

CITY OF BILLINGS
AVIATION AND TRANSIT DEPARTMENT
BILLINGS LOGAN INTERNATIONAL AIRPORT



DISADVANTAGED BUSINESS

ENTERPRISE PROGRAM

MAY 2017

DBE PROGRAM – 49 CFR PART 26

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Billings Aviation and Transit Department has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Billings Aviation and Transit Department has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Billings Aviation and Transit Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Billings Aviation and Transit Department to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts.
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in DOT assisted contracts.
6. To promote the use of DBEs in all types of Federally assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
8. To provide appropriate flexibility to the City of Billings Aviation and Transit Department of Federal financial assistance in establishing and providing opportunities for DBEs.

Donald Kim Annin, C.M., Manager of Construction Engineering and Planning has been delegated as the DBE Liaison Officer. In that capacity, he is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Billings Aviation and Transit Department in its financial assistance agreements with the Department of Transportation.

The City of Billings Aviation and Transit Department has disseminated this policy statement to the City of Billings and all of the components of our organization. We have distributed this statement to DBE and non DBE business communities that may perform work for us on DOT assisted contracts. The distribution was accomplished by including it on the City of Billings' Website, the Montana Procurement Technical Assistance Center's Website at bigskyeda-edc.org, and the Billings Logan International Airport's Website.

Thomas W. Hanel
City of Billings Mayor

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Billings Aviation and Transit Department is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City of Billings Aviation and Transit Department will use terms in this Program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this Part. We will also report the DBE contractor information either on the FAA DBE Contractor's Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

Bidders List: 26.11(c)

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

We will collect this information by requiring a bidders list to be included in each of our bid packages. Each bidder is required to include a completed form as part of their bid proposal. Please see Attachment 7.

Section 26.13 Federal Financial Assistance Agreement

The City of Billings Aviation and Transit Department has signed the following assurances, applicable to all DOT assisted contracts and their administration:

Assurance: 26.13(a)

Each financial assistance agreement the City of Billings Aviation and Transit Department signs with a DOT operating administration will include the following assurance:

The City of Billings Aviation and Transit Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City of Billings Aviation and Transit Department shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City of Billings Aviation and Transit Department's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Billings Aviation and Transit Department of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

The City of Billings Aviation and Transit Department will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Billings Aviation and Transit Department is required to have a DBE Program meeting the requirements of this Part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this Part. We will continue to carry out our Program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our Program, as long as we remain in compliance. However, we will submit significant changes in the Program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Donald Kim Annin, C.M.
Manager of Construction Engineering and Planning
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings Montana 59105
Phone: 406-657-8482
FAX: 406-657-8438
annink@ci.billings.mt.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City of Billings Aviation and Transit Department complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Aviation and Transit concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this Program.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The City of Billings Aviation and Transit Department's contracted Engineering and Architectural firms will assist in the administration of the Program. Their duties and responsibilities include the following:

1. The DBELO will review the bid documents on each Federally funded project for the bidders lists and the Letters of Intent to subcontractor. From this review, the DBE involvement at time of bid will be established. During the construction phase, DBELO will provide onsite inspectors to monitor the work and the subcontractors on the project. Any deviation from the list of contractors will be noted and the prime contractor and the DEBLO will be notified. At the completion of the job, the inspectors will provide the DBELO with the

amounts of payments to the contractors and subcontractor and the amount of work completed by DBE contractors on the project. The DBELO will review this information to ensure the established DBE compliance for the project has been met.

2. The DBELO's duties and responsibilities include the following:
 - a. Gathers and reports statistical data and other information as required by DOT.
 - b. Works with all departments to set overall annual goals.
 - c. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
 - d. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
 - e. Analyzes the progress toward attainment and identifies ways to improve progress.
 - f. Participates in pre-bid meetings.
 - g. Advises the CEO/governing body on DBE matters and achievement.
 - h. Determine contractor compliance with good faith efforts.
 - i. Acts as liaison to the Uniform Certification Process.
 - j. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Billings Aviation and Transit Department 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.

