

STATEWIDE AIRPORT SPECIAL PROVISION ASP-1
ADDITIONS TO AIRPORT GENERAL CONTRACT PROVISIONS FOR BUILDING CONSTRUCTION
Instructions to the designer on how to modify the SSAC are shown in underlined italics.

10-01 GENERAL.

Delete the third paragraph and replace with: These Specifications incorporate by reference a number of publications including regulations, design and construction standards, or recommendations published by outside sources. Cited publications refer to the most recent issue, including interim publications, in effect on the date of the Invitation to Bid, unless specified by year or date.

10-03 DEFINITIONS.

Add the following new definitions:

BUILDING BOUNDARY LINE. A line located five feet horizontal distance outside the exterior edge of the foundation of any building included in the work. Work within the building boundary line and above the footing elevation, shall be constructed and inspected using the building technical specifications, and paid for according to a schedule of values for that building.

BUILDING TECHNICAL SPECIFICATIONS. The portions of the contract that relate to the construction of any building as part of the work, including, but not limited to, the architectural, structural, mechanical, and electrical features of such work, and earthwork, located within the building boundary line and above the footing elevation.

DEFECTIVE. Work that is unsatisfactory, faulty, deficient, or does not conform with regulatory requirements or the Contract documents.

REGULATORY REQUIREMENTS. Laws, rules, regulations, ordinances, codes, or orders, including requirements of permits, issued by a governmental entity with lawful authority over a matter.

SCHEDULE OF VALUES. A document submitted by the Contractor to the Engineer for approval. The approved document establishes the values for separate work items that comprise the total Contract Price for a building included in the work.

Delete the text of the following existing definitions and replace with:

PLANS. The Department's contract drawings, profiles, typical cross sections, and supplemental drawings or reproductions showing the location, character, dimensions, and details of the work. There may be separate drawings for work inside and outside of the building boundary line.

SPECIFICATIONS. General term applied to all Contract terms, conditions, directions, provisions, and requirements, which include, but are not limited to, written technical descriptions of materials, equipment, construction systems, standards and workmanship, and administrative and procedural details related to the work.

STANDARD SPECIFICATIONS. A book or electronic file of specifications approved by the Department for general application and repetitive use. Standard specifications may include General Contract Provisions, and separate specifications for work inside and outside the building boundary line.

SUBSTANTIAL COMPLETION. The point at which the project (1) can be safely and effectively used by the public without further delays, disruption, or other impediments; (2) pavement structure, shoulder, drainage, sidewalk, permanent signing and markings, guardrail and other traffic barrier, fencing, safety appurtenance, structures, utilities, lighting, bridge deck and parapet work, and guidance systems for aircraft are complete; and (3) the Engineer has issued a letter of substantial completion.

For projects built in phases, the work is substantially complete when it is ready for the subsequent project.

Notwithstanding the forgoing paragraphs, for a building included in the work substantial completion is the point at which the building (1) can be safely and effectively used by the public or occupied for the purpose that it was intended, without further delays, disruption, or other impediments; (2) all agencies that issue approvals before occupancy have approved the building for occupancy; and (3) the Engineer has issued a letter of substantial completion.

The terms “substantially complete” and “substantially completed” as applied to the work mean substantial completion.

30-06 INSURANCE REQUIREMENTS.

Add the following insurance coverage to the third paragraph:

e. Builder’s Risk Insurance: coverage on an “All Risk” completed value basis for any building that is part of the work, including “quake and flood”, and all materials, supplies, and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the project site, in transit from port of arrival to project site and while temporarily located away from the project site.

40-01 INTENT OF THE CONTRACT.

Delete text and replace with: The intent of the Contract is to provide for the construction and completion of every detail of the described work. The Contractor shall furnish all labor, material, supervision, equipment, tools, transportation, supplies, and other resources required to complete the work in the time specified and according to the Contract. The Contractor is responsible for the means, methods, techniques, sequence or procedures of construction, safety, quality control, and to perform or furnish the work in accordance with the Contract documents.

50-04 COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS.

Delete the entire text of Subsection 50-04 and replace with the following:

These Standard Specifications, Plans, Special Provisions, and all supplementary documents are essential parts of the Contract. They are intended to complement each other and describe and provide for a complete project. A requirement occurring in one is as binding as if occurring in all.

This contract may include two different sets of specifications and plans. One set of specifications and plans applies to work outside the building boundary line. The second set of specifications and plans applies to work within the building boundary line. The building boundary line is defined in Subsection 10-03.

For work within the building boundary line and above the footing elevation the contractor shall perform the work according to the building technical specifications, and payment for the work will be included in the building schedule of values. For work outside the building boundary line or below the footing elevation, the contractor shall perform the work according to the contract unit prices for the work involved.

For work outside of the building boundary line, in case of a conflict calculated dimensions govern over scaled dimensions, and large scale details govern over small scale details. In the event that any of the following listed contract documents conflict with another listed contract document, the order of precedence is (with **a.** having precedence over **b.**, and **b.** having precedence over **c.**, etc.):

- a.** Contents of Addenda
- b.** Special Provisions
- c.** Plans
- d.** Standard Specifications
- e.** Materials testing standards
- f.** FAA Advisory Circulars

For work within the building boundary line, in case of a conflict calculated dimensions govern over scaled dimensions, and large scale details govern over small scale details. In the event that any of the following listed contract documents conflict with another listed contract document, the order of precedence is (with **a.** having precedence over **b.**, and **b.** having precedence over **c.**, etc.):

- a.** Contents of the Addenda
- b.** Special Provisions or Supplementary Conditions
- c.** General Contract Provisions
- d.** Schedules or lists of items required for the completion of the project, such as equipment, finishes, doors, or materials, in specifications or plans
- e.** Building Technical Specifications
- f.** Plans (Drawings) (with **(1)** having precedence over **(2)**, **(2)** having precedence over **(3)** etc.)
 - (1)** Architectural drawings
 - (2)** Structural drawings
 - (3)** Mechanical drawings
 - (4)** Electrical drawings
 - (5)** Other drawings

The Contractor shall not take advantage of any apparent error or omission in the Contract documents. The Contractor may not base a claim for additional compensation or Contract time on a patent error, omission, or conflict in the Contract documents. The Contractor shall notify the Engineer immediately of any apparent errors or omissions in the Contract documents. The Engineer will make any corrections or interpretations necessary to fulfill the intent of the Contract.

Insert the following new Section 50-18:

50-18 ONE YEAR WARRANTY. If the department finds that an item of work in a building is defective within one year of the date of the Engineer's letter of substantial completion of the building, or any longer period of time as may be prescribed by regulatory requirements, or any longer period required by the Contract Documents, the Department will provide written notice to the Contractor of the defect. The Contractor shall promptly, without cost to the Department and according to the Department's written instructions, correct the defective work.

If the Contractor does not promptly comply with the terms of the instructions, or in an emergency where delay would cause serious risk of damage to property or persons, the Department may remove, repair, or replace the defective work. The Contractor shall reimburse the Department's direct, indirect, and consequential costs of such removal repair, or replacement. If the Contractor disagrees that it is liable for the removal, repair, or replacement of the defective work, refuses to reimburse the State for the removal, repair or replacement of the defective work, or does not pay the full amount of the costs of removal, repair, or replacement of the defective work, the Department shall file a claim against the contractor under AS 36.30.620 with the subsequent adjudication of the claim under AS 36.30.620 through AS 36.30.631 and AS 36.30.670 through AS 36.30.687.

In special circumstances, where a particular item of equipment is placed in continuous service, and the Engineer has issued a letter of partial acceptance before substantial completion, the warranty period of that item begins on the date of the letter of partial acceptance of that item.

Provisions of this Subsection are not intended to shorten the statute of limitations for bringing an action.

60-01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.

After subparagraph b in the seventh paragraph, add the following as the eighth paragraph: When the Contractor makes an equivalent materials request related to any building material or building equipment

included in the Work, the Contractor shall certify in the request that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited for the same use as the specified material. The Contractor's request shall state:

- a. Whether the evaluation, approval or use of the proposed substitute will delay substantial completion of the Work;
- b. Whether acceptance of the substitute will require changes in any of the Contract Documents, including the project schedule;
- c. Whether incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty;
- d. All instances where the proposed substitute will be incorporated into the Work;
- e. The identity of the available maintenance, repair, and replacement service; and
- f. An itemized estimate of all costs that will result directly and indirectly from acceptance of such substitution, including costs of installation and maintenance, repair, and replacement costs during the life cycle of the building.

