AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Gunnison-Crested Butte Region Airport Disadvantage

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison Crested Butte Regional Airport (Gunnison County) and U.S. Department of Transportation

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

GUC has signed an assurance to comply with 49 CFR Part 26 to receive Federal financial assistance from the DOT. This is a Policy Statement to ensure DBEs have an equal opportunity to receive and participate in DOT assisted contracts.

Fiscal Impact:

Submitted by: Stephanie Williams **Submitter's Email Address:** swilliams@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 7/26/2018

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/1/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/1/2018 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/2/2018

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 8/7/2018

Revised April 2015

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Gunnison-Crested Butte Regional 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 Gunnison-Crested Butte Regional Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Gunnison-Crested Butte Regional Airport has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Gunnison-Crested Butte Regional Airport 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 policy of the Gunnison-Crested Butte Regional Airport to engage in the following actions:

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
8. Make appropriate use of the flexibility afforded to Gunnison - Crested Butte Regional Airport's Federal financial assistance in establishing and providing opportunities for DBEs.

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

The Airport Manager has disseminated this policy statement to the County Manager and Gunnison Board of County Commissioners. This statement has been distributed to DBE and non-DBE business communities that perform work for the Gunnison-Crested Butte Regional Airport on DOT-assisted contracts.

_____ _____

Chairman, Board of County Commissioners Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Gunnison-Crested Butte Regional Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq*.

Section 26.5 Definitions

Gunnison-Crested Butte Regional Airport will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The Gunnison-Crested Butte Regional Airport 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 Gunnison-Crested Butte Regional Airport 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

<u>Reporting to DOT</u>

The Gunnison-Crested Butte Regional Airport will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to the FAA as follows:

The Gunnison-Crested Butte Regional Airport will transmit to FAA annually on or before December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B. The Gunnison-Crested Butte Regional Airport will also report the required information about participating DBE firms. All reporting will be done through the FAA reporting system or as instructed by the FAA.

Bidders List

The Gunnison-Crested Butte Regional Airport will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the DBE and non-DBE contractors and subcontractors who seek to work on Gunnison-Crested Butte Regional Airport DOT-assisted contracts for use in helping to set our 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 a contract clause requiring all bidders to report the names/addresses and possibly other information, of all firms who quote to them on subcontracts.

Record Retention and Reporting

The Gunnison-Crested Butte Regional Airport will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, Gunnison-Crested Butte Regional Airport 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 applicable record retention requirements of all financial assistance agreements. 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.

Section 26.13 Federal Financial Assistance Agreement

The Gunnison-Crested Butte Regional Airport has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the Gunnison-Crested Butte Regional Airport signs with a DOT operating administration (or a primary recipient) will include the following assurance:

> The Gunnison-Crested Butte Regional Airport 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 Gunnison-Crested Butte Regional Airport 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 airport'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 Gunnison-Crested Butte Regional Airport 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: – The Gunnison-Crested Butte Regional Airport will ensure that the following clause is included in each DOT funded contract signed 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 Gunnison-Crested Butte Regional Airport 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

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following airport individual has been designated as the DBE Liaison Officer for Gunnison - Crested Butte Regional Airport:

Airport Manager
519 West Rio Grande
Gunnison, CO 81230
970-642-7388 or 970-641-2304 x 4

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Gunnison - Crested Butte Regional Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the County Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The 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. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes Gunnison - Crested Butte Regional Airport's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the County Manager on DBE matters and achievements.

8. Determine contractor compliance with good faith efforts.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the Gunnison - Crested Butte Regional Airport 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.

The Gunnison - Crested Butte Regional Airport consulted with the Colorado DOT to obtain information on financial institutions owned by DBEs. In addition, the Colorado DBE Directory was reviewed for information pertaining to DBE financial institutions. Aspen Banking Services, KBS Merchant Services, and Opulence Enterprise Group were the three financial institutions owned by DBEs that were identified during this process. The Gunnison - Crested Butte Regional Airport will do an annual search of this source to determine if any other DBE financial institutions become available.

Section 26.29 Prompt Payment Mechanisms

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport.

Gunnison - Crested Butte Regional Airport 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, Gunnison - Crested Butte Regional Airport has selected the following method to comply with this requirement:

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

<u>Additionally, for Federal Aviation Administration (FAA) Recipients include the following:</u>

To implement this measure, Gunnison - Crested Butte Regional Airport includes the following clause from FAA Advisory Circular 150/5370-10 (*or current version*) in each DOT-assisted prime contract:

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

No retainage will be held by the Owner from progress payments due the prime. When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

Section 26.31 Directory

Gunnison - Crested Butte Regional Airport through Gunnison County is a non-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 Over-concentration

Gunnison - Crested Butte Regional Airport has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

Gunnison - Crested Butte Regional Airport has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport's DBE program.