To date, we have identified two institutions within the State:

Eagle Bank
80 Heritage Lane
Polson, MT 59860
406-883-2940

Native American Bank
125 N. Public Square
Browning, MT 59417
406-338-7000

Section 26.29 Prompt Payment Mechanisms

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

The City of Billings Aviation and Transit Department will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's

work is satisfactorily completed. We will use the following method to comply with this requirement:

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

The City of Billings Aviation and Transit Department will consider a subcontractor's work as satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of Billings Aviation and Transit Department. When the City of Billings Aviation and Transit Department has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The City of Billings Aviation and Transit Department will provide appropriate means to enforce the requirements of this Section. These may include withholding payments to contractor until written proof of payment to subcontractor has been received by the City of Billings Aviation and Transit Department.

The City of Billings Aviation and Transit Department will include the following clause in each DOT assisted prime contract:

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

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Billings Aviation and Transit Department or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We 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.

Section 26.31 Directory

The City of Billings Aviation and Transit Department uses the State of Montana Department of Transportation DBE directory.

The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Montana revises the Directory annually. The Directory may be found at <http://mdt.mt.gov/business/contracting/civil/dbe.shtml>. See Attachment 4.

Section 26.33 Over-concentration

The City of Billings Aviation and Transit Department has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Billings Aviation and Transit Department has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Billings Aviation and Transit Department will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment, or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3, State of Montana lists the regulation, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by our contracted Engineering and Architectural consultants who will review the bid documents on each Federally funded project for the bidders lists and the Letters of Intent to subcontractor. From this review, the DBE involvement at time of bid will be established. During the construction phase, the consultants will provide onsite inspectors to monitor the work and the subcontractors on the project. Any deviation from the list of contractors will be noted and the prime

any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the City of Billings Aviation and Transit Department will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure." We will use State of Montana DOT's DBE directory as a method to determine our base figure. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City of Billings Aviation and Transit Department would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT assisted contracts.

Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this Section, is not an acceptable alternative means of determining the availability of DBEs.

Step 2. Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the City of Billings Aviation and Transit Department will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Billings Aviation and Transit Department's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City of Billings Aviation and Transit Department's goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this Section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this Section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the City of Billings Aviation and Transit Department will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1. The

notice will be posted on our official Internet Website and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official Internet Website. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the City of Billings Aviation and Transit Department and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and Websites) where the proposal may be reviewed. **The public comment period will not extend the August 1 deadline.**

Our overall three-year DBE goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) Project Goals

If permitted or required by the FAA Administrator, we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT assisted contract for the project.

Section 26.45(f) Prior Operating Administration Concurrent

The City of Billings Aviation and Transit Department understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to Section 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 8 to this Program.

Section 26.47 Failure to Meet Overall Goals

The City of Billings Aviation and Transit Department will maintain an approved DBE Program and

overall DBE goal, if applicable, as well as administer our DBE Program in good faith to be considered to be in compliance with this Part.

If the City of Billings Aviation and Transit Department's awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing our DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year.
2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to fully meet our goal for the new fiscal year.
3. The City of Billings Aviation and Transit Department will prepare, within 90 days of the end of the fiscal year, the analysis, and corrective actions developed under paragraph (c) 1. and 2. of this Section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51(a-c) Breakout of Estimated Race-Neutral and Race-Conscious Participation

The City of Billings Aviation and Transit Department will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under Section 26.39 of this Part.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
3. Providing technical assistance and other services.
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on the City of Billings Aviation and Transit Department mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.

6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 8 to this Program.

Section 26.51(d-g) Contract Goals

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

If our approved projection under paragraph (c) of this Section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our Program without setting contract goals during that year, unless it becomes necessary in order to meet our overall goal.

We will establish contract goals only on those DOT assisted contracts that have subcontracting possibilities. We need 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 (e.g., type and location of work, availability of DBEs to perform the particular type of work).

We will express our contract goals as a percentage of the total amount of a DOT assisted contract

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (26.53(a) and (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal, or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

Donald Kim Annin, C.M., Manager of Construction Engineering and Planning, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be Submitted (26.53(b))

In our solicitations for DOT/FAA assisted contracts for which a contract goal has been established, we will require the following:

1. Award of the contract will be conditioned on meeting the requirements of this Section.
2. All bidders or offerors will be required to submit the following information to the City of Billings Aviation and Transit Department, at the time provided in paragraph (b)(3) of this Section:
 - 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - c. The dollar amount of the participation of each DBE firm participating.
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - f. If the contract goal is not met, evidence of good faith efforts (see Appendix A of this Part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
3. We will require that the bidder/offeror present the information required by paragraph (b)(2) of this Section: Under sealed bid procedures, as a matter of responsiveness.

