

DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26



Ogden Regional Airport (OGD)

Prepared for
City of Ogden
Ogden, UT

Prepared by
Mead
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Preface

Ogden City Corporation (OCC) is the owner and operator of the Ogden Regional Airport (OGD) located in Ogden, Weber County, Utah. OCC controls, operates, and manages all airport operations. It establishes policy to ensure that quality aviation related services are provided to the region. OCC has established the following Disadvantaged Business Enterprise (DBE) program for the Ogden Regional Airport in accordance with Code of Federal Regulations (CFR) of the U. S. Department of Transportation (DOT), 49 CFR Part 26. All reference to Subparts and Section numbers throughout this DBE policy (i.e. Subpart A, 26.1, 26.3, etc.) are to the 49 CFR Part 26 regulations.

OGDEN CITY / OGDEN REGIONAL AIRPORT
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
POLICY STATEMENT

Section 26.1, 26.23 Objectives / Policy Statement

Ogden City Corporation (OCC), owner and operator of the Ogden Regional Airport (OGD), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. OCC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, OCC 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 OCC to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also OCC policy to engage in the following actions on a continuing basis:

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

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

OCC has disseminated this policy statement within all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on OCC DOT-assisted contracts. The Policy Statement is available for public access on the Ogden Regional Airport website ([Airport Documents | Ogden, UT \(ogdencity.com\)](https://www.ogdencity.com/Airport/Documents/Ogden%20Regional%20Airport%20DBE%20Policy%20Statement.pdf)).

Michael P Caldwell

Michael P Caldwell (Mar 28, 2023 12:40 MDT)

Mike Caldwell, Mayor

Mar 28, 2023

Date

Lee Ann Peterson
Chief Deputy Recorder

Mar 29, 2023



SUBPART A - GENERAL REQUIREMENTS

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

Ogden City Corporation (OCC) is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

OCC will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

OCC 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, OCC 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

OCC will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to Federal Aviation Administration as follows:

OCC will transmit to Federal Aviation Administration annually, by or before December 1 of each year, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. OCC will similarly report the required information about participating DBE firms. All reporting

will be done through the Federal Aviation Administration official reporting system, or another format acceptable to Federal Aviation Administration as instructed thereby.

Bidders List

OCC 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 OCC 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 using the form in Attachment 3 which will be included in bidding documents. The information will be submitted by primes and subcontractors whether or not they were successful in being awarded a subcontract or the prime contract. OCC will provide this information in the public domain.

Records retention and reporting:

OCC, as a member of the Utah Unified Certification Program (UCP) established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

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

Section 26.13 Federal Financial Assistance Agreement

OCC has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

[Note: The following language is to be used verbatim, as stated in 26.13(a)]

The OCC 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 OCC 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 OCC 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 OCC 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: OCC 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):

[Note: The following language is to be used verbatim, as stated in 26.13(b)]

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

OCC 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. OCC is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and OCC is in compliance with it and Part 26. OCC will continue to carry out this program until all funds from DOT financial assistance have been expended. OCC 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 OCC:

Bryant Garrett, AAE
Airport Manager
3909 Airport Road
Ogden, UT 84405
Phone: 801-629-8251
email: bryantgarrett@ogdencity.com
Hours: 8:00AM – 5:00 PM
Monday - Friday

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the OCC complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to Ogden City's Chief Administrative Officer 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 six to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes OCC's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the OCC 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 OCC shall use the State of Utah, Department of Financial Institutions online directory <https://dfi.utah.gov/non-depository/consumer-lending> to search for commercial banking, credit unions, and consumer lending businesses. This will be done on an annual basis at a minimum.

Section 26.29 Prompt Payment Mechanisms

OCC 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 OCC 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 OCC.

OCC 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, OCC has selected the following method to comply with this requirement:

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

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

- a. From the total of the amount determined to be payable on a partial payment, 5% percent of such total amount will be deducted and

retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

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

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

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

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

Section 26.31 Directory

OCC is a non-certifying member of the Utah 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

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

Section 26.35 Business Development Programs

OCC has not established a DBE business development program

Section 26.37 Monitoring Responsibilities

OCC 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 OCC 's DBE program.

OCC 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

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

1. Announcing prime contractor payments at regularly scheduled progress meetings.
2. Posting payments to a website, database, or other place accessible to subcontractors.

