

City of Torrington, Wyoming
Torrington Municipal Airport (TOR)
DBE PROGRAM – 49 CFR PART 26
DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

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

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

The **Torrington City Engineer** has been delegated as the DBE Liaison Officer. In that capacity, the **Torrington City Engineer** is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the **City of Torrington Wyoming** in its financial assistance agreements with the Department of Transportation.

The **City of Torrington Wyoming** has disseminated this policy statement to the **Torrington City Council** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the **City of Torrington Wyoming** DOT-assisted contracts. The distribution was accomplished by electronic posting on the **City of Torrington** and WYDOT DBE websites.

Jeff Harkins, Torrington City Engineer

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The **City of Torrington Wyoming** will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

The **City of Torrington Wyoming** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to DOT/FAA as follows:

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

Bidders List

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

This information will be collected in the following way(s):

A contract clause requiring this information is submitted at the time of bid submittal on all DOT assisted contracts. See Attachment 3 to this program for a sample collection form.

Records retention and reporting:

The **City of Torrington Wyoming** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the **City of Torrington Wyoming** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the **City of Torrington Wyoming** 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

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

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

The **City of Torrington Wyoming** shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The **City of Torrington Wyoming** shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The **City of Torrington Wyoming** DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **City of Torrington Wyoming** 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 **City of Torrington Wyoming** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **City of Torrington Wyoming** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The **City of Torrington Wyoming** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **City of Torrington Wyoming** is in compliance with it and Part 26. The **City of Torrington Wyoming** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **City of Torrington Wyoming** 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 individual has been designated as the DBE Liaison Officer for the **City of Torrington, Wyoming**:

Jeff Harkins
City of Torrington
P.O. Box 250
Torrington, WY 82240
(307) 532-4815 (Office)
(307) 532-2010 (Fax)
jharkins@torringtonwy.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **City of Torrington, Wyoming** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Torrington City Council** 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 DBELO has a staff of all pertinent City staff members and the Wyoming Department of Transportation Civil Rights staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Reviews third party contracts and purchase requisitions for compliance with this program.
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. Analyzes the **City of Torrington, Wyoming** progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and achievement.
8. Determine contractor compliance with good faith efforts.

WYDOT Civil Rights Duties

1. Gathers and reports statistical data and other information as required by DOT.
2. Chairs the DBE Advisory Committee.
3. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
4. Plans and participates in DBE training seminars.
5. Acts as liaison to the Uniform Certification Process in Wyoming.
6. Provides outreach to DBEs and community organizations to advise them of opportunities.
7. Maintains the **State of Wyoming** updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the **City of Torrington, Wyoming** 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 **City of Torrington, Wyoming** will annually research financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. We have made the following efforts to identify and use such institutions by contacting the following agencies:

Wyoming Department of Transportation DBE Program
Wyoming Business Consultants Inc.

To date we have identified the following such institutions: None

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

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

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

The **City of Torrington, Wyoming** ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the **City of Torrington, Wyoming** 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.

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

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

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.

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 50-03. 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.

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.

When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The **City of Torrington, Wyoming** is a non-certifying member of the **Wyoming** 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

The **City of Torrington, Wyoming** has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The **City of Torrington, Wyoming** has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The **City of Torrington, Wyoming** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants,

including prompt payment, and describes and set forth these mechanisms in the **City of Torrington, Wyoming** DBE program.

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

Monitoring Payments to DBEs and Non-DBEs

The **City of Torrington, Wyoming** 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):

- Posting prime contractor payments to the WYDOT aviation website/database, www.blackcataviation.com, which is accessible to subcontractors to alert them to the start of the 30-day clock for payment.
- Notifying prime contractor and subcontractors of progress estimate payments during weekly jobsite progress meetings and posting minutes of the meetings at the jobsite.

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

- The **City of Torrington, Wyoming** proactively reviews contract payments to subcontractors including DBEs quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the **City of Torrington, Wyoming** by the prime contractor.

