

DEPARTMENT OF TRANSPORTATION

DBE PROGRAM – 49 CFR PART 26

CITY OF EASTPORT, MAINE



EASTPORT MUNICIPAL AIRPORT



DBE PROGRAM

ATTACHMENTS

- [Attachment 1](#) Regulations: Link to 49 CFR Part 26 (eCFR)
- [Attachment 2](#) Organizational Chart
- [Attachment 3](#) Bidders 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

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

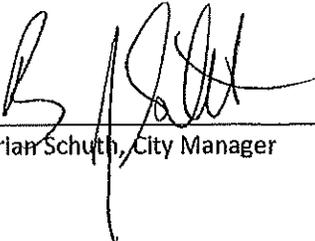
The **City of Eastport**, owner of **Eastport Municipal Airport**, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The **City of Eastport / Eastport Municipal Airport** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal Airport** 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.

Pete Lehmann, Airport Manager has been delegated as the DBE Liaison Officer. In that capacity, **Pete Lehmann, Airport Manager** is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the **City of Eastport / Eastport Municipal Airport** in its financial assistance agreements with the Department of Transportation.

The **City of Eastport / Eastport Municipal Airport** has disseminated this policy statement to the **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** DOT-assisted contracts. The distribution was accomplished by including as part of bid packages and contract documents.



Brian Schuth, City Manager

10-2-24

Date

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

The **City of Eastport / Eastport Municipal Airport** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The **City of Eastport / Eastport Municipal Airport** will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

The **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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 Data Collection and Reporting Requirements

Reporting to DOT

The **City of Eastport / Eastport Municipal Airport** 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:

The **City of Eastport / Eastport Municipal 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 Part 26. The **City of Eastport / Eastport Municipal Airport** 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

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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), the **City of Eastport / Eastport Municipal Airport** will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The **City of Eastport / Eastport Municipal Airport** will maintain records documenting a firm's compliance with the requirements of this part. 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

The **City of Eastport / Eastport Municipal Airport** has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the **City of Eastport / Eastport Municipal Airport** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

[Note: The following language is to be used verbatim, as stated in 26.13(a)]

The **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal 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):

[Note: The following language is to be used verbatim, as stated in 26.13(b)]

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 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.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **City of Eastport / Eastport Municipal Airport** is in compliance with it and Part 26. The **City of Eastport / Eastport Municipal Airport** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **City of Eastport / Eastport Municipal 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 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 **City of Eastport / Eastport Municipal Airport**:

Name:	Pete Lehmann
Title:	Airport Manager
Address:	City of Eastport 22 Washington Street Eastport, Maine 04631
Telephone:	(413) 657-4636
E-mail Address:	<u>airport@eastport-me.gov</u>

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **City of Eastport / Eastport Municipal Airport** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **City of Eastport / Eastport Municipal Airport** 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 **eight (8)** 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 the **City of Eastport / Eastport Municipal Airport** 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. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the **City of Eastport / Eastport Municipal 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. Availability of such institutions will be investigated on an annual basis.

Currently, the Maine Unified Certification Program does not have any certified DBE financial institutions. In addition, at this time, there are no minority-owned banks in the State of Maine. (Source: U.S. Treasury Department Minority Bank Deposit Program <https://www.fiscal.treasury.gov/mbdp/participants.html>). We will investigate this on an annual basis.

Section 26.29 Prompt Payment Mechanisms

The **City of Eastport / Eastport Municipal 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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal Airport**.

The **City of Eastport / Eastport Municipal 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, the **City of Eastport / Eastport Municipal Airport** has selected the following method to comply with this requirement:

1. The **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** payment to the prime contractor.

[FAA Recipients include the following]

For every airport construction project funded under Federal grant assistance programs, the **City of Eastport / Eastport Municipal Airport** 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.

Prompt Payment Monitoring for DBEs and Non-DBEs

The **City of Eastport / Eastport Municipal Airport** 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, the **City of Eastport / Eastport Municipal Airport** 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):

- Random on-site visits.
- Prime contractor's sworn statement is included in monthly invoicing.
- There may be interim audits of the contractor's payments to DBE's to ensure the actual amount paid to DBE subcontractors equals the amount reported.

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

- The **City of Eastport / Eastport Municipal Airport** proactively reviews contract payments to subcontractors including DBEs on a monthly basis with each application for payment. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the **City of Eastport / Eastport Municipal Airport** by the prime contractor.

Prompt Payment Dispute Resolution

The **City of Eastport / Eastport Municipal Airport** 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.