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

- OCC proactively reviews contract payments to subcontractors including DBEs on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to OCC by the prime contractor.

Prompt Payment Dispute Resolution

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

Meetings will be conducted including OCC, prime, subconsultant, and the resident project representative (RPR) and/or project manager (PM) presence as appropriate. The purpose of meeting will be to discuss satisfactory completion requirements and dispute resolution.

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

(1) When the work on which the claim for payment and/or retainage release is based has been completed, the Subcontractor shall, within 10 calendar days after not being paid as per the prompt payment clause listed in the Contract, submit a written claim to the Resident Project Representative (RPR) or Project Manager (PM) who will present it to OCC for consideration in accordance with contract requirements or local laws / ordinances. The OCC will immediately contact the Prime and require their compliance with Contract specifications. The matter will be monitored until payment has been satisfied.

Prompt Payment Complaints

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

1. The affected contractor shall notify the Project Manager (PM) and/or Resident Representative (RPR) in writing within 10 days of non-payment. The PM or RPR shall contact the prime to inquire and resolve the issue.
2. If the affected contractor is not satisfied within 30 days of non-payment they shall notify the DBELO in writing clearly defining the issue including the dates of non-payment.
3. If the affected contractor is not satisfied within 90 days of the complaint, they shall notify the FAA Office of Civil Rights.

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

OCC will provide appropriate means to enforce the requirements of §26.29. These means include:

1. We will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. 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
3. 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
4. Other penalties for failure to comply, up to and including contract termination.

OCC will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

OCC 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 DBELO and with the assistance of the Project Consultant. Contracting records are reviewed by DBELO and with the assistance of the Project Consultant. OCC 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

OCC 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.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

OCC does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

OCC 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), OCC will submit its Overall

Three-year DBE Goal to Federal Aviation Administration 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 Federal Aviation Administration.

DBE Reporting Requirements For Airport Grant Recipients

49 CFR Part 26		All Airports -- 3-Year Overall DBE Goals		DUE: AUGUST 1
Airport Type	Region	Due	Period Covered	Next Goal Due
Non-Hub Primary	Northwest Mountain	2021	2022/2023/2024	2024 (2025/2026/2027)

DUE DECEMBER 1, ANNUALLY

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If OCC 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 OCC 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. OCC will use [a Bidders List, a Disparity Study, the goal of another DOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45] as a method to determine the base figure. OCC 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. OCC 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 OCC market.

In establishing the overall goal, OCC 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 OCC 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 OCC 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 OCC 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, OCC will publish a notice announcing the proposed overall goal before submission to the Federal Aviation Administration on August 1st. The notice will be posted on OCC 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 Federal Aviation Administration, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of OCC. This notice will provide that the OCC and Federal Aviation Administration will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1st deadline.**

The Overall Three-Year DBE Goal submission to Federal Aviation Administration will include a summary of information and comments received, if any, during this public participation process and OCC responses.

OCC will begin using the overall goal on October 1 of the relevant period, unless other instructions from Federal Aviation Administration have been received.

Project Goals

If permitted or required by the Federal Aviation Administration 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

OCC understands that prior Federal Aviation Administration concurrence with the overall goal is not required. However, if the Federal Aviation Administration review suggests that the overall goal has not been correctly calculated or that the method employed by OCC for calculating goals is inadequate, Federal Aviation Administration may, after consulting with OCC, adjust the overall goal or require that the goal be adjusted by OCC. 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

OCC 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 OCC fails to administer its DBE program in good faith.

OCC 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.

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

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

OCC 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 OCC 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 Federal share of a DOT-assisted contract.

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

Demonstration of good faith efforts (pre-award)

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

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.

OCC 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) *[Select either responsiveness OR responsibility option]*

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

Administrative reconsideration

Within 10 days of being informed by OCC 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:

Mike Caldwell - Mayor
City of Ogden
2549 Washington Blvd, Ste 910
Ogden, UT 84401
801-629-8000

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. The reconsideration official is not someone who reports to the DBELO who made the original determination. The reconsideration official is well-acquainted with the requirements outlined in Appendix A of 49 CFR Part 26.

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

Good Faith Efforts procedural requirements (post-solicitation)

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of OCC 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.