Administrative Reconsideration (26.53(d))

Within five business days of being informed by the City of Billings Aviation and Transit Department that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings , MT 59105
406-657-8495

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate

good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts Procedures in Situations When There Are Contract Goals (26.53(f)(g))

We will include in each prime contract a provision stating:

1. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f).
2. That unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available, upon request, a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with this Part's provisions.

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this Section (or an approved substitute DBE firm) without our prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law.
6. We have determined that the listed DBE subcontractor is not a responsible contractor.

7. The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal.
8. The listed DBE is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
10. Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

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

The City of Billings Aviation and Transit Department will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within seven days, which may be extended for an additional seven days if necessary at the request of the contractor, and the City of Billings Aviation and Transit Department shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by Section 26.13(b) stating that failure by the contractor to carry out the requirements of this Part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this Section.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Billings Aviation and Transit Department to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ___ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
3. The dollar amount of the participation of each DBE firm participating.
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal.
5. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

If the firm is not currently certified as a DBE in accordance with the standards of Subpart D of this Part at the time of the execution of the contract, we will not count the firm's participation toward any DBE goals, except as provided for in Section 26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Billings Aviation and Transit Department will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

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

DBE Liaison Officer/Program Manager
Montana Department of Transportation
Civil Rights Bureau
P.O. Box 201001
Helena, MT 59620-1001
(406) 444-6331 (voice)
(406) 444-7696 (TTY)
(406) 444-7685 (FAX)

Our certification application forms and documentation requirements are found in Attachment 5 to this Program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Billings Aviation and Transit Department is the member of a Unified Certification Program (UCP) administered by:

DBE Liaison Officer/Program Manager
Montana Department of Transportation
Civil Rights Bureau
P.O. Box 201001
Helena, MT 59620-1001
(406) 444-6331 (voice)
(406) 444-7696 (TTY)
(406) 444-7685 (FAX)

The UCP will meet all of the requirements of this Section. See Attachment 6.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, State, and local law.

Notwithstanding any provision of Federal or State law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will transmit this information to DOT in

any certification appeal proceeding under Section 26.89 of this Part or to any other state to which the individual's firm has applied for certification under Section 26.85 of this Part.

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

The City of Billings Aviation and Transit Department, contractor, or any other participant in the Program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. If we violate this prohibition, we are in noncompliance with this Part.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 Website Link
- Attachment 2 Organizational Chart
- Attachment 3 State of Montana DBE Program Website Link
- Attachment 4 State of Montana DBE Directory Website Link
- Attachment 5 Certification Application Form Website Link
- Attachment 6 Signed UCP Application and UCP Program
- Attachment 7 Bidders List
- Attachment 8 Overall Goal Calculation (Include Breakout of Estimated Race-Neutral and Race-Conscious Participation, Public Participation, and Contract Goal)
- Attachment 9 Fostering Small Business Participation