70-01 LAWS TO BE OBSERVED.

Add the following as the second paragraph: For any building included in the work, the contractor shall comply with AS 35.10.025, which requires construction in accordance with applicable local building codes.

70-02 PERMITS, LICENSES, AND TAXES.

Add the following at the end of the first paragraph: The Contractor shall obtain required building and fire safety permits, and pay required permit fees, except when the Department has already obtained the permits and attached them to the Contract.

70-03 PATENTED DEVICES, MATERIALS AND PROCESSES.

Add the following as the third paragraph: The Contractor has no right to use for its own purposes, any of the Contract Documents prepared by or for the Department. The Contractor shall not use any of the Contract Documents on extensions of the Project, or on work unauthorized by the Department, without written consent of the Department. The Department's consent is conditioned upon the Contractor:

- a. Agreeing to indemnify, defend, and hold the state harmless for any claims arising from the reuse of the contract documents;
- b. Presenting the written consent of the designer; and
- c. Presenting a certification from the designer, evidenced by application of new designer's seal, that the design is suitable for the proposed use.

70-15 CONTRACTOR'S RESPONSIBILITY FOR WORK.

Add the following as the second paragraph: The Contractor shall not load or permit the loading with materials, equipment or workers of a floor, roof, or wall of a building included in the work in a manner that will endanger the structure, workers, or adjacent property. The contractor shall brace the building during construction to allow it to withstand reasonably foreseeable winds, snow and ice, and earthquakes.

80-03 PROSECUTION AND PROGRESS.

Add the following to the first paragraph:

m. A Schedule of Values submitted on a state contract form for any building included in the Work. The Contractor may not begin construction of the building until the Engineer has approved the Schedule of Values. The contractor shall break down all the work for the building into measurable work items, in sufficient detail to serve as a basis for progress payments. Any stockpiled materials for which interim payment is proposed shall be included. The Schedule of Values must indicate a quantity and unit cost, including overhead and profit for each work item, the total cost for each work item, and the total cost of all work items. The contractor shall certify the cost of each item and the overhead and profit for each item. The total cost for all work items must equal the total Contract price for the building.

Add the following as the sixth paragraph: For any building included in the work, the Contractor shall maintain one record copy of all plans, drawings, specifications, addenda, directives, change orders, supplemental agreements and written interpretations and clarifications issued by the Engineer, annotated to accurately record variations in the work from requirements shown or indicated in the contract documents. These record documents together with all approved samples and a copy of all approved working drawings will be available to the Engineer for reference and copying. Upon completion of the work, the contractor shall deliver the annotated record documents, samples, and working drawings to the Contracting Officer.

90-01 GENERAL.

Add the following as the fourth paragraph:

For work within the building boundary line and above the footing elevation, the work shall be measured and paid according to the schedule of values submitted under Subsection 80-03. For work outside the building boundary or below the footing elevation, the work shall be measured and paid according to the contract unit prices for the work involved.

STATEWIDE AIRPORT SPECIAL PROVISION ASP-2

Instructions to the designer on how to modify the SSAC are shown in underlined italics.

**SECTION 20
BIDDING REQUIREMENTS AND CONDITIONS**

20-01 QUALIFICATION OF BIDDERS. *After fourth paragraph add the following paragraph:*

The bidder must be registered as an Electrical Administrator, or must employ a person whose Electrical Administrator's license is assigned to the bidder, under AS 08.40 at the time designated for bid opening.

STATEWIDE AIRPORT SPECIAL PROVISION ASP-3

Instructions to the designer on how to modify the SSAC are shown in underlined italics.

**SECTION 90
MEASUREMENT AND PAYMENT**

90-02 MEASUREMENT OF QUANTITIES.

m. Ton (2,000 pounds). *delete the second sentence of item m. and substitute the following:* Methods (3) or (4), below, may be used with written approval of the Engineer:

and insert the following paragraph after item m.3. Invoices:

- 4. Barge Displacement Method.** When the barge displacement method is proposed the Contractor shall furnish water loading charts, certified by a Professional Engineer for all barges utilized in the hauling of the material. If barge hauled material is stockpiled, loss shall be estimated by the Engineer and shall be deducted from the total weight measured to allow for stockpile loss. Any material wasted or lost between the barge and the point where it is placed in final position shall be estimated and the loss deducted by the Engineer.

**STATEWIDE AIRPORT SPECIAL PROVISION
ASP-4**

ITEM S-142 EQUIPMENT STORAGE BUILDING

DESCRIPTION

142-1.1 Furnish all labor, materials and equipment required to construct a new snow removal equipment building at the location indicated on the plans. Comply with the building technical specifications located in Appendix L for work on the building and related systems. This item will construct the new equipment storage building(s) on a new or existing building pad.

MATERIALS

142-2.1 Materials required to perform this work are outlined in the building technical specifications in Appendix L except as specified in Subsection 142-6.1. Comply with GCP Subsection 60-08 for submittals.

CONSTRUCTION REQUIREMENTS

142-3.1 Comply with the plans and specifications outlined in the building technical specifications in Appendix L except as specified in Subsection 142-6.1. Submit plans and working drawings in accordance with GCP Subsection 50-02.

142-3.2 TESTING. Perform testing in conformance with the plans and specifications outlined in the building technical specifications in Appendix L except as specified in Subsection 142-5.1.

METHOD OF MEASUREMENT

142-4.1 This item will not be measured for payment.

BASIS OF PAYMENT

142-5.1 Payment will be made at the contract lump sum price for construction of the building and related systems. This item provides full compensation for this work to include the building and internal systems.

Bollards external to building walls, all required mobilization/demobilization, surveying required for this work, airport lighting equipment, and standard signs are specified and paid for under items F-170, G-100, G-135, L series specifications, and P-661.

Earthwork associated with construction of the building pad, including the area within the building boundary line, will be specified, measured, and paid for under the appropriate earthwork (P series) bid items. Excavation and backfill of building foundation and footings will be subsidiary to Item S142.040.0000.

Payment will also include all labor and materials necessary to connect the fuel oil tank furnished under Item S-143 with the appropriate building heating system.

Payment will be made under:

Item S142.010.0000	Equipment Storage Building (Concrete Floor) – per each
Item S142.020.0000	Equipment Storage Building (Steel Floor on Grade) – per each
Item S142.030.0000	Equipment Storage Building (Steel Floor on Skid) – per each
Item S142.040.0000	Equipment Storage Building – per lump sum

**STATEWIDE AIRPORT SPECIAL PROVISION
ASP-5**

ITEM S-143 FUEL TANK

DESCRIPTION

143-1.1 This item consists of furnishing and installing a protected aboveground motor vehicle fuel or heating oil tank complete with fuel and accessories as specified. Prepare for Department use, an EPA approved Spill Prevention, Control and Countermeasure Plan (SPCC plan).

MATERIALS

143-2.1 TANK. Provide skid-mounted, doublewall, aboveground steel tank. The tank shall be of the type and capacity shown in the bid schedule. Equip tank with accessories as shown on the Plans and as follows:

- a. **Overfill Alarm.** Provide a mechanical, audible overfill alarm, Ventalarm Signal as manufactured by Scully Signal Company, 70 Industrial Way, Wilmington, MA 01887 or approved equal.
- b. **Automatic Shut-Off Device.** Provide a positive closing, mechanical, automatic shut-off device. Clay & Bailey model F-30 as manufactured by Clay and Bailey Manufacturing Co., 6401 East 40th Street, Kansas City, MO 64129 or approved equal.
- c. **Tank-Mounted Mechanical Fuel Gauge.** Provide mechanical gauge with 12-hour clock face in feet and inches readout, activated by a stainless steel float connected to a stainless steel cable. Morrison Model 818 as manufactured by Morrison Bros. Co., P.O. Box 238, Dubuque, Iowa 52004 or approved equal.
- d. **Openings.** Provide the following threaded openings and accessories on tank top:
 - One 2-inch Interstitial Monitoring with plug
 - One 2-inch Normal Vent with screen
 - One 2-inch Product fill opening with locking cap
 - One 2-inch Product pump opening with plug
 - One 2 to 4-inch Liquid level gauge
 - One 4 to 8-inch Emergency vent with plug, primary tank
 - One 4 to 8-inch Emergency vent with plug, secondary tank
 - No Drain Opening at bottom
- e. **Exterior Coating.** Abrasive blast the exterior surface of the outer tank according to SSPC-SP 6. Coat the exterior surface with 8 mils total thickness of epoxy paint base and urethane paint finish.
- f. **UL Labeling.** Heating oil tanks shall be manufactured and labeled according to UL 142. Motor vehicle fuel tanks shall be manufactured and labeled according to UL 142 and UL 2085.
- g. **Insulation.** For motor vehicle fuel tanks install 3-inch thickness of insulation according to ASTM C332 and ASTM C495.