Prompt Payment Dispute Resolution

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

Weekly progress meetings between prime contractor, subcontractors, resident project representative, City Engineer and/or project manager presence as appropriate.

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

- (1) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- Section 90-06 of FAA AC 150/5370-10(current edition):

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.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact **Project Engineer** to initiate complaint.
- If filing a prompt payment complaint with **Project Engineer** does not result in timely and meaningful action by the **City of Torrington, Wyoming** to resolve prompt payment disputes, affected subcontractor may contact the responsible **DBELO** contact.
- If filing a prompt payment complaint with the **DBELO** does not result in timely and meaningful action by the **City of Torrington, Wyoming** to resolve prompt payment disputes, affected subcontractor may contact the responsible **City of Torrington Attorney** contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The **City of Torrington, Wyoming** will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime

- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.

The **City of Torrington, Wyoming** will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The **City of Torrington, Wyoming** 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 project managers/consultant. Contracting records are reviewed by the project managers/consultant. The **City of Torrington, Wyoming** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation

The **City of Torrington, Wyoming** 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 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City of Torrington, Wyoming to be considered by DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **City of Torrington, Wyoming** does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The **City of Torrington, Wyoming** will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the **City of Torrington, Wyoming** 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.

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 the **City of Torrington, Wyoming** does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the **City of Torrington, Wyoming** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

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

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

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

In establishing the overall goal, the **City of Torrington, Wyoming** will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the **City of Torrington, Wyoming** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on

obtaining information relevant to the goal setting process, and it will occur before the **City of Torrington, Wyoming** 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 the **City of Torrington, Wyoming** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the **City of Torrington, Wyoming** will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the **City of Torrington, Wyoming** 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 the 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 this public participation process and the **City of Torrington, Wyoming** responses.

The **City of Torrington, Wyoming** 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

The **City of Torrington, Wyoming** understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the **City of Torrington, Wyoming** for calculating goals is inadequate, FAA may, after consulting with the **City of Torrington, Wyoming**, adjust the overall goal or require that the goal be adjusted by the **City of Torrington, Wyoming**. 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

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

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

The **City of Torrington, Wyoming** 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) The **City of Torrington, Wyoming** 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 26.49 How are overall goals established for transit vehicle manufacturers?

NOT USED

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **City of Torrington, Wyoming** 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.

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

Contract Goals

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

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract,

and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

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

Section 26.53 Good Faith Efforts Procedures 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.

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

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

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

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time

of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 7 business days of being informed by the **City of Torrington, Wyoming** 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:

City Attorney
City of Torrington
P.O. Box 250
Torrington, WY 82240
(307) 532-5666

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

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

Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its

- work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
 - (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (6) The **City of Torrington, Wyoming** determined that the listed DBE subcontractor is not a responsible contractor;
 - (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the **City of Torrington, Wyoming** 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 **City of Torrington, Wyoming** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the **City of Torrington, Wyoming** 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 the **City of Torrington, Wyoming** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The **City of Torrington, Wyoming** will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at

least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the **City of Torrington, Wyoming** requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. [The **City of Torrington, Wyoming** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the **City of Torrington, Wyoming** 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).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **City of Torrington, Wyoming** 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. The **City of Torrington, Wyoming** 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:

Wyoming Department of Transportation
Civil Rights
5300 Bishop Blvd.
Cheyenne, WY 82009-3340
(307) 777-4268

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

The **City of Torrington, Wyoming** is the member of a Unified Certification Program (UCP) administered by the **State of Wyoming**. The UCP will meet all of the requirements of this section. A copy of the State of Wyoming's UCP membership is included in Attachment 9 of this program.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Torrington, Wyoming

The **City of Torrington, Wyoming** understands that if it fails to comply with any requirement of this part, the **City of Torrington, Wyoming** may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

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

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

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

The **City of Torrington, Wyoming**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The **City of Torrington, Wyoming** 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 "To Be Submitted Separately"
- 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 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

