

City and County of Denver Disadvantaged Business Enterprise (DBE) Policy & Procedures

Division of Small Business
Opportunity (DSBO)



DENVER
THE MILE HIGH CITY

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THE CITY AND COUNTY OF DENVER

U.S. DEPARTMENT OF TRANSPORTATION (USDOT)
DBE PROGRAM POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City and County of Denver, owner of Denver International Airport (DEN), 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 and County of Denver has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, The City and County of Denver has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as “Part 26”).

It is the policy of the City and County of Denver to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also City and County of Denver’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 marketplace 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.

Adrina Gibson, Director, Division of Small Business Opportunity (DSBO), Denver Economic Development & Opportunity (DEDO) has been delegated as the DBE Liaison Officer. In that capacity, **Adrina Gibson, Director, Division of Small Business Opportunity (DSBO), DEDO** 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 and County of Denver in its financial assistance agreements with the Department of Transportation.

The City and County of Denver has disseminated this policy statement to the Denver City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on City and County of Denver DOT-assisted contracts. The distribution was accomplished by email.



Mayor Michael B. Hancock

3/6/2023

Date

THE CITY AND COUNTY OF DENVER

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Mayor Michael B. Hancock
City and County of Denver

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

The City & County of Denver is the recipient of federal-aid highway funds authorized under Title I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 1015-178, 112 Stat. 107).

The City & County of Denver is the recipient of federal transit funds authorized by Titles I, 111, V, and VI of ISTEA, Pub. L. 102- 240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The City and County of Denver will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

The City and County of Denver will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FAA as follows:

The City and County of Denver 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 and County of Denver 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

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

This information will be collected through the City and County of Denver Department of Aviation’s Rocky Mountain E-Purchasing System also referred to as [bidnet](#).

Records Retention and Reporting

The City and County of Denver will maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, the City and County of Denver will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of The City and County of Denver financial assistance agreement. Other certification or 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.

The City and County of Denver, as a member of the Colorado UCP established pursuant to §26.81, will report to the Department of Transportation’s Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

1. Women;
2. Socially and economically disadvantaged individuals (other than women); and
3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Federal Financial Assistance Agreement

The City and County of Denver has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement City and County of Denver signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The City and County of Denver 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 City and County of Denver 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

City and County of Denver 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 City and County of Denver 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: 26.13b

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

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The City and County of Denver has designated the following individual as its DBE Liaison Officer:

Adrina Gibson
Director of the Division of Small Business Opportunity (DSBO)
Denver Economic Development & Opportunity (DEDO)
The City and County of Denver
101 Colfax Ave, Suite, 850
Denver, Colorado 80202
720-913-1701
Adrina.Gibson@denvergov.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City and County of Denver complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor of the City and County of Denver concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of three within DSBO, five staff members that reside in other City and County of Denver offices and a supplemental consultant to assist in the administration of the DBE program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Provides appropriate staffing resources to align with volume and value of federally funded contracts to conduct and carry-out DBE Program duties and responsibilities through coordination with necessary departments (department of finance, budget office and procuring agency)
3. Reviews third party contracts and purchase requisitions for compliance with this program.
4. Works with all Departments to review federal funds awarded.
5. Works with all Departments to review overall annual goals and overall triennial goals
6. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
7. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
8. Analyzes the City and County of Denver's progress toward goal attainment and identifies ways to improve progress and is responsible for overseeing implementation of corrective action initiatives, as may be required, to ensure the success of the DBE Program objectives.
9. Participates in pre-bid and pre-proposal meetings.
10. Advises the Mayor's Office, City Council, and DEDO Executive Director on DBE matters and achievement.
11. Chairs the DSBO Equity and Empowerment Council to present on DBE program.
12. Determine contractor compliance with good faith efforts.
13. Provides DBEs with information and coordinates assistance in preparing bids, obtaining bonding and insurance.
14. Plans and participates in DBE training seminars.
15. Certifies DBEs according to the criteria set by DOT and acts as a liaison to the Uniform Certification Process in the State of Colorado.
16. Provides outreach to DBEs and community organizations to advise them of opportunities.
17. Reviews the updated UCP Directory and UCP plan with UCP certifying partners.

18. Investigates any acts that compromise the integrity of the DBE Program and notifies the appropriate authorities of perceived violations or DBE Program abuse.
19. Ensure that all support staff are properly trained to perform their required duties for the effective implementation of the DBE Program.

