

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Friedman Memorial Airport Authority has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Friedman Memorial Airport Authority has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Friedman Memorial Airport Authority has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

Brian Blackburn has been delegated as the DBE Liaison Officer. In that capacity, Brian Blackburn 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 Friedman Memorial Airport Authority in its financial assistance agreements with the Department of Transportation.

Friedman Memorial Airport Authority has disseminated this policy statement to the departments of the organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on DOT-assisted contracts and was accomplished by inclusion in solicitations of bids or requests for qualifications.

Martha Burke
Chair, Friedman Memorial Airport Authority Board

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are described in the policy statement of this program.

Section 26.3 Applicability

Friedman Memorial Airport Authority is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

Friedman Memorial Airport Authority will use terms in this program that are defined in Part 26, §26.5.

Section 26.7 Non-Discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

Friedman Memorial Airport Authority will provide data about its DBE Program to DOT as directed by DOT operating administrations.

DBE participation will be reported to the Friedman Memorial Airport Authority Board as follows:

Friedman Memorial Airport Authority will transmit to the FAA annually, by or before December 1, the information required for the *“Uniform Report of DBE Awards or Commitments and Payments”*, as described in Part 26. Friedman Memorial Airport Authority will similarly report the required information about participating DBE firms. All reporting will be done through the FAA’s Civil Rights Connect portal.

Bidders List

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

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

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

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

Friedman Memorial Airport Authority will enter this data in the DOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

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

Friedman Memorial Airport Authority will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, Friedman Memorial Airport Authority 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 Friedman Memorial Airport Authority 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.

Section 26.13 Federal Financial Assistance Agreement

Friedman Memorial Airport Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement Friedman Memorial Airport Authority signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Friedman Memorial Airport Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract

or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Friedman Memorial Airport Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Friedman Memorial Airport Authority DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Friedman Memorial Airport Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: Friedman Memorial Airport Authority will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual is designated as the DBE Liaison Officer for Friedman Memorial Airport Authority:

Brian Blackburn, Deputy Director, Finance and Administration
1616 Airport Circle
Hailey, ID 83333
Phone: (208) 788-4956 x101
Email: brian@iflysun.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Friedman Memorial Airport Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Friedman Memorial Airport Authority Board 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 Friedman Memorial Airport Authority officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
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. Evaluates Friedman Memorial Airport Authority progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the governing body on DBE matters and achievement.
8. Participates with the City Attorney to determine contractor compliance with good faith efforts.
9. Refers all DBE Uniform Certification Process certification/decertification to Idaho Transportation Department (UCP in Idaho) for determination pursuant to the criteria set by DOT.
10. Obtains the Idaho Transportation Department (ITD) certified DBE directory that is updated monthly.

Section 26.27 DBE Financial Institutions

Friedman Memorial Airport Authority will 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 list of DBE financial institutions available was reviewed to determine if any of the financial institutions are owned and controlled by DBEs. One financial institution was identified. Friedman Memorial Airport Authority will review the availability of DBE financial institutions annually.

Section 26.29 Prompt Payment Mechanisms

Friedman Memorial Airport Authority requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements and in accordance with all relevant federal, state, and local law. **Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.**

In accordance with 49 CFR §26.29, Friedman Memorial Airport Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Friedman Memorial Airport Authority.

Friedman Memorial Airport Authority 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, Friedman Memorial Airport Authority has selected the following method to comply with this requirement:

Friedman Memorial Airport Authority will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after Friedman Memorial Airport Authority payment to the prime contractor.

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

To implement this measure, Friedman Memorial Airport Authority includes the following clause from FAA Advisory Circular 150/5370-10H in each DOT-assisted prime contract:

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. If Option 3 is selected, insert the following clause, and specify a suitable value where indicated:

- a. From the total of the amount determined to be payable on a partial payment, 10 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.

Prompt Payment Monitoring to DBEs and Non-DBEs

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

- Friedman Memorial Airport Authority shall require prime contractors to submit with each pay request a certification of subcontractor payment signed by a company official. The

prime contractor shall certify that: (1) payment has been made to subcontractors for the subcontracted work items identified; (2) payment to subcontractors for satisfactory performance of their work was made no later than 30 days from receipt of each payment the prime contractor received from Friedman Memorial Airport Authority.

