

MUNICIPALITY OF ANCHORAGE
DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM
49 CFR 26

FOR

Projects assisted with funds from the federal Department of Transportation
(DOT) including
Federal Transit Administration (FTA)
Federal Aviation Administration (FAA)
Federal Highway Administration (FHWA)

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Disadvantaged Business Enterprises (DBE) Program
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Objectives and Policy Statement

The Municipality of Anchorage has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR 26. This program applies to all contracts funded wholly or in part with financial assistance from the federal DOT and its operating elements, the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA), and the Federal Highway Administration (FHWA). Additionally, this program complies with the requirements of Anchorage Municipal Code 7.60.

It is the policy of the Municipality of Anchorage to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Municipality's policy to:

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

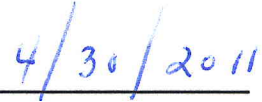
The Director, Office of Equal Opportunity, is delegated as the DBE Liaison Officer, who has overall responsibility for the program. The D/WBE Officer in the Office of Equal Opportunity has the primary responsibility for developing, coordinating, and implementing all aspects of the DBE program. The D/WBE Officer occupies a program manager's position in the Municipality of Anchorage and is under the direct supervision of the Director, Office of Equal Opportunity, who has direct, independent access to the Chief Executive Officer, the Mayor. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Municipality of Anchorage in its financial assistance agreements with the federal DOT.

Department directors shall cooperate fully with the D/WBE Officer to ensure the successful operation of the DBE Program, including providing information and reports relevant to the implementation of the program. The Municipality of Anchorage has disseminated this policy statement to the Anchorage Municipal Assembly and to all Municipal Departments. This

policy statement has also been distributed to the DBE and non-DBE business communities that perform work for Municipal DOT-assisted contracts.



Dan Sullivan, Mayor
Municipality of Anchorage



Date

Preliminary Information

The Municipality of Anchorage's DBE Program is written to conform to the minimum requirements of the federal Department of Transportation without exceeding those minimum requirements. Under a court order dated February 13, 1998 from the United States District Court for the District of Alaska, the Municipality is enjoined from exceeding the minimum DBE requirements of a federal funding agency. A copy of that court order is attached in this Preliminary Information as a part of this program. The Municipality has written this program in good faith to meet, but not exceed, the minimum DOT requirements.

As required by the DOT regulations at 49 CFR 26.21(b)(1), the Municipality of Anchorage is submitting this program to FTA, the concerned operating administration for the Municipality's DOT Program. The Municipality requests the earliest possible review and approval of this program, with the added request that FTA advise us where, if at all, we have exceeded the minimum DOT requirements as it is not the Municipality's intention to violate the court order.

I. Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5.

Specifically:

1. **Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR 121.
 - a. Except as otherwise provided in 13 CFR 121, concerns are affiliates of each other when, either directly or indirectly (i) one concern controls or has the power to control the other; or (ii) a third party or parties controls or has the power to control both; or (iii) an identity of interest between or among parties exists such that affiliation may be found.
 - b. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.
2. **Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more of Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native Village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
3. **Alaska Native Corporation** (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).
4. **Alaska Unified Certification Program** (AUCP) means a group of USDOT recipients that include state, local and rural agencies. Under mutual agreement these agencies have created a "one stop" program for certification of Disadvantaged Business Enterprises (DBEs). The administrative functions of this program are currently administered within the Alaska Department of Transportation and Public Facilities office.
5. **Compliance** means that a recipient has correctly implemented the requirements of this part.
6. **Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.
7. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

8. **Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
9. **Disadvantaged Business Enterprise or DBE** means a for-profit small business concern--
 - a. That is 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
 - b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
10. **DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
11. **DOT/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23,1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT'S Disadvantaged Business Enterprises (DBE) program for small and disadvantaged businesses
12. **Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
13. **Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
14. **Indian tribe means** any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.
15. **Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest
16. **Mayor means** the elected official, Mayor of Anchorage.
17. **Native Hawaiian** means any individual whose ancestors were natives prior to 1778 of the area which now comprises the State of Hawaii.
18. **Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization

chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

19. **Noncompliance** means that a recipient has not correctly implemented the requirements of this part.
20. **Operation Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
21. **Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
22. **Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, 1997 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the internet at <http://www.ntis.gov/product/naics.htm>.
23. **Primary recipient means** a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.
24. **Principal place of business means** the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records &e kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
25. **Program means** any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
26. **Race-conscious** measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.
27. **Race-neutral** measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
28. **Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
29. **Secretary means** the Secretary of Transportation or his/her designee.
30. **Set-aside means** a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
31. **Small Business Administration or SBA means** the United States Small Business Administration.
32. **SBA certified firm** refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