Section 26.27 DBE Financial Institutions

It is the policy of the City and County of Denver 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. To date the City and County of Denver has identified the following institution(s) and will investigate availability annually:

The Denver Foundation
Black Resilience in Colorado (BRIC)
1009 Grant Street
Denver, CO 80203
303.300.1790
information@denverfoundation.org

The Colorado Trust
1600 Sherman Street
Denver, CO 80203
888-847-9140
<https://www.coloradotrust.org/>

Community Enterprise Development Services (CEDs Finance)
10660 E. Colfax Ave, Suite B
Aurora, CO 80010
303-569-8165
info@cedsfinance.org

Native American Bank
201 Broadway
Denver, CO 80203
303-988-2727
<https://nativeamericanbank.com/>

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR §26.29, the City and County of Denver established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory

performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the City and County of Denver.

The City and County of Denver ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the City and County of Denver has selected the following method to comply with this requirement:

Option 3: The Owner may hold retainage from prime Contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime Contractors based on these acceptances, and require a contract clause obligating the prime Contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the Owner's payment to the prime Contractor. If Option 3 is selected, the percent withheld may range from 0% to 10% but in no case may it exceed 10%. When establishing a suitable retainage value that protects the Owner's interests, give consideration that the performance and payment bonds also provide similar protection of Owner interests. Owner may elect to incrementally release retainage if owner is satisfied its interest with completion of the project are protected in an adequate manner.

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

To implement this measure, the City and County of Denver includes the following clause from FAA Advisory Circular 150/5370-10 (Section 90-06) in each DOT-assisted prime construction contract:

a. From the total of the amount determined to be payable on a partial payment, 5% percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount

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

Section 26.31 Directory

The City and County of Denver is a certifying member of the Colorado Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

Section 26.33 Overconcentration

The City and County of Denver has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City and County of Denver has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The City and County of Denver 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 and County of Denver's DBE program.

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

Monitoring Payments to DBEs and Non-DBEs

The City and County of Denver 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):

- The City and County of Denver will require both the prime contractor and subcontractors to complete reporting of payments made and payments received on a monthly basis.
- DSBO Compliance Officer oversight of DSBO's Certification and Contract Management System, B2G an automated system that requires entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system.
- DSBO Compliance Officer evaluates and resolves payment discrepancies.
- DSBO Compliance Officer and DSBO Data Analyst conducts both desk audit administrative investigations, reviews and actual on-site field investigations.
- DSBO Compliance Officer monitors DSBO's Payment Alert & Investigation DESK (PAID) built specifically for the City and County of Denver's certified small, disadvantaged, minority, and women owned firms to confidentially record their concerns and solicit DSBO's assistance for the examination and resolution of payment issues.

The City and County of Denver requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided

by applicable record retention requirements for the City and County of Denver financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of City and County of Denver or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The City and County of Denver 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 and County of Denver by the prime contractor.

Prompt Payment Dispute Resolution

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

If it is determined through a DSBO contract compliance review, a DBE or non-DBE firm contacting DSBO or other that a DBE firm is not being utilized in the agreed-upon scope, under-utilized, not being paid, or not being paid in a timely fashion:

- DSBO Program Manager opens investigation
- DSBO Program Manager contacts the contractor for additional information
- DSBO Program Manager as part of its investigation, requests information be submitted by the contractor regarding the non-compliance issue.
- If the contractor does not cooperate with the investigation, DSBO Director or DSBO Assistant Director of Compliance will notify City Project Manager and request that the City & County of Denver withhold payment from the Contractor until DSBO Program Manager receives the requested information.
- If the contractor has been found in non-compliance with DBE requirements, DSBO Program Manager will provide corrective action to comply or notify the City Attorney's Office and City Project Manager that contractor is in breach of its contract.
- If compliance is not achieved, DSBO Director or DSBO Assistant Director of Compliance will notify the City Attorney's Office and City Project Manager the actions and/or sanctions that DSBO shall be imposed on the contractor.
- If applicable, DSBO Program Manager will review, evaluate and make corrective action recommendations for the implementation of any approved supportive services or business development programs agreed to in the contract between the City and County of Denver and the prime and its lower tier subcontractors.