Upon either parties written request to the DBELO for mediation, the parties shall participate voluntary mediation by selecting a mediator within 10 days of request. Within 30 days of the request, the mediation shall be completed, with or without legal counsel, pursuant to Maine law.

The **City of Eastport / Eastport Municipal Airport** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

1. Alternative dispute resolution (ADR)
 - If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the subcontractor should contact the DBELO to initiate complaint.
2. 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.

- Subcontractors that are not comfortable contacting the prime contractor directly regarding payment, or that have been unable to resolve payment discrepancies with the prime contractor, may contact the DBELO to report the prompt payment issue.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **City of Eastport / Eastport Municipal 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

The **City of Eastport / Eastport Municipal Airport** provides appropriate means to enforce the requirements of § 26.29. These means include:

- Notify the contractor for resolution.
- If not promptly resolved, provide the subcontractor with copy of the bond for them to notify the bonding agency.
- Retainage is not released until all lien waivers are received from subs.

The **City of Eastport / Eastport Municipal Airport** will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The **City of Eastport / Eastport Municipal Airport** is a *non-certifying* member of the **State of Maine** 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

The **City of Eastport / Eastport Municipal Airport** has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development and Mentor-Protégé Programs

The **City of Eastport / Eastport Municipal Airport** has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** actively monitors attainment toward overall goals by maintaining a 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 **random on-site visits and performing commercially useful function reviews, prime contractor sworn statement included in monthly invoicing, reviewing contract payments to subcontractors including DBEs monthly and with each application for payment and maintaining a running tally that compares DBE commitments versus attainments (payments)**. This

mechanism to maintain a running tally of overall goal attainment will be used to inform the **City of Eastport / Eastport Municipal Airport's** decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

The **City of Eastport / Eastport Municipal Airport** 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 **random on-site visits and performing commercially useful function reviews, prime contractor sworn statement included in monthly invoicing, reviewing contract payments to subcontractors including DBEs monthly and with each application for payment and maintaining a running tally that compares DBE commitments versus attainments (payments)**. 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

The **City of Eastport / Eastport Municipal 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, 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 **DBELO or their designee**. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by **DBELO or their designee**. The **City of Eastport / Eastport Municipal Airport** will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. The **City of Eastport / Eastport Municipal Airport** 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

The **City of Eastport / Eastport Municipal 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. The **City of Eastport /**

Eastport Municipal Airport 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.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **City of Eastport / Eastport Municipal Airport** does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The **City of Eastport / Eastport Municipal 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), the **City of Eastport / Eastport Municipal Airport** will submit its Overall Three-year DBE Goal to **FAA** by August 1st 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 the **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal 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. The **City of Eastport / Eastport Municipal Airport** will use **DBE Directory information and Census Bureau Data** as a method to determine the base figure. The **City of Eastport / Eastport Municipal 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. The **City of Eastport / Eastport Municipal 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 **City of Eastport / Eastport Municipal Airport** market.

In establishing the overall goal, the **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal 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, the **City of Eastport / Eastport Municipal Airport** will publish a notice announcing the proposed overall goal before submission to the **FAA** on August 1st. The notice will be posted on the **City of Eastport / Eastport Municipal 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 **FAA**, the revised goal will be posted on the **City of Eastport / Eastport Municipal Airport's** 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 **City of Eastport / Eastport Municipal Airport**. This notice will provide that the **City of Eastport / Eastport Municipal Airport** 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) and the location(s) where the proposed goal may be reviewed. **The public comment period will not extend the August 1st deadline.**

The Overall Three-Year DBE Goal submission to **FAA** will include any information and comments received, who provided the comment, and how the **City of Eastport / Eastport Municipal Airport** considered and responded to any comments and information received before finalizing the goal.

The **City of Eastport / Eastport Municipal Airport** 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

The **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal Airport** for calculating goals is inadequate, **FAA** may, after consulting with the **City of Eastport / Eastport Municipal Airport**, adjust the overall goal or require that the goal be adjusted by the **City of Eastport /**

Eastport Municipal 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

The **City of Eastport / Eastport Municipal 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 the **City of Eastport / Eastport Municipal Airport** fails to administer its DBE program in good faith.

The **City of Eastport / Eastport Municipal 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.

The **City of Eastport / Eastport Municipal 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. The **City of Eastport / Eastport Municipal 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 **FAA** upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **City of Eastport / Eastport Municipal 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 to this program.

The **City of Eastport / Eastport Municipal 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.

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 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.