When a motor vehicle fuel-dispensing tank is specified, it shall meet or exceed the requirements of UL 2085, Underwriters Laboratories Standard for Safety for Protected Aboveground Tanks for Flammable and Combustible Liquids. Equip with a threaded opening for the specified fuel pump.

Tanks larger than 2,500 gallons require additional openings and accessories for UL rating.

143-2.2 MANUAL DISPENSING SYSTEM. Provide a double-action pump, equipped with detachable, self-venting bung adapter, set screws and strainer screen. Provide a dispensing system that is not gravity fed. The pump shall have 16 feet of 3/4-inch diameter hose with shut-off nozzle and deliver a minimum of 20 gallons/100 strokes. The pump supplied shall be a Gasboy, Model 1720, or approved equal.

143-2.3 ELECTRIC DISPENSING SYSTEM. Provide an electric suction or submerged turbine pump with a delivery rate up to 18 gpm, 3-wheel, meter-register with reset and non-resettable 6 digit master totalizer in a cabinet, anti-siphon valve with internal pressure relief, gate valve, canister style fuel filter, flow meter, 20 ft fuel hose with swivel and breakaway coupling, hose retractor, OPW 11-A automatic nozzle with lockable nozzle holder, explosion proof pump activation switch, emergency pump shutoff switch mounted on the SRE building, warning signs, and BC fire extinguisher per International Fire Code (IFC) chapter 2201 - 2206.

143-2.4 FUEL. No. 1 diesel or No. 1 heating oil, depending on tank use.

CONSTRUCTION REQUIREMENTS

143-3.1 INSTALLATION. Install according to the International Fire Code (IFC) chapters 22 and 34 for the type of tank specified. Mount and secure the tank on the skid base. Install dispensing system to include all fittings and hose. Install wiring of the pump and emergency shut off according to National Fire Protection Association (NFPA) 30 and the current edition of the National Electrical Code (NEC) for hazardous locations. Place tank at the location shown on the Plans, or as directed. Set automatic shut-off device to 90% capacity. Fill to 90% capacity with specified fuel.

143-3.2 SPILL PREVENTION, CONTROL AND COUNTERMEASURE PLAN (SPCC). Provide for Department use after tank installation/modification, an EPA approved SPCC plan for the motor vehicle fuel or heating oil tank, in compliance with 40 CFR 112. (See <http://www.epa.gov/oilspill/lawsregs.htm> for SPCC plan requirements).

Provide two (2) copies of the SPCC Plan; deliver one to the Engineer to be retained at the site and deliver the other to the Department's Statewide Safety Officer at 5300 E. Tudor Drive, Anchorage, AK, 99507.

METHOD OF MEASUREMENT

143-4.1 GCP Subsection 90-02 and as follows:

- a. Lump Sum. No measurement of quantities will be made.
- b. Unit Prices. The quantity to be paid for will be the number of units installed, complete, in place, accepted, and ready for operation.

BASIS OF PAYMENT

143-5.1 At the contract unit price for the pay items listed below that appear in the bid schedule. Heating fuel distribution and delivery systems are measured and paid for under Item S-142.

Payment will be made under:

Item S143.010.0500	Heating Fuel Tank, 500 Gal – per each
Item S143.020.0000	Fuel – per lump sum
Item S143.030.0000	Manual Dispensing System – per each
Item S143.040.0000	Electric Dispensing System – per each

**STATEWIDE AIRPORT SPECIAL PROVISION
ASP-6**

ITEM S-146 PASSENGER WAITING SHELTER

DESCRIPTION

146-1.1 Design, and furnish all labor, materials and equipment required to construct a passenger waiting shelter at the location and in accordance with the conceptual plan shown on the plans. The shelter shall be designed by the Contractor, however a prefabricated structure will be accepted pursuant to the requirements outlined on the plans and these specifications.

MATERIALS

146-2.1 Comply with International Building Code (IBC 2009) and contain at a minimum, the following:

- a. square feet of floor area.
- b. square feet of window area.
- c. Adequate ventilation.
- d. A thermostatically controlled interior heating system with necessary fuel.
- e. Adequate electrical lighting and 120 volt, 60 hertz power, with a minimum of 1 electrical outlet.
- f. One exterior light to adequately light the entry area.
- g. Entry shall conform to the Uniform Federal Accessibility Standards (UFAS) and the 2006 U. S. DOT ADA Standards for Transportation Facilities.
- h. Roof shall be designed to shed to the sides so snow does not fall on entry way area.
- i. The interior surface of the floor shall be finished and/or treated in order to be slip-resistant.
- j. The exterior of the structure shall have a weatherproofing sealer, material or compound applied that is suitable for arctic climate use.
- k. The structure shall be constructed of vandal resistant materials.
- l. Paints and pigmentation shall be lead-free and shall have a minimum ten (10) year warranty.

Commented [JW1]: Designer to enter required size.

Commented [JW2]: Designer to enter required size.

Comply with GCP Subsection 60-08 for submittals.

DESIGN CRITERIA

146-2.2. It is the responsibility of the Contractor to furnish design and fabrication drawings for the shelter. This includes structural, electrical, mechanical, and foundation designs that are stamped by a registered Civil Engineer in the State of Alaska. Submit plans and working drawings in accordance with GCP Subsection 50-02. The drawings are to include floor plan view with dimensions, component and appurtenance layout with dimensions and material detail and plan sheets with exterior dimensions and elevation views.

- a. Design of the passenger waiting shelter shall include the following:
 - (1) Design roof snow load: minimum 200 pounds per square foot (psf)
 - (2) Design floor load: minimum 150 psf
 - (3) Design wind load: minimum 120 miles per hour (mph)

- (4) Seismic design category: D1 event
- (5) Roof pitch: 4H:1V minimum/3H:1V maximum
- b. If a prefabricated structure, the manufacturer supplying the shelter must meet the following:
 - (1) Provide stamped, engineered fabrication and erection drawings prior to acceptance.
 - (2) Acceptance of drawings to be based on design criteria listed above, building layout and appearance, product material, appearance and function.
 - (3) Manufacturer must be pre-approved by the Engineer prior to ordering.

CONSTRUCTION REQUIREMENTS

146-3.1 Construct the passenger waiting shelter in accordance with the plans, these special provisions and general contract provisions.

METHOD OF MEASUREMENT

146-5.1 This item will not be measured for payment. The Engineer's acceptance constitutes measurement.

BASIS OF PAYMENT

146-6.1 Payment for Item S146.010.0000, Passenger Waiting Shelter, will be made at the contract lump sum amount and will be considered full compensation for all work inside the pay limits noted on the plans. Payment includes the shelter foundation, structural, electrical, mechanical and architectural items and finishes, and all appurtenances. No separate payment will be made for excavation or backfill, if necessary.

Payment will be made under:

Item S146.010.0000 Passenger Waiting Shelter – per lump sum

ITEM G-120 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

120-1.1 DESCRIPTION. Provide Disadvantaged Business Enterprises (DBEs), as defined in Title 49 CFR Part 26, the opportunity to participate fairly with other contractors in the performance of contracts financed with federal funds. The Contractor and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts.