The City and County of Denver has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage include the following:

(1) Alternative dispute resolution (ADR)

Contractor shall submit a detailed ADR plan for approval of DSBO Program Manager. The ADR plan is designed to identify and resolve DBE performance and administrative concerns to avoid or resolve prompt payment and retainage issues between the Contractor and subcontractor. The plan shall also depict interaction of Contractor's organization and subcontractor and establish the coordination that would occur.

(2) Other mechanisms

The Contractor shall ensure that:

- i) Each Contractor shall pay its respective Subcontractors any undisputed amount owed to such Subcontractor within thirty (30) days of receipt of the subcontractor's invoice

- by such Contractor, regardless of whether such Contractor has been paid for such invoice by the City;
- ii) Approval of invoices is not unreasonably delayed and that invoices shall be either approved or rejected with written notice of deficiency or dispute to the payee Subcontractor within ten (10) days of receipt of invoice by the Contractor; and
 - iii) Each Contractor makes prompt and full payment of any retainage kept by such Contractor to its respective subcontractors within thirty (30) days after such subcontractor's work has been completed and accepted by the City's Project Manager or by the Contractor, unless claim is filed against a subcontractor;
 - iv) Failure to comply with the above may give just-cause to withhold payment from Contractor until payment to the subcontractors is satisfied. Depending on extent of failure to comply with the above, such failure may also be construed to be a breach of contract.
 - v) The Contractor shall ensure that tiered subcontractors comply with this Section and insert the provisions of this Section into all lower tiered subcontractor agreements with firms.

Prompt Payment Complaints

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

- If a subcontractor disagrees with payment reported by their contractor, they may notify DSBO through the Discrepancy report in the Certification and Contract Management System, B2G
- If affected subcontractor is not comfortable contacting contractor directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DSBO directly or through the [Payment Alert & Investigation Desk](#) (PAID) to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City and County of Denver to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA, FTA or FHWA (depending on federal operating administrator) contact.

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

Enforcement Actions for Noncompliance of Participants

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

- In accordance with the contract, assessing penalties against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
- Other penalties for failure to comply, up to and including contract termination.

The City and County of Denver will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City and County of Denver reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the City project managers and DSBO compliance team. Contracting records are reviewed by the DSBO compliance team. The City and County of Denver will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

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

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

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City and County of Denver 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 and County of Denver will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA, FTA and FHWA:

- FAA:
https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City and County of Denver does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City and County of Denver 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 and County of Denver will use Disparity Study, DBE Directory information and Census Bureau Data, and/or other alternative method that complies with §26.45 as a method to determine the base figure. The City and County of Denver understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

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

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

In establishing the overall goal, the City and County of Denver will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the City and County of Denver to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City and County of Denver is required to submit the goal methodology to the operating administration for Recipient pursuant to §26.45(f). The goal submission will document the consultation process in which the City and County of Denver 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 and County of Denver will publish a notice announcing the proposed overall goal before submission to the [operating administration] on August 1st. The notice will be posted on the City and County of Denver official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by [operating administration], the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to FAA, FTA and FHWA will include a summary of information and comments received, if any, during this public participation process and the City and County of Denver responses.

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

Project Goals

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

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

Prior Operating Administration Concurrence

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

Section 26.47 Failure to Meet Goals

The City and County of Denver 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 and County of Denver fails to administer its DBE program in good faith.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) City and County of Denver will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

Section 26.49 How are overall goals established for transit vehicle manufacturers?

The City and County of Denver will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

- (1) The City and County of Denver affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
- (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
- (3) The City and County of Denver is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
- (4) The City and County of Denver will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

Section 26.51 Mean Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

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

- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

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

Contract Goals

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

The DBELO or designee 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.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:

- (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative Reconsideration

Within 7 business days of being informed by the City and County of Denver that it is not Responsive 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:

Mica Anderson
Senior Director, DEN Commerce Hub
Work: (303) 342-2411 Work Cell: (720) 951-5112
Email: mica.anderson@flydenver.com.

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts procedural requirements (post-solicitation)

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

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City and County of Denver. 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 and County of Denver 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) [Recipient] determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides [Recipient] written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that [Recipient] 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 and County of Denver a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City and County of Denver, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the City and County of Denver 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 and County of Denver 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 and County of Denver 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 and County of Denver 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 and County of Denver may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

The provisions of the foregoing section apply only when a contract goal is established.