The DBELO or designee 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**.

The **City of Eastport / Eastport Municipal 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:
 - 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 the **City of Eastport / Eastport Municipal Airport**. 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 the **City of Eastport / Eastport Municipal Airport** 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, the **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** solicits proposals to design and build a project with minimal project details at time of letting, the **City of Eastport / Eastport Municipal Airport** 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, the **City of Eastport / Eastport Municipal Airport** will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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, the **City of Eastport / Eastport Municipal Airport** 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 **10** days of being informed by the **City of Eastport / Eastport Municipal 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:

Name:	Brian Schuth
Title:	City Manager
Address:	City of Eastport 22 Washington Street Eastport, Maine 04631
Telephone:	(207) 853-2300
E-mail Address:	<u>citymanager@eastport-me.gov</u>

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)

The **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** deems appropriate if the prime contractor fails to comply with the requirements of this section.

The **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** 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.

The **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport's** written consent as provided in § 26.53(f); and
2. Unless the **City of Eastport / Eastport Municipal Airport'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.

The **City of Eastport / Eastport Municipal Airport** 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. The **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal 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; and
10. Other documented good cause that the **City of Eastport / Eastport Municipal Airport** determines compels the termination of the DBE subcontractor.

Before transmitting to the **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the **City of Eastport / Eastport Municipal Airport** should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the **City of Eastport / Eastport Municipal Airport** 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 the **City of Eastport / Eastport Municipal Airport** 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. The **City of Eastport / Eastport Municipal Airport** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

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.

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **City of Eastport / Eastport Municipal Airport** is a **non-certifying member** of the **State of Maine** Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. The **State of Maine** 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 **State of Maine** UCP members make all certification decisions based on the facts as a whole.

[Note: include the following information regardless of whether your agency is a certifying member]

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

**Ms. Mary Bryant
Maine Department of Transportation
Office of Civil Rights
16 State House Station
Augusta, ME 04333-0016
Telephone: (207) 624-3056
Fax: (207) 624-3021
E-mail: mary.bryant@maine.gov**

<https://www.maine.gov/mdot/civilrights/dbe/>

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>.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full **State of Maine** UCP agreement. The full UCP agreement can be found in Attachment 9.

Section 26.81 Unified Certification Programs

The **City of Eastport / Eastport Municipal Airport** is a member of a Unified Certification Program (UCP) administered by the **State of Maine, Department of Transportation**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Disadvantaged Business Enterprises

MaineDOT is committed to engaging small disadvantaged, minority and women-owned business enterprises as defined herein in all contracts to the maximum feasible extent, and will continue working to ensure the maximum feasible opportunity for these businesses to participate in contracts financed in whole or in part with federal funds.

As a recipient of federal USDOT funding, MaineDOT is required to develop and administer the DBE Program. MaineDOT administers the DBE Program and certifies all DBEs in Maine in compliance with federal regulations under 49 CFR Part 26. This Program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field", and foster equal opportunity in USDOT-assisted contracts; improve the flexibility and efficiency of the DBE Program; and reduce burdens on small businesses.

DBE Certification does not mean the Contractor has the ability to work in the State of Maine - it is up to the Contractor to verify eligibility.

DBE Information found at: <https://www.maine.gov/mdot/civilrights/dbe/>

The Maine Department of Transportation is committed to the effective implementation of the Disadvantaged Business Enterprise (DBE) Program as defined in Title 49, Code of Federal (CFR) Part 26 and Part 23 for Airport Concessions. This program will be executed in accordance with the regulations of the United States Department of Transportation (DOT) as a condition of receiving DOT funding.

MaineDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract or concession opportunity. MaineDOT 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 and ACDBE Programs or the requirements of 49 CFR Part 26 and 23. MaineDOT shall take all necessary and reasonable steps under 49 CFR Part 26 and 23 to ensure nondiscrimination in the award and administration of DOT-assisted contracts and concession opportunities.

Section 26.91 Actions Following DOT Certification Appeal Decisions

If the **City of Eastport / Eastport Municipal Airport** 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 the City of Eastport / Eastport Municipal Airport

The **City of Eastport / Eastport Municipal Airport** understands that if it fails to comply with any requirement of this part, the **City of Eastport / Eastport Municipal 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.

The **City of Eastport / Eastport Municipal Airport** 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 (1) of this section is also applicable in FAA programs.

1. **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).