ATTACHMENT 1

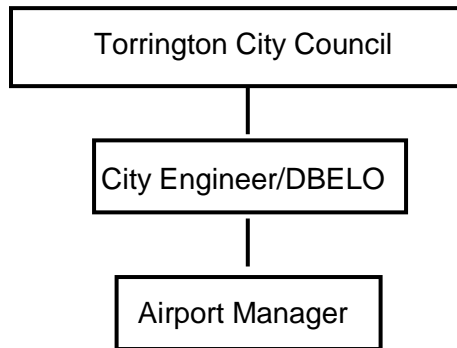
Regulations: 49 CFR Part 26, or link to website

A current copy of 49 CFR Part 26 may be obtained at the following website:

www.ecfr.gov

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS 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
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

ATTACHMENT 4

Wyoming web link to DBE directory

http://www.dot.state.wy.us/home/business_with_wydot/contractors/Disadvantaged_Business_Enterprise.html

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Section 26.45: Overall DBE Goal Methodology has been submitted under a separate document

to FAA for review and approval.

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: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

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

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

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

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

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

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The **City of Torrington, Wyoming** 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;

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties in this agreement.

Owner 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. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Owner's notice.

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

A DBE application request may be obtained from the Wyoming Department of Transportation at the following location:

<http://www.dot.state.wy.us/Dbe/>

ATTACHMENT 9

Wyoming State's UCP Agreement

**SUBPART E - CERTIFICATION PROCEDURES
SECTION 1
UNIFIED CERTIFICATION PROGRAM**

In accordance with 49 CFR 26.81(b), the Wyoming Department of Transportation will assume the responsibilities as the Unified Certification Program (UCP) Lead Agency. As the UCP Lead Agency, WYDOT will make all certification decisions on behalf of all DOT recipients (FHWA, FTA and FAA) in the state of Wyoming with respect to participation in the USDOT DBE Program.

WYDOT will ensure that, as the UCP Lead Agency:

- A. WYDOT will follow all certification procedures in 49 CFR 26, Subparts D and E.
- B. WYDOT will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations.
- C. WYDOT will implement DOT directives and guidance concerning certification matters.

Certification decisions by WYDOT will be binding on all DOT recipients in the state and shall provide a "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

WYDOT will carry out all obligations with respect to certification and nondiscrimination and ensure that recipients that are party to the UCP establish the same nondiscrimination obligations in their respective DBE Programs.

All certifications by WYDOT will be pre-certifications, meaning certifications will have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

As the UCP Lead Agency, WYDOT is not required to process an application for certification from a firm having its principal place of business outside the state if a firm is not certified by the UCP in the state in which it maintains its principal place of business. As the UCP Lead Agency, WYDOT will maintain a unified DBE directory of all firms certified by WYDOT containing the information required in 49 CFR 26.31. The DBE directory is available at the following WYDOT website address:

http://www.dot.state.wy.us/wydot/business_with_wydot/contractors/Disadvantaged_Business_Enterprise

In order to be a party to the UCP, each recipient must complete, sign and forward an "Agreement and Acceptance" to the Senior Civil Rights Officer, Civil Rights Office, Wyoming Department of Transportation, 5300 Bishop Blvd., Cheyenne, WY 82009-3340.

Ref: 49 CFR 26.81

SUBPART E - CERTIFICATION PROCEDURES
SECTION 2
CERTIFICATION PROCEDURES

WYDOT will certify the eligibility of DBE'S in accordance with the criteria set forth in 49 CFR 26 consistent with the standards of Subpart D to ensure that its DBE program benefits only those firms owned and controlled by disadvantaged individuals.

1. WYDOT will require each prospective DBE to complete and submit an Application, unless the potential DBE is an SBA-certified firm applying pursuant to the DOT/SBA MOU. All information required in the Application, and all required supporting documents must be submitted. The applicant will attest to the accuracy and truthfulness of the information on the Application through an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths. The applicant will be notified by mail or FAX if the Application is incomplete or any of the required supporting documents are not included. A time limit of 30 calendar days will be imposed for submission of missing information and documents. The applicant will be denied eligibility if the missing information and documents are not submitted within the imposed 30 calendar day time limit.

