

# **Bert Mooney Airport Authority**

## **Bert Mooney Airport**



## **U.S. Department of Transportation Disadvantaged Business Enterprise Program**

**49 CFR PART 26**

**July 2024**

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## **POLICY STATEMENT**

### **Section 26.1, 26.23 Objectives/Policy Statement**

**Bert Mooney Airport Authority**, owner of **Bert Mooney 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. **Bert Mooney Airport Authority** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also **Bert Mooney Airport Authority** 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 market place 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.

**Pam Chamberlin, Airport Manager, Bert Mooney Airport, 101 Airport Road, Butte, MT 59701 (406) 494-3771, [pamc@butteairport.com](mailto:pamc@butteairport.com)** has been delegated as the DBE Liaison Officer. In that capacity, **Ms. Chamberlin** 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 **Bert Mooney Airport Authority** in its financial assistance agreements with the Department of Transportation.

**The Bert Mooney Airport Authority** has disseminated this policy statement to the **Bert Mooney Airport Authority Board** 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 **Bert Mooney Airport Authority** DOT-assisted contracts. The distribution was accomplished by **posting on the Bert Mooney Airport’s website, <http://butteairport.com/> and by making it available to all parties requesting a copy.**

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**Chair, Bert Mooney Airport Authority**

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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**

#### ***Federal Aviation Administration (FAA) Recipients***

***Bert Mooney Airport Authority*** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

***Bert Mooney Airport Authority*** will use terms in this program that have their meanings defined in Part 26, § 26.5.

### **Section 26.7 Non-discrimination Requirements**

***Bert Mooney Airport Authority*** 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, ***Bert Mooney Airport Authority*** 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 Data Collection and Reporting Requirements**

#### **Reporting to DOT**

***Bert Mooney Airport Authority*** will provide data about its DBE Program to the Department as directed by DOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

***Bert Mooney Airport Authority*** 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 Part 26. ***Bert Mooney Airport Authority*** will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

#### **Bidders List**

***Bert Mooney Airport Authority*** will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

**Bert Mooney Airport Authority** will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

**Bert Mooney Airport Authority** will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

**Bert Mooney Airport Authority** will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), **Bert Mooney Airport Authority** will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

**Bert Mooney Airport Authority** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, **Bert Mooney Airport Authority** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of **Bert Mooney Airport Authority** financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

### **Section 26.13      Assurances Recipients and Contractors Must Make**

**Bert Mooney Airport Authority** has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement **Bert Mooney Airport Authority** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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:** **Bert Mooney Airport Authority** 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**

**Bert Mooney Airport Authority** 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.

**Bert Mooney Airport Authority** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **Bert Mooney Airport Authority** is in compliance with it and Part 26. **Bert Mooney Airport Authority** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **Bert Mooney Airport Authority** 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 to the relevant operating administration 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)**

The following individual has been designated as the DBE Liaison Officer for the **Bert Mooney Airport Authority**:

**Name:** Pam Chamberlin  
**Title:** Airport Director  
**Address:** Bert Mooney Airport, 101 Airport Road, Butte, MT 59701  
**Telephone Number:** (406) 494-3771  
**Fax Number:** (406) 494-2166  
**E-Mail Address:** [pamc@butteairport.com](mailto:pamc@butteairport.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **Bert Mooney Airport Authority** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Airport Director** 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 DBELO has a staff of **two which includes consultant engineers** to 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 **Bert Mooney Airport Authority** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of **Bert Mooney Airport Authority** 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. Availability of such institutions will be investigated on an annual basis.



**Bert Mooney Airport Authority** will review the MDT DBE listings for financial institutions in the County.

To date there are no listings identified for such financial institutions in **Silver Bow County, Montana**.

