



# KOOTENAI COUNTY

## TRANSIT SYSTEM

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### **Disadvantaged Business Enterprise Program 01 April 2019**

**Policy Statement**  
Kootenai County Disadvantaged Business Enterprise Program

Kootenai County has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the United States Department of Transportation (DOT), 49 CFR Part 26. Kootenai County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this financial assistance, the Kootenai County Commissioners have signed an assurance that it will comply with 49 CFR Part 26.

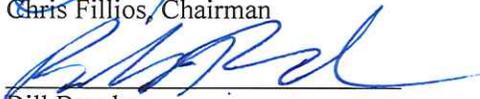
It is the policy of the Kootenai County Commissioners to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the Kootenai County Commissioners' policy:

- (a) To ensure nondiscrimination in the award and administration of Department of Transportation (DOT) financially assisted contracts;
- (b) To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- (c) To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Ms. Jody Bieze, Director Resource Management Office, has been designated as the DBE Liaison Officer (DBELO). In that capacity, Ms. Bieze is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is afforded the same priority as compliance with all other legal obligations incurred by the Kootenai County Commissioners in its financial assistance agreements with USDOT.

This policy statement has been reviewed by the Kootenai County Board of Commissioners and all the components of Kootenai County Government. The Resource Management Office has published this statement for reference by Kootenai County Employees, DBEs and Non-DBEs that perform work for Kootenai County on USDOT-assisted contracts in the local newspaper and posted it on Kootenai County's website.

  
Chris Fillios, Chairman

  
Bill Brooks

  
Leslie Duncan

## Disadvantaged Business Enterprise Program

### Objectives §26.1

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

### Applicability §26.3

Kootenai County is the recipient of Federal funds authorized by 49 U.S.C Chapter 53 Section.

### Definitions §26.5

Kootenai County will use terms in this program that have the meaning defined in Section 26.5.

### Nondiscrimination §26.7

The Kootenai County will not intentionally exclude any person from participation in, deny any person the benefit 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, Kootenai 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.

### Record Keeping Requirements §26.11(b)

Kootenai County will report participation to the appropriate USDOT Operating Administration(s) on a semi-annual basis. The report will reflect awards made to Primes and Subcontractors on USDOT-assisted contracts. The report will also reflect payments on completed USDOT-assisted contracts to Primes and Subcontractors.

### Bidders List §26.11(c)

Kootenai County will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder list approach to calculating overall goals. The DBE/non-DBE participation form will include the name, address, description of work performed, age of the firm, and annual gross receipts of the firm.

Kootenai County will collect this information by requiring prime bidders to include the DBE/non-DBE participation form in their bid packets.

## Federal Financial Assistance Agreement §26.13

Kootenai County has signed the following assurances, applicable to all USDOT-assisted contracts and their administration.

### *Assurance* §26.13(a)

Kootenai County 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. Kootenai County shall take necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. Kootenai County's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Kootenai County of its failure to carry out its approved program, the Department may impose sanction as provided for under 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.).

This language will appear in financial assistance agreements with sub-recipients.

### *Contract* §26.13(b)

Kootenai County will ensure that the following clause is included in every DOT-assisted contract and subcontract:

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.

### Administration Requirements §26.21

Since Kootenai County has received a grant of \$250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, the County will continue to carry out this program until all funds from DOT financial assistance have been expended. Kootenai County will provide to DOT updates representing significant changes in the program.

### Policy Statement §26.23

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

## DBE Liaison Officer (DBELO) §26.25

We have designated the following individual as our DBE Liaison Officer

Ms. Jody Bieze  
Director, Resource Management Office  
Kootenai County  
PO Box 9000  
Coeur d'Alene, Idaho 83816  
Phone: 208.446.1608  
e-Mail: jbieze@kcgov.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Kootenai County complies with all provisions of 49 CFR 26. The DBELO has direct, independent access to the Kootenai County Board of County Commissioners concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third-party contracts and purchase requisitions for compliance with this program.
3. Works with the appropriate individuals to set overall Annual Participation Goals (APGs).
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 Kootenai County's progress toward DBE goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises Kootenai County Board of County Commissioners on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Refers all DBE certifications/decertification to Idaho Transportation Department (which is responsible for Idaho's Unified Certification Program (UCP)) for determination pursuant to the criteria set by USDOT.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

## DBE Financial Institutions §26.27

It is the policy of Kootenai County to investigate services offered by the financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable effort to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions.