33. **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 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).
34. **Socially and economically disadvantaged individual means** any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
- a. Individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. **"Black Americans"**, which includes persons having origins in any of the Black racial groups of Africa;
 - ii. **"Hispanic Americans"**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. **"Native Americans"**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. **"Asian-Pacific Americans"**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. **"Subcontinent Asian Americans"**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. **Women**; and
 - vii. **Any additional groups** whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
35. **Tribally-owned concern means** any concern at least 51 percent owned by an Indian tribe as defined in this section.
36. **You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'you must do XYZ' means that recipients must do XYZ).

II. **Nondiscrimination**

- A. In accordance with the requirements at 49 CFR 26.7, the Municipality of Anchorage will not 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 26 on the basis of

race, color, sex, or national origin.

- B. In administering its DBE program, the Municipality of Anchorage 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.

III. DBE Program Updates

In accordance with 49 CFR 26.21(c), the Municipality of Anchorage will continue to carry out this program until all funds from DOT financial assistance have been expended. The Municipality will provide to DOT written updates to show any significant changes in the program. 49 CFR 21 (b)(2). The Municipality will assume that written program updates which have been provided to DOT have been approved by DOT unless DOT specifically disapproves them in writing to the Municipality.

IV. Quotas

In accordance with 49 CFR 26.43, the Municipality of Anchorage does not use quotas in any way in the administration of its DBE Program. The Municipality does not set aside contracts for DBEs on DOT-assisted contracts subject to 49 CFR 26, or on any other contracts.

V. DBE Liaison Officer and D/WBE Officer

- A. In accordance with the requirements of 49 CFR 26.25, the Municipality of Anchorage has designated as DBE Liaison Officer Marilyn Stewart - Richardson, Director, Office of Equal Opportunity, Municipality of Anchorage, P. O.Box 196650, Anchorage, AK 99519, telephone (907) 343-4890, e-mail address Stewart-Richardsonm@muni.org. The DBE Liaison Officer has overall responsibility for the Municipality's DBE Program.
- B. The D/WBE Officer, who is under the direct supervision of the Director, Office of Equal Opportunity, occupies a program manager's position in the Office of Equal Opportunity, is Karen Bretz, D/WBE Officer, Office of Equal Opportunity, Municipality of Anchorage, P. O. Box 196650, Anchorage, AK 99519, telephone (907) 343-4897, e-mail address BretzKE@muni.org The D/WBE Officer has the primary responsibility for developing, coordinating, and implementing all aspects of the DBE program and ensuring that the Municipality of Anchorage complies with all provisions of 49 CFR 26 and of AMC 7.60.
- C. Marilyn Stewart-Richardson, Director, Office of Equal Opportunity has direct and independent access to the CEO, Mayor Dan Sullivan. An organization chart displaying the DBE Liaison Officer's and the D/WBE Officer's positions in the organization is attached to this document.

- D. The DBE Liaison Officer has overall responsibility for the DBE program. His/her duties and responsibilities in the DBE Program include:
1. Directly supervising the DBE Officer.
 2. Recommending to upper management policies and procedures regarding the DBE Program.
 3. Advising the Mayor, the municipal assembly, and other top management on DBE program matters and achievement.
 4. Submitting to the Mayor, periodically and/or on request, a full report of activities relative to the Municipal DBE Policy and Program and, when appropriate, submitting to the Mayor recommendations for legislation or other action deemed desirable to promote the DBE program.
- E. The D/WBE Officer is responsible day-to-day for developing, implementing and monitoring, and revising the DBE program, in coordination with other appropriate officials. His/her duties and responsibilities in the DBE Program include:
1. Interpreting federal, state and local laws and regulations to make policy recommendations to the DBE Liaison Officer and the Mayor.
 2. Coordinating with municipal departments the identification of the work, goods, and services needed by the Municipality and its contractors for DBE utilization efforts.
 3. Developing appropriate goals for DBE utilization on overall grants and/or on an individual project basis.
 4. Reviewing contractors' planned DBE utilization to meet goals and/or good faith efforts and makes appropriate recommendations prior to award of contract; monitors actual DBE utilization during the work of the project; assures that contractors and the Municipality remain in compliance with DBE program requirements.
 5. Acting as liaison for the Municipality in the development and the implementation of the Uniform Certification Program in Alaska.
 6. Advising in, or makes appropriate referrals to, securing management and technical assistance for the establishment, expansion, and overall development of DBEs.
 7. Maintaining accurate and up-to-date records demonstrating DBE program efforts and accomplishments; prepares reports as required to DOT funding agencies and as requested by municipal management.
 8. Planning and participating in informational sessions, training seminars and workshops for the purpose of informing potential bidders, municipal personnel, and other interested parties of the DBE program and of procurement and contracting opportunities.
 9. Coordinating with community resources available within the Municipality, including business and trade associations, professional organizations, educational institutions, and other groups to identify and help resolve concerns of the DBE community and to present information about the DBE