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

- Friedman Memorial Airport Authority proactively reviews contract payments to subcontractors including DBEs every 30 days. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Friedman Memorial Airport Authority by the prime contractor.

Prompt Payment Dispute Resolution

Friedman Memorial Airport Authority will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- When a dispute has occurred the resident project representative will have an informal meeting with the on-site personnel representing the prime contractor and affected subcontractor. If the resident project representative is unable to resolve the issue, a meeting will be conducted with the Owner, Engineer's project manager, prime contractor's project manager and affected subcontractor.
- The Engineer shall then decide questions as to the acceptability of work performed and payments made.

Friedman Memorial Airport Authority has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- Any controversy or dispute arising out of or related to the contract, or the breach thereof, shall be subject to the Alternative Dispute Resolution procedures in this Subparagraph upon review of the dispute notice by Friedman Memorial Airport Authority. Prior to the initiation of any action or proceeding permitted by the contract to resolve disputes, Friedman Memorial Airport Authority will request each party to make a good faith effort to resolve any such dispute by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve

the dispute through a structured mediation procedure fashioned by the parties with the assistance of a professional mediator initiated within thirty (30) days from the date of a written request for mediation by any party, unless extended by agreement by both parties. If the parties are able to reach resolution at mediation, the parties shall memorialize such resolution in unity, signed by all parties and the mediator. Any agreement reached in mediation will be binding on the parties.

Prompt Payment Complaints

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

- Friedman Memorial Airport Authority will verify if the work has been accepted and payment made to the prime contractor. The subcontractor will be informed of the status of the work and payment.
- Friedman Memorial Airport Authority will investigate all prompt payment discrepancy complaints made by subcontractors and provide a response to the complainant within 30 days of when the complaint was received.
- The subcontractor will be informed that if Friedman Memorial Airport Authority has not responded, or payment has not been received within 30 days of the complaint, the subcontractor may contact the DBELO identified under §26.25 of this plan.
- 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

Friedman Memorial Airport Authority will provide appropriate means to enforce the requirements of §26.29. These means include:

1. Friedman Memorial Airport Authority will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.107.
2. Friedman Memorial Airport Authority will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Friedman Memorial Airport Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:
 - Breach of contract, action, pursuant to the terms of the contract;
 - Suspension or debarment proceedings pursuant to 49 CFR Part 26;
 - Enforcement action pursuant to 49 CFR Part 31;

- Prosecution pursuant to 18 USC 1001.

Friedman Memorial Airport Authority will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

Friedman Memorial Airport Authority is a certifying member of the Idaho Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, which contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm is certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to §26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

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

Section 26.33 Over-Concentration

Friedman Memorial Airport Authority has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development and Mentor-Protégé Programs

Friedman Memorial Airport Authority has not established a Business Development Program, or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

Friedman Memorial Airport Authority 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 this DBE program.

Friedman Memorial Airport Authority actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by tracking DBE participation in each project closeout report and annual reporting spreadsheets. This mechanism to maintain a running tally of overall goal attainment will be used to inform Friedman Memorial Airport Authority decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

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

Monitoring Contracts and Work Sites

Friedman Memorial Airport Authority reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of §26.55. Work site monitoring for counting and commercially useful function review is performed by project managers and consultants. Contracting records are reviewed by project managers and consultants. Friedman Memorial Airport Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

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

The small business element is incorporated as Attachment 12 to this DBE Program. The program elements will be actively implemented to foster small business participation. doing do is a requirement of good faith implementation of our DBE program. Friedman Memorial Airport Authority acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-Asides or Quotas

Friedman Memorial Airport Authority does not use quotas in the administration of this DBE program.

Section 26.45 Overall Goals

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

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

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

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

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Friedman Memorial Airport Authority market area.