In the State of Montana, the only DBE financial institutions identified is:

Eagle Bank  
80 Heritage Lane  
Polson, MT 59860  
406.883.2940

Information on the availability of such financial institutions can be obtained from the DBE Program Specialists or Minority Depository Institutions list through the Federal Deposit Insurance Corporation at the following link FDIC - <https://www.fdic.gov/regulations/resources/minority/mdi.html>

## **Section 26.29 Prompt Payment Mechanisms**

**Bert Mooney Airport Authority** 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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority**.

**Bert Mooney Airport Authority** 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, **Bert Mooney Airport Authority** has selected the following method to comply with this requirement:

**Bert Mooney Airport Authority** will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after **Bert Mooney Airport Authority** payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, **Bert Mooney Airport Authority** includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

90-06 Partial payments. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and

materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, Payment for Materials on Hand. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must 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.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner 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.

#### Prompt Payment Monitoring for DBEs and Non-DBEs

**Bert Mooney Airport Authority** clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, **Bert Mooney Airport Authority** undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- Prior to the start of construction, all subcontractors will be provided contact information for the DBELO on the covered contract. Any inquiries in regards to timing of payment to the prime contractor will be referred to the DBELO for resolution.
- Prior to final payment to the prime contractor on a covered contract, the prime contractor shall provide lien releases from all DBE and non-DBE subcontractors to verify the final amounts due to the subcontractors within the covered contract.

**Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of **Bert Mooney Airport Authority** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- **Bert Mooney Airport Authority** proactively reviews contract payments to subcontractors including DBEs **quarterly**. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **Bert Mooney Airport Authority** by the prime contractor.

### Prompt Payment Dispute Resolution

**Bert Mooney Airport Authority** will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

If there is a dispute between a prime contractor and a subcontractor under a covered contract in regards to the satisfactory completion of the work and the release of payment the following dispute resolution procedures will be implemented:

- The prime contractor shall provide to the project manager a summary of the non-conforming work for which payment is being withheld from the subcontractor.
- The engineer, prime contractor, subcontractor, and owner will review the work performed in conformance with the requirements of the prime contract and subcontract.
- The owner and the engineer will determine if the subcontractor's work or portion of the work has been performed in conformance with the contract.
- The project manager and owner will meet with the prime contractor and subcontractor to discuss the work performed by the subcontractor and provide direction for the correction, if required, of any nonconforming work items in order to receive payment.
- If an agreement cannot be reached between the prime and subcontractor, as it relates to the Contract Documents, or a breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute by non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules before having recourse to a judicial forum.

**Bert Mooney Airport Authority** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

The following contract clause is included in the federal provisions section of the contract documents.

#### (3) Other mechanisms

- Prompt Payment (§26.29) - 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 Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

To ensure that prompt payment and return of retainage is provided to subcontractors under the covered contract, all subcontractors on the project will be provided contract information for the DBELO for the covered contract. Interested subcontractors will be encouraged to contact the DBELO for any question regarding payments to prime contractors and timing of when they should receive payments.

#### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime contractor directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- The DBELO and their consultant will review the complaint and discuss with the complaint with the prime contractor.
- The prime contractor shall provide justification to the DBELO for nonpayment to the DBE. If non-payment is not justified, the prime contractor shall provide a corrective action plan for meeting the prompt payment requirements of the contract.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by ***the Bert Mooney Airport Authority*** 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

***The Bert Mooney Airport Authority*** provides appropriate means to enforce the requirements of § 26.29. These means include:

- 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.

***Bert Mooney Airport Authority*** will actively implement the enforcement actions detailed above.

#### **Section 26.31      Directory of Certified Firms**

***Bert Mooney Airport Authority*** is a ***non-certifying*** member of the **Montana** Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the

program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
  1. Physical location
  2. NAICS code(s)
  3. Work descriptions
  4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

#### **Section 26.33 Over-concentration**

***Bert Mooney Airport Authority*** has not identified that over-concentration exists in the types of work that DBEs perform.