## Prompt Payment Mechanisms §26.29

Kootenai County has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to the prime contractor.

Kootenai County will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We 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.

Kootenai County will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by Kootenai County. When Kootenai County 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.

Kootenai County will provide appropriate means to enforce the requirements of this section. In the event the contractor is not compliant with prompt payment provisions, Kootenai County may impose such sanctions and penalties as it or DOT may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the contractor under the contract until the contractor complies.
2. Deduction from contract funds due or to become due the contractor.
3. Disqualification of the contractor as non-responsible.
4. Cancellation, termination or suspension of the contract in whole or in part.
5. Any other remedy as DOT deems appropriate.

Kootenai County will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Kootenai County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of Kootenai County. This clause applies to both DBE and non-DBE subcontractors.

Kootenai County has also established, as part of its DBE Program, the following mechanisms to ensure prompt payment:

1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

2. 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.
3. Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

#### Monitoring Payments to DBEs

Kootenai County will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Kootenai County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Kootenai County will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

#### Directory §26.31

Kootenai County uses the Idaho Transportation Department (ITD) DBE On-Demand that identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE and the most specific NAICS code available.

ITD's DBE directory on the Internet at <http://itd.dbesystem.com> or by contacting Ester Ceja, DBE Program Specialist, at 208.334.8152 or by e-mail at [ester.ceja@itd.idaho.gov](mailto:ester.ceja@itd.idaho.gov).

#### Overconcentration §26.33

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

#### Business Development Program §26.35

Kootenai County has not established a business development program.

#### Monitoring and Enforcement Mechanisms §26.37

Kootenai County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

Kootenai County will bring to the attention the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the U.S. Department of Transportation 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 disbarment or Program Fraud and Civil Penalties rules) provided in (§26.107).

Kootenai County will consider similar action under our own legal authorities, including responsibilities determinations in future contracts per local government code. In the event of non-compliance with the DBE regulation by a participant in our DBE Program, Kootenai County will first advise violators in writing that they will be removed from the Approved Bidders List if any non-compliance issues are not resolved within 30 days. At the end of the 30-day period, if non-compliance issues have not been resolved to the satisfaction of the DBELO, the violator will be removed from the Approved Bidders List. Kootenai County will also suspend any payment owed to the violator for work on any existing contracts until non-compliance issues are resolved to the satisfaction of the DBELO.

Kootenai County will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs. To which the work was committed.

Kootenai County will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by monitoring monthly pay requests for payments to DBEs. Kootenai County will also require all DBEs to certify that such payments were made.

Kootenai County will keep a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments.

#### Fostering Small Business Participation §26.39

Kootenai County has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking 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.

Kootenai County small business element is incorporated as Attachment 9 to this DBE Program. We will foster small business participation; doing so is a requirement of good faith implementation of the DBE program.

#### Set-Asides or Quotas §26.43

Kootenai County does not use set-asides or quotas in any way in the administration of its DBE program.

#### Overall Goals §26.45

Kootenai County will establish an overall DBE goal covering a three (3) year federal fiscal year period if Kootenai County anticipates awarding DOT/FTA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three (3) year goal period. In accordance with §26.45(f) Kootenai County will submit its overall goal by 1 August, every three (3) years.

The DBE goals will be established in accordance with the two-step process as specified in 49 CFR Part 26.45. If Kootenai County does not anticipate awarding DOT /FTA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three (3) year reporting period, Kootenai County will not develop an overall goal; however, this DBE Program will remain in effect and Kootenai County will seek to fulfill the objectives outlined in 49 CFR 26.1.

#### Failure to Meet Overall Goals §26.47

Kootenai County will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer its DBE Program in good faith to be considered to be in compliance with this part.

If Kootenai County awards and commitments shown on its Uniform Report of Awards at the end of any fiscal year are less than the overall goal applicable to that fiscal year, Kootenai County do the following in order to be regarded by the Department as implementing Kootenai County's DBE Program in good faith:

Analyze in detail the reasons for the difference between the overall goal and Kootenai County's award and commitments in that fiscal year;

Establish specific steps and milestones to correct the problems Kootenai County has identified in its analysis and to enable Kootenai County to meet fully its goal for the new fiscal year;

Kootenai County 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. Kootenai County will retain copy of analysis and corrective actions in records for a minimum of three (3) year, and will make it available to FTA, upon request.