In establishing the overall goal, Friedman Memorial Airport Authority will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be

expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the effort by Friedman Memorial Airport Authority to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before Friedman Memorial Airport Authority is required to submit the goal methodology to the FAA for review pursuant to §26.45(f). The goal submission will document the consultation process in which Friedman Memorial Airport Authority engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, Friedman Memorial Airport Authority will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the Friedman Memorial Airport Authority 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 the FAA will include a summary of information and comments received, if any, during this public participation process and Friedman Memorial Airport Authority responses.

Friedman Memorial Airport Authority will begin using the overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the FAA. 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.

Prior Operating Administration Concurrence

Friedman Memorial Airport Authority understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by Friedman Memorial Airport Authority for calculating goals is inadequate, FAA may, after consulting with Friedman Memorial Airport Authority, adjust the overall goal or require that the goal be adjusted by Friedman Memorial Airport Authority. The adjusted overall goal is binding. In evaluating the adequacy or soundness

of the methodology used to derive the overall goal, the 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

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

Friedman Memorial Airport Authority understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained and this DBE Program must be administered in good faith.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) Friedman Memorial Airport Authority will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three (3) 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

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small

businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

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

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

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

Contract Goals

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (c) The dollar amount of the participation of each DBE firm participating;
 - (d) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (e) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's

commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of §26.53 (c)(1).

(f) If the contract goal is not met, evidence of good faith efforts (as described in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;

- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by Friedman Memorial Airport Authority. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

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

In a design-build contracting situation, in which Friedman Memorial Airport Authority solicits proposals to design and build a project with minimal project details at time of letting, Friedman Memorial Airport Authority may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an

estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, Friedman Memorial Airport Authority will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Friedman Memorial Airport Authority and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

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

Administrative Reconsideration of Good Faith Effort Determinations

Within seven (7) days of being informed by Friedman Memorial Airport Authority 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:

Chris Pomeroy, Director, Friedman Memorial Airport
1616 Airport Circle
Hailey, ID 83333
Phone: (208) 788-9003
Email: chris@iflysun.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 so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

Friedman Memorial Airport Authority will include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such

other remedies set forth in that section that Friedman Memorial Airport Authority deems appropriate if the prime contractor fails to comply with the requirements of this section.

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

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

Friedman Memorial Airport Authority will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains Friedman Memorial Airport Authority's written consent as provided in §26.53(f); and
- (2) Unless Friedman Memorial Airport Authority's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Friedman Memorial Airport Authority may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of §26.53(f)(3), good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, 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) Friedman Memorial Airport Authority determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides Friedman Memorial Airport Authority written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the Friedman Memorial Airport Authority has determined compels the termination of the DBE subcontractor.

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

The prime contractor's **written notice** must give the DBE five (5) days to respond, advising Friedman Memorial Airport Authority and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract **or portion thereof** and why **Friedman Memorial Airport Authority** should not **approve the prime contractor's request**. If required in a particular case as a matter of public necessity (*e.g.*, safety), **Friedman Memorial Airport Authority may provide a response period shorter than five (5) days**.

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

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in §26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If Friedman Memorial Airport Authority requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. Friedman Memorial Airport Authority shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance

with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

For FAA-funded projects only, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Friedman Memorial Airport Authority is a certifying member of the Idaho Unified Certification Program (UCP). Friedman Memorial Airport Authority 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. Friedman Memorial Airport Authority makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the Idaho UCP agreement. The full UCP agreement can be found at:

<https://itd.idaho.gov/civilrights/>

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

Idaho Transportation Department, Office of Civil Rights

11331 W Chinden Blvd, Boise, ID 83714

Boise, ID 83714

Telephone Number: (208) 334-8884

Email: CivilRights@itd.idaho.gov

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

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Idaho UCP agreement. <https://itd.idaho.gov/civilrights/>

Section 26.81 Unified Certification Programs

Friedman Memorial Airport Authority is the member of a Unified Certification Program (UCP) administered by ITD. **The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.**

Section 26.91 Actions Following DOT Certification Appeal Decisions

If Friedman Memorial Airport Authority is a certifier to which a DOT determination under §26.89 is applicable, we will take any and all required action(s) pursuant to §26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Friedman Memorial Airport Authority

Friedman Memorial Airport Authority understands that if it fails to comply with any requirement of this part, it may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the FAA, 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 FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

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

Section 26.105 Enforcement Actions Applicable to FAA Programs

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

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

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

Section 26.107 Enforcement Actions Applicable to Participating Firms

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

the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

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

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

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

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

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

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).