#### **Section 26.35 Business Development and Mentor-Protégé Programs**

***Bert Mooney Airport Authority*** has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

#### **Section 26.37 Monitoring Responsibilities**

***Bert Mooney Airport Authority*** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, and describes and sets forth these mechanisms in this DBE program.

***Bert Mooney Airport Authority*** actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by **Uniform Reporting Form**. This mechanism to maintain a running tally of overall goal attainment will be used to inform ***Bert Mooney Airport Authority*** decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

**Bert Mooney Airport Authority** actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by **Uniform Reporting Form**. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

#### Monitoring Contracts and Work Sites

**Bert Mooney Airport Authority** 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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by **consultant**. Contracting records are reviewed by **consultant**. **Bert Mooney Airport Authority** will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

#### **Section 26.39      Fostering Small Business Participation**

**Bert Mooney Airport Authority** 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. **Bert Mooney Airport Authority** acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

### **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 26.43      Set-asides or Quotas**

**Bert Mooney Airport Authority** does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

#### **Section 26.45      Overall Goals**

**Bert Mooney Airport Authority** 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), **Bert Mooney Airport Authority** will submit its Overall Three-year DBE Goal

to **FAA** by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by **FAA**.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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. **Bert Mooney Airport Authority** will use **a Disparity Study** as a method to determine the base figure. **Bert Mooney Airport Authority** 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. **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** market.

In establishing the overall goal, **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** 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, **Bert Mooney Airport Authority** will publish a notice announcing the proposed overall goal before submission to the **FAA** on August 1<sup>st</sup>. The notice will be posted on **Bert Mooney Airport Authority** 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 **FAA**, the revised goal will be posted on **Bert Mooney Airport Authority** official internet web site.

The Overall Three-Year DBE Goal submission to **FAA** will include any information and comments received, who provided the comment, and how **Bert Mooney Airport Authority** considered and responded to any comments and information received before finalizing the goal.

**Bert Mooney Airport Authority** will begin using the overall goal on October 1 of the relevant period, unless other instructions from **FAA** have been received.

#### Project Goals

If permitted or required by the **FAA**, 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 it must meet all the substantive and procedural requirements 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.

#### Prior Operating Administration Concurrence

**Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** for calculating goals is inadequate, **FAA** may, after consulting with **Bert Mooney Airport Authority**, adjust the overall goal or require that the goal be adjusted by **Bert Mooney Airport Authority**. 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**

**Bert Mooney Airport Authority** 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 **Bert Mooney Airport Authority** fails to administer its DBE program in good faith.

**Bert Mooney Airport Authority** 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.



**Bert Mooney Airport Authority** 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) **Bert Mooney Airport Authority** 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 26.49            How are overall goals established for transit vehicle manufacturers?**

Not Applicable

**Section 26.51            Means Recipients Use to Meet Overall Goals**

**Breakout of Estimated Race-Neutral & Race-Conscious Participation**

**Bert Mooney Airport Authority** 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** to this program.

**Bert Mooney Airport Authority** 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.

#### Contract Goals

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 Federal share of a DOT-assisted contract***.

#### **Section 26.53      Good Faith Efforts Procedures in Situations where there are Contract Goals**

##### 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.

**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***.

**Bert Mooney Airport Authority** 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:
  - 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; and
  - 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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
  - f. 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;
- (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;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by **Bert Mooney Airport Authority**. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor **Bert Mooney Airport Authority** will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written

responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, **Bert Mooney Airport Authority** will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which **Bert Mooney Airport Authority** solicits proposals to design and build a project with minimal project details at time of letting, **Bert Mooney Airport Authority** may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, **Bert Mooney Airport Authority** will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. **Bert Mooney Airport Authority** and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

**Bert Mooney Airport Authority** will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal **Bert Mooney Airport Authority will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

#### Administrative Reconsideration of Good Faith Efforts determinations

Within **5** days of being informed by **Bert Mooney Airport Authority** 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:

**Chairman, Bert Mooney Airport Authority, 101 Airport Road, Butte, MT 59701 (406) 494-3771.**

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/award)

**Bert Mooney Airport Authority** will include in each prime contract the contract clause required by § 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 **Bert Mooney Airport Authority** deems appropriate if the prime contractor fails to comply with the requirements of this section.