- program, its requirements and procedures.
10. Establishing Municipality of Anchorage's annual overall DBE goal on federally funded projects.
 11. Participating as needed on bid and proposal review panels and at pre-bid and pre-construction conference
 12. Performing other duties as assigned and as required to implement and monitor the DBE Program.

VI. Federal Financial Assistance Agreement Assurance

- A. The financial assistance agreements the Municipality of Anchorage signs with a DOT operating administration (or another primary recipient) includes the following assurance: The Municipality of Anchorage 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 26. The recipient shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE program, as required by 49 CFR 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 Municipality of its failure to carry out its approved program, the Department may impose sanctions 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 US .C. 3801 et seq.
- B. Each contract the Municipality signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurances in compliance with 49 CFR 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 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 Municipality deems appropriate.

VII. DBE Financial Institutions

In compliance with 49 CFR 26.27, it is the policy of the Municipality of Anchorage 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 Municipality has informally

canvassed the community to identify such institutions. To date, we have identified no such institutions.

VIII. Directory

- A. As required by 49 CFR 26.8 1(a), the Municipality participates in the Alaska Unified Certification Program (AUCP). The AUCP maintains a directory identifying all firms certified by the AUCP as eligible to participate as DBEs in the DBE Program. The directory lists for each firm the firm's name, address, phone number, date of next required certification review, and the type of work the firm has been certified to perform for DBE credit on municipal contracts. The directory is revised weekly.
- B. The directory is available to any interested party at the AUCP Office, Alaska Department of Transportation & Public Facilities, Civil Rights Office, and 2200 E. 42nd Avenue, Anchorage, AK or via mail at P.O. Box 196900, Anchorage, AK 99519. AUCP's telephone number is (907) 269-0853.
- C. The AUCP will, upon request, mail the most current hard-copy of the directory to any interested parties. The directory can also be accessed through the ADOT&PF Home Page at <http://www.dot.state.ak.us>.

IX. Overconcentration (49 CFR 26.33)

No area of overconcentration has been identified by the Municipality.

X. Business Development Program (49 CFR 26.35)

The Municipality has not elected to have a business development or mentor-protégé program.

XI. Required Contract Clauses

- A. In compliance with 49 CFR 26.13(a) and (b), the Municipality will include the specific language cited above in VI. Federal Financial Assistance Agreement Assurance of this program in applicable agreements with DOT operating administrations, other primary recipients, and DOT-assisted contracts with contractors and subcontracts.
- B. In compliance with 49 CFR 26.29, the Municipality has included in its *DBE Program Specifications for Municipal Contracts for Projects Funded Wholly or in Part by Federal DOT* the following language regarding prompt payment: "This contract is funded wholly or in part, with federal DOT money. In accordance with the requirement at 49 CFR 26.29, the Contractor is required to pay all subcontractors within **30** calendar days after the Contractor receives a payment

from the Municipality. Additionally, if retainage is withheld from any subcontractor payments, the Contractor shall return the retainage within **30** calendar days after the subcontractor's work has been satisfactorily completed. Failure of the Contractor to make payments within the time frame specified above may cause future requests for payment by the Contractor to be accompanied by signed statements from all subcontractors stating they have been paid for satisfactory work previously performed prior to processing the payment request.