#### Transit Vehicle Manufacturers Goals §26.49 (a)(d)

Kootenai County requires each transit vehicle manufacturer (TVM), as a condition of being authorized to submit a bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

#### Race-Neutral Participation §26.51

Kootenai County will use race-neutral means of facilitating DBE participation. Race-neutral means the Kootenai County 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 businesses, by means such as those provided under §26.39.

## Good Faith Efforts Procedure §26.53

### Demonstration of good faith efforts §26.53(a)(c)

The obligation of the bidder/proposer is to make good faith efforts in utilizing DBEs. The bidder/proposer can demonstrate that it has done so by meeting the goal at the time of bid or documenting good faith efforts. Example of good faith efforts are found in Appendix A to Part 26

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

The DBE Liaison Officer will ensure the “Disadvantaged Business Enterprise Utilization and Letter of Intent are complete and accurate and adequately documents the bidder/proposer’s good faith efforts before they commit to the performance of the contract.

### Information to be Submitted §26.53(b)

Kootenai County treats bidder/offers’ compliance with good faith efforts’ requirements as a matter of responsiveness.

1. The name and address of DBE firms that will participate in the contract;
2. 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; ;
3. The dollar amount of work to be performed by each participating DBE;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor’s commitment; and
6. If the contract goal is not met, provide evidence of good faith efforts. 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 is selected over a DBE for work on the contract.
7. If DBE documentation, as required by paragraph (b)(2) of this section, is not submitted with bidders/offerors IFB/RFP, the required documentation must be submitted no later than five (5) days after bid opening, . Failure to comply may subject the offer/bid to be deemed non-responsive.

### Administrative Reconsideration §26.53(d)

Within seven (7) days of being informed by the DBE Liaison Officer that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing for reconsideration to the Kootenai County Board of Commissioners. The Board of County Commissioners will not have played any role in the original determination that the bidder/proposer made in the documentation of sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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/proposer will have the opportunity to meet in person with the Board of County Commissioners to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

#### Good Faith Efforts DBE Replacement on a Contract §26.53(f)

Kootenai County 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. The County will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE inability or unwillingness to perform and provide reasonable documentation.

In this situation, Kootenai County will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, Kootenai County will issue an order stopping all or part of the payment/work until satisfactory action has been taken. If the contractor still fails to comply, Kootenai County may issue a termination for default proceeding.

#### Counting DBE Participation §26.55

Kootenai County will count DBE participation toward overall goals as provided in 49 CFR §26.55.

#### Certification Procedures §26.61 - §26.91)

The Idaho Transportation Department performs all DBE certification for Kootenai County and will make certification decisions based on the facts as a whole (§26 Subparts D and E and Appendix A to Part 26).

For information about the certification process or to apply for certification, firms should contact: Idaho Transportation Department, Ester Ceja, DBE Program Specialist, at 208.334.8152 or by e-mail at [ester.ceja@itd.idaho.gov](mailto:ester.ceja@itd.idaho.gov).

If, at any time, Kootenai County receives a complaint concerning DBE eligibility or has any reason to question a DBE's eligibility, notice shall be provided to Idaho Transportation Department.

Applicants denied certification or decertified by Idaho Transportation Department may apply again three months from the date of denial.

The decision for decertification will be determined by Idaho Transportation Department.

## Unified Certification Program §26.81

Kootenai County is a member of a Unified Certification Program (UCP) administered by Idaho Department of Transportation. The UPC will meet all requirements of this section.

## Information, Confidentiality, Cooperation and Intimidation or Retaliation §26.109

Kootenai County will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, Kootenai County will transmit this information to DOT in any certification appeal proceeding under §26.89 of this part 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 grounds 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).

Kootenai County, 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. Violation of this prohibition shall be deemed noncompliance with this part.