When another DOT recipient has certified a firm, WYDOT may require the applicant to go through WYDOT's application process, including supporting documentation.

When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, WYDOT will accept the certification application, forms and package submitted by the applicant firm to the SBA for either the 8(a) or SDB programs, in lieu of requiring the applicant firm to complete WYDOT's own Application. The applicant firm may submit the package directly, or may request that the SBA forward the package to WYDOT. If necessary, WYDOT may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of WYDOT's written request.

WYDOT is not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that WYDOT or its UCP partners would use in their DOT-assisted programs or airport concessions.

2. Upon receipt of the completed Application, and supporting documents, WYDOT will acknowledge receipt by mail and notify the applicant that the Application will be processed when possible within 60 calendar days. WYDOT will review all information on

the Application prior to making a decision about the eligibility of the firm. That review will include, but is not limited to:

- A) If the firm is a corporation, analysis of the ownership of stock in the firm;
- B) Analysis the bonding and financial capacity of the firm;
- C) Reviewing the work history of the firm, including contracts it has received and work it has completed;
- D) A statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- E) A list of the equipment owned by or available to the firm, and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

If the documentation does not support all the certification eligibility requirements, WYDOT will deny certification without further investigation.

3. Upon completion of the documentation review, WYDOT will perform an on-site investigation as outlined below.

- A) For Wyoming Resident Applicants: If the documentation supports all the eligibility requirements, WYDOT will perform an on-site investigation of the offices and yard facilities. WYDOT will interview the principal officers of the firm and review their resumes and/or work histories. WYDOT will also perform an on-site investigation of job sites if there are such sites on which the firm is working at the time of the eligibility investigation in WYDOT's jurisdiction or local area. No Wyoming firm will be certified before the completion of the on-site investigation.
- B) For Out-of-state (Non-Wyoming Resident) Applicants: Before an out-of state DBE applicant's eligibility will be certified by WYDOT, the DBE will be required to submit to WYDOT proof of current certification of DBE eligibility by the DBE's resident-State Transportation Agency, including a copy of its resident-State Transportation Agency on-site review as completed by the DBE's resident-State Transportation Agency or DBE certifying Agency.

Before certifying a Wyoming based firm based on its 8(a) or SDB certification, WYDOT will conduct an on-site review of the firm. WYDOT is not required to process an application for certification from an SBA-certified firm having its principal place of business outside Wyoming unless there is report of a "home state" on-site review on which WYDOT may rely. Before certifying an out-of-state firm, WYDOT will require an on-site review by the firm's home state UCP agency. If the SBA conducted an on-site review, WYDOT may choose to rely on the SBA's report of the on-site review. In

connection with this review, WYDOT may also request additional relevant information from the firm.

4. Firms determined to be eligible for participation on WYDOT transportation construction projects as DBE's will be sent a "letter of certification of eligibility" and a copy of this DBE Program Plan. They will be advised in the letter that they must inform WYDOT of any changes in ownership, control, or management of the firm, any change of address or physical location of their offices or yard facilities, and any denial or decertification of this firm as Disadvantaged Business Enterprise by any other certifying agency within 10 working days of such occurrence. Failure to inform WYDOT of such changes will result in decertification, and will require submission of a new Application.

5. Upon WYDOT certification as a DBE firm, the firm will remain certified for a period of three (3) years unless and until its certification has been removed through the procedures of 49 CFR 26.87 and Subpart E, Section 4 of this Plan. WYDOT will not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

6. Each certified DBE firm must inform WYDOT in writing of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in its Application, including changes in management responsibility among members of a limited liability company are covered by this requirement. The DBE firm must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths. The DBE firm must provide the written notification within 30 days of the occurrence of the change. If the DBE firm fails to make timely notification of such a change, it will be deemed to have failed to cooperate under 49 CFR 26.109(c).