ATTACHMENT 1

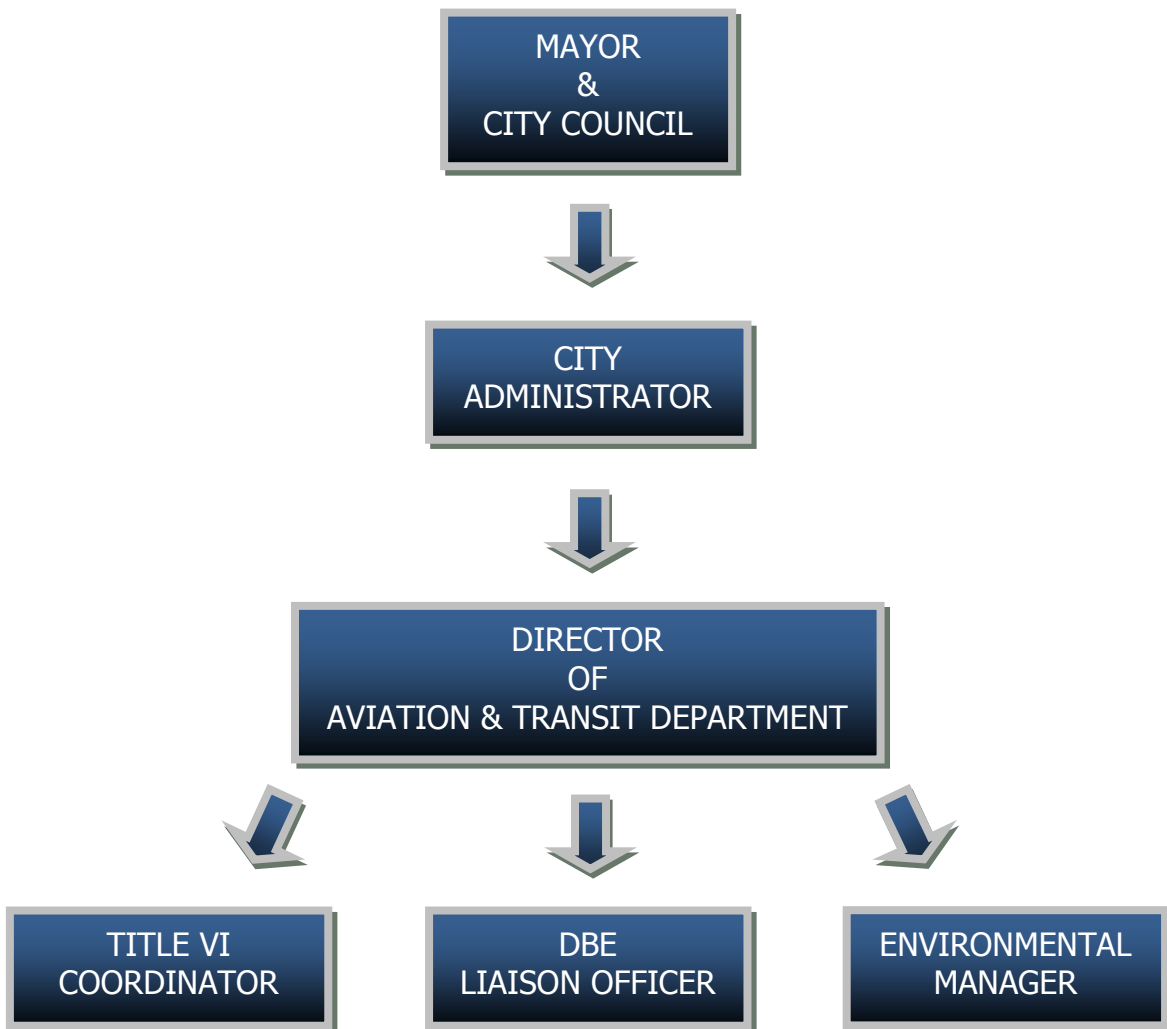
49 CFR PART 26

Website Link:

www.gpo.gov/fdsys/pkg/CFR-2010-title 49-vol1-part26.pdf

ATTACHMENT 2

ORGANIZATIONAL CHART



ATTACHMENT 3

STATE OF MONTANA DBE PROGRAM

Website Link:

http://www.mdt.mt.gov/publications/docs/manuals/dbe_prog.pdf

ATTACHMENT 4

STATE OF MONTANA DBE DIRECTORY

Website Link:

http://www3.mdt.mt.gov:7782/mttplc/mttplc.TPLK0002.DBE_DIRECTORY

ATTACHMENT 5

CERTIFICATION APPLICATION FORM

Website Link:

http://www.mdt.mt.gov/publications/docs/forms/dbe/dbe_certification.pdf

ATTACHMENT 6

SIGNED

UNIFIED CERTIFICATION PROGRAM

AGREEMENT

**MONTANA DEPARTMENT OF TRANSPORTATION (MDT)
UNIFIED CERTIFICATION PROGRAM (UCP)**

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

MDT will ensure that:

- As the UCP Lead Agency, MDT will follow all certification procedures outlined in 49 CFR §26, subparts D and E;
- As the UCP Lead Agency, MDT will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations; and
- As the UCP Lead Agency, MDT will implement DOT directives and guidance concerning certification matters.