XII. Monitoring and Enforcement Mechanisms

- A. In compliance with 49 CFR 26.37(a), the Municipality has implemented appropriate mechanisms to ensure compliance with monitoring and enforcement required of DOT financial assistance recipients. Specifically,
1. All solicitations for projects funded wholly or in part with federal DOT assistance contain the *DBE Program Specifications for Municipal Contracts for Projects Funded Wholly or in Part by Federal DOT*. See Attachment B.
 2. These specifications state on page 1, Part I: Applications that the project is subject to Anchorage Municipal Code Chapter 7.6 and 49 CFR 26 and that the requirements are mandatory. Bidders or proposers who fail to meet DBE goals, or fail to demonstrate that specified affirmative action steps were taken to try to meet the goal, will not be awarded the contract. A bidder or proposer who is not in compliance with the requirements of the applicable regulations or these specifications will not be awarded this contract. Noncompliance after award of contract constitutes a breach of the contract and may result in termination of the contract or other appropriate remedy for such breach. Part VII of this specification requires the prime contractor to file DBE utilization reports every 30 days or with each request for progress payment. This part also contains a provision for removing or substituting for a DBE after contract award. The specification also provides that the D/WBE Officer or her designee may visit the job site for verification of compliance.
 3. The local law applicable to the DBE program (AMC 7.60) reiterates these same requirements. See Attachment C.
- B. In accordance with 49 CFR 26.37(b), the Municipality has implemented a monitoring and enforcement mechanism to verify that the work committed to DBEs prior to contract award is actually performed by the DBEs. Specifically:
1. The DBE Program Specification for Municipal Contracts for projects funded wholly or in part by federal DOT requires that within three municipal working days after bid opening, the apparently successful bidder must file the Form

10-030, which lists the DBEs who will be utilized on the project, the work to be performed by each, and the total amount of the subcontract with each. This form contains the following statement: "For each DBE listed above, you must provide with this form written confirmation from the DBE that it is participating in the contract as listed above."

2. Once work on the contract has begun, the prime contractor is required to file a DBE utilization report every 30 days or with each request for progress payment. This report shows, for each DBE, the contract amount, the amount paid the DBE this report, and the total amount paid the DBE to date. This form contains the following statement: "For monitoring purposes, please attach a copy of your check to the DBE subcontractor for payment(s) made this reporting period."

XIII. Overall Goals

- A. In accordance with 49 CFR 26.45, the Municipality has developed goals for DBE participation on contracts funded wholly or in part with federal DOT monies. These goals are established in two parts: (1) as overall goals on grants, and (2) as goals on the individual projects within the grants as these go out for bids or proposals. The individual project goals will vary from project to project as appropriate to ensure the result that the overall goal for the grant will be met.
- B. The Municipality's overall goal for FY 2010 is **5%** of the federal financial assistance the Municipality will expend in DOT-assisted contracts, exclusive of any Federal Transit Administration funds which are used to purchase transit vehicles.
- C. This overall goal will be reviewed and adjusted, if necessary, on an annual basis.

XIV. Method

- A. Overall Goals Development for DOT-Assisted Projects for FY 2010
 1. As required by 49 CFR 26.45, the Municipality of Anchorage's DBE Program has established goals for DBE Participation on contracts funded wholly or in part with federal DOT monies. These goals are established in two parts: (1) as overall goals on DOT grants awarded and (2) as goals on the individual projects within a DOT grant as they go out for bids or proposals. The individual project goals vary from project to project as appropriate to ensure the result that the overall goal for the grant is met.
 2. The Municipality's overall goal for FY 2009 was 5% of the federal financial assistance the Municipality would expend in DOT-assisted contracts. The 5% goal was to be achieved exclusively through race-neutral methods. The

Municipality reviewed this overall goal to see whether an adjustment was necessary for FY 2010.

B. Method of Reviewing and Calculating Goal for FY 2010

We used the method described below to review and calculate goals for FY 2010:

1. Step 1, as described at 49 CFR 26.45(a), is to determine the relative availability of DBEs in the geographic area. For this step we accessed the current U.S. Census Bureau data and used the date previously extrapolated from that data base for our FY 2009 goals. We determined that more than 75% of the firms performing on Municipal projects funded through DOT sources are based and spend their contracting dollars within the Municipality of Anchorage area. Specifically, using the NAICS categories (23 – Construction and 5412 – Architecture/Engineering and Associated Services) in which DBEs and non-DBEs typically perform on Municipal DOT-assisted contracting opportunities we found 3058 firms. We then reviewed the current Alaska Unified Certification Program DOT&PF DBE Directory, which is used by the Municipality under the Unified Certification Program Agreement. The list showed 207 DBE firms, however only 166 DBE firms (minus airport concessionaires, which do not provide services for the Municipality Of Anchorage) have stated that they are willing to work in the Central Region. The 166 ready and available DBE companies divided by the 3058 ready and available firms in the census showed an availability of 5% DBE firms.

