

CITY OF BILLINGS
AVIATION AND TRANSIT DEPARTMENT
BILLINGS LOGAN INTERNATIONAL AIRPORT



DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM

November 2020

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Billings, owner of Billings Logan International Airport, 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 Billings Logan International Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Billings Logan International Airport has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the Billings Logan International Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Billings Logan International Airport's policy to engage in the following actions on a continuing basis:

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

Marita Herold, Aviation and Transit Business Manager, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Herold 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 Billings Logan International Airport in its financial assistance agreements with the Department of Transportation.

The Billings Logan International Airport has disseminated this policy statement to the City of Billings and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on DOT-assisted contracts. The distribution was accomplished by including it on the Billings Logan International Airport's Website.

William A. Cole
City of Billings Mayor

Date

SUBPART A GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

Billings Logan International Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

Billings Logan International Airport will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-Discrimination Requirements

Billings Logan International Airport 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 Billings Logan International Airport 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(b)

Billings Logan International Airport will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to the DOT/FAA as follows:

Billings Logan International Airport will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The Billings Logan International Airport will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

Bidders List: 26.11(c)

The Billings Logan International Airport 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 DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way:

The Billings Logan International Airport will collect this information by requiring a bidders list to be included in each of its bid packages. Each bidder is required to include a completed form as part of his or her bid proposal. Please see Attachment 3 Bidder's List Collection Form.

Section 26.13 Federal Financial Assistance Agreement

The Billings Logan International Airport has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

The Billings Logan International Airport 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 Billings Logan International Airport 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 Billings Logan International Airport 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 Billings Logan International Airport 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: The Billings Logan International Airport will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;

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

SUBPART B ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Billings Logan International Airport is required to have a DBE program meeting, 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. The Billings Logan International Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Billings Logan International Airport is in compliance with it and Part 26. The Billings Logan International Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. The Billings Logan International Airport does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for Billings Logan International Airport:

Marita Herold
Aviation and Business Manager
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings Montana, 59105
Phone: 406-237-6284
heroldm@billingsmt.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Billings Logan International Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Aviation and Transit concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The Airport's contracted Engineering and Architectural firms will assist in the administration of the program. The duties and responsibilities include the following:

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

Section 26.27 DBE Financial Institutions

It is the policy of the Billings Logan International Airport 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, the Airport has 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 Billings Logan International Airport requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Billings Logan International Airport established a contract clause implementing this requirement and requires prime contractors to pay

subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Billings Logan International Airport.

Billings Logan International Airport ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, Billings Logan International Airport has selected 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.

To implement this measure, Billings Logan International Airport includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction 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 Airport. 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 Airport. This clause applies to both DBE and non-DBE subcontractors. See Attachment 7.

Section 26.31 Directory

The Billings Logan International Airport uses the Montana Department of Transportation (MDT) DBE directory, which is updated by MDT, and as applicable DBE directories published by neighboring states, and directories of other certifying agencies required to follow 49 CFR Part 26. MDT lists the firm's name, address, phone number, date of most recent certification, and the type(s) 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 directory is available online at:

<https://www.mdt.mt.gov/business/contracting/civil/doing-business.shtml>

Additional information on the directory can be obtained from the DBE Liaison Officer. See Attachment 4.

Section 26.33 Over-Concentration

Billings Logan International Airport has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

Billings Logan International Airport has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

Billings Logan International Airport implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in Billings Logan International Airport's DBE program.

Billings Logan International Airport actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

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

Billings Logan International Airport will implement a monitoring and enforcement mechanism that will include written certification that the Airport has reviewed the contracting records and monitored work sites for this purpose. The Airport will require all prime bidders to submit information on DBE subcontractors that will participate in the contract at the time bids are submitted. This information will include:

- a. The name and address of each DBE.
- b. A description of the work to be performed by each named firm.
- c. The dollar value of the work to be performed by each named firm.
- d. The dollar value of the work of the subcontract.

Failure of the prime contractor to provide this information with his or her bid will make the bidder nonresponsive and not eligible for the award of the contract.

Billings Logan International Airport requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Billings Logan International Airport's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Billings Logan International Airport or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- Billings Logan International Airport proactively reviews contract payments to subcontractors including DBEs. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Billings Logan International Airport by the prime contractor.