7. Each DBE certified firm must provide to WYDOT, every year on the anniversary of the date of its certification, an Annual Eligibility Update Affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths. This Affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its Application, except for changes about which it has notified WYDOT, as stated in the previous paragraph. The Affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the DBE firm's size and gross receipts. If the DBE firm fails to provide this Affidavit in a timely manner, it will be deemed to have failed to cooperate under 49 CFR 26.109(c).

A) For Wyoming Resident DBE Firms: WYDOT will require each currently certified Wyoming DBE to submit an Annual Eligibility Update Affidavit. A notice and the Affidavit form will be sent to each DBE by certified mail with a return receipt request no later than 30 calendar days prior to the firm's certification anniversary date reminding them of the requirement and advising them of the procedure for submitting the Affidavit.

B) For Out-of-State (Non-Wyoming Resident) DBE Firms: WYDOT will require each currently certified out-of-state DBE to submit an Annual Eligibility Update Affidavit. A notice and the Affidavit form will be sent to each DBE by certified mail with a return receipt request no later than 30 calendar days prior to the firm's certification anniversary date reminding them of the requirement and advising them of the procedure for submitting the Affidavit.

In addition, WYDOT will require the out-of-state DBE firm to submit evidence of current continuing certification by their resident-State Transportation Agency or DBE certifying agency.

8. Eligibility for a currently certified DBE, whose properly completed Affidavit is received by its anniversary date, will remain valid until the Affidavit is processed and a continuing eligibility determination is made.

Eligibility for a currently certified out-of-state DBE, whose resident-State certification Affidavit has not yet been processed, will remain valid only when the DBE firm submits a letter from its resident-State Transportation Agency or DBE certifying Agency stating that its resident-State DBE certification has been extended. The extension letter must be received by WYDOT prior to the DBE firm's certification anniversary date. WYDOT certification will then remain valid until the resident-State Transportation Agency or DBE certifying Agency continuing eligibility determination is made and notification is received by WYDOT.

All information required in the continuing eligibility process and all required supporting documents must be submitted before the Affidavit will be processed.

9. A currently certified DBE that fails to return the required Affidavit and/or documentation by its certification anniversary date will be suspended for a period of 30 calendar days, and not eligible to bid or submit quotes on any WYDOT projects as a DBE. If the Affidavit is not received within that 30-day suspension period, the DBE will no longer be considered certified and will be removed from the currently certified DBE listings.

10. A currently certified DBE that fails to submit the required Affidavit and/or documentation within 6 months following expiration of its eligibility will not be permitted to apply for current DBE certification any sooner than 12 months from the date of expiration of the prior DBE certification. After that time, the applicant will be required to

submit a new Application. The new Application will be processed in accordance with the procedure for initial certification of eligibility.

11. A currently certified DBE may withdraw their Affidavit at any time by submitting the written request to the State Construction Engineer. Once the written request to withdraw is received, the firm will no longer be certified, and will be removed from the DBE program and from the certified DBE listings.

WYDOT will safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

When a Uniform Certification Program (UCP) from another state, in connection with its consideration of the eligibility of a firm, makes a written request for certification information WYDOT has obtained about that firm (e.g., including Application materials or the report of an on-site investigation, if WYDOT made one to the firm), WYDOT will promptly make the information available to the other UCP.

When WYDOT receives a request of application for certification from a Wyoming based DBE-certified firm pursuing SBA certification, or a request from the SBA made pursuant to the DOT/SBA MOU, the following procedures will be followed:

1. Upon receipt of a signed, written request from the DBE firm, WYDOT will transfer to the SBA a copy of the firm's application package. WYDOT will transfer this information within thirty days of receipt of the request.
2. If necessary, the SBA may make a written request to WYDOT for additional materials (e.g., the report of the on-site review). WYDOT will provide a copy of this material to the SBA within forty-five days of the additional request.
3. WYDOT will provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

Ref: 49 CFR 26.83, 26.84 & 26.85

SUBPART E - CERTIFICATION PROCEDURES

SECTION 3

DENIAL OF CERTIFICATION PROCEDURES

In the instance that WYDOT would deny a request by a firm, which is not currently certified with WYDOT, to be certified as a DBE, WYDOT will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial.