The Municipality of Anchorage disparity study was completed in June 2008. According to the data presented in the study, there is a significant contracting disparity present. As a result, the disparity study recommends a DBE goal of at least 14%. However, a review of DBE certification numbers over the last five years shows a consistent, significant decrease (39%) in the number of certified DBEs ready and willing to work in the Anchorage region. In light of the decrease in the last five years and the statistical analysis discussed in the preceding paragraph, the Municipality of Anchorage set a DBE goal of 5% with plans to increase this number by 1% annually until the 14% recommendation by the disparity study is achieved. Implementing a 5% goal increases the likelihood of the Municipality achieving it, in light of the continued decrease in the number of certified DBEs ready and available to perform work within the Central Region.

2. Step 2 of the process, as described in 49 CFR 26.45(d), is to adjust the base figure. Due to the discrimination noted in the disparity study, it appears that 10% DBE participation overall would represent a fair share. However, anecdotal evidence included in the disparity study addresses the limited number of certified DBE firms present within the Municipality of Anchorage.

While not addressed specifically within the disparity study; it remains likely that there are many potential DBE-certifiable firms, which have not come forward for one reason or another to be certified to participate in the program. The most common reason given by these businesses for not becoming a certified DBE firm is the amount of time and effort a firm must spend completing the required paperwork in order to become certified. The Alaska Department of Transportation, Civil Rights Office manages the certification paperwork content; however the Municipality Of Anchorage continues to work with them to create something more user-friendly. It appears that there is still an untapped pool of potentially qualified businesses which are not participating in the DBE program. The Municipality continues to partner with Alaska DOT, Alaska Railroad, Alyeska Pipeline, SCORE, and SBA to provide DBE certification workshops and networking opportunities in the Anchorage and Mat-Su areas.

The Municipality calculated the current capacity of DBEs to perform work in DOT-assisted contracts by reviewing the utilization on federal DOT-assisted projects during prior years:

	2002	2003	2004	2005	2006	2007	2008	2009
FAA:	11.0%	11.0%	11.0%	11.0%	11.0% ¹	4.0%	5.0%	10.0%
FTA:	11.0%	11.0%	11.0%	11.0%	11.0%	4.0%	5.0%	5.0%

We considered the DOT-funded projects under their individual agencies to be similar enough in nature to take a median of past participation, which for FAA is 9.56% and for FTA funded projects is 3.04%.

Therefore, using the availability of 5% (which the Municipality thinks under represents the percentage of DBEs ready and available to work on DOT-assisted contracts), the 14% DBE goal recommended by the disparity study, and DBE utilization on prior year projects; the Municipality elected to implement a DBE goal of 5% for both FAA and FTA-assisted projects for FY 2010 (exclusive of FTA funds to be used for the purchase of transit vehicles).

¹ In April 2006 the Municipality began to implement an entirely race-neutral DBE program in response to Western States Paving Co. v. United States and Washington State DOT, 407 F3d. 983 (9th Cir. 2005). The Municipality’s disparity study was completed in June 2008, and race-conscious goals were reestablished in FY 2010.

C. Breakout of Estimated Race-Neutral and Race-Conscious Participation

1. As required by 49 CFR 26.51(b), the Municipality will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Municipality will continue to use the following race-neutral means to increase DBE participation:
 - a. Include DBE and non-DBE business on mailing lists for solicitations for quotes ITBs and RFPs;
 - b. Award contracts based on low bid, without consideration for the DBE or non-DBE status of the low bidder;
 - c. Continue to encourage prime contractors to award subcontracts on a strict low bid system;
 - d. Whenever practical, break large contracts into smaller units to make them more accessible to small businesses;
 - e. Continue to encourage prime contractors to assist small subcontractors with bonding requirements or to include them under the prime’s bonding; and
 - f. Municipal staff will continue to participate in procurement workshops to provide information about the bidding process, how to find projects on which to bid, and other aspects of the procurement process to encourage both DBE and non-DBE small businesses to bid on Municipal projects

2. As required by 49 CFR 26.51(c), the Municipality estimates that in meeting the overall goal of 5%, it will obtain the 5% from 3.5% race conscious participation and the remaining 1.5% through race-neutral participation.