Prompt Payment Dispute Resolution

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

- Meetings between the prime contractor and affected subcontractor will be held as a measure to resolved disputes, in the presence of the Sponsor's designated representative as well as the Resident Project Representative and/or Project Manager as appropriate.

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

- A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment Complaints

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

- If affected subcontractor is unable to resolve payment discrepancies with the prime contractor, the subcontractor should contact the DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Billings Logan International Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

Billings Logan International Airport will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
- Other penalties for failure to comply, up to and including contract termination.

Billings Logan International Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

Billings Logan International Airport reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Airport's contracted Engineering consultant. Contracting records are reviewed by the Airport's contracted Engineering consultant. Billings Logan International Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

Billings Logan International Airport has created a Small Business Element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The Small Business Element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the Small Business Element is required in order for Billings Logan International Airport to be considered by DOT as implementing this DBE program in good faith.

SUBPART C GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-Asides or Quotas

Billings Logan International Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

Billings Logan International Airport will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), Billings Logan International Airport will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA.

FAA Website:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Billings Logan International Airport does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and Billings Logan International Airport will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. Billings Logan International Airport will use the DBE Directory and Census Bureau Data as a method to determine the base figure. Billings Logan International Airport understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. Billings Logan International Airport will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the market.

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

In addition to the consultation described above, Billings Logan International Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Billings Logan International Airport's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the Billings Logan International Airport. This notice will provide that the Billings Logan International Airport and the 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 1st deadline.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and Billings Logan International Airport responses.

Billings Logan International Airport will begin using the overall goal on October 1st of the relevant period, unless other instructions from the FAA have been received.

Project Goals

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

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

Billings Logan International Airport understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by Billings Logan International Airport for calculating goals is inadequate, the FAA may, after consulting with Billings Logan International Airport, adjust the overall goal or require that the goal be adjusted by Billings Logan International Airport. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to Meet Overall Goals

Billings Logan International Airport cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless Billings Logan International Airport fails to administer its DBE program in good faith.

Billings Logan International Airport understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

Billings Logan International Airport understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) Billings Logan International Airport 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 the FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 Overall DBE Three-Year Methodology to this program.

Contract Goals

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

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (Pre-Award)

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

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

Billings Logan International Airport will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative Reconsideration

Within 5 business days of being informed by Billings Logan International Airport that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts Procedural Requirements (Post-Solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of Billings Logan International Airport. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if Billings Logan International Airport agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) Billings Logan International Airport determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides Billings Logan International Airport 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 Billings Logan International Airport has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to Billings Logan International Airport a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Billings Logan International Airport, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise Billings Logan International Airport and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.*, safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

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

provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Billings Logan International Airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If Billings Logan International Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. Billings Logan International Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Billings Logan International Airport is a non-certifying member of the Montana Unified Certification Program (UCP). The Montana UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Montana UCP members make all certification decisions based on the facts as a whole.

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

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 Uniform Certification Application Form and documentation requirements are found in Attachment 8 to this program.

SUBPART E CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Billings Logan International Airport is the member of a Unified Certification Program (UCP) administered by Montana Department of Transportation, Civil Rights Bureau. The UCP will meet all of the requirements of this section. See Attachment 9 State's UCP Agreement.

SUBPART F COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures

Billings Logan International Airport understands that if it fails to comply with any requirement of this part, Billings Logan International Airport may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

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

Billings Logan International Airport, 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. Billings Logan International Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