The Department, in coordination with the Federal Aviation Administration (FAA), adopted a Race-Neutral DBE Program in the Central and Southcoast Regions with a DBE Utilization Goal of 6.1% for Southcoast Region and 8.3% for Central Region's FAA Federal-Aid program. Although the Race-Neutral program does not establish or require individual project DBE Utilization Goals, 49 CFR establishes the Bidder is responsible to make a portion of the work available to DBEs and to select those portions of the work or material needs consistent with the available DBEs to facilitate DBE participation.

If the Department, in collaboration with our contractors, does not meet the overall program DBE Utilization Goal and cannot demonstrate good faith effort to meet the program goal, the program may be modified to Race-Conscious, with individual DBE Utilization Goals established for each Federal-Aid project. The Department and FAA will use the data collected under Item G-120 to evaluate the program for compliance with Item G-120 and with 49 CFR Part 26.

120-1.2 INTERPRETATION. This section implements the requirements of 49 CFR Part 26, and the Department's federally approved DBE Program.

120-1.3 ESSENTIAL CONTRACT PROVISION. Failure to comply with the provisions of this section is a material breach of contract, which may result in cancelation of intent to award, contract termination, or other remedy as DOT&PF deems appropriate. Failure to comply with this section is justification for debarment action as provided in AS 36.30.640(4).

120-1.4 DEFINITIONS AND TERMS.

- a. **Civil Rights Office.** The Department's Civil Rights Office. (CRO)
- b. **Commercially Useful Function.** Action within the scope of the Contract where a Disadvantaged Business Enterprise (DBE) is responsible for execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- c. **Contract Compliance Officer.** Individual within the Department's CRO with the authority to administer the Department's compliance programs.
- d. **Disadvantage Business Enterprise (DBE).** A commercial entity which is a for-profit small business certified in accordance with 49 CFR Part 26 and listed in the Alaska DBE Directory.
- e. **DBE Broker.** A DBE certified for the delivery of creditable materials, supplies, equipment, transportation/hauling, insurance, bonding, etc., within its certified category, that is necessary to complete the project. A DBE Broker of materials certified in a supply category must be responsible for scheduling the delivery of materials and ensuring that the materials meet specifications before credit will be given.
- f. **DBE Key Employee.** Employee of the DBE who is identified by the DBE owner in the DBE's certification file at the CRO.

- g. **DBE Manufacturer.** A DBE certified in a supply category that changes the shape, form, or composition of original material in some way. The DBE Manufacturer must provide that altered material to the general public or the construction industry at large on a regular basis.
- h. **DBE On-Site Representative.** On-site representatives approved by the DBE owner and the CRO to represent a DBE owner. These representatives must have technical knowledge and the ability to answer questions regarding the work being performed on a project.
- i. **DBE Regular Dealer.** A DBE certified in a supply category who operates in a manner consistent with industry practice and who:
 - (1) maintains an in-house inventory on a regular basis of the particular product provided to this project; and
 - (2) keeps an inventory in an amount appropriate for the type of work using that product; and
 - (3) offers that inventory for sale to the general public or construction industry at large (private and public sectors), not just supplied as needed on a project by project basis during the construction season, except where the product requires special or heavy equipment for delivery and the DBE possesses and operates this equipment on a regular basis throughout the construction season in order to deliver the product to the general public or construction industry at large. If the distribution equipment is rented or leased, it must be on a repetitive, seasonal basis; and may additionally fabricate (assemble large components) for use on a construction project, consistent with standard industry practice, for delivery to the project.

A person may be a DBE Regular Dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of DBE Regular Dealers' own distribution equipment shall be by a long-term lease agreement and **not on an ad hoc or contract-by-contract basis.**

- j. **DBE Utilization Goal.** The percent of work to be performed by certified DBEs.
- k. **DBE Officer.** Individual designated in writing as a representative of the Contractor concerning DBE issues.
- l. **Good Faith Effort (GFE).** Bidder's actions, performed prior to bid opening and demonstrated through detailed and comprehensive documentation, to take all necessary and reasonable steps to achieve DBE participation. Lower case "good faith effort", refers to the Department's and all or contractors' collaborative efforts to meet the overall program DBE Utilization Goal.
- m. **Plan Holder Self-Registration List (PHSRL).** The Department's online portal that allows contractors, DBEs and non-DBEs to self-register as an interested contractor to bid.
- n. **Race-Conscious Participation.** DBE participation used to meet an individual project specific DBE Utilization Goal.
- o. **Race-Neutral DBE Participation.** DBE participation when no DBE Utilization Goal is specified in the Contract and DBE participation that exceeds the goal amount when an individual project specific DBE Utilization Goal is specified in the Contract.

120-2.1 RESERVED.

120-3.1 DETERMINATION OF COMPLIANCE.

- a. **Phase I - Bid.** All Bidders' GFEs must be completed prior to bid opening.

b. Phase II - Award. The apparent low bidder shall submit evidence of DBE commitment(s) within 5 working days after receipt of written notification by the Department of the successful low bid. The apparent low bidder may not supplement its DBE efforts after opening, nor offer new or additional DBE participation after submitting the DBE Utilization Report (Form 25A-325C).

(1) Written DBE Commitment. Complete Form 25A-326 for each DBE subcontractor.

(2) DBE Utilization Report. Submit a completed DBE Utilization Report Form 25A-325C. All listed DBEs must be certified in the appropriate work categories prior to bid opening to be used to meet the DBE contract goal.

(3) GFE Documentation. Submit a completed Summary of GFE Documentation Form 25A-332A (with attachments) and Contact Report Form 25A-321A.

120-3.2 GOOD FAITH EFFORT (GFE). Although evaluation of GFE for sufficiency is not a condition of award, documenting GFE is required and is necessary for the Department's and FAA's determination of compliance with 49 CFR Part 26.

a. GFE Criteria. If the Department does not meet the overall program DBE Utilization Goal, the Department and FAA will use the following criteria to judge whether the Department, in collaboration with our contractors, demonstrated good faith effort to meet the overall program DBE Utilization Goal.

(1) Consider All Subcontractable Items. Before bid opening, seek DBE participation by considering those portions of the work or material needs consistent with the available DBEs to facilitate DBE participation.

(2) Initial DBE Notification. Contact DBEs listed in the Department's Plan Holders Self-Registration List for the particular project being bid at least 7 calendar days prior to bid opening to solicit their interest. Log each contact with a DBE firm on a Contact Report, Form 25A-321A.

Give DBEs at least 7 calendar days to quote. The bidder may reject DBE quotes received after the deadline. Responsive DBE quotes should be accepted unless they are determined non-competitive. Consistently apply deadlines for quote submission and responsiveness determinations for DBEs and non-DBEs.

Methods of initial and follow up notification are:

(a) By fax with a confirmation receipt of successful transmission to the DBE's fax number listed in the DBE Directory. A fax transmission without receipt of successful transmission is unsatisfactory.

(b) By email to the DBE's email address listed in the DBE Directory, with confirmation of successful receipt. Email without confirmation of successful receipt is unsatisfactory.

(c) By telephone solicitation made to the DBE's telephone number listed in the DBE Directory, with a record of the date and time of the telephone contact. Telephone solicitation without a record of date and time is unsatisfactory.

(d) By publication, with the names and dates of each advertisement in which a request for DBE participation was placed. Attach copies of advertisements or proof of publication.

(3) Non-Acceptance of DBE Quotes.

When a DBE quote is not accepted, the work must be performed by the non-DBE subcontractor whose quote was used to provide the basis of the determination or by your own forces if your forces were the basis of the determination. Include evidence in support of the determination not to use the DBE subcontractor.

Payments received by a non-DBE subcontractor during the execution of the Contract shall be consistent with the accepted quote. This does not preclude increases due to change documents issued by the Department.

(4) Assistance to DBEs. Provide DBEs with:

- (a) Information about bonding or insurance required by the bidder.
- (b) Information about securing equipment, supplies, materials, or business development related assistance or services.
- (c) Adequate information about the requirements of the contract regarding the specific item of work or service sought from the DBE.
- (d) Document all efforts to provide assistance to DBEs on Federal-Aid projects.

(5) Follow-up DBE Notifications. If there is no response from the initial DBE notification, contact the DBEs again to determine if they will be quoting.

