBE firms that will participate in the contract;
 - ii. A description of the work that each DBE will perform (To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract);
 - iii. The dollar amount of the participation of each DBE firm participating;
 - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - v. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work as provided in the prime contractor's commitment; and
 - vi. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
3. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
4. No later than 5 days after bid opening as a matter of responsibility. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time bid submission or of the presentation of the initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the City of Kenai.

Administrative reconsideration (26.53(d))

Within five (5) business days of being informed by the City of Kenai that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: City Manager, 210 Fidalgo Avenue, Kenai, Alaska 99651, (907) 283-8222. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

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

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

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

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

Each prime contract will include a provision stating:

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

The City of Kenai will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the City of Kenai requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The City of Kenai shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Counting DBE Participation (Section 26.55)

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

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they

do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D - CERTIFICATION STANDARDS

Certification Process (Section 26.61 – 26.73)

The City of Kenai is a non-certifying member of the Alaska Unified Certification Program (UCP). The Alaska UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBE's in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Alaska UCP members make all certification decisions based on the facts as a whole.

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

Alaska DOT&PF Civil Rights Office
2200 E. 42nd Avenue
PO Box 196900
Anchorage, Alaska 99510
907-269-0851
www.dot.alaska.gov/cvlrts/aucp.shtml#aucp

The Alaska UCP is responsible for all certifications, re-certifications, de-certifications, and appeals to certification decisions for all federal DOT financial aid recipients in Alaska.

SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Program (Section 26.81)

The City of Kenai is a member of the UCP administered by the State of Alaska. The Alaska UCP will meet all of the requirements of this section.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Compliance Procedures Applicable to the City of Kenai (Section 26.101)

The City of Kenai understands that if it fails to comply with any requirement of this part, the City of Kenai may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. 47106(d), 47111(d) and 47122.

Information, Confidentiality, Cooperation (Section 26.109)

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

Notwithstanding any contrary provisions of federal, state or local law, information that may reasonably be construed as confidential business information will not be released to any third party without the

written consent of the firm that submitted the information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the DOT's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and the recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

Attachments:

Attachment 1	Regulations: 49 CFR Part 26
Attachment 2	Interested Bidders List
Attachment 3	Interested Bidders List Collection Form
Attachment 4	Alaska DBE Directory
Attachment 5	Overall Three-year Goal Methodology
Attachment 6	Demonstration of Good Faith Efforts – Form 1 and 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	Alaska UCP Participant List
Attachment 9	Small Business Element Program

Attachment 1

REGULATIONS: 49 CFR Part 26

Refer to: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Attachment 2

INTERESTED BIDDERS LIST

The following contractors and suppliers have expressed interest in performing work for the City of Kenai on DOT-assisted contracts by submitting quotes or bids as prime contractors, subcontractors or suppliers.

Firm Name	Firm Address	DBE or non-DBE	Firm Age (years)	Firm Annual Gross Receipts
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000
		☐ DBE # _____ ☐ non-DBE		☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000 ☐ More than \$5,000,000

Attachment 3

INTERESTED BIDDERS LIST COLLECTION FORM

As required by 49 CFR § 26.11, please provide the following information. Each prime bidder submitting a bid on this project shall complete and submit this form with their bid. The information is required for all prime contractors, subcontractors and suppliers providing quotes on this project, whether used in determining the bid price or not.

ITB # _____ or RFP # _____
Project name: _____

1. Your firm's name: _____
2. Your firm's address: _____
3. Is your firm a ☐ DBE ☐ non-DBE DOT Cert. # _____
4. Your firm's age: _____
5. Size of Firm (Annual Gross Receipts):
☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000
☐ More than \$5,000,000

The same information is required for every subcontractor who bid to you on this project, even if you will not use that subcontractor. Copy this sheet as necessary.

1. Firm's name: _____
2. Firm's address: _____
3. Is this firm a ☐ DBE ☐ non-DBE DOT Cert. # _____
4. Firm's age: _____
5. Size of Firm (Annual Gross Receipts):
☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000
☐ More than \$5,000,000

1. Firm's name: _____
2. Firm's address: _____
3. Is this firm a ☐ DBE ☐ non-DBE DOT Cert. # _____
4. Firm's age: _____
5. Size of Firm (Annual Gross Receipts):
☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000
☐ More than \$5,000,000

1. Firm's name: _____
2. Firm's address: _____
3. Is this firm a ☐ DBE ☐ non-DBE DOT Cert. # _____
4. Firm's age: _____
5. Size of Firm (Annual Gross Receipts):
☐ Less than \$500,000 ☐ \$500,000-\$1,000,000 ☐ \$1,000,000-\$5,000,000
☐ More than \$5,000,000

The undersigned certifies that this Bidder/Proposer is aware of and shall comply with 49 CFR § 26, and all other applicable federal, state, and municipal laws and regulations concerning DBE participation in the City's program, which are incorporated by reference as if fully set forth herein. False statements are punishable under AS 11.56.210.

Principal's Signature

Principal's Printed Name

Date

Company's Name

Attachment 4

ALASKA DBE DIRECTORY

Refer to: <http://www.dot.state.ak.us/cvlrts/directory.shtml>

Attachment 5

SECTION 26.45: OVERALL DBE THREE-YEAR GOAL METHODOLOGY

Submitted Separately

DEMONSTRATION OF GOOD FAITH EFFORTS - FORMS 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

☐ Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract.

☐ Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and will submit documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

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

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

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

**Percentage is to be used only in negotiated procurements, including design-build contracts*

***For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

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

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

Attachment 7

DBE Monitoring and Enforcement Mechanisms

The City of Kenai 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;

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.

Attachment 8

Alaska UCP PARTICIPANT LIST

Refer to: <https://dot.alaska.gov/cvlrts/aucpmemb.shtml>

Attachment 9

Small Business Element

Objectives/Strategies

The objective of the City of Kenai's small business program element of this DBE Program is to facilitate competition by small business concerns (both DBE and non-DBE small businesses) on DOT-assisted projects, in accordance with 49 CFR 26.39.

The City of Kenai's small business program element includes the following strategies:

1. The City of Kenai procurement procedures enable direct solicitation for purchases up to \$10,000 and from at least three (3) vendors for purchases greater than \$10,000 but less than \$25,000. Larger purchases are advertised on the City of Kenai website and in newspapers in an effort to maximize access to small businesses.
2. On DOT-assisted large contracts, prime contractors are encouraged to provide subcontracting opportunities of a size that small businesses can reasonably perform, rather than self-performing all work involved.
3. When appropriate, large projects are divided into smaller portions to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform the work.

Definition

Small business is defined consistent with 49 CFR 26.5, as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).

All small businesses meeting the criteria outlined above will be considered small businesses, without regard to race or gender.

Verification

The City of Kenai will use the federal System for Award Management website (www.SAM.gov) to verify whether a business has certified as a small business according to the SBA size standards. Small businesses must be certified by the State of Alaska as a DBE and/or self-certified by the SBA as a small business at the time of contract signing.

Monitoring/Record Keeping

At the time of award of a small-business contract, self-certified small businesses are required to submit a signed, notarized certification with supporting documentation that they meet the definition of small business. Alaska-certified DBEs are presumed to meet the requirements.

Assurance

The City of Kenai makes the following assurances:

1. The small business program is not prohibited by state law;

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