Section 26.55 Counting DBE Participation

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

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

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

SUBPARTS D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City and County of Denver will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBE in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

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

Colorado Department of Transportation (CDOT)
<http://www.dot.state.co.us/EEO/DBEProgramPage.htm>

For questions:

Greg Diehl

Colorado Department of Transportation (CDOT)

4201 E. Arkansas Ave., Room 150

Denver, CO 80222

greg.diehl@dot.state.co.us

303-757-9599

Or

The City and County of Denver

Denver Office of Economic Development (OED)

<https://denver.mwdbe.com/?TN=denver>

For questions:

Adrina Gibson

Division of Small Business Opportunity (DSBO)

101 West Colfax, Dept. 210

Denver, CO 80202

adrina.gibson@denvergov.org

720-913-1701

The Uniform Certification Application form and documentation requirements are found in Attachment 6 to this program.

SUBPARTS D – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City and County of Denver is a member of the Colorado Unified Certification Program (UCP) administered by Colorado DOT and the City and County of Denver. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. The City and County of Denver will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of the City and County of Denver that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

"No Change" Affidavits and Notice of Change

The UCP requires all DBEs owners to provide a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with the DBE firm's original application for certification.

The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

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 [name of DBE firm] has provided written notice to the City and County of Denver pursuant to §26.83(i). [Name of DBE firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The UCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The UCP will notify all currently certified DBE firms of these obligations [program should state how and when]. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth, business size), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

When a firm currently certified in its home state ("State A") applies to a member of this State's UCP ("State B") for DBE certification, the UCP will follow the procedures defined in §26.85(b).

Section 26.86 Denials of Initial Requests for Certification

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until 12 months have passed from such action. The time period for

reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Removal of DBE's Eligibility

In the event the City and County of Denver proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. Attachment 10 to this program sets forth these procedures in detail. To ensure separation of functions in a proposal to remove a firm's eligibility, the City and County of Denver has determined that Cathy Kramer, Caddis LLC. (Work: (720) 624-6728 and Email: ckramer@caddisllc.com) will serve as the decision-maker in the required proceedings. The City and County of Denver has established an administrative "firewall" to ensure that Cathy Kramer will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification

The City and County of Denver will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), the City and County of Denver will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the City and County of Denver information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of

receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of the City and County of Denver to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of the City and County of Denver in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of the City and County of Denver, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) the City and County of Denver failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
Email: S33AppealsManagementrecords@dot.gov

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City and County of Denver

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

47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

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

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

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

The City and County of Denver, 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 and County of Denver understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