The information in the table below is based on data from prior years’ utilization on FAA and FTA assisted projects. R/C stands for race-conscious goal, and R/N stands for race-neutral goal.

	2002	2003	2004	2005	2006	2007	2008	2009
FAA R/C:	7.0%	7.0%	7.0%	7.0%	7.0% ²	0.0%	0.0%	0.0%
FAA R/N:	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	5.0%	10.0%
FTA R/C:	7.0%	7.0%	7.0%	7.0%	7.0%	0.0%	0.0%	0.0%
FTA R/N:	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	5.0%	5.0%

3. The Municipality will adjust the estimated breakout of race-neutral and race-

² In April 2006 the Municipality began to implement an entirely race-neutral DBE program in response to Western States Paving Co. v. United States and Washington State DOT, 407 F3d. 983 (9th Cir. 2005). The Municipality’s disparity study was completed in June 2008, and race-conscious goals were reestablished in FY 2010.

conscious participation as needed to reflect actual DBE participation as required at 49 CFR 26.51(f) and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following:

- a. DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- b. DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- c. DBE participation on a prime contract exceeding a contract goal; and
- d. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

D. Public Notification and Comments Regarding FY2010 Goals

The Municipality of Anchorage partnered with the Alaska Railroad Corporation for all public notification and our public participation meeting for all public participation efforts, input and responses.

E. Transit Vehicle Manufacturers

In compliance with 49 CFR 26.49, the Municipality will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

F. Process

The Municipality will submit its overall goal to DOT on August 1, every three years after 2010. 49 CFR 26.45(f)(1)

1. As required by 49 CFR 26.45(g)(1), before establishing the overall goal, the Municipality will consult with various sources, such as the U.S. Census data for Anchorage, U.S. Small Business Administration, contractor, minority, women, and other community groups to obtain information concerning the availability of DBE and non-DBE businesses, the effects of discrimination on opportunities for DBEs, and the Municipality's efforts to establish a level playing field for the participation of DBEs.
2. As required by 49 CFR 26.45(g)(2), following this consultation, the Municipality will publish a notice in the local news media of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Office of Equal Opportunity for 30 days following the date of the notice, and informing the public that the Municipality and DOT will accept comments on the goals for 45 days from the date of the notice. After 2012, the Municipality will issue this notice by June

1st of each year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

3. The overall goal submission to DOT will include a summary of information and comments received during the public participation process and the responses given.
4. The Municipality will begin using its overall goal on October **1st** of each year unless it has received other instructions in writing from DOT.

G. Contract Goals (49 CFR 26.51)

1. The Municipality will use contract goals to meet any portion of the overall goal which the Municipality does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, goals will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.
2. The Municipality will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The Municipality might not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract.
3. The Municipality will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

H. Good Faith Efforts (49 CFR 26.53)

1. The Municipality treats bidders' and proposers' compliance with good faith efforts requirements as a matter of responsibility.
2. Each solicitation for which a contract goal has been established will require the apparently successful bidder to submit the following information by 5:00 p.m. three municipal working days after bid opening, or, for proposers, prior to completion of contract negotiations:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform;
 - c. The dollar amount of each DBE firm's participation;
 - d. Written and signed documentation of commitment to use a DBE
 - e. Subcontractor whose participation it submits to meet a contract goal; and
 - f. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

3. If the bidder or proposer's listing of DBEs to be used to meet the goal does not show sufficient participation to meet the goal, the bidder or proposer must provide, within three Municipal working days after receipt of notice from the D/WBE Officer, documented evidence of the good faith efforts made to have reached the goal.
4. The requirements of this section apply where the apparently successful bidder or proposer is itself a DBE. In determining whether a DBE bidder or proposer for a prime contract has met the contract goal, the Municipality counts the work the DBE has committed to performing with its own forces, in the categories for which the DBE is certified to perform for DBE credit on municipal projects, as well as the work that it has committed to be performed by DBE subcontractors and suppliers. 49 CFR 26.53(g).