**Bert Mooney Airport Authority** will require the awarded contractor 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.

**Bert Mooney Airport Authority** will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless **Bert Mooney Airport Authority** causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

**Bert Mooney Airport Authority** will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains **Bert Mooney Airport Authority's** written consent as provided in § 26.53(f); and
- (2) Unless **Bert Mooney Airport Authority's** consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

**Bert Mooney Airport Authority** may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he

prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (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 1200 or applicable state law;
- (6) **Bert Mooney Airport Authority** has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to **Bert Mooney Airport Authority** 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; and
- (10) Other documented good cause that **Bert Mooney Airport Authority** determines compels the termination of the DBE subcontractor;

Before transmitting to **Bert Mooney Airport Authority** the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **Bert Mooney Airport Authority** sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising **Bert Mooney Airport Authority** and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why **Bert Mooney Airport Authority** should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), **Bert Mooney Airport Authority** may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If **Bert Mooney Airport Authority** requests documentation under this provision, the contractor shall submit the

documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. **Bert Mooney Airport Authority** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

### **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).

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals 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**

**Bert Mooney Airport Authority** is a non-certifying member of the **Montana** Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. **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:

Name: Maggie Metzger,  
Title: DBE Program Specialist,  
Address: Montana Department of Transportation, Civil Rights Bureau,  
P.O. Box 201001, Helena, MT 59620-1001,  
Phone: 406-444-6337,  
Fax: 406-444-7243  
E-mail: [mmetzger@mt.gov](mailto:mmetzger@mt.gov)

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>. The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full **Montana** UCP agreement. The full UCP agreement can be found in attachment 9.

### **Section 26.81 Unified Certification Programs**

**Bert Mooney Airport Authority** is a member of a Unified Certification Program (UCP) administered by **Montana Department of Transportation**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

### **Section 26.91 Actions Following DOT Certification Appeal Decisions**

If **Bert Mooney Airport Authority** is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to Bert Mooney Airport Authority**

**Bert Mooney Airport Authority** understands that if it fails to comply with any requirement of this part, **Bert Mooney Airport Authority** 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.

**Bert Mooney Airport Authority** understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

### **Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs**

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY paragraph (2) of this section is also applicable in FAA programs.**

- (2) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

### **Section 26.105 Enforcement Actions Applicable to FAA Programs**

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.



The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

### **Section 26.107      Enforcement Actions Applicable to Participating Firms**

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

### **Section 26.109      Confidentiality, Cooperation, and Intimidation or Retaliation**

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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).

***Bert Mooney Airport Authority***, 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. ***Bert Mooney Airport Authority*** understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