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

ATTACHMENT 1

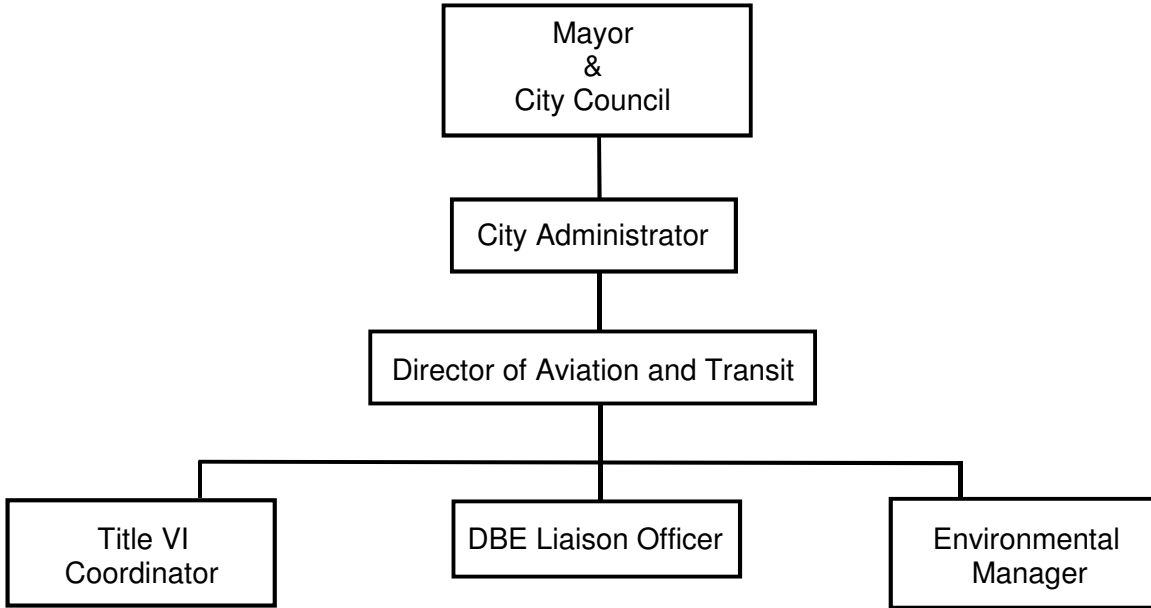
Regulations: 49 CFR Part 26

Below is the electronic link for Federal Regulations 49 CFR Part 26:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0f4248ab3efb51c07b5861d8130a3523&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

Bidder's List Collection Form

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

ATTACHMENT 4

Montana DBE Directory Web Link

Below is the electronic link to the Montana Department of Transportation (DOT) Disadvantaged Business Directory (DBE):

<https://www.mdt.mt.gov/business/contracting/civil/doing-business.shtml>

ATTACHMENT 5

Overall DBE Three-Year Methodology

Overall goal calculations to be submitted separately.

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: Billings Logan International Airport

Goal Period: FY-2021, 2022, 2023 – October 1, 2020 through September 30, 2023)

DOT-assisted contract amount:	FY-2021	<u>\$10,000,000</u>
	FY-2022	<u>\$10,075,000</u>
	FY-2023	<u>\$6,300,000</u>
	Total	<u>\$26,375,000</u>

Overall Three-Year Goal: 2.39%, to be accomplished through 0% RC and 2.39% RN

Total dollar amount to be expended on DBEs: \$912,637

Describe the Number and Type of Contracts that the airport anticipates awarding:

Contracts Fiscal Year 2021

1. Terminal Construction - \$7,750,000
2. Terminal Ramp Repairs/Replacement (Schedule 3) - \$1,800,000
3. Extend Operations Building Mechanic Bay - \$450,000

Contracts Fiscal Year 2022

1. Terminal Construction - \$10,000,000
2. Pavement Condition Index Survey - \$75,000

Contracts Fiscal Year 2023

1. Terminal Construction - \$2,000,000
2. Terminal Ramp Replacement (Schedule 4) - \$4,000,000
3. West Airfield Service Road - \$300,000

Market Area: State of Montana

Step 1. Actual relative availability of DBEs

Method: Use MT DBE Directory: <https://app.mdt.mt.gov/dbe/dbe/search>
and 2017 Census Bureau Data from <https://data.census.gov/cedsci/>

Step 1 of the overall goal determination is computed by determining the number of ready, willing, and able DBEs performing the types of work noted above as listed in the current DBE Directory prepared and maintained by the Montana Department of Transportation against the number of ready, willing, and able businesses available in the same NAICS code. The total number of businesses was obtained from the Census Bureau's Business Pattern database. The latest information currently available from this site is from 2017.

Finally, by applying the ratio of ready, willing, and able DBE firms and the total number of ready, willing, and able firms from the census data to the estimated percentage of total project costs, the Step 1 goal is determined.