Failure to submit a quote by the deadline is evidence of the DBE's lack of interest in bidding. Log follow-up contacts on the Contact Report Form 25A-321A.

(6) GFE Evaluation. The Department will review the GFE documentation for content but will not evaluate sufficiency. Failure to provide GFE documentation may result in cancellation of the notice of intent to award and forfeiture of the bid security according to Subsection 30-03.

b. Reserved.

120-3.3 DBE CREDITABLE AND NON CREDITABLE WORK.

a. DBE Creditable Work. The Commercially Useful Function work items and creditable dollar amounts shown on the DBE Utilization Report, Form 25A-325C, shall be included in any subcontract, purchase order or service agreement with that DBE.

b. DBE Decertification.

- (1) If a DBE performing a Commercially Useful Function loses its DBE certification at any time prior to execution of a subcontract, purchase order or service agreement, as the result of a determination of ineligibility pursuant to 49 CFR Part 26.87, the work of that firm will not be credited toward the DBE Utilization Goal and the Contractor must either:
 - (a) meet the contract goal by subcontracting with an eligible DBE firm or demonstrate a GFE to do so; or
 - (b) continue with the decertified DBE and find other work not already committed to DBEs in an amount that meets or exceeds the DBE Utilization Goal.
- (2) If a DBE performing a Commercially Useful Function loses its DBE certification after execution of a subcontract, purchase order or service agreement, as the result of a determination of ineligibility pursuant to 49 CFR Part 26.87, the de-certified DBE may continue to perform, and the work may be credited toward the DBE Utilization Goal.
- (3) If a DBE goes out of business and cannot perform the work, the Contractor must meet the contract goal by subcontracting with an eligible DBE Firm or demonstrate a GFE to do so.

The provisions of 120-3.03(3) Termination of a DBE and 120-3.03(4) DBE Replacement or Substitution do not apply to this section.

A Contractor must notify the CRO within one business day if they become aware of any change in a DBE's circumstances that might lead to a DBE's decertification.

c. Termination of a DBE.

- (1) In accordance with 49 CFR 26.53(f)(1) the Contractor shall not terminate a DBE without good cause and the prior written consent of the Engineer. For purposes of this paragraph, good cause includes the following circumstances:
 - (a) DBE defaults on their obligation for any reason;
 - (b) The DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
 - (c) The DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
 - (d) The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (e) The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215, and 1,200 or applicable state law;
 - (f) The Engineer determines the DBE is not a responsible contractor.
 - (g) The DBE voluntarily withdraws from the project and provides a written notice of its withdrawal;
 - (h) The DBE is ineligible to receive DBE credit for the type of work required;
 - (i) A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work; or
 - (j) Other documented good cause that the Engineer determines, compels the termination of the DBE, provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE after contract award.
- (2) The Contractor must give written notice to the DBE of its intent to request to terminate and/or substitute, and the reason for the request. The request to terminate and/or substitute must be submitted to the Engineer.
- (3) The Contractor must give the DBE 5 working days to respond to the written notice. Any response from the DBE must be submitted to the Engineer.

d. DBE Replacement or Substitution.

- (1) The Contractor shall submit to the Engineer a written request to replace or substitute a DBE who fails or refuses to execute a written subcontract or who is terminated under 120-3.03(3).
- (2) If the Contractor cannot obtain replacement DBE participation, the DBE Utilization Goal will not be adjusted. However, the Engineer may consider the following criteria as satisfying that portion of DBE participation that cannot be replaced:
 - (a) The Contractor was not at fault or negligent and that the circumstances surrounding the replacement or substitution were beyond the control of the Contractor; and

(b) The Contractor is unable to find replacement DBE participation at the same level of DBE commitment and has adequately performed and documented the GFE expended in accordance with Subsection 120-3.02; or

(c) It is too late in the project to provide any real subcontracting opportunities for DBEs.

If the Engineer agrees that additional DBE participation is not available, the DBE may be replaced or substituted with a non-DBE or the Contractor may self-perform the work.

120-3.4 COMMERCIALY USEFUL FUNCTION (CUF).

a. **Creditable Work.** Measuring the DBE Utilization Goal will be based upon the actual dollars paid to the DBEs for creditable CUF work on this project. This is determined by the Engineer in accordance with this section. CUFs are limited to:

(1) Prime Contractors;

(2) Subcontractors;

(3) Manufacturers;

(4) Regular Dealers;

(5) Brokers; or

(6) Joint Ventures

b. **Determination of CUF.** In order for the CUF work of the DBE to be credited toward the goal, the Contractor will ensure that the DBE is certified in the appropriate category at the time of the submittal of the subcontract, or the issuance of a purchase order or service agreement. Subcontracts, purchase orders and service agreements shall be consistent with the written DBE commitment.

(1) The CUF performed by a DBE certified in a supply category will be evaluated by the Engineer to determine whether the DBE performed as either a broker, regular dealer, or manufacturer of the product provided to this project.

(2) The following factors will be used in determining whether a DBE trucking company is performing a CUF:

(a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is performing on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(c) 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.

(3) The Contractor will receive credit for the CUF performed by DBEs as provided in this Section. Contractors are encouraged to contact the Engineer in advance of the execution of the DBE's work or provision of goods or services regarding CUF and potential DBE credit.

(4) The DBE may perform work in categories for which it is not certified, but only work performed in the DBE's certified category meeting the CUF criteria may be credited toward the DBE Utilization Goal.

(5) DBE work shall conform to the following requirements to be a CUF:

- (a) It will be necessary and useful work required for the execution of the Contract.
- (b) The scope of work will be distinct and identifiable with specific contract items of work, bonding, or insurance requirement.
- (c) It will be performed, controlled, managed, and supervised by employees normally employed by and under the control of the certified DBE. The work will be performed with the DBE's own equipment. Either the DBE owner or DBE On-Site Representative will be at the work site and responsible for the work. Leased equipment may also be used provided the DBE has exclusive use of the equipment and it is operated by a driver the DBE employs. In remote locations or rare situations, a DBE may use equipment and/or personnel from the Contractor or its affiliates. Should this situation arise, a prior arrangement must be in place. The duration of the arrangement must be short term and prior written approval from the Engineer must be obtained.
- (d) The manner in which the work is sublet or performed will conform to standard industry practice within Alaska, as determined by the Department. The work or provision of goods or services will have a market outside of the DBE program (and must also be performed by non-DBE firms within the Alaskan construction industry). Otherwise, the work or service will be deemed an unnecessary step in the contracting or purchasing process and no DBE credit will be allowed.

There will be no DBE credit for lower-tier non-DBE subcontract work.

- (e) The cost of the goods and services will be reasonable and competitive with the cost of goods and services outside the DBE program within Alaska. Materials or supplies needed as a regular course of the Contractor's operations such as fuel, maintenance, office facilities, portable bathrooms, etc. are not creditable.

The cost of materials actually incorporated into the project by a DBE subcontractor is creditable toward the DBE goal only if the DBE is responsible for ordering and scheduling their delivery and fully responsible for ensuring that they meet specifications. The cost of materials purchased from the contractor or its affiliates is not creditable.

- (f) Subcontract work, with the exception of truck hauling, shall be sublet by the same unit of measure as is contained in the Bid Schedule unless approved in advance by the Engineer.
- (g) The DBE will control all business administration, accounting, billing and payment transactions. The Contractor cannot perform these functions for the DBE.

In accordance with AS 36.30.420(b), the Engineer may inspect the offices of the DBE and audit their records to assure compliance.

- c. **Rebuttal of a Finding of No CUF.** Consistent with the provisions of 49 CFR Part 26.55(c)(4)&(5), before the Engineer makes a final finding that no CUF has been performed by a DBE, the Engineer will coordinate transmittal of the presumptive finding to the Contractor, who will in-turn, notify the DBE. The Contractor will provide the DBE the opportunity to provide rebuttal information. The Contractor shall present the information to the Engineer.

The Engineer will make a final determination on whether the DBE is performing a CUF. Under no circumstances will the Contractor take any action with respect to the DBE until the final determination is made. The Engineer's decisions on CUF matters are subject to review by the Department, but are not administratively appealable to the U.S. DOT.