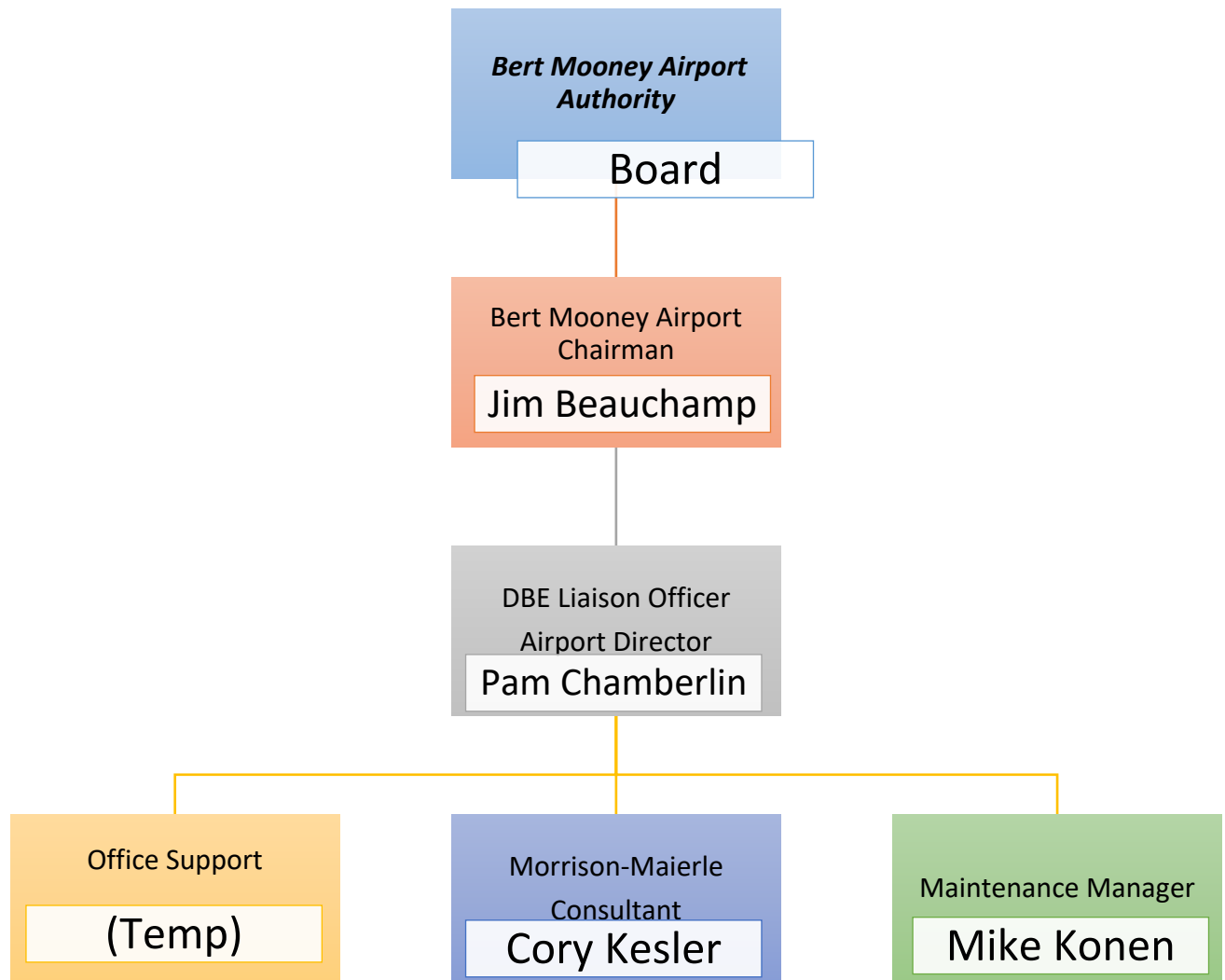
- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

**Attachment 1 – Regulations: Link to 49 CFR Part 26**

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

## Attachment 2 – Organizational Chart



**Attachment 3 – Bidder’s List Collection Form****[EXAMPLE]**

**[Note: § 26.11(c) requires Recipients to collect bidders list information from all bidders at the time of bid submittal, and to enter it into USDOT’s designated system. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not). The form below is NOT mandatory. If you use an electronic system to collect this information, you may instead provide a screenshot or other example showing how the system collects all the required data.]**

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

**Attachment 4 – Link to UCP Directory of Certified Firms**

**State of Montana** UCP Directory may be found here:

**<https://app.mdt.mt.gov/ess-dbe/>**

**Attachment 5 – Goal Methodology**

**Bert Mooney Airport to submit to Civil Rights Connect as a separate document.**



## **Attachment 6 – Good Faith Efforts Forms**

### **Demonstration of Good Faith Efforts - Forms 1, 2, and 3**

***[The following Forms 1, 2, and 3 are provided for illustrative purposes ONLY. Any forms Recipients develop and use for purposes of assessing bidders'/offerors' good faith efforts should be included with solicitation documents. These forms or their equivalents are NOT for use in soliciting for Design-Build contracts. Design-Build solicitations must require respondents to provide a DBE Open-Ended Performance Plan in their initial responses.]***