The Step 1 goal was determined for each project anticipated for the Billings Logan International Airport. A summary of the Step 1 goal determinations is summarized for each project on the next pages.

Weighted Availability of DBE firms:

Fiscal Year #1

For FY 2021, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
Contract #1 Terminal Construction	Security	Guard Services	561612	\$100,000	22	0	0%	\$0
	Excavation, Earthwork, Site Work	Site Preparation	238910	\$1,000,000	304	12	3.95%	\$39,500
	Concrete	Poured Concrete Foundation and Structure	238110	\$1,300,000	186	8	4.30%	\$55,900
	Structural Steel	Structural Steel and Precast Concrete	238120	\$2,000,000	18	1	5.56%	\$111,200
	Plumbing & HVAC	Plumbing, Heating, and Air-Conditioning	238220	\$1,500,000	679	2	0.29%	\$4,350
	Electrical	Electrical and Other Wiring Installation	238210	\$1,500,000	529	4	0.76%	\$11,400
	Transporting Materials (gravel, concrete, etc.) and Equipment	Trucking	484220	\$150,000	298	8	2.68%	\$4,020
	Materials Testing and Special Inspections	Testing	541380	\$200,000	32	1	3.13%	\$6,260
Total Contract #1				\$7,750,000				\$232,630 (3.00% of \$7,750,000)
Contract #2 Terminal Ramp Repair/ Replacement (Schedule 3)	Engineering Services (Design and CA)	Engineering Services	541330	\$200,000	300	10	3.33%	\$6,660
	Security	Guard Services	561612	\$25,000	22	0	0%	\$0
	Asphalt Paving, Fencing, Striping	Highway, Street, Bridge Construction	237310	\$55,000	84	7	8.33%	\$4,582
	Concrete	Poured Concrete Foundation and Structure	238110	\$1,250,000	186	8	4.30%	\$53,750
	Excavation, Earthwork, Seeding	Site Preparation	238910	\$200,000	304	12	3.95%	\$7,900
	Transporting Materials (gravel,	Trucking	484220	\$20,000	298	8	2.68%	\$536

	asphalt, etc.) and Equipment							
	Materials Testing	Testing	541380	\$50,000	32	1	3.13%	\$1,565
Total Contract #2				\$1,800,000				\$74,993 (4.17% of \$1,800,000)
Contract #3 Extend Operations Building Mechanic Bay	Engineering Services (Design and CA)	Engineering Services	541330	\$90,000	300	10	3.33%	\$2,997
	Security	Guard Services	561612	\$10,000	22	0	0%	\$0
	Excavation, Earthwork, Site Work	Site Preparation	238910	\$45,000	304	12	3.95%	\$1,778
	Concrete	Poured Concrete Foundation and Structure	238110	\$140,000	186	8	4.30%	\$6,020
	Structural Steel	Structural Steel and Precast Concrete	238120	\$100,000	18	1	5.56%	\$5,560
	Plumbing & HVAC	Plumbing, Heating, and Air-Conditioning	238220	\$25,000	679	2	0.29%	\$73
	Electrical	Electrical and Other Wiring Installation	238210	\$25,000	529	4	0.76%	\$190
	Transporting Materials (gravel, concrete, etc.) and Equipment	Trucking	484220	\$5,000	298	8	2.68%	\$134
	Materials Testing and Special Inspections	Testing	541380	\$10,000	32	1	3.13%	\$313
Total Contract #3				\$450,000				\$17,064 (3.79% of \$450,000)
Total FY 2021				\$10,000,000				\$324,687 (3.25% of \$10,000,000)