I. Demonstration of Good Faith Efforts

1. As required by 49 CFR 26.53, the bidder or proposer is obligated to make good faith efforts to meet the DBE utilization goal. This can be demonstrated either by (a) meeting the contract goal as required in a timely manner, or (b) by documenting that adequate good faith efforts were made to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.
2. In accordance with 49 CFR 26, Appendix A, examples of good faith efforts are:
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder or proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder or proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. (1) Negotiating in good faith with interested DBEs. It is the bidder's or proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or

material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder or proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's or proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder or proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-selection of bids in the contractor's efforts to meet the project goal.
 - f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Municipality or contractor.
 - g. Making efforts to assist interested DBEs in obtaining the necessary equipment, supplies, materials, or related assistance or services.
 - h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
3. In determining whether a bidder or proposer has made good faith efforts, the Municipality may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder or proposer fails to meet the contract goal, but others meet it, the Municipality may reasonably raise the question of whether, with additional reasonable

efforts, the apparent successful bidder or proposer could have met the goal. If the apparent successful bidder or proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the Municipality may view this, in conjunction with other factors, as evidence of the apparent successful bidder or proposer having made good faith efforts.

4. Karen Bretz, DBE Officer, and/or Marilyn Stewart-Richardson, Director, Office of Equal Opportunity, are responsible for determining whether a bidder or proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. When a determination is made that the bidder or proposer has not documented sufficient good faith efforts to be considered responsible, the DBE Officer, through the Director, Office of Equal Opportunity, recommends to the Mayor (at this time Dan Sullivan) via memorandum that the bidder or proposer not be awarded the contract. The Mayor has the discretion of accepting, rejecting, or modifying the D/WBE Officer's recommendation. By local code (AMC 7.60) the Mayor has 15 days in which to make his/her decision.

J. Administrative Reconsideration

1. Within seven (7) days of being informed by the Municipality's Purchasing Officer (Fred Kaltenbach, Purchasing Officer, Municipality of Anchorage, P. O. Box 196650, Anchorage, AK 99519, (907) 343-4590) that the bidder or proposer is not responsible because he or she has not documented sufficient good faith efforts, a bidder or proposer may request administrative reconsideration in accordance with local code AMC 7.60.100 *Appeals*. The Municipal Bid Review Board will be convened to provide a hearing. This board, or individual members of the board, is not involved in any way in the original determination regarding the bidder's or proposer's good faith efforts.
2. As part of this reconsideration, the bidder or proposer will have the opportunity to meet in person with the bid review board, along with his or her legal counsel and other persons he or she might wish to include, and at that time to provide written documentation and/or verbal argument concerning the issue of whether he or she met the goal or made adequate good faith efforts to do so. The information or argument of the bidder or proposer must be limited to that which was previously provided for consideration by the D/WBE Officer in making the determination of inadequate good faith efforts. The D/WBE Officer, the Director, Office of Equal Opportunity, and their legal counsel are also present at the hearing to present the reason(s) for the finding regarding good faith efforts. The bid review board may question any of the parties in an effort to gain a clear understanding of the information presented. The bid review board typically conducts its discussion and reaches a finding after the testimony has been given, with all parties still present, and before the hearing is concluded.

3. Written confirmation of the decision is sent to the bidder or proposer by the Purchasing Officer as soon as practical after the hearing. The determination reached by the bid review board is administratively final.

K. Good Faith Efforts When a DBE is Replaced on a Contract (49 CFR 26.53(f))

1. If a successful bidder or proposer for a contract which contains a DBE participation goal at any time after award of contract proposes to remove or make substitutions for DBE subcontractors or joint venture partners under the contract, a written notice of such removal or substitution shall be submitted to the D/WBE Officer **prior to commencement of performance of the affected work**, with the names, addresses and phone numbers of the subcontractors or joint venture partners to be removed or substituted for and an explanation of the reasons for the removal or substitution. Where such removal or replacement would cause the DBE percentage to fall below the goal set for the project, the successful bidder or proposer shall make good faith efforts to utilize another DBE subcontractor as the replacement. These efforts shall be documented and the circumstances fully explained in writing, and approval obtained from the D/WBE Officer prior to such replacement. The D/WBE Officer shall, within seven days of receipt of such notice, approve said notice or removal and substitution where it is shown that the requested action is for good cause and not for discriminatory purposes.
2. This language is included in the *DBE Program Specifications for Municipal Contracts or projects funded wholly or in part by federal DOT*, which become a part of the contract for the project. The specifications also state that "Failure of the contractor or its subcontractors to carry out the requirements set forth above shall constitute a breach of contract and after the notification of the Municipality, may result in termination of the contract by the Municipality or such remedy as the Municipality deems appropriate."