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

OCC is a non-certifying member of the Utah Unified Certification Program (UCP). Utah UCP 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. Certifying Utah UCP members make all certification decisions based on the facts as a whole.

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

Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

Phone: (801) 287-3533
Fax: (801) 287-4520
Email: DBELO@rideuta.com

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

OCC is a non-certifying member of the Unified Certification Program (UCP) administered by Utah Transit Authority (UTA). This UCP meets all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to OCC

OCC understands that if it fails to comply with any requirement of this part, OCC 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).

OCC, 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. OCC understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

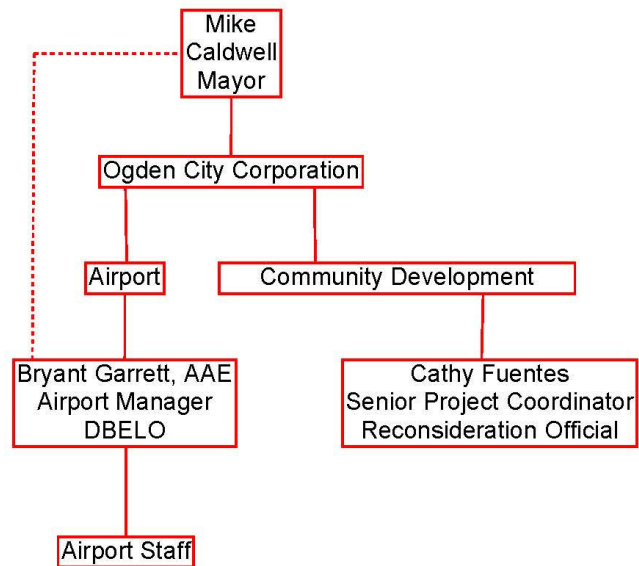
ATTACHMENT 1
Regulations: 49 CFR Part 26

The regulations can be viewed at the following website:

<https://ecfr.io/Title-49/Part-26>

ATTACHMENT 2

OCC Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

[Reminder: the information below must be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires recipients to collect information from all bidders and subcontractors, including unsuccessful ones.]

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

Utah DBE Directory

The Utah Unified Certification Directory (UCP) can be viewed at the following website:

<https://www.rideuta.com/Doing-Business/Disadvantaged-Enterprises>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

THIS SECTION UNDER DEVELOPMENT & SUBMITTED SEPARATELY

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

These forms will be provided as part of the solicitation documents for purposes of assessing bidders'/offerors' good faith efforts

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:

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

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

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

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

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

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 OCC has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to Utah Civil Code, Title 15 Contracts and Obligations in General

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

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

ATTACHMENT 8
DBE Certification Application Form

[Uniform Certification Application-annotated \(rideuta.com\)](#)

ATTACHMENT 9

State of Utah UCP Interlocal Agreement

AGREEMENT ESTABLISHING UTAH UNIFORM CERTIFICATION PROGRAM FOR DISADVANTAGED BUSINESS ENTERPRISES

THIS AGREEMENT is made and entered into by and between the Utah Transit Authority ("UTA"), the Salt Lake Corporation for the benefit of the Salt Lake City Department of Airports ("SLCDA"), the Utah Department of Transportation ("UDOT"), the City of Logan, and Park City, hereinafter collectively referred to as the "parties".

RECITALS

WHEREAS, prior to execution of this Agreement, 49 C.F.R. Part 26 requires federal transportation fund recipients of a state to create a Unified Certification Program ("UCP") as part of each recipient's disadvantaged business enterprise program; and

WHEREAS, the parties are recipients of United States Department of Transportation ("USDOT") financial assistance. As used in this Agreement, "recipient" is defined as set forth in 49 C.F.R. Part 26; and

WHEREAS, all recipients of federal transportation funds in this State are covered by the requirements of 49 C.F.R. Part 26, and are also required to participate in a Unified Certification Program; and

WHEREAS, The Utah Interlocal Cooperation Act, Utah Code Ann. 11-13-1 to 11-13-37 (2001) authorizes two or more governmental units to jointly or cooperatively exercise the powers, privileges or authorities vested in them individually; and

WHEREAS, the parties desire to join together for cooperative action pursuant to that Act, to carry out the requirements of 49 C.F.R. Part 26, and to establish a Utah Unified Certification Program ("UUCP"); and