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

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

All certifications by MDT shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

As the UCP Lead Agency, MDT is not required to process an application for certification from a firm having its principal place of business outside the state if a firm is not certified by the UCP in the state in which it maintains its principal place of business.

As the UCP Lead Agency, MDT will maintain a unified DBE directory containing, for all firms certified by MDT, the

information required by 49 CFR §26.31. The DBE directory is available at the following website: www.mdt.state.mt.us.

In order to be a party to the UCP, each recipient must complete, sign and forward the agreement in Attachment H to the following address:

Montana Department of Transportation
DBE Program UCP
PO Box 201001
Helena, MT 59620-1001

UNIFIED CERTIFICATION PROGRAM (UCP)
AGREEMENT AND ACCEPTANCE

The undersigned, a duly appointed representative of the following agency:

BILLINGS LOGAN INTERNATIONAL AIRPORT
(agency name)

agrees to and accepts the Unified Certification Program (UCP), as outlined in the Montana Department of Transportation DBE Program, and required by 49 CFR §26.81. By this agreement and acceptance, the above-named agency will ensure that:

- This agency will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR §26 on the basis of race, color, sex or national origin;
- This agency 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;
- Each financial assistance agreement this agency sign with a DOT operating administration (or a primary recipient) will include the following assurance:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contracts or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient will take all necessary and reasonable steps under 49 CFR part 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 recipient of its failure to carry out its approved program, the Department may impose sanctions as approved for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

- Each contract this agency signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

"The contractor, subrecipient, 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 recipient deems appropriate."

- And this agency will accept all DBEs certified by MDT as certified for participation in this agency's DBE Program.


(Signed)

JULY 19, 2001
(Dated)

ATTACHMENT 7

BIDDERS LIST

ATTACHMENT 8

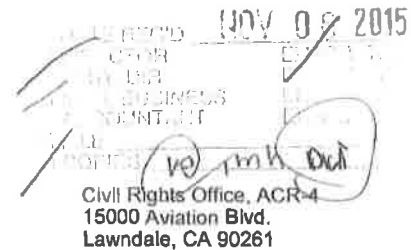
OVERALL GOAL CALCULATIONS



U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Western-Pacific Region Headquarters

Reply to: Northwest Mountain Region
& Alaskan Region



OCT 28 2015

Donald Kim Annin
Airport Engineering Division
Billings Logan International Airport
1901 Terminal Circle Drive, Room 216
Billings, Montana 59105

Dear Mr. Annin:

This letter is in reference to the Disadvantaged Business Enterprise (DBE) fiscal year (FY) 2016 thru 2018 goal that you submitted for the **Billings Logan International**, Billings, Montana. Based on our review, we have determined that the goal meet the standards in 49 CFR Part 26, Department of Transportation regulations.

The goal is described as follows:

FY 16-18: Overall goal: 6.64 % DBE Participation
To be obtained through **6.64 % Race-Neutral** and **0.0 % Race-Conscious means**
(Covering the period **October 1, 2015 through September 30, 2018**)

This overall goal covers the following project/s to be advertised during **FY 16-18**:

FY-16: Runway 10R Extension, Concourse Hold Room Expansion, and a New Taxilane
FY-17: New North/South Taxilane / Rehab Taxiway "A" West End, and North Side
Public Ramp Expansion
FY-18: West GA Parking Apron, and Taxiway B Northside Rehab.

DBE Accomplishments continue to be due annually on **December 1** for the previous fiscal year. Accomplishments can be submitted either through our new dbE-Connect system at www.faa.dbeconnect.com/FAA/login.asp or by completing the Uniform Report of DBE Awards/Commitments and Payments form and submitting via email to ricky.watson@faa.gov.

If you need a dbE-Connect User Account, please contact Ricky Watson at phone (310) 725-3940. Our blank forms can be found at http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/.

If you have any questions or need assistance, please call Ricky Watson at (310) 725-3940 or email at ricky.watson@faa.gov.