Fiscal Year #2

For FY 2022, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
Contract #1 Terminal Construction	Security	Guard Services	561612	\$150,000	22	0	0%	\$0
	Excavation, Earthwork, Site Work	Site Preparation	238910	\$2,000,000	304	12	3.95%	\$79,000
	Concrete	Poured Concrete Foundation and Structure	238110	\$2,500,000	186	8	4.30%	\$107,500
	Structural Steel	Structural Steel and Precast Concrete	238120	\$2,000,000	18	1	5.56%	\$111,200
	Plumbing & HVAC	Plumbing, Heating, and Air-Conditioning	238220	\$1,500,000	679	2	0.29%	\$4,350
	Electrical	Electrical and Other Wiring Installation	238210	\$1,500,000	529	4	0.76%	\$11,400
	Transporting Materials (gravel, concrete, etc.) and Equipment	Trucking	484220	\$150,000	298	8	2.68%	\$4,020
	Materials Testing and Special Inspections	Testing	541380	\$200,000	32	1	3.13%	\$6,260
Total Contract #1				\$10,000,000				\$323,730 (3.24% of \$10,000,000)
Contract #2 Pavement Condition Index Survey	Engineering Services	Engineering Services	541330	\$75,000	300	10	3.33%	\$2,500
Total Contract #2				\$75,000				\$2,500 (3.33% of \$75,000)
Total FY 2022				\$10,075,000				\$326,230 (3.24% of \$10,075,000)

Fiscal Year #3

For FY 2023, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
Contract #1 Terminal Construction	Security	Guard Services	561612	\$25,000	22	0	0%	\$0
	Excavation, Earthwork, Site Work	Site Preparation	238910	\$450,000	304	12	3.95%	\$17,775
	Concrete	Poured Concrete Foundation and Structure	238110	\$500,000	186	8	4.30%	\$21,500
	Structural Steel	Structural Steel and Precast Concrete	238120	\$475,000	18	1	5.56%	\$26,410
	Plumbing & HVAC	Plumbing, Heating, and Air-Conditioning	238220	\$250,000	679	2	0.29%	\$725
	Electrical	Electrical and Other Wiring Installation	238210	\$250,000	529	4	0.76%	\$1,900
	Transporting Materials (gravel, concrete, etc.) and Equipment	Trucking	484220	\$25,000	298	8	2.68%	\$670
	Materials Testing and Special Inspections	Testing	541380	\$25,000	32	1	3.13%	\$783
Total Contract #1				\$2,000,000				\$69,763 (3.49% of \$2,000,000)
Contract #2 Terminal Ramp Replacement (Schedule 4)	Engineering Services (Design and CA)	Engineering Services	541330	\$400,000	300	10	3.33%	\$13,320
	Security	Guard Services	561612	\$30,000	22	0	0%	\$0
	Asphalt Paving, Fencing, Striping	Highway, Street, Bridge Construction	237310	\$300,000	84	7	8.33%	\$24,990
	Concrete	Poured Concrete Foundation and Structure	238110	\$2,725,000	186	8	4.30%	\$117,175
	Excavation, Earthwork, Seeding	Site Preparation	238910	\$320,000	304	12	3.95%	\$12,640
	Transporting Materials (gravel, asphalt, etc.) and Equipment	Trucking	484220	\$150,000	298	8	2.68%	\$4,020
	Materials Testing	Testing	541380	\$75,000	32	1	3.13%	\$2,348

Total Contract #2				\$4,000,000				\$174,493 (4.36% of \$4,000,000)
Contract #3 West Airfield Service Road	Engineering Services (Design and CA)	Engineering Services	541330	\$60,000	300	10	3.33%	\$1,998
	Security	Guard Services	561612	\$15,000	22	0	0%	\$0
	Asphalt Paving, Fencing, Striping	Highway, Street, Bridge Construction	237310	\$155,000	84	7	8.33%	\$12,912
	Excavation, Earthwork, Seeding	Site Preparation	238910	\$50,000	304	12	3.95%	\$1,975
	Transporting Materials (gravel, asphalt, etc.) and Equipment	Trucking	484220	\$10,000	298	8	2.68%	\$268
	Materials Testing	Testing	541380	\$10,000	32	1	3.13%	\$313
Total Contract #3				\$300,000				\$17,466 (5.82% of \$300,000)
Total FY 2023				\$6,300,000				\$261,721 (4.15% of \$6,300,000)

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$912,637
- Total for All Trades: \$26,375,000

Dividing the weighted DBE totals by the total estimate for all trades gives a base DBE availability figure for the projects anticipated during the goal-setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Base of DBE Goal: **3.46%**

Step 2: Adjustments to Step 1 base figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal.

Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 2015	\$3,132,071	0%	6.64%	6.64%	0%	0%	0%	Apron Construction, Tunnel Boring
FY 2016	\$4,746,518	0%	6.64%	6.64%	0%	0.86%	0.86%	Taxilane Construction, Terminal Restroom Construction
FY 2017	\$3,281,840	0%	6.64%	6.64%	0%	2.17%	2.17%	Runway Shift Construction, Terminal Expansion Preliminary Design
FY 2018	\$3,070,994	0%	2.10%	2.10%	0%	0.08%	0.08%	ARFF Ramp Rehabilitation, PCI Study, Terminal Expansion Final Design, Commercial Apron Construction Predesign
FY 2019	\$6,556,729	0%	2.10%	2.10%	0%	1.77%	1.77%	Commercial Apron Construction, Terminal Expansion Design, ARFF Gear, Terminal Expansion Phase 1 Construction

Arranging this historical data from low to high, not including the 0% (0.08%, 0.86%, 1.77%, and 2.17%) the median is **1.32%**.

Step 1 Base averaged with historical median: $(3.46\% + 1.32\%)/2 = \mathbf{2.39\%}$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **2.39%**. Billings Logan International Airport believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

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

The State of Montana, Department of Transportation acts as a lead organization for the development and solicitation of minority and women owned firms. They provide a web site distribution of a bid distribution form, which was sent to all DBE firms in the State. The State of Montana has also developed a Referral Resource list of organizations that also assist minority and women owned businesses. MDOT conducted a statewide disparity study with respect to highway construction. The 2016 Disparity Study Update is the last full disparity and availability study conducted. Provided is a link to the DBE program's Disparity & Availability Studies webpage:

<https://www.mdt.mt.gov/business/contracting/civil/programinfo.shtml>

MDT engaged a consultant (Keen Independent) to conduct an Availability and Disparity Study, which focused on participation of minority and women owned firms in MDT's contracts from October 2009 through September 2014. This Study was completed in 2016 and did not examine contracts using Federal Aviation Administration (FAA) funds; MDT and other agencies might review information in the report regarding DBE availability as they relate to operating the Program for FAA-funded contracts. Since contractors that participated on MDT contracts during the Study period are in most cases the same contractors that are awarded FAA-funded contracts.

The other factors examined in the 2016 MDT Disparity Study were related to success of minority- and women-owned firms relative to majority-owned businesses in the Montana marketplace. The Study noted quantitative evidence that minority- and women-owned firms are less successful than majority-owned firms and face greater barriers in the marketplace. There was also qualitative information that suggests discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Montana transportation contracting industry. Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified (*2016 MDT Disparity Study, Chapter 9, page 9*).

An adjustment to the base figure for barriers related to other factors was not made in the determination of the current because the MDT Disparity study indicated the impact of the barriers related to this category could not be quantified.

Billings Logan International Airport will utilize the findings of the Montana Department of Transportation's disparity study to determine the existence of discrimination or its effects in the market.

Breakout of Estimated "Race and Gender Neutral" (RN) and "Race and Gender Conscious" (RC) Participation.

Billings Logan International Airport will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

Billings Logan International Airport estimates that in meeting the established overall goal of **2.39%**, it will obtain **2.39%** from RN participation and **0%** through RC measures.

This breakout is based on:

Billings Logan International Airport does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a good faith effort to obtain DBE participation. Therefore, the entire goal of 2.39% is to be obtained through race-neutral participation.

Billings Logan International Airport will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (Section §26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, 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.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, Billings Logan International Airport provided for consultation and publication. This process included 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 Billings Logan International's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was teleconference via Zoom Meeting, which was held virtually online on December 17, 2020.

The following comments were received during the course of the consultation:

[If no comments were received, so state]

A notice of the proposed goal was published on the Billings Logan International Airport official website before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on the Billings Logan International Airport's official website.

Notwithstanding paragraph (f)(4) of §26.45, Billings Logan International Airport's proposed goals will not be implemented until this requirement has been met.

PUBLIC NOTICE

Billings Logan International Airport hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 2.39% for FAA/DOT-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2021 through 2023.