WHEREAS, the governing board, or authorized agent, of each party has authorized the entering into of the Agreement and the establishment of the UUCP.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive therefrom, the parties agree as follows:

AGREEMENT

I. PURPOSE

The parties have entered into this Agreement to create a Utah Unified Certification Program ("UUCP") for the State of Utah in compliance with 49 C.F.R. Section 26.81. The work of the UUCP will be performed by three "certifying recipients," meaning three agencies with

established DBE programs that will continue to certify DBEs on behalf of all recipients. The three certifying recipients are UDOT, UTA, and SLCD. All certification actions under this UUCP shall be binding on all USDOT recipients within this State.

II. ORGANIZATION OF THE UUCP

A. Certifying Recipients; Duties.

The certifying recipients shall make all certification decision on behalf of all USDOT recipients in the State with respect to participation in the USDOT DBE program. The certifying recipients under the UUCP shall be UDOT, UTA and SLCD. In particular, UTA shall be responsible for certifications in the area of public transit construction and public transit-related services (e.g., transit-related planning, engineering and design services, staffing services, or office supply merchants), SLCD shall be responsible for certifications in the area of airport-specific expertise and airport concessions, and UDOT shall be responsible for certifications in the area of general construction for highways and airports and all other areas.

Each certifying recipient shall independently evaluate, and make decisions on, DBE certification applications and affidavits of no change in accordance with 49 C.F.R. Part 26.

B. One-Stop Shopping.

Once a firm is certified as a DBE by one of the certifying recipients, that firm shall be deemed certified as such under the UUCP.

C. Unified Directory.

UDOT agrees to host and maintain a unified DBE directory for this State in accordance with 49 C.F.R. Section 26.31. UDOT shall maintain the DBE directory in electronic format, and shall make the Directory available to the public through its website. The directory shall list each firm certified under the UUCP. Each recipient shall provide a link on its website to the UDOT website.

Each certifying recipient shall have ongoing internet access to review, and to make changes to, the directory. Each certifying recipient shall update the directory to reflect certification additions, deletions or changes within its purview. The certifying recipient shall promptly update the directory, but in no event later than 14 days after the effective date of any such additions, deletions, or changes. UTA and SLCD shall pay a one-time licensing fee of twenty-five dollars (\$ 25.00) to UDOT for use of the electronic directory.

On a semi-annual basis, UDOT shall distribute a printed copy to each recipient, which shall also be made available to the public upon request.

III. UUCP PROCEDURES

A. Federal Requirements.

The UUCP will be implemented in accordance with 49 C.F.R. Part 26. The recipients agree to comply with all requirements of that Part 26. Each recipient shall cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations, and shall implement USDOT directives and guidance concerning certification matters.

B. Applications; Timing; Form.

The recipients will use a universal application form that satisfies the requirements of 49 C.F.R. Part 26, which will be modified as needed to comply with applicable federal laws and regulations. (Attachment 1.) The application form shall request that the applicant indicate the category of work that the applicant anticipates engaging in to allow UDOT to appropriately direct the application for certification review under paragraph A of Section II of this Agreement.

All applications for DBE certification shall be submitted to UDOT. Within seven (7) days after receipt of an application, UDOT shall forward the application for review and decision to the appropriate certifying recipient based on the category of work selected by the applicant. If an applicant does not select a category of work, UDOT will be responsible for processing that application.

C. Out-of-State Applications.

A firm located outside this State seeking DBE certification under the UUCP shall apply for certification as a DBE in the same manner as an in-state firm, except that the firm located outside this State must be certified in their home state before seeking certification under the UUCP.

D. Waiting Period for Denied or Decertified Firms.

A firm that has been denied certification, or that has been decertified, by a certifying recipient must wait one year before subsequently applying for certification under this UUCP.

E. Appeals.

An appeal of a certification action shall be made to the United States Department of Transportation in accordance with 49 C.F.R. Part 26. As used in this Agreement, a "certification action" means a decision by a certifying recipient to deny, approve, or revoke a DBE certification, or to process an affidavit of no change.

F. Third Party Complaints.

Any complaint by a third party, or a person or entity who is not representing the certifying recipient or the subject firm, regarding a certification action, shall be investigated by the certifying recipient.