- d. **Monthly Required Reporting.** On a monthly basis, the Contractor shall submit the Monthly Summary of DBE Participation, Form 25A-336, to the Engineer. Reports are due by the 15th of the

following month. Also attach copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information shown on the form.

120-4.1 DETERMINING DBE CREDIT. The Contractor is entitled to count toward the DBE Utilization Goal, monies actually paid to certified DBEs for CUF work performed by the DBE as determined by the Engineer. The Contractor will receive credit toward the DBE Utilization Goal, as follows:

- a. Credit for the Commercially Useful Function of a DBE prime contractor is 100 percent of the monies actually paid to the DBE under the contract for creditable work and materials in accordance with 49 CFR Part 26.55.
- b. Credit for the CUF of a subcontractor is 100 percent of the monies actually paid to the DBE under the subcontract for creditable work and materials.
- c. Credit for the CUF of a subcontractor performing hauling/transportation is 100 percent of the monies actually paid to the DBE under the subcontract for creditable work for those firms certified in the 100 percent category. Credit for the CUF of a subcontractor performing hauling/transportation is 5 percent of the monies actually paid to the DBE under the subcontract for creditable work for those firms certified in the 5 percent credit category.
- d. Credit for the CUF of a manufacturer is 100 percent of the monies paid to the DBE for the creditable materials manufactured.
- e. Credit for the CUF of a regular dealer of a creditable material, product, or supply is 60 percent of its value. The value is the actual cost paid to the DBE not to exceed the bid price for such item.
- f. Credit for the CUF of a broker performed by a DBE certified in a supply category for providing a creditable material, product or supply is limited to a reasonable brokerage fee. The brokerage fee will not exceed 5 percent of the cost of the procurement contract for the creditable item.
- g. Credit for the CUF of a broker performed by a DBE certified in a bonding or insurance category is limited to a reasonable brokerage fee, not to exceed 5 percent of the premium cost.
- h. Credit for the CUF of a joint venture (JV) either as the prime contractor or as a subcontractor may not exceed the percent of the DBE's participation in the JV agreement, as certified by the CRO. The DBE joint venture partner will be responsible for performing all of the work as delineated in the certified JV agreement.

120-5.1 ACHIEVEMENT OF DBE GOALS. Work under this item is subsidiary to other contract items and no payment will be made for meeting or exceeding the DBE Utilization Goal.

If the Contractor fails to utilize the DBEs listed on Form 25A-325C as scheduled or fails to submit proof of payment, requested documentation, or otherwise cooperate with a DBE review or investigation, the Department will consider this to be unsatisfactory work. If the Contractor fails to utilize GFE to replace or substitute a DBE, regardless of fault (except for Subsection 120-3.03(4)(b)(3)), the Department will also consider this unsatisfactory work. Unsatisfactory work may result in disqualification of the Contractor from future bidding under Subsection 20-13 and withholding or progress payments consistent with Subsection 90-06.

ITEM G-120
RACE-CONSCIOUS DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

120-1.1 DESCRIPTION. Provide Disadvantaged Business Enterprises (DBEs), as defined in Title 49 CFR Part 26, the opportunity to participate fairly with other contractors in the performance of contracts financed with federal funds. The Contractor and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts.

The Department, in coordination with the Federal Aviation Administration, adopted a Race-Conscious DBE Program for Northern Region. The DBE Utilization Goal for this project is as noted on Form 25D-7, Invitation to Bid. 49 CFR establishes the Bidder is responsible to make a portion of the work available to DBEs and to select those portions of the work or material needs consistent with the available DBEs to facilitate DBE participation. The Department and FAA will use the data collected under Item G-120 to evaluate the Contractor and the program for compliance with Item G-120 and with 49 CFR Part 26.

120-1.2 INTERPRETATION. This section implements the requirements of 49 CFR Part 26, and the Department's federally approved DBE Program.

120-1.3 ESSENTIAL CONTRACT PROVISION. Failure to comply with the provisions of this section is a material breach of contract, which may result in cancelation of intent to award, contract termination, or other remedy as DOT&PF deems appropriate. Failure to comply with this section is justification for debarment action as provided in AS 36.30.640(4).

120-1.4 DEFINITIONS AND TERMS.

- a. **Administrative Reconsideration.** A process by which the low bidder may request reconsideration when the Department determines the Good Faith Effort (GFE) requirements have not been met.
- b. **Civil Rights Office.** The Department's Civil Rights Office. (CRO)
- c. **Commercially Useful Function.** Action within the scope of the Contract where a Disadvantaged Business Enterprise (DBE) is responsible for execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- d. **Contract Compliance Officer.** Individual within the Department's CRO with the authority to administer the Department's compliance programs.
- e. **Disadvantage Business Enterprise (DBE).** A commercial entity which is a for-profit small business certified in accordance with 49 CFR Part 26 and listed in the Alaska DBE Directory.
- f. **DBE Broker.** A DBE certified for the delivery of creditable materials, supplies, equipment, transportation/hauling, insurance, bonding, etc., within its certified category, that is necessary to complete the project. A DBE Broker of materials certified in a supply category must be responsible for scheduling the delivery of materials and ensuring that the materials meet specifications before credit will be given.
- g. **DBE Key Employee.** Employee of the DBE who is identified by the DBE owner in the DBE's certification file at the CRO.

- h. **DBE Liaison Officer.** Individual within the Department, who is assigned to perform the administrative reconsideration process according to 49 CFR 26.53(d), who was not part of the Department's original determination the bidder did not demonstrate Good Faith Effort.
- i. **DBE Mandatory Contact.** DBEs that register on the Plan Holders Self Registration List for the project, within 7 calendar days after advertisement of the project.
- j. **DBE Manufacturer.** A DBE certified in a supply category that changes the shape, form, or composition of original material in some way. The DBE Manufacturer must provide that altered material to the general public or the construction industry at large on a regular basis.
- k. **DBE Officer.** Individual designated in writing as a representative of the Contractor concerning DBE issues.
- l. **DBE On-Site Representative.** On-site representatives approved by the DBE owner and the CRO to represent a DBE owner. These representatives must have technical knowledge and the ability to answer questions regarding the work being performed on a project.
- m. **DBE Regular Dealer.** A DBE certified in a supply category who operates in a manner consistent with industry practice and who:
 - (1) maintains an in-house inventory on a regular basis of the particular product provided to this project; and
 - (2) keeps an inventory in an amount appropriate for the type of work using that product; and
 - (3) offers that inventory for sale to the general public or construction industry at large (private and public sectors), not just supplied as needed on a project by project basis during the construction season, except where the product requires special or heavy equipment for delivery and the DBE possesses and operates this equipment on a regular basis throughout the construction season in order to deliver the product to the general public or construction industry at large. If the distribution equipment is rented or leased, it must be on a repetitive, seasonal basis; and may additionally fabricate (assemble large components) for use on a construction project, consistent with standard industry practice, for delivery to the project.

A person may be a DBE Regular Dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of DBE Regular Dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- n. **DBE Utilization Goal.** The percent of work to be performed by certified DBEs.
- o. **DBE Voluntary Contact.** DBEs that register on the Plan Holders Self Registration List, but did not register within 7 calendar days of the project's advertising date.
- p. **Good Faith Effort (GFE).** Bidder's actions, performed prior to bid opening and demonstrated through detailed and comprehensive documentation, to take all necessary and reasonable steps to achieve DBE participation. Lower case "good faith effort", refers to the Department's and all or contractors' collaborative efforts to meet the overall program DBE Utilization Goal.
- q. **Plan Holder Self-Registration List (PHSRL).** The Department's online portal that allows contractors, DBEs and non-DBEs to self-register as an interested contractor to bid.

- r. **Race-Conscious DBE Participation.** DBE participation used to meet an individual project specific DBE Utilization Goal.
- s. **Race-Neutral DBE Participation.** DBE participation when no DBE Utilization Goal is specified in the Contract and DBE participation that exceeds the goal amount when an individual project specific DBE Utilization Goal is specified in the Contract.

120-2.1 RESERVED.

120-3.1 DETERMINATION OF COMPLIANCE.