Sincerely,


Ricky Watson, MBA
Northwest Mountain & Alaskan Regions DBE/ACDBE Compliance Specialist
Office of Civil Rights & DBE/ACDBE Compliance

cc: Joe Nye, HLN-ADO



CITY OF BILLINGS

AVIATION AND TRANSIT DEPARTMENT

DATE REC'D **OCT 22 2015**
DIRECTOR
ASST. DIR.
GENERAL BUSINESS
ACCOUNTANT
FILE
COPIES mh

1901 Terminal Circle, Room 216
Billings Logan International Airport
Billings, Montana 59105-1996
(406) 657-8495
(406) 657-8438 FAX
www.flybillings.com

October 21, 2015

Thomas H. Binford, A.A.E.
Director of Aviation and Transit

Kevin Ploehn
Assistant Director of Aviation and Transit

Mr. Ricky Watson
FAA Western Pacific Regional Office
AWP-9
P.O. Box 92007
Los Angeles, CA 90009-2007

Dear Ricky,

Billings Logan International Airport has established a Disadvantaged Business Enterprise (DBE) goal of 6.64% for the three-year period 2016-2018, for Federally funded Airport Improvement Program (AIP) projects. The 2016 projects include the Runway 10R Extension, Concourse Hold Room Expansion, and a New Taxiway. The 2017 projects include the New North/South Taxiway for the West GA Area, Rehab Taxiway A West End, and North Side Public Ramp Expansion. The 2018 projects include West GA Parking Apron, and Taxiway B Northside Rehab. The methods used to establish this goal are described below.

STEP ONE

Our market area is the State of Montana, although most of the bidders reside in Yellowstone County. Using historical information obtained from our Federally funded projects for the last five years, we have calculated the following weighted goal:

2016-2018 Construction Costs:

Building Construction Costs	=	\$2,400,000
<u>Heavy Construction Costs</u>	=	<u>\$7,200,000</u>
Total Construction Costs		\$9,600,000

Weighted Costs:

Heavy Construction	\$7,200,000/\$9,600,000	=	.75	x	100	=	75%
Building Construction	\$2,400,000/\$9,600,000	=	.25	x	100	=	25%

Weighted DBE:

.75	(14 Heavy Construction DBE's/109 Heavy Construction Firms)	+
.25	(1 Building Construction DBE/179 Building Construction Firms)	=
(.75 x .128) x 100		+
(.25 x .005) x 100		=
9.6%		+
.125%		=
9.725%		

Using these numbers, the Step One calculation is as follows:

YEAR	TOTAL BIDDERS	DBE BIDDERS	
2013	15	3	20%
2014	6	0	0%
2015	8	3	38%

Median Percentage:
38%
20%
20%
18%
0%

The Median Percentage is: 20%

To obtain a more accurate picture, we weighted the goal according to how much we will spend in each NACIS category.

The weighted adjustment calculations are as follows:

$$\frac{\text{Heavy Construction Cost}}{\text{AIP Funds}} = \frac{\$14,805,602}{\$15,433,914} = .95$$

Further:

$$\frac{\text{Heavy Construction DBE's}}{\text{Heavy Construction Firms}} \times 100$$

$$((10/99) \times .95) = (.10) \times 100 = 10\%$$

$$\frac{\text{Access Control System Cost}}{\text{AIP Funds}} = \frac{\$588,668}{\$735,525} = .80$$

$$\frac{\text{Access Control System DBE's}}{\text{Access Control System Firms}} \times 100$$

$$((7/367) \times .80) = (.015 \times 100) = 1.5$$

The adjusted Step One DBE participation goal is $(20+10+ 1.5)/3 = 10.5\%$

STEP TWO

The DBE participation we have had on our Federally funded projects since 2010 is as follows:

YEAR	CONTRACT GOAL	ACHIEVED GOAL	DIFFERENCE
2010	7.71%	7.24%	-4.7%
2011	6.29%	10.29%	4%
2013	6.49%	.25%	-6.01%
2014	6.49%	2.78%	-3.71%
2014	6.49%	1.14%	-5.35%