## ATTACHMENTS

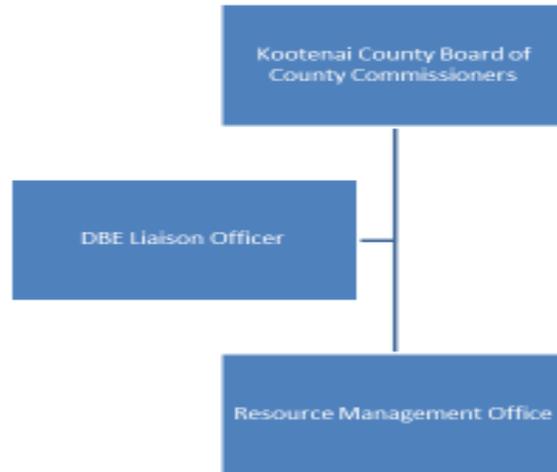
- ATTACHMENT 1: 49 CFR Part 26 [https://ecfr.io/Title-49/cfr26\\_main](https://ecfr.io/Title-49/cfr26_main)
- ATTACHMENT 2: Organizational Chart
- ATTACHMENT 3: Bidder's List Collection Form
- ATTACHMENT 4: DBE Directory <https://itd.dbesystem.com/?TN=itd>
- ATTACHMENT 5: Overall Goal Calculations
- ATTACHMENT 6: Demonstration Good Faith Efforts/Good Faith Effort Plan Forms 1 and 2
- ATTACHMENT 7: DBE Monitoring and Enforcement Mechanisms
- ATTACHMENT 8: State's UCP Agreement
- ATTACHMENT 9: Small Business Element Program

ATTACHMENT 1

49 CFR Part 26 [https://ecfr.io/Title-49/cfr26\\_main](https://ecfr.io/Title-49/cfr26_main)

## ATTACHEMENT 2

### DBE Liaison Officer



ATTACHMENT 3

Bidder List Form

Firm Name	Address/Phone	DBE/NON-DBE	Age of Firm	Annual Gross Receipt
			<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

DBE Directory <https://itd.dbesystem.com/?TN=itd>

ATTACHMENT 5  
Overall Goal Calculations  
**To Be Submitted Separately**

ATTACHMENT 6

Good Faith Efforts Form

Forms 1 and 2 will be provided as part of the solicitation documents.

**Form 1: Demonstration of Good Faith**

Disadvantaged Business Enterprise (DBE) Utilization

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

\_\_\_\_\_The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_The bidder/offeror, if unable to meet the DBE goal of \_\_\_\_, is committed to a minimum of \_\_\_\_% DBE utilization on this contract and will submit documentation demonstrating good faith efforts.

Name of bidder/offeror's Firm \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Print Name of above Signature Date

ATTACHMENT 6

Good Faith Efforts Form

Forms 1 and 2 will be provided as part of the solicitation documents.

**Form 2: Letter of Intent**

**Letter of Intent**

Name of Bidder/Offeror's Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Email Address \_\_\_\_\_

Name of DBE Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Email Address \_\_\_\_\_

Description of work to be performed by DBE Firm

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Bidder/Offeror is committed to utilizing the above-named DBE Firm for the work described above.  
The estimated dollar value of this work is \$ \_\_\_\_\_

**Affirmation**

The above-named DBE Firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Print Name of above Signature Date

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

**[A letter of intent must be submitted for each DBE subcontractor.]**

## ATTACHMENT 7

### DBE Monitoring and Enforcement Mechanisms

The Kootenai County Board of County Commissioners will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

The Kootenai County Board of County Commissioners will bring to the attention of the Idaho Transportation Department any false, fraudulent, or dishonest conduct in connection with the program, so that the U.S. Department of Transportation can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the Inspector General, action under suspension and disbarment or Program Fraud and Civil Penalties rules) provided in (§26.109).

The Kootenai County Board of County Commissioners will consider similar action under their own legal authorities, including responsibilities determinations in future contracts.

The Kootenai County Board of County Commissioners will also implement a monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by requiring the contractor to provide a DBE Participation Report and certified payroll with each invoice or request for payment submitted to the Kootenai County Board of County Commissioners for payment. Failure of the contractor to provide the DBE Participation Report may result in the invoice not being paid until the contractor has provided the report.

The Kootenai County Board of County Commissioners will include language within every contract that will require prime contractors, or their designee, to maintain records and documents of payments to DBEs for three years following the performance of the contract. The prime contractor will make available the records and documentation of payment for inspection upon request by any authorized representative of Kootenai County or the Idaho Transportation Department. This requirement also extends to any certified DBE sub-contractor.

The Kootenai County Board of County Commissioners will perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBE subcontractors equals the dollar amount stated in the schedule of DBE participation. A letter of DBE participation will be mailed to the firm identified by the prime contractor performing work on the contract. The firm shall be requested to return the letter acknowledging the work and payment amount submitted to Kootenai County from the prime contractor.

Each contractor will be required to provide a DBE Participation Report [See Attachment D] with each invoice or request for payment submitted to the Kootenai County Commissioners for payment. Failure of the contractor to provide the DBE Participation Report may result in the invoice not being paid until the contractor has provided the report.

Perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBE subcontractors equals the dollar amount stated in the schedule of DBE participation. A letter of DBE participation will be mailed to the firm identified by the prime contractor performing work on the contract. The firm shall be requested to return the letter acknowledging the work and payment amount submitted to Kootenai County from the prime contractor.



## ATTACHMENT 9

### **Small Business Element Program**

- A. Purpose and Objective of the Small Business Participation Plan
- B. Small Business Participation Plan (SBPP) Strategy
  - 1. Criteria to Set Small Business Race-Neutral Goal
  - 2. Race-Neutral Subcontracting Goal
  - 3. Consideration of Unbundling
- C. Definitions
- D. Verification Standards and Procedures
- E. Monitoring and Enforcement
- F. Supportive Services
- G. Implementation Plan and Timetable
- H. Assurances
- I. Principal Responsible Person-DBELO

## **Fostering Small Business Participation**

### **A Purpose and Objective**

This element will be included as an attachment to the DBE Program for Kootenai County, and is herein referenced as the Small Business Participation Plan (SBPP). This attachment calls for the inclusion of an element to:

“Structure contracting requirements to facilitate competition by Small Business Concerns (SBCs), taking all reasonable steps to eliminate obstacles to their participation.”

As the governing body Kootenai County, hereby sets forth its plan to implement these requirements for the Airport. The Airport’s SBPP is regarded as a substantial effort toward fulfilling the overall intent of 49 CFR Part 26.51, which is to meet the maximum feasible portion of its overall goal by using race-neutral means to obtain Small Business participation. Therefore, implementation of the Airport’s SBPP will be based on the standard of business size, without regard to race or gender of the business owner. This element also addresses the unnecessary and unjustified “bundling” of contract requirement which may preclude or inhibit small business participation in procurements, as either prime or subcontractors. Further, Kootenai County perceives the objectives of this section to be consistent with the Airport’s DBE Program Policy Statement, which says in part:

- “- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To help remove barriers to the participation of DBEs in DOT assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE program.”

Our policy statement and this Small Business Participation Plan are consistent with the Airport’s long history of creating and encouraging business opportunities at all levels.

### **B. Small Business Participation Plan (SBPP) Strategy**

Kootenai County intends to carry out the objectives of SBPP by employing the following strategy and supporting activities:

#### **1. Criteria to Set Small Business Race-Neutral Goal**

Kootenai County will initially establish an overall goal for Small Business participation by calculating the relative availability of SBCs in the Airport’s market area, expressed as a percentage. This figure will be calculated by dividing the total quantity of SBA-certified firms in the local market area by the total quantity of all firms. The quantity of SBA-certified firms will be derived from the Small Business Administration’s Dynamic Small Business Search website, using relevant NAICS project codes.

The market area used to establish the DBE goal will be used for the SBC goal. The quantity of all firms will be derived from the U.S. Census Bureau's Censtats database, using the same NAICS project codes and market area. For the initial goal, Kootenai County will use this relative availability value as the actual goal.

Since there is no accomplishment data available at this time as the SBPP is a new program, it is not possible to make adjustments to the relative availability based on previous participation. In the future, when there is a record of accomplishment data available, Kootenai County will establish goals for Small Business participation by averaging the relative availability with the median accomplishment data derived from historical accomplishments of the SBPP.

For future goal setting, the first step will follow the process established above for determining the relative availability of SBCs in the Airport's market area. The second step will involve the adjustment of the base figure percentage (calculated in Step 1) to reflect, as accurately as possible, the SBC participation the Airport would expect in the absence of discrimination.

The Airport will continue to review its historical SBC participation achievement in order to ensure the goal's reasonableness. By averaging the median historical SBC participation rate with the relative availability calculated in Step 1, an adjusted SBC goal can be calculated.

Kootenai County will include this goal setting process with the Airport's triennial DBE Goal Methodology publication and will notify the public with the same process used for the DBE Goals. This will provide for a consistent method of seeking public input into these programs.

Kootenai County overall SBC goal submission to DOT will be included with its DBE Goal Methodology submission and include a summary of information and comments received during this public participation process, including any responses received. The Airport will begin using the overall goal on October 1 of each year, unless it receives other instructions from DOT.

## **2. Establishment of a Race-Neutral "Subcontracting Goal"**

Kootenai County proposes, where feasible, on certain prime contracts that do not have a DBE contract goal, that prime contractors will be required to provide subcontracting opportunities to qualified Small Business Concerns (SBCs), as defined herein, and without regards to race or gender of the business owner. Verified business size and subcontracting opportunities will be the basis of this subcontracting goal.