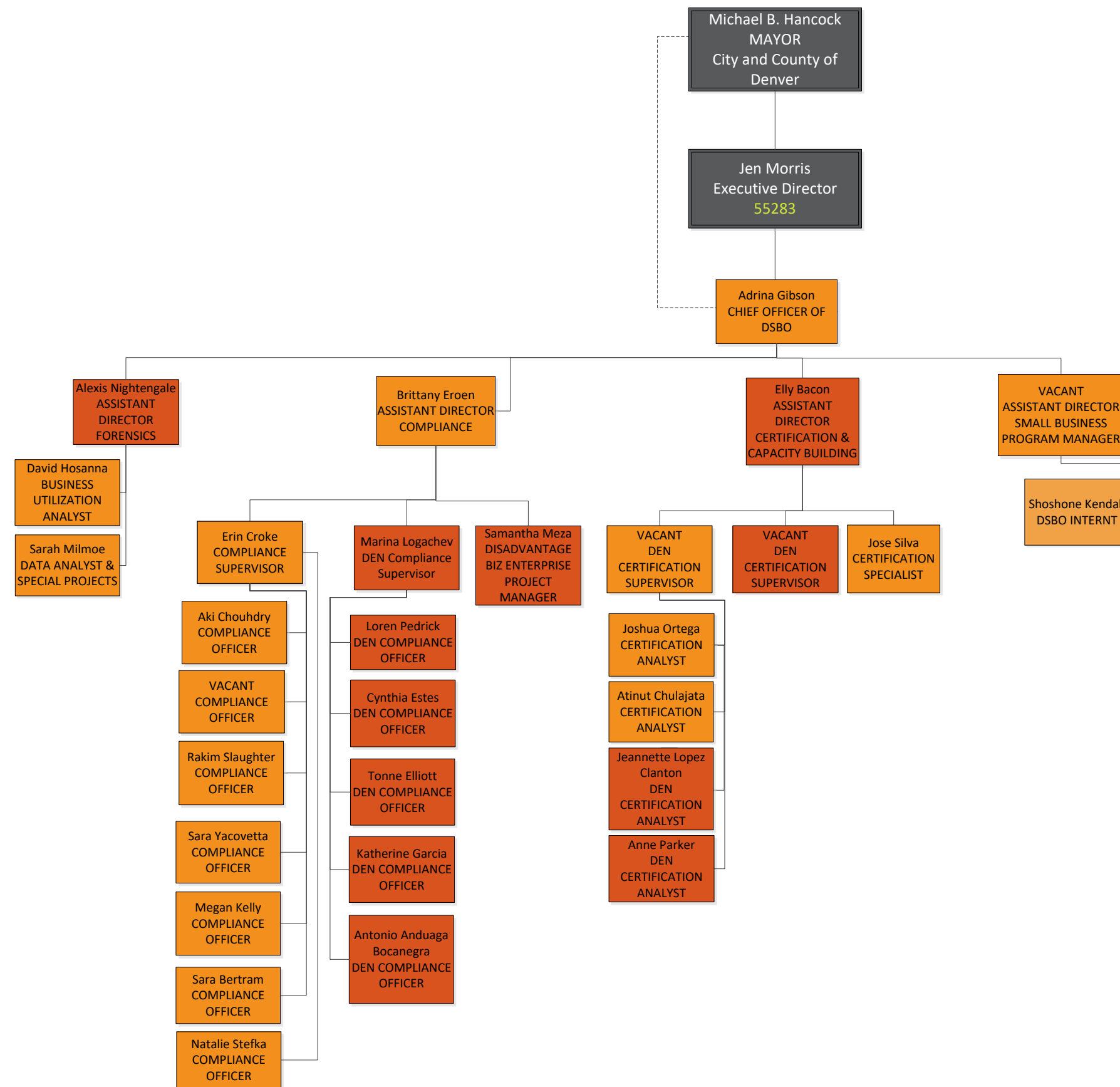
Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	DBE Monitoring and Enforcement Mechanisms/Legal Remedies
Attachment 4	Triennial DBE Goal and Methodology
Attachment 5	Forms for Demonstration of Good Faith Efforts
Attachment 6	Colorado Unified Certification Plan (UCP)
Attachment 7	Certification Application Forms
Attachment 8	Bidder's List Collection Form
Attachment 9	Small Business Element Program
Attachment 10	Removal of DBE's Eligibility
Attachment 11	DBE Regulations, 49 CFR Part 26
	Official Questions and Answers (Q&A's) DBE Program Regulation (49 CFR 26)

Attachment 1

Organizational Chart

Provided on following page.

DIVISION OF SMALL BUSINESS OPPORTUNITY (DSBO)



Legend

- Downtown
- Denver International Airport

Attachment 2

DBE Directory

The DBE Directory can be obtained on the following website:

Colorado Unified Certification Program

<http://www.coloradodbe.org/>

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

Pursuant to the terms of the City and County of Denver contracts, failure by the Contractor to comply with or implement DBE requirements is a material breach of an the City and County of Denver contract. The City and County of Denver has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Termination of contract,
2. Withholding monthly progress payments,
3. Assessing sanctions and penalties
4. Disqualifying the contractor from future bidding as non-responsible.

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 CFR Part 180 and 2 CFR Part 1200
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

Attachment 4

Triennial DBE Goal and Methodology

The Triennial DBE Goal and Methodology was submitted separately in the USDOT's operating administration system.

Attachment 5

The City and County of Denver DSBO Forms for Demonstration of Good Faith Efforts

Demonstration of Good Faith Efforts for purposes of assessing bidders, proposers and offerors good faith efforts in solicitation documents include:

[DSBO Commitment Form](#)

[DSBO Letter of Intent](#)

Attachment 6

Colorado Unified Certification Plan (UCP) Agreement

Information pertaining to the DBE certification procedures and standards of 49 CFR Part 26 are provided in the [Colorado UCP Plan Agreement](#).