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

ATTACHMENTS

- Attachment 1 Regulations 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form Information (Subcontractor Bidders list)
- Attachment 4 ITD DBE Directory
- Attachment 5 DBE Goal Methodology
- Attachment 6 Forms for DBE Utilization
- Attachment 7 Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Uniform Certification Application and Personal Net Worth Statement
- Attachment 9 Procedures for Removal of DBE's Eligibility
- Attachment 10 Evidence of Signed Statement of Agreement with ITD for DBE Certification
- Attachment 11 Reporting Forms, "FAA Civil Rights Connect" reporting system
- Attachment 12 Small Business Element

Attachment 1

REGULATIONS 49 CFR PART 26

The regulation may be accessed via the following web-link:

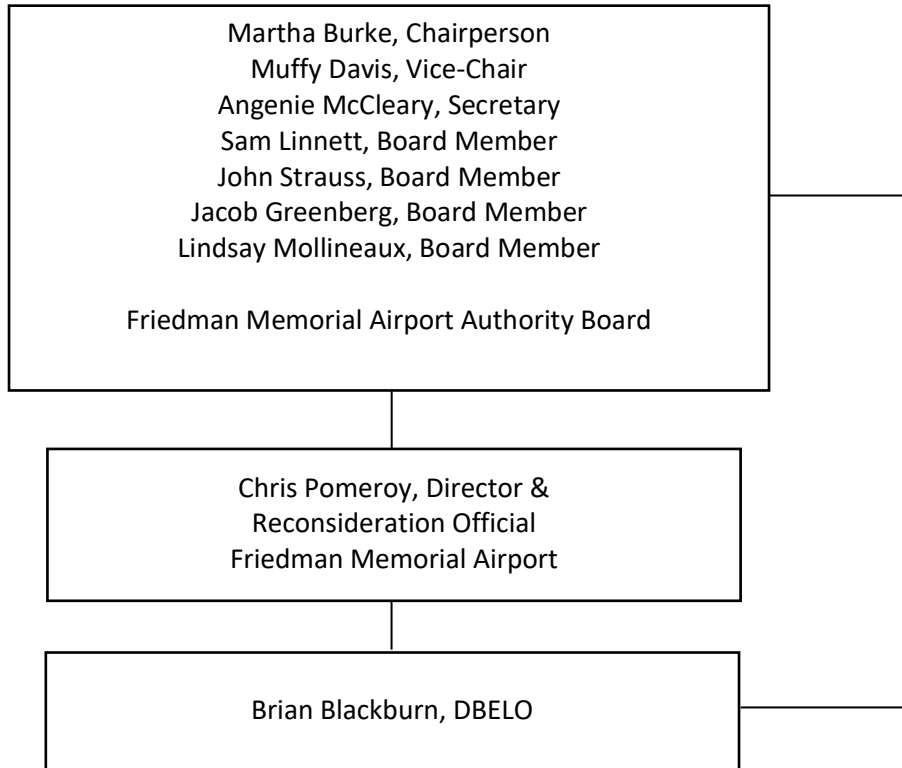
49 CFR PART 26 can be found at the following website address:

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

Attachment 2

ORGANIZATIONAL CHART

FRIEDMAN MEMORIAL AIRPORT AUTHORITY



Attachment 3

BIDDER'S LIST COLLECTION FORM

**PROJECT:
AIRPORT:**

FAA/AIP PROJECT NO.

- The OWNER is required to create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts.
- The bidders list is used to determine the number of firms that are participating or attempting to participate on DOT-assisted contracts.
- The bidders list must include all firms that bid on prime contracts or bid or quote subcontracts on DOT-assisted projects, including both DBE and non-DBE firms.
- The bidders list provides a valuable measure of available DBE subcontractors and will be used to set realistic overall DBE goals.

Provide the following information for ALL firms from which you received a bid or quote. Copy the form as needed to provide data for ALL firms. Submit with Bid Documents.