A teleconference will be held virtually on December 17, 2020 at 2:00 P.M. local time for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. Notice of the meeting details and instructions on how to register for the virtual meeting will be posted on the Billings Logan International Airport's website – <https://www.flybillings.com>, for two weeks prior to the meeting.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Marita Herold
Aviation and Transit Business Manager
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings Montana, 59105
Phone: 406-237-6284
heroldm@billingsmt.gov

AND

Federal Aviation Administration, Office of Civil Rights Staff
Sonia Cruz, Compliance Specialist
Northwest Mountain Region, Federal Aviation Administration, Office of Civil Rights
P.O. Box 92007
Los Angeles, California 90009-2007
(310) 725-3940
Sonia.Cruz@faa.gov

Dated the 25th day of November, 2020.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

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

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

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

Signature of Bidder/Offeror's Authorized Representative Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative Date: _____

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

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The Billings Logan International Airport has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Montana Code Annotated;

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

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

ATTACHMENT 8

DBE Certification Application Form

Below is the electronic link to the U.S. Department of Transportation (DOT) Uniform Certification Application form:

<https://www.mdt.mt.gov/other/webdata/external/civilrights/forms/DOT-DBE-Certification-Application.pdf>

ATTACHMENT 9

State's UCP Agreement

See attached copy of the signed Unified Certification Program (UCP) Agreement.

ATTACHMENT 9

State's UCP Agreement

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/civilrights.

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

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.


Shane Ketterling, Assistant Director of Aviation
and Transit

11-24-2020
(Dated)

ATTACHMENT 10

Small Business Element

Section 26.39 – Fostering Small Business Participation

The following is the small business element at the Billings Logan International Airport hereinafter (the "Airport")

1. Objective/Strategies

In order to promote Small Business participation the Airport will implement the following procedures to assist certified Small Business participation as a prime or subcontractor on Airport Projects

- For larger projects that will have subcontracting opportunities eligible for SBE or DBE participation, the Airport will encourage prime bidders to provide these subcontracting opportunities to SBE and DBE contractors. The Airport will encourage prime bidders to provide a bidders' list identifying who they contacted and who will provide services as a subcontractor and identify if they are an SBE or DBE. This information will be used to determine if there was adequate opportunities on the project for SBE or DBE firms.
- The Airport, when feasible, may unbundle large projects into smaller contracts which may be more feasible for small business participation.

2. Definitions

A. **Small Business**: A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

B. **Disadvantaged Business Enterprise (DBE)**: A for-profit small business (as defined by the Small Business Administration) —

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) as described in 49 CFR Part 26.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE by the State of Montana Department of Transportation (MDT), Office of Civil Rights in accordance with 49 CFR Part 26.

For the purposes of the small business element of the Airport DBE Program, small businesses which are also owned and controlled by disadvantaged individuals will be encouraged to seek

DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA assisted contracts.

3. Verification

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

- A DBE Certification by the MDT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the MDT Office of Civil Rights.
- SBA 8(a) Business Development Certification (as described in CFR parts 121 and 124).

4. Monitoring/Record Keeping

The Airport will require all Prime bidders to submit information on subcontractors that will participate in the Contract.

This information will include: (1) the name and address of each subcontractor or supplier; (2) a description of the work to be performed by each named firm; (3) the dollar value of the work of the subcontract. (4) Applicable certification to determine if the subcontractor or supplier is a small business.

Contractors, subcontractors, and suppliers are required to maintain records and documents of payments for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Airport or DOT. Failure to maintain accessible records for the three-year period will be reported to DOT.

During the course of work, the Airport or their representative shall review payrolls, and if necessary, conduct interviews with contractor's employees, to determine and ensure that firms are completing work items to the extent indicated in the Prime Contractor's bid, and performing a commercially useful function as defined in 49 CFR Part 26, Section 26.55(c). Should a determination be made that the firms are not completing work items or performing a commercially useful function, Airport shall notify DOT. Termination of the Prime Contractor's construction contract will be considered.

We will require that the bidder/offeror present the information required under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

5. Assurances

The Airport makes the following assurances:

1. The DBE Program, including its small business element, is not prohibited by state law.
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in this small business element of the DBE Program.

3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location.
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program.
5. Reasonable effort will be taken to encourage the minority and women owned firms that are eligible for DBE certification to become certified.
6. The program is open to small businesses regardless of their location.