Gunnison - Crested Butte Regional Airport 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.

<u>Monitoring Payments to DBEs and Non-DBEs</u>

Gunnison - Crested Butte Regional Airport 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):

Emailing the subcontractors when a prime contractor payment is made to alert them to the start of the 30-day clock for payment.

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Gunnison - Crested Butte Regional Airport or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Gunnison - Crested Butte Regional Airport proactively reviews contract payments to subcontractors including DBEs at least quarterly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Gunnison - Crested Butte Regional Airport by the prime contractor.

Prompt Payment Dispute Resolution

Gunnison - Crested Butte Regional Airport will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

The DBELO or another authorized Gunnison – Created Butte Regional Airport representative will conduct meetings between the prime and sub and act as a mediator.

Gunnison - Crested Butte Regional Airport has established, as part of its DBE program, an Alternative dispute resolution (ADR) to ensure prompt payment and return of retainage. The ADR is a contract clause added to each contract that requires the prime contractor to submit a detailed alternative dispute resolution plan prior to the issuance of any notice to proceed.

Prompt Payment Complaints

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

1. Once the subcontractor has made every effort to resolve the issue with the prime, subcontractor should contact DBELO to initiate a complaint.
2. The DBELO will work with the prime to resolve the complaint, and will initiate the enforcement mechanisms outlined in **Attachment 7** if necessary.
3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by Gunnison - Crested Butte Regional Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.

Enforcement Actions for Noncompliance of Participants

Gunnison - Crested Butte Regional Airport will provide appropriate means to enforce the requirements of §26.29. These means include ensuring the following clause is included in each contract we sign with a contractor:

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 Gunnison – Created Butte Regional Airport deems appropriate, which may include, subcontractors being paid directly and deducting this amount from the retainage owed to the prime.

Gunnison - Crested Butte Regional Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

Gunnison - Crested Butte Regional Airport 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 consultant. Contracting records are reviewed by the consultant. Gunnison - Crested Butte Regional Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

Gunnison - Crested Butte Regional Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

Gunnison - Crested Butte Regional Airport 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), Gunnison - Crested Butte Regional Airport 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:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport 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. Gunnison - Crested Butte Regional Airport will use one of the following as a method to determine our base figure:

- DBE Directories and Census Bureau Data,
- Bidders List,
- Goal of another DOT recipient.

Gunnison - Crested Butte Regional Airport 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. Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport market.

In establishing the overall goal, Gunnison - Crested Butte Regional Airport shall endeavor to 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 Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which Gunnison - Crested Butte Regional Airport 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, Gunnison - Crested Butte Regional Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Gunnison County's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during any public participation process conducted in establishing the overall DBE goal and the Gunnison - Crested Butte Regional Airport responses.

Gunnison - Crested Butte Regional Airport will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

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

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

Prior Operating Administration Concurrence

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport for calculating goals is inadequate, FAA may, after consulting with Gunnison - Crested Butte Regional Airport, adjust the overall goal or require that the goal be adjusted by Gunnison - Crested Butte Regional Airport. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

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

Section 26.47 Failure to meet overall goals

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport fails to administer its DBE program in good faith.

Gunnison - Crested Butte Regional Airport 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.

Gunnison - Crested Butte Regional Airport 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. Gunnison - Crested Butte Regional Airport will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

Gunnison - Crested Butte Regional Airport 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.
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;
6. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
7. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

8. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

Contract Goals

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

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

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

Section 26.53 Good Faith Efforts

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 Airport Manager 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.

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport, 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 days of being informed by Gunnison - Crested Butte Regional Airport 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:

Chairman
Gunnison County Board of County Commissioners
200 E. Virginia Ave
Gunnison, CO 81230
970-641-0044

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 Gunnison - Crested Butte Regional Airport. 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 Gunnison - Crested Butte Regional Airport 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. Gunnison - Crested Butte Regional Airport determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport, 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 Gunnison - Crested Butte Regional Airport and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.,* safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

> *The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of Gunnison - Crested Butte Regional Airport 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.*

Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport 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. Gunnison - Crested Butte Regional Airport 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 Gunnison - Crested Butte Regional Airport may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

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

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Gunnison - Crested Butte Regional Airport will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Gunnison - Crested Butte Regional Airport makes all certification decisions based on the facts as a whole.