L. Counting DBE Participation

The Municipality will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. When a DBE participates in a contract, only the value of the work actually performed by the DBE will count toward DBE goals. Specifically:

1. Count the entire amount of the portion of a construction contract that is performed by the DBEs own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
2. Count the entire amount of fees or commissions charged by a DBE firm for

providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
5. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
6. Count materials or supplies obtained from a DBE manufacturer at 100% of the cost toward DBE goals.
7. Count materials or supplies obtained from a DBE regular dealer at 60% of the cost toward DBE goals.
8. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward the DBE goals.
9. For trucking, the DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services

the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

10. The DBE must perform work on the project in the category(s) of work for which certification is issued. While the DBE may perform work in other categories for which certification is not issued, only that work performed in the certified categories will count toward the DBE goal on the project.
11. If a firm is not currently certified as a DBE in accordance with this regulation at the time of the execution of the contract, the firm's participation toward any goals will not count.

M. Unified Certification Program

In accordance with 49 CFR 26.81(a), the Municipality participates in the Alaska Unified Certification Program (AUCP) which is maintained by the Alaska Department of Transportation and Public Facilities (ADOT&PF).

1. Parties interested in applying for certification as DBEs in the Municipality's DBE program or as joint ventures on a Municipality project must contact the AUCP for the appropriate forms and procedures.
2. The AUCP can be reached at State of Alaska DOT&PF, Civil Rights Office, 2200 E. 42nd Avenue, Anchorage, AK. It can also be reached via mail at P. O. Box 196900, Anchorage, AK 99510 or at telephone number (907) 269-0853.
3. The AUCP is responsible for all certifications, re-certifications, de-certifications, and appeals to certification decisions for all federal DOT financial aid recipients in Alaska.
4. A copy of the agreement with the Municipality as a participant in the AUCP is attached. (See Attachment D.)

XV. Information Collection and Reporting

A. Bidders List

1. In accordance with 49 CFR 26.11, the Municipality will make a good faith effort to 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, as stated by DOT, is to allow use of the bidder's list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age of firm, and annual gross receipts of firms.
3. This information will be collected through a form which will be included in the DBE specification for DOT-assisted projects. (See Attachment E) The successful bidder or proposer will be requested to complete the form as a part of the post-bid DBE paperwork requirement. The unsuccessful bidders or proposers, as determined at bid or proposal opening, are notified in the specification that they will be contacted and asked to provide the information. The D/WBE Officer will contact the unsuccessful bidders or proposers via mail and request the information.

B. Monitoring Payments to DBEs

1. To meet the requirements of 49 CFR 26.37(b), the Municipality through its DBE specification for contracts, will require prime contractors to report every 30 days, or with each request for progress payment, the utilization status of every DBE used to meet the goal and approved by the Municipality prior to award of contract. This report, which will be filed on our Form 10-031, includes a list of DBEs used to meet the goal, contract amount with each DBE, amount actually paid to each DBE during the reporting period, and total amount paid to date to each DBE. The report form also requires a copy of the contractor's check to the DBE for any payment(s) made during the reporting period. The form also notes that the contractor is not credited with DBE utilization until proof of payment has been received, and then only in the amount of the documented payment.
2. The Municipality 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.

C. Reporting to DOT

In accordance with 49 CFR 26.11, the Municipality will report DBE participation to federal DOT as directed by DOT'S operating administrations. Specifically,

1. For FAA-assisted projects, the Municipality will submit annually DOT Form 4630, as modified for use by FAA recipients, or will utilize the new DBE Office Online Reporting System, otherwise known as "DOORS."
2. For FTA-assisted projects, the Municipality will submit quarterly reports on DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.
3. For FHWA-assisted projects through direct grants to the Municipality, the Municipality will submit quarterly reports on DBE participation on DOT Form 4630.

D. Confidentiality

1. As required by 49 CFR 26.109(a), the Municipality will safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal and law. The Municipality complies with applicable provisions of the Federal Freedom of Information and Privacy Acts [5 U.S.C. 552 and 552A]. We also comply with the requirements of the local *Access to Public Records* law, AMC 3.90 which, while allowing disclosure of most public records, exempts files which reveal the financial status of any specific individual. [AMC 3.90.0401]
2. The Municipality, as required by 49 CFR 26.109(b), will keep confidential the identity of complainants at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving confidentiality. Complainants will be advised that, in some circumstances, failure to waive the privilege of confidentiality may result in the closure of the investigation or dismissal of the proceeding or hearing.

XVI. Attachments