The opportunities must be of a size that SBCs, including some which may also happen to be DBEs, can reasonably perform. Kootenai County will assess the feasibility for race-neutral subcontracting goals on projects. Kootenai County will assist the potential primes by reviewing the project(s), in advance of the solicitation and by suggesting potential subcontracting opportunities in the solicitation documents. This will help to establish a reasonable race-neutral subcontracting goal.

## **3. Consideration of "Unbundling" of Large Contracts**

Kootenai County has given consideration to "unbundling" as a small business strategy and believes that at this time, such a strategy will not be suitable for the Airport. Because of the limited number of contracts each year, the increased total number of bid solicitations with "unbundling" could significantly increase both administrative and project costs per bid. This will reduce the necessary "economy of scale" for smaller air carrier airports.

## **C. Definitions**

### **Small Business**

For purposes of this program element, which is part of our approved DBE program, “Small Business” shall have the same definition as “small business concerns” contained in 49 CFR 26.5:

“Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as 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).”

For additional clarification it is useful to include some excerpts from the SBA regulations, 13 CFR, 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and primarily operates within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor” and,

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more that 49 percent participation by foreign entities in the joint venture.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

It is understood that in the implementation of this element, all of the “Small Business Concerns” may not necessarily be DBE firms. However, small businesses which are also owned and controlled by individuals who meet the DBE standard will be encouraged to seek DBE certification.

## **D. Verification Standards and Procedures**

For purposes of this Small Business element, Kootenai County will require the following verification and/or certification:

Kootenai County will rely on the verification process of the Small Business Administration (SBA). Small Business Concerns must be certified by the SBA at time of response to a solicitation or a bid submittal, as evidence of the small business status, and must submit evidence of SBA 8(a) Certification.

Information regarding the process to become SBA certified can be found at the following website:

<https://www.sba.gov/offices/headquarters/obd/resources/4210>

## **E. Monitoring and Enforcement**

Only SBA-certified firms who participate as Small Business Concerns, pursuant to this program, will be counted towards SBC race-neutral participation of FTA-assisted contracts. To verify that work committed to SBC participation is actually performed by SBCs, Kootenai County will:

1. Require that all contractors provide documentation that any work that is performed in order to meet the SBPP goal is, in fact, performed by SBA-certified businesses;

2. Confirm that such entities are SBA-certified by checking the SBA's Dynamic Small Business Search website;
3. Require all prime contractors to submit progress records of payments made to subcontractor's that are SBCs, including change orders and new scope of work, on a monthly basis. These records will be verified by obtaining certified statements from SBC subcontractors. Kootenai County will maintain a running tally of actual payments made to SBC firms (attainments) and compare these attainments to the commitments made to the SBCs by the prime contractor.
4. Bring to the attention of the Department of Transportation 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 of Program Fraud and Civil Penalties rules).

#### **F. Supportive Services**

Although not a direct provider of supportive services, Kootenai County is aware of an important resource for small businesses in the general market area. Kootenai County will make a referral to the services provided by this entity and provide links to it on the Airport's web site.

#### **G. Implementation Plan**

1. Review all upcoming projects to determine which, if any, will be conducive for application of the SBPP strategy described in Section B, above, i.e., the use of a race-neutral subcontracting goal.
2. Review compliance, and legal input, the necessary revisions and modifications to bid solicitation language etc., prior to implementation.
3. Coordinate with other entities currently providing relevant supportive services and/or business development for referrals to their programs, appropriate for the Small Business Concerns which may contact Kootenai County to increase their competitive opportunities at the Airport.
4. The Airport, during the pre-implementation period, may also seek consultation with representatives of the small business community.

#### **H. Assurances**

Kootenai County agrees to the following assurances required by the Federal Aviation Administration:

1. Assurance that the program is authorized under state law;
2. Assurance that certified SBCs that meet the size criteria established under the program are presumptively eligible to participate in the Small Business Participation Program;
3. Assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. Assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;

5. Assurance that aggressive steps will be taken to encourage minority and women-owned firms that are eligible for SBC certification to become certified; and 6. Assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).

**I. Principal Responsible Person – DBELO**

The principle person responsible for overseeing and implementing the Airport's SBPP will be the currently designed Disadvantaged Business Enterprise Liaison Officer (DBELO).