In the instance that WYDOT would deny DBE certification to a firm certified by the SBA, WYDOT will also notify the SBA in writing, including the reason for denial.

Applicant firms denied DBE eligibility by WYDOT will be notified by certified mail of the denial, and will be advised that the denial may be appealed under 49 CFR 26.89 solely to the Director - Departmental Office of Civil Rights, U. S. Department of Transportation (U.S. DOT) within 90 days of the date of the notice of denial.

Firms denied DBE eligibility will be advised that they may, as an alternative to appealing the denial, correct deficiencies in eligibility, and submit a new Application For Certification Of DBE Eligibility to WYDOT no sooner than twelve months after the date of denial. The new application will be deemed an initial application, and will be processed in accordance with the foregoing certification procedures. The time period for re-application begins to run on the date the explanation of denial is received by the firm. Ref: 49 CFR 26.86

SUBPART E - CERTIFICATION PROCEDURES
SECTION 4
DECERTIFICATION PROCEDURES

WYDOT will "decertify"; i.e., revoke its recognition and certification of a firm's DBE eligibility upon discovery at any time that it no longer meets the eligibility standards of 49 CFR 26.

When a DBE firm is notified by WYDOT that there is a reasonable cause to remove eligibility, WYDOT will give the DBE an opportunity for an informal hearing, at which time the firm may respond in person to the reasons for the proposed removal of eligibility, and provide information and arguments why it should remain certified.

1. Ineligibility complaints. Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current SBA 8(a) certification) presumed to be socially and economically disadvantaged if the challenged individual is the owner of a firm whose DBE eligibility is certified by WYDOT, or is seeking certification of DBE eligibility by WYDOT.

WYDOT will accept only a written complaint alleging that a currently-certified firm or a firm seeking DBE certification is ineligible, with specific alleged reasons why the firm is ineligible. WYDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

WYDOT will adhere to the following procedural guide for accepting, processing and resolving third-party challenges of an individual's social and economic status:

A. The challenge must be made in writing to WYDOT. The challenging party must include with its letter all information available to it relevant to a determination of the challenged party's social and economic disadvantage.

B. WYDOT will determine, on the basis of WYDOT's records and any other information provided by the challenging party and the DBE firm, whether the challenged DBE is in fact socially and economically disadvantaged. If WYDOT determines that the challenged DBE is in fact socially and economically disadvantaged, WYDOT will so inform the challenging party, and the proceeding will be terminated.

C. If WYDOT determines that there is reason to believe that the challenged DBE is not socially and economically disadvantaged, WYDOT will notify the challenged DBE in writing by certified mail that its social and economic disadvantage status has been challenged. The notice will identify the challenging party and summarize the grounds for the challenge, and will require the challenged DBE to provide WYDOT, within 30 calendar days, information sufficient to enable WYDOT to evaluate the status of the challenged DBE's social and economic disadvantage. The challenged DBE will be required to cooperate with WYDOT in this investigation.

D. If a challenged DBE fails to respond within the prescribed 30-day period to a WYDOT request for information which would enable WYDOT to evaluate the social and economic disadvantage of the challenged DBE, WYDOT will give written notice of decertification to the challenged DBE by certified mail, effective on the first day following the prescribed 14-day response period. The challenged DBE will be advised that its sole route of appeal is to the Director - Departmental Office of Civil Rights, U.S. DOT within 90 days of the effective date of decertification as set forth in Subpart E, Section 5 of this Plan.