Attachment 7

Certification Application Forms

The application for DBE certification and recertification can be obtained from the following websites:

Colorado Department of Transportation

<https://cdot.dbesystem.com/>

The City and County of Denver

<https://denver.mwdbe.com/?TN=denver>

Attachment 8

Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FOM THROUGH BIDNET)

Acting as: liz X

bidnet direct. powered by mdf commerce

SOLICITATIONS PARTICIPATING ORGANIZATIONS

Fly Denver Custom Questions - Fly Denver Custom Questions

Status: **BID NOT SUBMITTED** Closing Date: 05/01/2023 10:00 AM EDT Time Left to Bid: 00h 33m 44s

Create Bid

1 Proposal 2 Submission 3 Confirmation

Documents Questions Pricing

1 Legal Entity Name*

Please provide your legal entity name that you are submitting a response under.

B&E Removal

11 character(s) (maximum: 1000)

2 Legal Entity Address*

Please provide your legal entity address.

15 British American Blvd

24 character(s) (maximum: 1000)

3 Legal Entity Phone Number*

Please provide your legal entity phone number.

800-835-4603

12 character(s) (maximum: 1000)

4 Age of Legal Entity*

Please provide the year your legal entity was established

1994

4 character(s) (maximum: 1000)

5 DBE Certified* Yes

Are you Disadvantaged Business Enterprise (DBE) certified or Non-DBE

6 Annual Gross Receipts* \$2.5 million

Please select your Annual Gross Receipts:

← Previous Cancel Save & Quit Next

Terms & Conditions | Privacy Policy

powered by mdf

Attachment 9

Small Business Element

1. Objective/Program Strategies

The City and County of Denver has adopted several initiatives to support the growth and development of the small business through structuring contract requirements to facilitate competition, meaningful steps to eliminate barriers and unbundle contracts. The initiatives will be implemented as race neutral measures under the DBE Program:

- A. Convening the Business Equity Leadership Team (BELT), Citywide Bridging the Gap to Success and DSBO Equity & Empowerment Council (DEEC) meetings to gain in-depth insight on procurement opportunities, key personnel and processes.
- B. Unbundling large contracts into smaller procurements to encourage competition of small businesses through the [SBE Defined Pool Program](#)
- C. [Small Business Enterprise \(SBE\) Defined Pool Program](#) to establish race-neutral small business set-asides for City contracts based off the evaluation of scope, size and project type for Professional service and construction projects.

2. Definition

For purposes of this Small Business Program, a Small Business Enterprise (SBE) shall be defined as follows:

An SBE, with respect to firms seeking to participate as SBEs in the City and County of Denver SBE Program, is a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65.

3. Verification

A firm who wishes to participate as an SBE on a project at the City and County of Denver and is not currently certified SBE by the City and County of Denver may apply for certification as an SBE by submitting a an SMALL BUSINESS ENTERPRISE (SBE) APPLICATION with the City and County of Denver. Applications may be found on the [Small Business Contract Management System](#)

4. Monitoring/Record Keeping

DSBO oversees monitoring and recordkeeping in accordance with the [DSBO Ordinance SBE Requirements](#) through the utilization of the [Small Business Contract Management System](#).

5. Assurance

The following assurances are included:

- A. The program is authorized under state law;

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

Attachment 10

Removal of DBE's Eligibility

DIVISION OF SMALL BUSINESS OPPORTUNITY PROCEDURE

SUBJECT:	DBE Removal of Certification
EFFECTIVE DATE:	October 1, 2020
PROJECT LEAD:	Elly Bacon
POLICY SERIES #:	2020-DSBO-DBE Removal of Certification-SOP
PURPOSE:	To provide guidance on the steps and process for certification

AUTHORIZATION APPROVED BY:



Adrina Gibson
Director
Division of Small Business Opportunity

DBE Removal of Certification

Purpose

To provide clear understanding and process for the removal of DBE firm's certification. See C.F.R. 26.87 "What procedures does a recipient use to remove a DBE's eligibility?"