G. Implementation.

The UUCP shall be fully implemented within 120 calendar days after the Secretary of Transportation approves the UUCP in accordance with the following schedule:

(1) The certifying recipients will meet within 30 days after the Secretary's approval of the UUCP to agree on organizational matters including, but not limited to, meeting schedules and the use of the unified DBE directory. In addition, within 30 days after the Secretary's approval, the recipients shall notify all DBEs presently certified of the grandfathering requirements set forth in paragraph H.

(2) Within 60 days after the Secretary's approval of the UUCP, UDOT will post the unified DBE directory on its website.

(3) Within 90 days after the Secretary's approval of the UUCP, each party to this Agreement shall begin to use the unified procedures set forth in the UUCP.

H. Grandfathered Firms.

A firm certified as a DBE in this State before the implementation of the UUCP is eligible to continue its certification as a DBE under the UUCP if (1) the firm is certified under the February 2, 1999, federal regulations on DBE certifications on the date prior to implementation of this UUCP, (2) the firm has met all reporting requirements since its certification, including but not limited to all required personal net worth statements and Affidavits of No Change, and (3) the governmental entity that previously certified the firm has completed an on-site visit report within three years before the implementation of the UUCP.

The entity that certified a grandfathered firm shall continue to administer the certification status of the firm until the firm's certification lapses, but in any event no later than three years after the date of the original certification.

Upon the expiration of a grandfathered firm's certification, the firm must seek any future certification through the UUCP process.

I. Document Retention.

Each certifying recipient shall retain all documents relating to certification actions taken by that certifying recipient in accordance with applicable federal and State laws and regulations.

J. Maintenance of Business and Financial Information.

Each certifying recipient shall safeguard from disclosure to unauthorized persons information that may reasonably be considered confidential business information consistent with the requirements of federal, State and local law. Each certifying recipient will classify records as confidential or private in accordance with such requirements. The recipients recognize that it is the responsibility of persons seeking records to comply with the applicable provisions of Utah's Governmental Records Access Management Act (GRAMA).

K. Audits.

Once every three years, beginning in 2005, the UUCP's certifying recipients shall carry out a practices and financial audit of the UUCP. The practices audit shall include a sampling of certification actions of each certifying recipient during the previous three years. Once completed, the audit shall be submitted to the governing body or executive employee of each certifying recipient to be used for consideration of UUCP processes or consideration of modifications to this Agreement.

IV. COSTS AND INDEMNIFICATION.

A. UUCP Membership Costs.

1. *General Cost Allocation.* The administrative costs of the UUCP shall be shared by all recipients. The annual contribution paid by each recipient to support the UUCP shall be based on the recipient's relative share of USDOT financial assistance awarded during the federal fiscal year. The proportionate share owed by the certifying recipients shall be offset by costs incurred by the certifying recipients to perform certification actions for the benefit of all recipients.

2. *Calculation of Proportionate Share of Federal Funds.* Within 15 days after the end of the federal fiscal year, each recipient shall calculate, and provide to UDOT a statement of, its proportionate share of USDOT financial assistance received by the recipient during that federal fiscal year. For purposes of this subparagraph (2), "USDOT financial assistance" shall not include moneys allocated by the federal government for the procurement of vehicles or specialized equipment covered under 49 C.F.R. 26.49.

3. *Annual Calculation of Certifying Recipients' Costs.* Throughout the federal fiscal year, each certifying recipient shall document hours spent by staff to perform certification actions. Within 15 days after the end of the federal fiscal year, each certifying recipient shall calculate, and provide to UDOT a written invoice of, its costs of certification actions performed by the certifying recipient during that federal fiscal year. The costs shall be determined by multiplying 2.54 (the "cost factor") by the number of hours performed by the certifying recipient's staff to perform certification actions during the federal fiscal year, and by the hourly wage of such staff. The certifying recipients agree that the certifying recipients' costs, as calculated under this subparagraph, amounts to a fair and complete sum of all direct and indirect costs of performing certification actions for the UUCP. The certifying recipients further agree to perform certification actions in a timely manner and at all time in full compliance with the requirements of 49 C.F.R. Part 26.