E. WYDOT will evaluate the information submitted to it by both the challenging party and the challenged DBE and any other information available to it and make a preliminary determination of the social and economic disadvantage of the challenged DBE. WYDOT may request additional information from the firm or conduct any other investigation deemed necessary. To further substantiate the information submitted, the State Construction Engineer or his designee may interview selected members of the business community and, if deemed necessary, members of the minority community in the challenged DBE's locale. WYDOT will notify both parties of its preliminary determination in writing by certified mail, setting forth the reasons for its determination and scheduling a time and place for an informal hearing, at which time they can respond to WYDOT's preliminary determination.

F. Following the informal hearing, WYDOT will make a final determination concerning the social and economic disadvantage of the challenged DBE, and will notify both parties in writing by certified mail, setting forth the reasons for its determination. Both parties will be advised that the adversely affected party may appeal the final determination to the Director - Departmental Office of Civil Rights, U.S. DOT within 90 days of the notice of final determination, as set forth in Subpart E, Section 5 of this Plan.

G. In making determinations in third-party challenges of the socially and economically disadvantaged status of an individual, WYDOT will follow the eligibility criteria set forth in the foregoing Subpart D.

H. The original WYDOT presumption of social and economic disadvantage for an individual will remain in effect for the challenged DBE during pendency of a final determination by WYDOT concerning the validity of a third-party challenge.

2. WYDOT-initiated proceedings. If, based on notification by the DBE of a change in its Firm's circumstances or other information that comes to WYDOT's attention, WYDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, WYDOT will initiate the following procedure:

A. WYDOT will provide written notice of intent to decertify to the DBE firm by certified mail. The notice will state that WYDOT proposes to find the DBE firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will reference the evidence in the record on which each reason is based. The notice will provide the DBE an opportunity to respond in writing. The DBE's written response must specifically address the areas in which it feels WYDOT's determination is in error, and must be received by WYDOT within 30 calendar days following receipt of WYDOT's notice of intent to decertify.

B. If a DBE fails to respond to a WYDOT notice of intent to decertify within the prescribed 30-day period, WYDOT will give written notice of decertification to the DBE by certified mail, effective on the first day following the prescribed 30-day response period. The DBE will be advised that its sole route of appeal is to the Director - Departmental Office of Civil Rights, U. S. DOT within 90 days of the effective date of decertification as set forth in Subpart E, Section 5 of this Plan.

C. When a DBE firm is decertified by WYDOT, the OA will be notified of the name and address of the decertified DBE and its principal owners and employees. In the instance that WYDOT would decertify a firm certified by

the SBA, WYDOT will also notify the SBA in writing, including the reason for decertification.

D. A DBE that appeals its WYDOT decertification to the USDOT cannot reapply to WYDOT for certification of eligibility until a final decision has been rendered by USDOT on its appeal. As an alternative to appealing the decertification determination to the USDOT, the DBE may, if feasible, correct the deficiencies in eligibility, and submit a new Application for Certification of Eligibility to WYDOT no earlier than twelve months after the date of decertification. The new application will be deemed an initial application, and will be processed in accordance with the foregoing certification procedures.

3. USDOT directive to initiate proceeding. If a USDOT OA determines that information in WYDOT's certification records, or other information available, provides reasonable cause to believe that a firm WYDOT certified does not meet the eligibility criteria of this part, the OA may direct WYDOT in writing to initiate a proceeding to remove the firm's certification.

The concerned OA must provide WYDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. WYDOT will immediately commence a proceeding to remove eligibility as provided by paragraph 2 of this section.

4. Grounds for Decision. WYDOT will not base a decision to remove eligibility on a reinterpretation or changed opinion of information contained in the Application and the on-site that was available to WYDOT at the time of the firm's certification. WYDOT will base such a decision only on one or more of the following:

- A. Changes in the firm's circumstances since the certification of the firm by WYDOT that render the firm unable to meet the eligibility standards of this part;
- B. Information or evidence not made available to WYDOT at the time the firm was certified;
- C. Information that was concealed or misrepresented by the firm in previous certification actions by WYDOT;
- D. A change in the certification standards or requirements of the USDOT since WYDOT certified the firm; or