The **City of Eastport / Eastport Municipal 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. The **City of Eastport / Eastport Municipal Airport** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

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

ATTACHMENT 1

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:

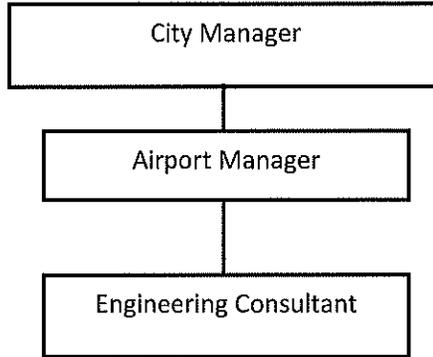
<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2

Organizational Chart

City of Eastport, Maine

Eastport Municipal Airport



ATTACHMENT 4

State of Maine DBE Directory

The State of Maine Department of Transportation DBE Directory is available online at the following website:

<https://www.maine.gov/mdot/civilrights/docs/dbe/WeeklyDBEVendorList.pdf>

ATTACHMENT 5

Submitted separately to FAA Civil Rights Connect.

ATTACHMENT 6

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

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:

Authorized DBE Representative (Name and Title):

Total Subcontract/Purchase Order Amount:

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 NO¹

(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.**)

¹ 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)? YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? YES² NO³

² 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%.

³ 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:

Demonstration of Good Faith Efforts

The DBE goal for this project is X.XX percent.

All Bidders must submit an Assurance stating the percentages of minority business and women-owned businesses they intend to employ on this project.

All Bidders must shall submit the following with their bid:

1. Name(s) of DBE subcontractor(s).
2. Description of work each is to perform.
3. Dollar value of each proposed minority business subcontract(s).

If Bidders wish, they may submit the above information, in a separate, sealed envelope marked "D.B.E. Participation Information" with their Bid.

REQUIRED ASSURANCE TO BE INCLUDED IN ALL PROPOSALS

This firm assures that it will utilize no less than _____% DBE participation.

CERTIFICATION OF BIDDER for the above:

BIDDER'S NAME: _____

ADDRESS: _____

EIN NUMBER: _____

If the apparent successful competitor does not meet the goal, it shall submit a statement showing that a good faith effort was made by the competitor to meet the goal.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

LISTING OF PROJECT SUBCONTRACTORS

The Bidder advises herein that the following Subcontractors are proposed for the item of work listed. Subcontractors are subject to review and approval per the requirements of the Contract Documents and the technical requirements specified. List only firms that will supply labor at the site.

	Subcontractor	DBE? Y/N	Work Item to be Performed	Dollar Value
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

RESPECTFULLY SUBMITTED: _____
Contractor

Signed: _____

Title: _____

Date: _____

(use additional sheets if necessary and number 1 of 1, 1 of 2, etc.)

REPORT OF CERTIFIED DBE SUBCONTRACTORS USED ON FAA FUNDED PROJECTS

(To be filled out by the Prime Contractor and submitted with **EACH** Periodic Cost Estimate)

Submit this page for each DBE subcontractor

Period Covered for this invoice: _____

Name of Airport: _____ Hoyle Tanner Project # _____

Name of Project: _____

AIP Number: _____ Total Contract Value: _____

Contractor's Name: _____

Contractor's Address: _____

City, State, Zip: _____

DBE Firm: _____

DBE Address: _____

City, State, Zip: _____

Telephone: _____ E-mail: _____

Type of Work Performed: NAICS (list all that apply): _____

Website to search for NAICS codes by type of work performed: <https://www.naics.com/search/>

	Total to DBE (Dollar Amount)	
	Women	Men
Black American		
Hispanic American		
Native American		
Asian-Pacific American		
Subcontinent Asian American		
Non-Minority		
TOTAL THIS PAY REQUEST:	\$	\$
TOTAL PREVIOUSLY REPORTED:	\$	\$
TOTAL WORK TO DATE:	\$	\$

I certify that the above information is correct:

Signature of Contractor

Date

Typed Name

REPORT OF SUBCONTRACTORS USED ON FAA FUNDED PROJECTS

(To be filled out by the Prime Contractor and submitted with **EACH** Periodic Cost Estimate)

Submit this page for each subcontractor

Period Covered for this invoice: _____

Name of Airport: _____ Hoyle Tanner Project # _____

Name of Project: _____

AIP Number: _____ Total Contract Value: _____

Contractor's Name: _____

Contractor's Address: _____

City, State, Zip: _____

Subcontractor: _____

Subcontractor Address: _____

City, State, Zip: _____

Telephone: _____ E-mail: _____

Type of Work Performed: _____

Website to search for NAICS codes by type of work performed: <https://www.naics.com/search/>