- a. **Phase I - Bid.** All Bidders' GFEs must be completed prior to bid opening.
- b. **Phase II - Award.** The apparent low bidder shall submit evidence of DBE commitment(s) within 5 calendar days after bid opening as a matter of responsibility (49 CFR 26.53). The apparent low bidder may not supplement its DBE efforts after opening, nor offer new or additional DBE participation after submitting the DBE Utilization Report (Form 25A-325C).

(1) **Written DBE Commitment.** Complete Form 25A-326 for each DBE subcontractor.

(2) **DBE Utilization Report.** Submit a completed DBE Utilization Report Form 25A-325C. All listed DBEs must be certified in the appropriate work categories prior to bid opening to be used to meet the DBE contract goal.

(3) **GFE Documentation.** Submit a completed Summary of GFE Documentation Form 25A-332A (with attachments) and Contact Report Form 25A-321A.

If the bidder cannot meet the DBE Utilization Goal, and cannot document the minimum required GFE (as specified below), the Contracting Officer will determine the bidder is not responsible.

120-3.2 GOOD FAITH EFFORT (GFE).

- a. **GFE Criteria.** If a bidder does not meet the DBE Utilization Goal, the Department will use the following criteria to determine whether the bidder demonstrated sufficient GFE to be eligible for award of the contract. Documenting GFE is required and is necessary for the Department's and FAA's determination of compliance with 49 CFR Part 26.

(1) **Consider All Subcontractable Items.** Before bid opening, seek DBE participation by considering those portions of the work or material needs consistent with the available DBEs to facilitate DBE participation. Contingent sum pay items may not be considered for Race Conscious DBE participation to meet the DBE Utilization Goal. DBE participation on contingent sum pay items will be credited towards Race Neutral DBE Participation.

(2) **Initial DBE Notification.** Contact all DBEs listed as Mandatory Contacts for this Contract on the Department's Plan Holders Self-Registration List. Bidders are encouraged to also contact DBEs listed as Voluntary Contacts but are not compelled to make voluntary contacts as a condition of demonstrating GFE. Log each contact with a DBE firm on a Contact Report, Form 25A-321A.

Give DBEs at least 7 calendar days to quote. You may reject DBE quotes received after the deadline. Responsive DBE quotes should be accepted unless they are determined non-competitive. Consistently apply deadlines for quote submission and responsiveness determinations for DBEs and non-DBEs.

(3) Methods of initial and follow up notification are:

- (a)** By fax with a confirmation receipt of successful transmission to the DBE's fax number listed in the DBE Directory. A fax transmission without receipt of successful transmission is unsatisfactory.
- (b)** By email to the DBE's email address listed in the DBE Directory, with confirmation of successful receipt. Email without confirmation of successful receipt is unsatisfactory.
- (c)** By telephone solicitation made to the DBE's telephone number listed in the DBE Directory, with a record of the date and time of the telephone contact. Telephone solicitation without a record of date and time is unsatisfactory.
- (d)** By publication, with the names and dates of each advertisement in which a request for DBE participation was placed. Attach copies of advertisements or proof of publication.

(4) Non-Competitive DBE Quotes.

DBE quotes more than 10 percent higher than an accepted non-DBE quote, or more than 10 percent higher than the cost of using your own forces may be deemed non-competitive, provided they are for the exact same work. Include evidence supporting the determination not to use the DBE subcontractor.

When a DBE quote is not accepted, the work must be performed by the non-DBE subcontractor whose quote was used to provide the basis of the determination or by your own forces if your forces were the basis of the determination. Payments received by a non-DBE subcontractor during the execution of the Contract shall be consistent with the accepted quote. This does not preclude increases due to change documents issued by the Department.

(5) Assistance to DBEs. Provide DBEs with:

- (a)** Information about bonding or insurance required by the bidder.
- (b)** Information about securing equipment, supplies, materials, or business development related assistance or services.
- (c)** Adequate information about the requirements of the contract regarding the specific item of work or service sought from the DBE.
- (d)** Document all efforts to provide assistance to DBEs on Federal-Aid projects.

(6) Follow-up DBE Notifications. If there is no response from the initial DBE notification, contact the DBEs again to determine if they will be quoting.

Failure to submit a quote by the deadline is evidence of the DBE's lack of interest in bidding. Log follow-up contacts on the Contact Report Form 25A-321A.

(7) GFE Evaluation. Subsections (a) through (e) must be completed for a GFE based submission to be considered. Failure to perform and document actions contained in subsections (a) through (e) constitutes insufficient GFE. After submitting a GFE, bidders may only clarify efforts taken before opening. No new efforts or additional DBE participation is permitted after bid opening, as basis of GFE.

- b. Administrative Reconsideration.** 49 CFR 26.53(d) provides an opportunity for administrative reconsideration when the Department determines that GFE is insufficient. This opportunity must be exercised within three working days of notification that GFEs were unsatisfactory. For reconsideration, the bidder must provide written documentation or argument concerning efforts to meet the DBE Utilization Goal. No new or additional contact information may be provided. Only contact information the bidder provided in support of its initial request for a GFE determination by the CRO may be presented to support the request for administrative reconsideration.

The process for an Administrative Reconsideration is as follows:

- (1) The bidder will have the opportunity to meet with the DBE Liaison Officer in person to discuss the issue. If so desired, the bidder must be ready to meet with the DBE Liaison Officer within four working days of receipt of notice that it failed to meet the requirements of this subsection.
- (2) The DBE Liaison Officer will render a written decision and provide notification to the bidder within four working days after the meeting. The written decision will explain the basis for finding.
- (3) The finding of the DBE Liaison Officer cannot be appealed to the U.S. DOT.

120-3.3 DBE CREDITABLE AND NON CREDITABLE WORK.

- a. DBE Creditable Work.** The Commercially Useful Function work items and creditable dollar amounts shown on the DBE Utilization Report, Form 25A-325C, shall be included in any subcontract, purchase order or service agreement with that DBE.

b. DBE Decertification.

- (1) If a DBE performing a Commercially Useful Function loses its DBE certification at any time prior to execution of a subcontract, purchase order or service agreement, as the result of a determination of ineligibility pursuant to 49 CFR Part 26.87, the work of that firm will not be credited toward the DBE Utilization Goal and the Contractor must either:
 - (a) meet the contract goal by subcontracting with an eligible DBE firm or demonstrate a GFE to do so; or
 - (b) continue with the decertified DBE and find other work not already committed to DBEs in an amount that meets or exceeds the DBE Utilization Goal.
- (2) If a DBE performing a Commercially Useful Function loses its DBE certification after execution of a subcontract, purchase order or service agreement, as the result of a determination of ineligibility pursuant to 49 CFR Part 26.87, the de-certified DBE may continue to perform, and the work may be credited toward the DBE Utilization Goal.
- (3) If a DBE goes out of business and cannot perform the work, the Contractor must meet the contract goal by subcontracting with an eligible DBE Firm or demonstrate a GFE to do so.

The provisions of 120-3.03(3) Termination of a DBE and 120-3.03(4) DBE Replacement or Substitution do not apply to this section.

A Contractor must notify the CRO within one business day if they become aware of any change in a DBE's circumstances that might lead to a DBE's decertification.

c. Termination of a DBE.

- (1) In accordance with 49 CFR 26.53(f)(1) the Contractor shall not terminate a DBE without good cause and the prior written consent of the Engineer. For purposes of this paragraph, good cause includes the following circumstances:
 - (a) DBE defaults on their obligation for any reason;
 - (b) The DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
 - (c) The DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
 - (d) The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (e) The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215, and 1,200 or applicable state law;
 - (f) The Engineer determines the DBE is not a responsible contractor.
 - (g) The DBE voluntarily withdraws from the project and provides a written notice of its withdrawal;
 - (h) The DBE is ineligible to receive DBE credit for the type of work required;
 - (i) A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work; or
 - (j) Other documented good cause that the Engineer determines, compels the termination of the DBE, provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE after contract award.
- (2) The Contractor must give written notice to the DBE of its intent to request to terminate and/or substitute, and the reason for the request. The request to terminate and/or substitute must be submitted to the Engineer.
- (3) The Contractor must give the DBE 5 working days to respond to the written notice. Any response from the DBE must be submitted to the Engineer.
- (4) DBEs that are terminated must be replaced or substituted in accordance with 120-3.3(d).

d. DBE Replacement or Substitution.