Median Percentage:
10.29%
7.24%
2.78%
1.14%
.25%

The Median Percentage is: 2.78%

$$\frac{\text{Step One Goal } 10.5\% \text{ Plus Step Two Goal } 2.78\%}{2} = \frac{13.28\%}{2} = 6.64\%$$

The 2016-2018 DBE participation goal for Billings Logan International Airport is 6.64%

DISPARITY STUDY

Currently there is no disparity study for the State of Montana. However, we have contacted the Montana Department of Transportation's Civil Rights Bureau and they are undertaking a study to determine if any disparity exists in the near future. For future goals, we will consult with minority, women's, general contractor groups, and community organizations to solicit information regarding the availability of disadvantaged and non-disadvantaged businesses, the affects of discrimination on opportunities for DBE's, and our efforts to establish a level playing field. We have also participated in a half day seminar sponsored by the Montana PTAC and informed the businesses that attended about the advantages of becoming DBE's, and the opportunities for them at the Billings Logan International Airport.

RACE-CONSCIOUS RACE-NEUTRAL

Billings Logan International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Billings Logan International Airport uses the following race-neutral means to increase DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).
2. Providing technical assistance and other services.
3. Providing services to help DBE's, and other small businesses, improve long term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
4. Ensuring distribution of the State DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

We estimate that, in meeting our overall goal of 6.64% we will not obtain any race-conscious participation and 6.64% through race-neutral measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

Using the schedules above, the median historical race-neutral DBE percentage is as follows:

YEAR	CONTRACT GOAL	ACHIEVED GOAL	DIFFERENCE
2010	7.71%	7.24%	-.47%
2011	6.29%	10.29%	4%
2013	6.49%	.25%	-6.01%
2014	6.49%	2.78%	-3.71%
2014	6.49%	1.14%	-5.35%

Median Percentage:
4%
-.47%
-3.71%
-5.35%
-6.01%

Therefore, Median Race-Neutral Percentage is: -3.71%

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals, we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)), and we 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: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goals; DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals respectively.

PROCESS

We will publish a notice of the proposed overall goal in the *Billings Times*, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Billings Logan International Airport for thirty (30) days following the date of the notice, and informing the public that we and the DOT would accept comments on the goals for forty-five (45) days from the date of the notice. We have also contacted the MDOT, Billings Score #0272, and the Big Sky Economic Development Authority concerning obstacles DBE's are encountering with regard to construction work. The common complaint from DBE's was that they were unaware of projects that had DBE goals. We will send a project list to the Montana Civil Rights Bureau, which will be sent to all DBE's certified with the State.

We will forward the comments and our responses to the FAA after the comment period is completed.

SUMMARY

The 2016-2018 DBE participation goal for Billings Logan International Airport is 6.64%. This goal has been determined by approved methodology as shown above. There is no disparity study for the State of Montana. The DBE requirements for each project are clearly stated during the pre-bid conferences for each project.

Should you have any questions or comments, please contact me at 406-657-8482.

Sincerely,



Donald Kim Annin
Manager of Engineering and Planning

DKA:mdb

cc: DBE Corres
Chrono
K. Ploehn
K. Annin

ATTACHMENT 9

FOSTERING SMALL BUSINESS
PARTICIPATION

FOSTERING SMALL BUSINESS PARTICIPATION

When able the City of Billings Aviation and Transit Department will include the following strategies:

1. In multi-year design build contracts or other large contracts (e.g., for "megaprojects") we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
3. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
4. To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
5. To increase the awareness of DBE's of contracts that are to be bid, we will use the Montana Procurement Technical Assistance Center to inform the DBEs of all contracts that are being bid and provide contact information for further information.

Additionally:

1. This agency will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR §26 on the basis of race, color, sex, or national origin.
2. This agency 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.
3. Each financial assistance agreement this agency signs with a DOT operating administration (or a primary recipient) will include the following assurance:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contracts or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient will take all necessary and reasonable steps under 49 CFR Part 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 recipient of its failure to carry out its approved Program, the Department may impose sanctions as approved for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)."

4. Each contract this agency signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

"The contractor, subrecipient, 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 recipient deems appropriate."

5. This agency will accept all DBEs certified by MDT as certified for participation in this agency's DBE Program.