#### **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:

Description of Work	NAICS	Dollar Amount / %*	Manufacturer/Regular Dealer/Distributor/Broker**

*\*Percentage is to be used only in negotiated procurements*

*\*\*For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

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, all representations in this Letter of Intent shall be null and void.**

**Submit this page for each DBE subcontractor.**

**Form 3: DBE Regular Dealer/Distributor Affirmation Form**

OMB Approval Pending 04/17/2024

U.S. Department of  
Transportation**DBE Regular Dealer/Distributor  
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

**DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO<sup>1</sup>

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

## **Attachment 7 – DBE Monitoring and Enforcement Mechanisms**

### **Administrative Enforcement Mechanisms**

The ***Bert Mooney Airport Authority*** 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 [MT Code § 27-1-311](#)

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 – Link to DBE Form and Personal Net Worth**

DBE Certification Application Form and Personal Net Worth Statement:

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

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

**Attachment 9 – State’s UCP**

**State of Montana** UCP Agreement can be found here:

<https://www.mdt.mt.gov/other/webdata/external/civilrights/db/ucp-approval.pdf>

## **Attachment 10 – Small Business Element Program**

### Small Business Element

The following are the objectives/strategies for the small business element at the **Bert Mooney Airport**.

#### **1. Objective/Strategies**

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

- For larger projects that will have subcontracting opportunities eligible for SBE or DBE participation the **Bert Mooney Airport Authority** will encourage prime bidders to provide these subcontracting opportunities to SBE and DBE contractors. We will encourage prime bidders to provide a bidders' list identifying who they contacted and who will provide services as a subcontractor and 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 and if the prime contractor provided those opportunities for future projects.

#### **2. Definition**

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**: 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, DBE Office 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 MDOT 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 State of Montana DBE Civil Rights Department.

### 4. Monitoring/Record Keeping

The **Bert Mooney Airport Authority** 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: (1) the name and address of each DBE; (2) a description of the work to be performed by each named firm; and (3) 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 award of the contract. Additionally, bidders are required to certify that any DBE firms engaged to provide materials, services, or supplies in the completion of the project: (1) is a bona fide DBE performing a commercially useful function; and (2) has executed a binding contract to provide specific materials or services for a specific dollar amount. The **Bert Mooney Airport Authority** will verify that proposed DBE firms are currently certified by and listed in the Montana Department of Transportation's DBE Directory. The County will also verify, as outlined in 49 Part 26, Section 26.55, that the Prime Bidder/Contractor has met the proposed and actual DBE participation. For projects with race-conscious goals, bidders not meeting the specified DBE goals must provide, with the bid, evidence of good faith efforts. Bidders not providing evidence of good faith efforts, as per Appendix A of Part 26 will be considered nonresponsive and not eligible for award of the contract.

Bidders, DBE contractors, DBE subcontractors, and DBE suppliers are required 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 **Bert Mooney Airport Authority** or DOT. Failure to maintain accessible records for the three-year period will be reported to DOT.

During the course of work, the **Bert Mooney Airport Authority** shall review payrolls, and if necessary, conduct interviews with contractor's employees, to determine and ensure that DBE 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 DBE firms are not completing work items or performing a commercially useful function, **Bert Mooney Airport Authority** 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:

- The DBE Program, including its small business element is not prohibited by state law;
- 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;
- 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;
- There are no limits on the number of contracts awarded to firms participating in the DBE Program;
- Reasonable effort will be taken to encourage the minority and women owned firms that are eligible for DBE certification to become certified.
- The program is open to small businesses regardless of their location.