- (1) The Contractor shall submit to the Engineer a written request to replace or substitute a DBE who fails or refuses to execute a written subcontract or who is terminated under Subsection 120-3.3(c).

(2) If the Contractor cannot obtain replacement DBE participation, the DBE Utilization Goal will not be adjusted. However, the Engineer may consider the following criteria as satisfying that portion of DBE participation that cannot be replaced:

- (a) The Contractor was not at fault or negligent and that the circumstances surrounding the replacement or substitution were beyond the control of the Contractor; and
- (b) The Contractor is unable to find replacement DBE participation at the same level of DBE commitment and has adequately performed and documented the GFE expended in accordance with Subsection 120-3.2; or
- (c) It is too late in the project to provide any real subcontracting opportunities for DBEs.

If the Engineer agrees that additional DBE participation is not available, the DBE may be replaced or substituted with a non-DBE or the Contractor may self-perform the work.

120-3.4 COMMERCIALY USEFUL FUNCTION (CUF).

a. **Creditable Work.** Measuring the DBE Utilization Goal will be based upon the actual dollars paid to the DBEs for creditable CUF work on this project. This is determined by the Engineer in accordance with this section. CUFs are limited to:

- (1) Prime Contractors;
- (2) Subcontractors;
- (3) Manufacturers;
- (4) Regular Dealers;
- (5) Brokers; or
- (6) Joint Ventures

b. **Determination of CUF.** In order for the CUF work of the DBE to be credited toward the goal, the Contractor must ensure the DBE is certified in the appropriate category at the time of the submittal of the subcontract, or the issuance of a purchase order or service agreement. Subcontracts, purchase orders and service agreements must be consistent with the written DBE commitment.

- (1) The CUF performed by a DBE certified in a supply category will be evaluated by the Engineer to determine whether the DBE performed as either a broker, regular dealer, or manufacturer of the product provided to this project.
- (2) The following factors will be used in determining whether a DBE trucking company is performing a CUF:
 - (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is performing on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (c) 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.

- (3)** The Contractor will receive credit for the CUF performed by DBEs as provided in this section. Contractors are encouraged to contact the Engineer in advance of the execution of the DBE's work or provision of goods or services regarding CUF and potential DBE credit.
- (4)** The DBE may perform work in categories for which it is not certified, but only work performed in the DBE's certified category meeting the CUF criteria may be credited toward the DBE Utilization Goal.
- (5)** DBE work shall conform to the following requirements to be a CUF:
 - (a)** It will be necessary and useful work required for the execution of the Contract.
 - (b)** The scope of work will be distinct and identifiable with specific contract items of work, bonding, or insurance requirement.
 - (c)** It will be performed, controlled, managed, and supervised by employees normally employed by and under the control of the certified DBE. The work will be performed with the DBE's own equipment. Either the DBE owner or DBE On-Site Representative will be at the work site and responsible for the work. Leased equipment may also be used provided the DBE has exclusive use of the equipment and it is operated by a driver the DBE employs. In remote locations or rare situations, a DBE may use equipment and/or personnel from the Contractor or its affiliates. Should this situation arise, a prior arrangement must be in place. The duration of the arrangement must be short term and prior written approval from the Engineer must be obtained.
 - (d)** The manner in which the work is sublet or performed will conform to standard industry practice within Alaska, as determined by the Department. The work or provision of goods or services will have a market outside of the DBE program (and must also be performed by non-DBE firms within the Alaskan construction industry). Otherwise, the work or service will be deemed an unnecessary step in the contracting or purchasing process and no DBE credit will be allowed.

There will be no DBE credit for lower-tier non-DBE subcontract work.

- (e)** The cost of the goods and services will be reasonable and competitive with the cost of goods and services outside the DBE program within Alaska. Materials or supplies needed as a regular course of the Contractor's operations such as fuel, maintenance, office facilities, portable bathrooms, etc. are not creditable.

The cost of materials actually incorporated into the project by a DBE subcontractor is creditable toward the DBE goal only if the DBE is responsible for ordering and scheduling their delivery and fully responsible for ensuring that they meet specifications. The cost of materials purchased from the contractor or its affiliates is not creditable.

- (f)** Subcontract work, with the exception of truck hauling, shall be sublet by the same unit of measure as is contained in the Bid Schedule unless approved in advance by the Engineer.
- (g)** The DBE will control all business administration, accounting, billing and payment transactions. The Contractor cannot perform these functions for the DBE.

In accordance with AS 36.30.420(b), the Engineer may inspect the offices of the DBE and audit their records to assure compliance.

- c. **Rebuttal of a Finding of No CUF.** Consistent with the provisions of 49 CFR Part 26.55(c)(4)&(5), before the Engineer makes a final finding that no CUF has been performed by a DBE, the Engineer will coordinate transmittal of the presumptive finding to the Contractor, who will in-turn, notify the DBE. The Contractor will provide the DBE the opportunity to provide rebuttal information. The Contractor shall present the information to the Engineer.

The Engineer will make a final determination on whether the DBE is performing a CUF. Under no circumstances will the Contractor take any action with respect to the DBE until the final determination is made. The Engineer's decisions on CUF matters are subject to review by the Department, but are not administratively appealable to the U.S. DOT.

- d. **Monthly Required Reporting.** On a monthly basis, the Contractor shall submit the Monthly Summary of DBE Participation, Form 25A-336, to the Engineer. Reports are due by the 15th of the following month. Also attach copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information shown on the form.

120-4.1 DETERMINING DBE CREDIT. The Contractor is entitled to count toward the DBE Utilization Goal, monies actually paid to certified DBEs for CUF work performed by the DBE as determined by the Engineer. The Contractor will receive credit toward the DBE Utilization Goal, as follows:

- a. Credit for the Commercially Useful Function of a DBE prime contractor is 100 percent of the monies actually paid to the DBE under the contract for creditable work and materials in accordance with 49 CFR Part 26.55.
- b. Credit for the CUF of a subcontractor is 100 percent of the monies actually paid to the DBE under the subcontract for creditable work and materials.
- c. Credit for the CUF of a subcontractor performing hauling/transportation is 100 percent of the monies actually paid to the DBE under the subcontract for creditable work for those firms certified in the 100 percent category. Credit for the CUF of a subcontractor performing hauling/transportation is 5 percent of the monies actually paid to the DBE under the subcontract for creditable work for those firms certified in the 5 percent credit category.
- d. Credit for the CUF of a manufacturer is 100 percent of the monies paid to the DBE for the creditable materials manufactured.
- e. Credit for the CUF of a regular dealer of a creditable material, product, or supply is 60 percent of its value. The value is the actual cost paid to the DBE not to exceed the bid price for such item.
- f. Credit for the CUF of a broker performed by a DBE certified in a supply category for providing a creditable material, product or supply is limited to a reasonable brokerage fee. The brokerage fee will not exceed 5 percent of the cost of the procurement contract for the creditable item.
- g. Credit for the CUF of a broker performed by a DBE certified in a bonding or insurance category is limited to a reasonable brokerage fee, not to exceed 5 percent of the premium cost.
- h. Credit for the CUF of a joint venture (JV) either as the prime contractor or as a subcontractor may not exceed the percent of the DBE's participation in the JV agreement, as certified by the CRO. The DBE joint venture partner will be responsible for performing all of the work as delineated in the certified JV agreement.

120-5.1 ACHIEVEMENT OF DBE GOALS. Work under this item is subsidiary to other contract items and no payment will be made for meeting or exceeding the DBE Utilization Goal.

If the Contractor fails to utilize the DBEs listed on Form 25A-325C as scheduled or fails to submit proof of payment, requested documentation, or otherwise cooperate with a DBE review or investigation, the Department will consider this to be unsatisfactory work. If the Contractor fails to utilize GFE to replace or substitute a DBE, regardless of fault (except for Subsection 120-3.3(d)(2)(c)), the Department will also consider this unsatisfactory work. Unsatisfactory work may result in disqualification of the Contractor from future bidding under Subsection 20-13 and withholding or progress payments consistent with Subsection 90-06.