Firm Name:	DBE: Yes <input type="checkbox"/> No <input type="checkbox"/>
Address (including Zip):	
Contact Name and Title:	
Race and Gender of Majority Owner:	
NAICS Code(s) Applicable to Scope Item:	
Year Firm Was Established (Age of Firm):	
Annual Gross Receipts (check one): ___ less than \$500,000; ___ \$500,000 to \$1 Million; ___ \$1 to \$2 Million; ___ \$2 to \$5 Million; ___ \$5 to \$10 Million; ___ more than \$10 Million	
Work Items Represented in the Quote:	

Firm Name:	DBE: Yes <input type="checkbox"/> No <input type="checkbox"/>
Address (including Zip):	
Contact Name and Title:	
Race and Gender of Majority Owner:	
NAICS Code(s) Applicable to Scope Item:	
Year Firm Was Established (Age of Firm):	
Annual Gross Receipts (check one): ___ less than \$500,000; ___ \$500,000 to \$1 Million; ___ \$1 to \$2 Million; ___ \$2 to \$5 Million; ___ \$5 to \$10 Million; ___ more than \$10 Million	
Work Items Represented in the Quote:	

Firm Name:	DBE: Yes <input type="checkbox"/> No <input type="checkbox"/>
Address (including Zip):	
Contact Name and Title:	
Race and Gender of Majority Owner:	
NAICS Code(s) Applicable to Scope Item:	
Year Firm Was Established (Age of Firm):	
Annual Gross Receipts (check one): ___ less than \$500,000; ___ \$500,000 to \$1 Million; ___ \$1 to \$2 Million; ___ \$2 to \$5 Million; ___ \$5 to \$10 Million; ___ more than \$10 Million	
Work Items Represented in the Quote:	

Attachment 4

IDAHO TRANSPORTATION DEPARTMENT DBE DIRECTORY

The DBE Directory may be found at the following link:

<https://itd.dbesystem.com/Default.asp?>

Or contact the Idaho Transportation Department

Attachment 5

DBE GOAL METHODOLOGY

DBE Goal Methodology submitted separately.

Attachment 6

FORMS FOR DBE UTILIZATION - FORMS 1 - 3

FORM 1
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

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

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

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

Name of bidder/offerer's firm _____

State Registration No. _____

By

(Signature)

(Name and Title)

Address _____

Phone No. _____

**FORM 2
LETTER OF INTENT**

(Provide a separate Letter of Intent for each DBE subcontractor.)

Name of Bidder's Firm: _____

Bidder's Address: _____

City: _____ State: _____ Zip: _____

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Attach a copy of most recent letter from DBE certifying agency confirming DBE certification and listing in an approved DBE Directory for each DBE subcontractor.

Description of work to be performed by DBE firm by Bid Item and Bid Schedule.

<u>BID SCHEDULE</u>	<u>BID ITEMS</u>	<u>\$ VALUE</u>

Bidder intends to utilize the above-named minority firm for the work described above. The estimated total value of work is \$

DBE Confirmation for Participation in the Contract as Stated above for the Amount Indicated.

<u>Authorized Signature</u>	<u>Name of DBE Firm</u>	<u>Date</u>

If the above-named bidder is not determined to be the successful bidder, the Letter of Intent shall be null and void.

FORM 3 DBE REGULAR DEALER/DISTRIBUTOR AFFIRMATION FORM

OMB Control #2105-0586 (Exp. 5/31/2027)



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:
Contract Name/Number:

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

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

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

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

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

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?
 YES NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
 YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

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

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? YES NO¹

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

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

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? YES² NO³

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? YES² NO³

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

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

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

Printed Name and Signature of DBE Owner/Authorized Representative:

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

Printed Name and Signature of Bidder's Authorized Representative:

Attachment 7

DBE MONITORING AND ENFORCEMENT MECHANISMS

The Friedman Memorial Airport Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Idaho State Code;

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

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

Attachment 8

DBE UNIFORM CERTIFICATION APPLICATION AND PERSONAL NET WORTH STATEMENT

A copy of the Uniform Certification Application can be obtained online from the DOT at the following link:

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

Attachment 9

PROCEDURES FOR REMOVAL OF DBE'S ELIGIBILITY

The Idaho Transportation Department, ITD, Certifies and has a process in place to decertify DBE's. Decertification is accomplished through the Signed Statement of Agreement with ITD, which is on file at the office of DBE at ITD headquarters.