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

Civil Rights & Business Resource Center
4201 E. Arkansas Ave, Ste. 150
Denver, CO 80220
Telephone Number: 303-757-9234
Fax Number: 303-952-7088
dot_civilrights@state.co.us

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Gunnison - Crested Butte Regional Airport through Gunnison County is a non-certifying member of the Colorado Unified Certification Program (UCP) administered by the State of Colorado. The UCP will meet all of the requirements of this section.

SUBPART E - COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Gunnison - Crested Butte Regional Airport

Gunnison - Crested Butte Regional Airport understands that if it fails to comply with any requirement of this part, Gunnison - Crested Butte Regional Airport 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).

Gunnison - Crested Butte Regional Airport, 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. Gunnison - Crested Butte Regional Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

Attachment 1	Regulations: 49 CFR Part 26 or website link
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory or link to DBE Directory
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form

ATTACHMENT 1

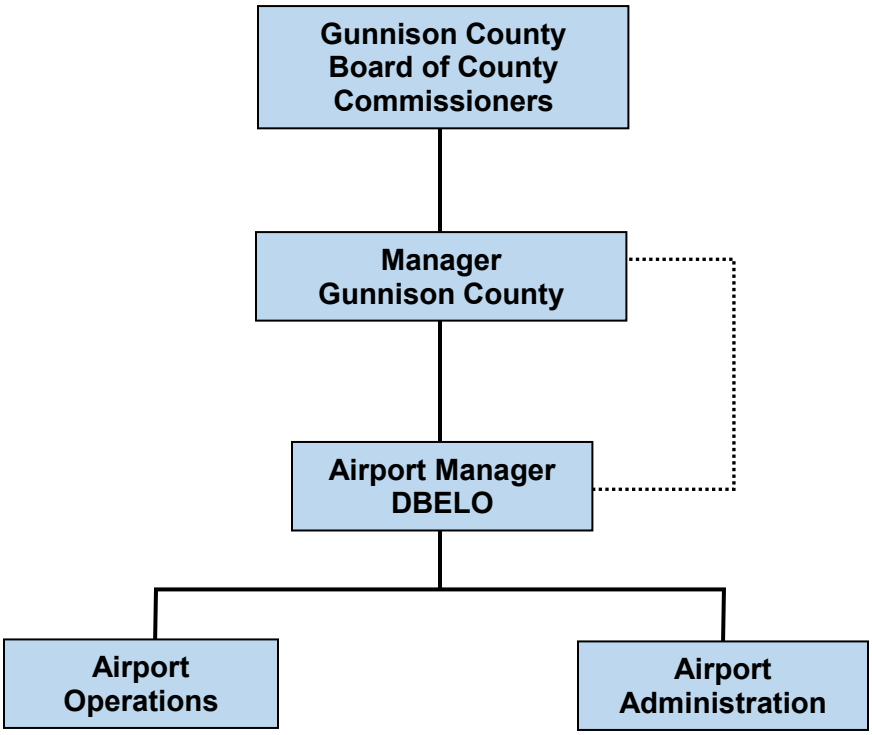
Regulations: 49 CFR Part 26, or link to website

Link to Website:

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

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

Example Bidder's List Collection Form

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million

ATTACHMENT 4

Colorado Web Link to DBE Directory

Link to Website:

https://coucp.dbesystem.com/FrontEnd/SearchCertifiedDirectory.asp?TN=coucp&XID=6003

Attachment 5

Overall DBE Goal Methodology

To be submitted separately

ATTACHMENT 6

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 has submitted [*or "will submit," if Recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

_____
Name & Title

_____ _____
Signature **Date**

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: _____

Work to be performed by DBE firm:

Description of Work	*NAICS*	*Dollar Amount / %**	*Dealer/Manufacturer***

**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.

_____ Date: _____
Signature of Bidder/Offeror's Authorized Representative

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.

_____ Date: _____
Signature of DBE's Authorized Representative

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.

Attachment 7

DBE Monitoring and Enforcement Mechanisms

The Gunnison - Crested Butte Regional Airport 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, as follows:

   Gunnison – Crested Butte Regional Airport will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Gunnison – Crested Butte Regional Airport reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Gunnison – Crested Butte Regional Airport elects to terminate the contract. The Gunnison – Crested Butte Regional Airport's notice will identify a specific date by which the Contractor must correct the breach. Gunnison – Crested Butte Regional Airport may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Gunnison – Crested Butte Regional Airport's notice.

2. Breach of contract action, pursuant to the State of Colorado.

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

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

ATTACHMENT 8

DBE Certification Application Form

Link to Website:

https://www.codot.gov/business/civilrights/smallbusiness/dbe/certification