E. A documented finding that WYDOT's determination to certify the firm was factually erroneous.

5. Status of firm during proceeding.

A. A firm remains an eligible DBE during the pendency of WYDOT's proceeding to remove its eligibility.

B. The firm does not become ineligible until the issuance of a written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

6. Effects of removal of eligibility. When WYDOT removes a firm's eligibility, WYDOT will take the following action:

A. When a prime contractor has made a commitment to use the ineligible firm, or WYDOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before WYDOT issues the decertification notice, the ineligible firm does not count toward the APG. If there is a contract goal, WYDOT will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to WYDOT that it has made a good faith effort to do so.

B. If a prime contractor has executed a subcontract with the firm before WYDOT has notified the firm of its ineligibility; the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where WYDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after WYDOT issued the notice of its ineligibility shall not count toward WYDOT's overall goal, but may count toward the contract goal.

C. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, WYDOT may continue to count its participation on that contract toward overall and contract goals.

Ref: 49 CFR 26.86 and 26.87

SUBPART E - CERTIFICATION PROCEDURES

SECTION 5

CERTIFICATION PROCEDURES - USDOT APPEALS PROCESS

A firm which is denied certification or whose eligibility is removed by WYDOT may make an administrative appeal to the USDOT.

If a firm is a complainant in an ineligibility complaint to WYDOT (including the concerned OA in the circumstances provided in 49 CFR 26.87(c)), the firm may appeal to the USDOT if WYDOT or the OA does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

Send appeals to the following address:

U.S. Department of Transportation
Office of Civil Rights
400 7th Street, S.W., Room 2401
Washington, D.C. 20590

Pending the USDOT's decision in the matter, WYDOT's decision remains in effect. The USDOT does not stay the effect of WYDOT's decision while it is considering an appeal.

If a firm wants to file an appeal, the firm must send a letter to the USDOT at the above address within 90 days of the date of WYDOT's final decision, containing information and arguments concerning why WYDOT's decision should be reversed.

The USDOT will provide written notice of its decision to WYDOT, the firm, and the complainant in an ineligibility complaint. All USDOT decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Ref: 49 CFR 26.89

SUBPART E - CERTIFICATION PROCEDURES
SECTION 6
CERTIFICATION PROCEDURES - EFFECT OF USDOT APPEAL DECISIONS

If a WYDOT action is taken to appeal under 49 CFR 26.89 and Section 5 of this Plan, the USDOT decision is binding.

If the USDOT determines that WYDOT erroneously certified a firm, WYDOT must remove the firm's eligibility on receipt of the determination, without further proceedings on WYDOT's part. Effective on the date of WYDOT's receipt of the USDOT's determination, the consequences of a removal of eligibility set forth in 49 CFR 26.87(i) take effect.

If the USDOT determines that WYDOT erroneously failed to find reasonable cause to remove the firm's eligibility, WYDOT must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR 26.87.

If the USDOT determines that WYDOT erroneously declined to certify or removed the eligibility of the firm, WYDOT must certify the firm, effective on the date of WYDOT's receipt of the written notice of USDOT's determination.

If the USDOT determines that WYDOT erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, WYDOT must take appropriate corrective action as determined by the USDOT.

If the USDOT affirms WYDOT's determination, no further action is necessary.

Where USDOT has upheld WYDOT's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed WYDOT's denial of certification to or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision.

Ref: 49 CFR 26.91

ATTACHMENT 10
Small Business Element

1. Objective/Strategies

(1) Prime contracts under \$1 million will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.

(2) In multi-year design-build contracts or other large contracts (i.e.\$1 million) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

- DBE firms will be identified in the Small Business element of the recipient's DBE program as eligible for the program.
- Size standard will be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
- Definitions will clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

3. Verification

The **City of Torrington, Wyoming** will diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms.

4. Monitoring/Record Keeping

- Information will be organized and maintained at the **Torrington Engineer's Office**
- SB element will be monitored by the DBELO

5. Assurance

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