Attachment 10

EVIDENCE OF SIGNED STATEMENT OF AGREEMENT With Idaho Transportation Department

The Idaho Transportation Department, ITD, maintains a Master List of airports in Idaho who have a signed Statement of Agreement with ITD, DBE Office. The Friedman Memorial Airport Authority is the member of a Unified Certification Program (UCP) administered by the Idaho Transportation Department. Attachment 10 is a list of airports in Idaho who have signed the statement of agreement with ITD.

<https://apps.itd.idaho.gov/apps/ocr/documents/UCP.pdf>

Attachment 11

UNIFORM REPORT of DBE AWARDS or COMMITMENTS and PAYMENTS FORM

The Airport will use the FAA Civil Rights Connect reporting system. Web access:

<https://faa.civilrightsconnect.com/>

Attachment 12

SMALL BUSINESS ELEMENT Friedman Memorial Airport Authority

The Friedman Memorial Airport Authority's Small Business Element is intended to provide fair opportunities for participation by small businesses in federally assisted contracting and procurement opportunities.

1. Objective/Strategies

- (1) Friedman Memorial Airport Authority considers on a case-by-case basis establishing a race-neutral small business set aside for contracts valued up to \$500,000.
- (2) Friedman Memorial Airport Authority, when feasible, "unbundles" projects by separating large contracts into smaller contracts which may be suitable for small business participation. Friedman Memorial Airport Authority conducts a review of each federally assisted contract to determine whether portions of the project could be unbundled and bid separately.
- (3) Friedman Memorial Airport Authority arranges solicitations, bid schedules, quantities, specifications, and delivery schedules in ways that facilitate participation by small businesses and DBEs.
- (4) Friedman Memorial Airport Authority identifies procurements structured to facilitate the ability of joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) Friedman Memorial Airport Authority monitors consultant-design projects for possible small business participation and encourages consultants to use small businesses in projects.

2. Definition

Certified DBEs that meet the size criteria established under the DBE Program are eligible to participate in the small business element of the DBE Program.

Small businesses must meet the size standards of the Small Business Administration, must be consistent with the requirements of 49 CFR 26.5, and must be no larger than the size of firms eligible to be certified as a DBE.

3. Verification

DBEs participating in the small business element of the DBE Program shall be certified by ITD.

Friedman Memorial Airport Authority is diligent in its efforts to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms. DBEs participating in the small business element of the DBE Program shall be certified by ITD. A firm not certified as a DBE that wishes to participate in the small business element of the DBE Program shall demonstrate to the Friedman Memorial Airport Authority that it meets the applicable Small Business Administration small business size standard by submitting information on gross revenues, ownership, legal structure, and principal activity.

4. Monitoring/Record Keeping

Friedman Memorial Airport Authority will maintain a contact list comprised of businesses, partners and economic development contacts established through various educational opportunities as well as partners. Through this contact list, Friedman Memorial Airport Authority will be able to communicate to small businesses about upcoming opportunities to grow small businesses.

Friedman Memorial Airport Authority reviews contracting records and engages in active monitoring of work sites to ensure that work committed to small businesses at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the small business to which the work was committed. This is accomplished by requiring prime contractors to provide documentation certifying that payments to subcontractors (including DBEs and small businesses) have been made within the time limit stated in their contract. The contract is solely between Friedman Memorial Airport Authority and the prime contractor.

Friedman Memorial Airport Authority keeps a running tally of actual payments to small businesses for work committed to them at the time of contract award.

5. Assurance

Friedman Memorial Airport Authority makes the following assurances:

- (1) The DBE Program, including the small business element is not prohibited under state law;
- (2) Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
- (3) There are no limits on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- (4) Minority and women owned firms that are eligible for DBE certification will be encouraged to become certified.
- (5) The program is open to all small businesses regardless of their location (there is no local or geographic preference).