Types of Removal

There are different reasons to remove a firm's certification. These are:

- Firms have failed to cooperate
 - Not cooperated fully with requests for information relevant to the certification process. ([26.73\(c\)](#) & [26.109\(c\)](#))
 - Does not provide the annual update every year on their anniversary date with a sworn affidavit and business taxes to verify size standards. ([26.83\(j\)](#))
- Ineligibility complaints (Third Party Challenge)
- DOT directive to initiate proceeding
- Recipient – initiated (change in circumstance)

Grounds for decision

In all cases, your decision to remove a firm's eligibility **must** be based on one or more of the following grounds:

- Changes in the firm's circumstances since certified that render the firm unable to meet the eligibility standards
- Information or evidence that was not available to you at the time the firm was certified.
- Information relevant to eligibility that has been concealed or misrepresented by the firm.
- A change in the certification standards or requirements since the firm was first certified
- Your decision to certify was clearly erroneous
- The firm has failed to cooperate with you ([26.109\(c\)](#))
- The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program ([26.73\(a\)\(2\)](#))
- The firm has been suspended or debarred for conduct related to the DBE program.
 - In this case, the notice of decision must include a copy of the suspension or debarment action.
 - The firm is also not granted an opportunity for an informal hearing in this scenario.

Process

Failure to cooperate

- Requesting information/documentation
 - Must reach out to the firm minimum of 3 times and provide deadlines.
 - If, after the third communication and provided deadline, send the firm written notice of your intent to revoke based on their failure to cooperate in 30 days
 - If the firm has still not submitted the requested information/documents within 30 days of the written notice of intent to revoke, provide the firm with written notice of your decision to revoke and the reasons for the decision. The notice must inform the firm of

the consequences of this decision and of the availability of an appeal to DOT under 26.89.

- Annual update on anniversary date
 - Send out reminder notifications at 120, 90, 60, & 30 days that their anniversary date is approaching.
 - After the anniversary date has passed send a first notice that their anniversary date has passed
 - Send final notice and intent to revoke 30 days following the first notice
 - If the firm has still not submitted the annual update 30 days following the final notice, send a revocation letter and remove their certification

Ineligibility complaints (Third Party Challenge)

- Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in [26.109\(b\)](#)
- You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
- After making a determination:
 - If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it.
 - If you determine that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination and the specific facts in the record on which each reason is based
 - In the written notice, you must inform the firm that they may request an informal hearing, at which the firm may respond to the reasons for the proposed removal and provide information and arguments why it should remain certified. ([26.87\(d\)](#)). The hearing can either be in-person/virtual or written.
 - Following the written notice to the firm and/or the informal hearing, you must provide the firm written notice of the decision and the reasons for it. If you are removing a firm's eligibility, you must inform them of the consequences of the decision and the availability of an appeal to the DOT (26.89)
 - A copy of this notice must also be sent to the complainant. However, you must remove any information reasonably constructed as confidential. The identity of the complainant must also be kept confidential if the complainant requests as such.

DOT Directive

- If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria the

concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

- The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information
- You must immediately commence and prosecute a proceeding to remove eligibility.
 - If, based on the information, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
 - In the written notice, you must inform the firm that they may request an informal hearing, at which the firm may respond to the reasons for the proposed removal and provide information and arguments why it should remain certified. [\(26.87\(d\)\)](#). The hearing can either be in-person/virtual or written.
 - Following the written notice to the firm and/or the informal hearing, you must provide the firm written notice of the decision and the reasons for it. If you are removing a firm's eligibility, you must inform them of the consequences of the decision and the availability of an appeal to the DOT (26.89)
 - A copy of this notice must also be sent to the concerned operating administration that had directed you to initiate the proceedings.

Change in Circumstance

- If the firm notifies you of a change in its circumstances, or you are otherwise notified of the change, you must determine if there is reasonable cause to believe that the firm is ineligible.
 - Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards might include
 - Ownership
 - Size standards
 - PNW
 - Etc.
 - If you determine that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination and the specific facts in the record on which each reason is based
 - In the written notice, you must inform the firm that they may request an informal hearing, at which the firm may respond to the reasons for the proposed removal and provide information and arguments why it should remain certified. [\(26.87\(d\)\)](#). The hearing can either be in-person/virtual or written.
 - Following the written notice to the firm and/or the informal hearing, you must provide the firm written notice of the decision and the reasons for it. If you are removing a firm's eligibility, you must inform them of the consequences of the decision and the availability of an appeal to the DOT (26.89)
 -

Attachment 11

DBE Regulations, 49 CFR Part 26

Official Questions and Answers (Q&A's) DBE Program Regulation (49 CFR Part 26)

The DBE Regulations: 49 CFR Part 26 and Official Questions and Answers can be obtained from the following websites:

DBE Regulations: 49 CFR Part 26

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

Official Questions and Answers (Q&A's) DBE Program Regulation (49 CFR Part 26)

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-qas-disadvantaged>