	Total to DBE (Dollar Amount)	
	Women	Men
Black American		
Hispanic American		
Native American		
Asian-Pacific American		
Subcontinent Asian American		
Non-Minority		
TOTAL THIS PAY REQUEST:	\$	\$
TOTAL PREVIOUSLY REPORTED:	\$	\$
TOTAL WORK TO DATE:	\$	\$

I certify that the above information is correct:

Signature of Contractor

Date

Typed Name

ATTACHMENT 7

Administrative Enforcement Mechanisms

Each Contractor will be required to submit documentation of DBE participation as the work progresses. A monthly compliance report/DBE participation affidavit and EEO/DBE monthly activities report will be required to be submitted monthly with the Contractor's Application for Payment or by the last day of the month if the Contractor is not submitting an Application for Payment. Trade Contractor's Application for Payment will not be processed if any of the DBE monthly report is delinquent.

The **City of Eastport / Eastport Municipal Airport** has a breach of contract action, pursuant to the terms of the contract, option available to enforce the DBE requirements contained in its contracts.

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 and Personal Net Worth Statement:

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

In addition, for forms required to initiate the DBE Certification process, visit the State of Maine website:

<https://www.maine.gov/mdot/civilrights/dbe/>

ATTACHMENT 9

State of Maine UCP Agreement

AGREEMENT

Between the

**MAINE DEPARTMENT OF TRANSPORTATION
OFFICE OF HUMAN RESOURCES**

And

City of Eastport Municipal Airport

This Agreement is made this 5th day of April, 2002, by and between the **State of Maine**, through its **Department of Transportation (MDOT)**, with an address of 16 State House Station, Augusta, Maine, and City of Eastport, with an address of 78 High Street Eastport, Maine.

I. AGREEMENT

MDOT and the named party hereby agrees as follows:

1. The named party agrees that as a recipient of USDOT financial assistance it will cooperate fully with the Maine Department of Transportation in the certification of Disadvantaged Business Enterprises.
2. The named party agrees it shall utilize the MDOT Disadvantaged Business Enterprise Certification program.
3. The named party agrees to refer potential applicants for DBE Certification to MDOT.
4. The named party agrees to honor the decisions made by MDOT with respect to certification decisions made in accordance with 49 CFR Parts 23 and 26 Subpart E Certification Procedures
5. MDOT will accept, review, and make determinations about DBE Certification for those entities referred to it by the named party.

II TERMS

This Agreement remains in place indefinitely

SEEN AND AGREED TO BY:

MAINE DEPARTMENT OF TRANSPORTATION

Penny Plourde

By: Penny Plourde Manager, Small Business Programs

George A. Finch *City Mgr.*

By: George A. Finch

Title CITY MANAGER

ATTACHMENT 10

Small Business Element

Recognizing that the DBE Program goals should be met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses, the **City of Eastport / Eastport Municipal Airport** will implement a small business element into its DBE policy in accordance with applicable law. The **City of Eastport / Eastport Municipal Airport** is including this element to facilitate competition by and expand opportunities for small businesses. The **City of Eastport / Eastport Municipal Airport** is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. The **City of Eastport / Eastport Municipal Airport** will meet its objectives using a combination of the following methods and strategies:

1. Objective/Strategies

- a. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- b. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- c. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- d. To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

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 Section 3 of 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) described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
- 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 Department of Transportation (MaineDOT) in accordance with 49 CFR 26.

For the purposes of the small business element of the **City of Eastport / Eastport Municipal Airport's** DBE Program, small businesses which are also owned and controlled by socially 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 **City of Eastport / Eastport Municipal Airport** will accept the following certifications for participation in the small business element of their DBE Program with applicable stipulations:

- a. State DOT DBE Certification – DBE Certification by the State DOT 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 State DOT.
- b. State DOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the State DOT DBE Certification application after contract award.
- c. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

4. Monitoring/Record Keeping

- a. The **City of Eastport / Eastport Municipal Airport** will track and monitor participation by DBEs and other small businesses that results from the implementation of this small business element. Participation will be reported annually as part of the Uniform Report of DBE Participation.
- b. The **City of Eastport / Eastport Municipal Airport** will actively monitor 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.

5. Assurances

The **City of Eastport / Eastport Municipal Airport** makes the following assurances:

- a. The DBE Program, including its small business element is not prohibited by state law;

- b. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
- c. 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;
- d. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
- e. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- f. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.