Any invoice submitted to UDOT under this subparagraph (3) shall include (A) a certified statement of accuracy by all staff persons whose hours comprise a part or all of the hours used in the calculation of costs hereunder, (B) the total number of certification actions performed by the certifying recipient during the federal fiscal year, including itemization of the total number of original certifications, recertifications, decertifications, and affidavits of no change, and (C) the amount of federal financial assistance awarded to the certifying recipient, as calculated under subparagraph (2).

Any costs calculated under this subparagraph (3) shall not include time and expenses associated with site visits.

Not less than triennially, beginning in 2005, the parties shall review the cost factor and determine whether an adjustment of that factor is appropriate.

4. *Calculation of Total Costs of Administering UUCP.* Based on the information received under subparagraph (3), UDOT shall compute the total costs of administering the UUCP during the federal fiscal year.

5. *Calculation of Annual UUCP Contribution of Non-Certifying Recipients.* For each non-certifying recipient, the annual UUCP contribution of that recipient shall be determined by multiplying the percentage of USDOT financial assistance received by that recipient, as compared with all other recipients, by the total costs of administering the UUCP, as calculated under subparagraphs (2) and (4), respectively.

In no event will the annual UUCP contribution of a non-certifying recipient exceed ten percent (10 %) of the total costs of administering the UUCP in the prior federal fiscal year. Solely for purposes of measuring 10 % of the total costs of administering the UUCP, the total costs of administering the UUCP shall be considered \$ 85,000.00 during the first full year of implementation of the UUCP and, in each year thereafter, the total costs of administering the

UUCP shall be based on the actual total costs of administering the UUCP in the prior federal fiscal year. This paragraph is intended to set a maximum contribution for non-certifying recipients, but shall not be construed in any manner as affecting the method of calculation of a non-certifying recipient's proportionate share under subparagraph (2).

6. *Calculation of Annual UUCP Contribution of Certifying Recipients.* For each certifying recipient, the annual UUCP contribution of that recipient shall be determined in the same manner as set forth in subparagraph (5), except that the product calculated under that subparagraph shall be reduced by the certifying recipient's costs of performing certification actions, as calculated under subparagraph (3).

7. *UDOT Billing.* Within sixty (60) days after receipt of a statement of financial assistance under subparagraph (2) in the case of a non-certifying recipient, or an invoice under subparagraph (3) in the case of a certifying recipient, UDOT shall compute and transmit to each recipient a final billing statement. Recipients shall submit payment consistent with the final billing statement within 30 days after the date of that statement. If a certifying recipient is entitled to reimbursement upon calculation of the its annual UUCP contribution under subparagraph (6), UDOT shall submit a reimbursement payment to the certifying recipient within 60 days after receipt of the certifying recipient's statement of financial assistance.

B. Participation of Indirect Recipients.

The three certifying recipients, and two other direct recipients who receive financial assistance directly from USDOT, have signed this Agreement. All other recipients that receive such financial assistance in the State of Utah receive it through UDOT, and for each grant, award or disbursement of such financial assistance, UDOT shall cause the recipient to enter into a Cooperative Agency Agreement containing the following provision:

By signing this Cooperative Agency Agreement, [recipient] agrees that the Utah Unified Certification Program ("UUCP") certifies Disadvantaged Business Enterprises ("DBEs") for the State of Utah, and that [recipient] will rely on UUCP determinations to obtain any DBE contractors and consultants that may be required in connection with this grant. [Recipient] further agrees that it is subject to the requirements of the UUCP and the "Agreement Establishing Utah Uniform Certification Program for Disadvantaged Business Enterprises" dated _____, including but not limited to the UUCP financial contribution requirements outlined in that agreement.

C. Indemnification.

1. In the event of a claim arising from a decision not to grant DBE certification, the certifying recipient that performed the challenged certification action shall be solely responsible for any costs, damages, and attorneys' fees that may be awarded to the firm raising the claim.

2. In the event of a claim challenging the certification process or methods used by a particular certifying recipient, that certifying recipient shall be solely responsible for any costs, damages, and attorneys' fees awarded to the claimant.

3. In the event of a claim challenging the UUCP created under this Agreement, the recipients shall jointly and severally bear any costs, damages, and attorneys' fees awarded to the claimant and any penalties imposed by a court or a federal agency or department. The recipients agree to work cooperatively to determine defense responsibilities under this subparagraph (3).

V. TERM AND GENERAL PROVISIONS.

A. Term.

This Agreement shall be effective immediately upon its execution by all the parties hereto and the approval of the UUCP by the Secretary of the USDOT. This Agreement and the UUCP shall continue in force as long as required by federal laws and regulations, and shall so bind all recipients, except for recipients that terminate participation under paragraph B of this Section V. In accordance with Utah Code Annotated Section 11-13-17 (1965), in no event shall this Agreement extend for a term of more than fifty (50) years.

B. Early Termination.

Any party to this Agreement may terminate its relationship to the UUCP upon a showing of non-recipient status, provided approval is given by USDOT for such termination. Upon such termination, participation of that party in the UUCP shall be immediately revoked.

C. Limited Agreement.

This Agreement is limited in scope and nothing contained in this Agreement shall imply any relationship between any of the signing parties beyond the creation and implementation of the UUCP. This Agreement shall not be construed to limit the parties' interactions with DBE firms in so far as such interactions do not relate to certification matters.

D. Requirements under Utah Interlocal Cooperation Act.

In satisfaction of the requirements of the Act and in connection with this Agreement, the parties agree as follows:

- (1) This Agreement shall be authorized by resolution of the governing body of each party that is subject to Section 11-13-17 of the Act;
- (2) This Agreement shall be approved as to form and legality by a duly authorized attorney on behalf of each party that is subject to Section 11-13-9 of the Act;
- (3) A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party that is subject to Section 11-13-10 of the Act;
- (4) Except as set forth under Section V.B of this Agreement, this Agreement may be terminated only by and upon the express prior written consent of the Secretary of the USDOT and all of the parties; and
- (5) Except as otherwise specifically provided in this Agreement, any real or personal property acquired by any party, or by the parties jointly, pursuant to this Agreement or in conjunction with the UUCP shall be acquired and held, and disposed of by such party upon termination of this Agreement as agreed among the parties or as otherwise required by applicable local, State and federal law.

E. Ethics.

The parties agree to comply with all applicable federal, State, and local ethics laws, regulations, and ordinances.

F. Severability.

In the event any one or more of the provisions contained in this Agreement are for any reason held by a court of competent jurisdiction in the State of Utah to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

G. Execution of Agreement.

This Agreement may be executed in any number of counterparts and by either of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof, and the retransmission of any signed facsimile transmission hereof, shall be the same as delivery of an original.

H. Modification.

This Agreement shall not be amended or modified except in writing with the consent of all parties. However, this Agreement may be modified solely to add or delete a non-certifying recipient without the consent of all of the parties. This paragraph shall not be construed to prevent the exchange of letters signed by all certifying recipients to further clarify, but not to change, processes under Section II.A.

I. Correspondence.

Any correspondence with the UUCP or with UDOT in connection with this Agreement, shall be directed to:

Civil Rights Section
Utah Department of Transportation
P.O. Box 141520
Salt Lake City, Utah 84114-1520

J. Attorneys' Fees.

Each party to this Agreement shall bear its own costs and attorneys' fees related to commencing legal action to enforce its rights under this Agreement. The parties shall endeavor in good faith to informally resolve any dispute relating to this Agreement.

K. Headings.

The headings of sections and paragraphs are included solely for convenience. If a conflict exists between any heading and the text of this Agreement, the text shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below:

UTAH DEPARTMENT OF TRANSPORTATION

BY: _____
Title:

DATE: _____

APPROVED AS TO FORM:

BY: _____
Legal Counsel

**SALT LAKE CORPORATION, FOR THE BENEFIT OF
THE SALT LAKE CITY DEPARTMENT OF AIRPORTS**

BY: _____
Title:

DATE: _____

APPROVED AS TO FORM:

BY: _____
Legal Counsel

UTAH TRANSIT AUTHORITY

BY: _____
John M. English, General Manager

BY: _____
Kenneth D. Montague, Director
of Finance and Administration

DATE: _____

APPROVED AS TO FORM:

BY: _____
Legal Counsel

CITY OF LOGAN

BY: _____
Douglas E. Thompson
Mayor of City of Logan

DATE: _____

PARK CITY

BY: _____
Title:

DATE: _____

L. Headings.

The headings of sections and paragraphs are included solely for convenience. If a conflict exists between any heading and the text of this Agreement, the text shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below:

UTAH DEPARTMENT OF TRANSPORTATION

BY: *Jan Boyd*
Title: *Executive Director*

DATE: *Feb. 20, 2002*

APPROVED AS TO FORM:

BY: *James H. Mueller*
Legal Counsel

SALT LAKE CITY CORPORATION

Ross C. "Rocky" Anderson

DATE: _____

ATTEST:

CHIEF DEPUTY CITY RECORDER

L. Headings.

The headings of sections and paragraphs are included solely for convenience. If a conflict exists between any heading and the text of this Agreement, the text shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below:

UTAH DEPARTMENT OF TRANSPORTATION

BY: _____
Title:

DATE: _____

APPROVED AS TO FORM:

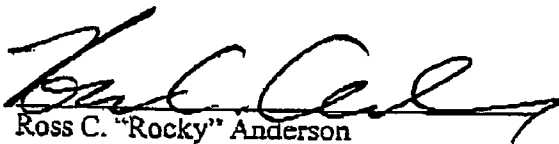
BY: _____
Legal Counsel

RECORDED

MAR 05 2002

CITY RECORDER

SALT LAKE CITY CORPORATION


Ross C. "Rocky" Anderson

DATE: _____

APPROVED AS TO FORM
Salt Lake City Attorney's Office

Date 19 Feb 02

By [Signature]

ATTEST:


CHIEF DEPUTY CITY RECORDER



UTAH TRANSIT AUTHORITY

BY: _____

John M. English, General Manager

BY: _____

Kenneth D. Montague, Director
of Finance and Administration

DATE: _____

2/22/02

APPROVED AS TO FORM: _____

BY: _____

Legal Counsel

CITY OF LOGAN

BY: _____

Douglas E. Thompson
Mayor of City of Logan

DATE: _____

APPROVED AS TO FORM: _____

BY: _____

ATTEST: _____

CITY RECORDER

Mar 02 02 05:33a

Geoff Straw

(435) 713-6617

p. 1

UTAH TRANSIT AUTHORITY


BY: _____
John M. English, General ManagerBY: _____
Kenneth D. Montague, Director
of Finance and Administration

DATE: _____

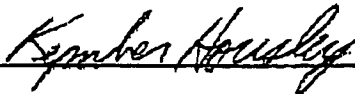
APPROVED AS TO FORM:

BY: _____
Legal Counsel

CITY OF LOGAN

BY: 
Douglas E. Thompson
Mayor of City of LoganDATE: 2/25/02


APPROVED AS TO FORM:

BY: 

ATTEST:


CITY RECORDER

PARK CITY MUNICIPAL CORPORATION

BY: 
Tom B. Bakley
Title:

DATE: 2/4/02

ATTACHMENT 10

Small Business Element

The OCC will include this small business element into this DBE Program. This small business element is intended to facilitate competition by and expand opportunities for small businesses. We are committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as contractors or subcontractors. We will meet its objectives using a combination of the following methods and strategies:

1. Objective/Strategies

- (1) Some prime contracts anticipated to be under \$150,000 will be set-aside for small businesses. 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 (e.g., for “megaprojects”) 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) Structuring procurements to facilitate 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

The definitions provided shall be in accordance with 49 CFR Part §26.39.

(1) Small Business:

Defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

(2) Disadvantaged Business Enterprise:

At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

The management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For the purposes of the small business element of the OCC DBE Program, DBE's who are also defined as small businesses shall be in accordance with 49 CFR Part 26.

3. Verification

The OCC will accept the following certifications for participation in this small business element of the DBE Program with applicable stipulations:

1. DBE Certification by the State of Utah Transit Authority (UTA) – UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. Certification determinations are evidenced by inclusion in the listing of DBE's on the UCP DBE Directory.
2. State of Utah Small Business Development Programs as certified by the UTA:
 - Micro Businesses – MB
 - Small Businesses – SB
 - Disabled Veteran Business Enterprise – DVBE
 - Non-Profit Veteran Service Agency - NSVA

Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be encouraged to seek DBE certification in order to be counted as DBE participation.

4. Monitoring/Record Keeping

1. Documentation regarding the small business element of this program will be organized in a designated directory and will be monitored and updated on an annual basis with the OCC administration.
2. This Small Business element will be monitored by reviewing project financial reporting documentation.

5. Assurance

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