



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PLAN
for
FEDERAL AVIATION ADMINISTRATION (FAA)
AIRPORT IMPROVEMENT PROGRAM (AIP)
PROJECTS
at
BANGOR INTERNATIONAL AIRPORT
BANGOR, MAINE

October 2011(Original)
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Section 26.1, 26.3 Objectives/Policy Statement

The City of Bangor, Maine 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 Bangor has received Federal financial assistance from the Department of Transportation for airport projects through the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP), and as a condition of receiving this assistance, the City of Bangor has signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Superintendent of Operations at the Airport has been designated as the DBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the DBE program. The DBE Liaison Officer is:

Robbie Beaton, Superintendent of Operations
Bangor International Airport
287 Godfrey Blvd.
Bangor, Me. 04401
Tel: 207-992-4608
rbeaton@flybangor.com

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Bangor International Airport in its financial assistance agreements with the Department of Transportation.

The Bangor International Airport has disseminated this policy statement to the City of Bangor and all the components of its organization. We have distributed this statement to DBE and non-DBE business communities that perform work for them on DOT-assisted contracts through a legal notice announcement and by publishing notice of DBE participation in all legal notices for letting of contracts for federally funded projects.

Anthony P. Caruso, Jr., C.M.
Airport Director

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Bangor is the recipient of Federal airport funds authorized by 49 U.S.C. 47101.

Section 26.5 Definitions

The City of Bangor will use terms in this program that have the meaning defined in 49 CFR Part 26.5.

Section 26.7 Non-discrimination Requirements

The City of Bangor 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 Bangor will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for use by FAA recipients.

Bidders List: 26.11(c)

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

We will collect this information through a contract clause requiring this information.

Section 26.13 Federal Financial Assistance Agreement

The City of Bangor has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The City of Bangor 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 recipient 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 Bangor's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Bangor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contracts and subcontracts:

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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City of Bangor has received a grant of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to the DOT updates representing significant changes in the program. In addition, we will submit an updated goal every three years prior to August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in the next 3-year period.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The City of Bangor has designated the individual designated in the Section 26.1, 26.23 - Objectives/Policy Statement of this plan as our DBELO.

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

The responsibility for overseeing the DBE Plan is fulfilled by the DBELO on a part-time basis. To assist in monitoring the Plan, the DBELO has full time general staff assistant.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials and representatives of the City. Duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes the City of Bangor's progress toward goal attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Airport Director and Airport staff on DBE matters and achievement.
8. Chairs the DBE Advisory Committee
9. Participates with the legal counsel to 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. Acts as liaison to the Uniform Certification Program (UCP) in the State of Maine.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Bangor 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 the institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Section 26.29 Prompt Payment Mechanisms

The City of Bangor will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from the City of Bangor. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Bangor. This clause applies to both DBE and non-DBE subcontractors.

The City of Bangor shall monitor and enforce compliance with the prompt payment requirements by requiring an affidavit of payment from the prime contractor with all payment requests that states that all subcontractors and suppliers have been paid from previous payments. The prime contractor shall submit a release and waiver liens with their final payment request. At final payment, the subcontractors and/or suppliers shall certify that they have received payment in-full from the prime contractor by submittal of a release and waiver of liens to the City of Bangor.

Section 26.31 Directory

The City of Bangor utilizes the Maine Department of Transportation (MEDOT) DBE Directory. The MEDOT participates in the Unified Certification Program (UCP). The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory is revised every Friday at 4 pm. The Directory shall be available from the MEDOT at the following address:

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, ME 04333-0016
Tel. 207-624-3042 (Director) or at the following web site:
<http://www.maine.gov/mdot/civilrights/dbe.htm>
<http://www.maine.gov/mdot/civilrights/documents/WeeklyDBEVendorList.pdf>

Section 26.33 Over-concentration

The City of Bangor has not identified over-concentration of DBEs pursuant to 49CFR Section 26.33 in any type of work that would unduly burden the opportunity of non-DBE firms to participate in that type of work.

Section 26.35 Business Development Programs

The City of Bangor has not established a business development or mentor-protégé program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. The City of Bangor will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.107.
2. The City of Bangor has available several remedies to enforce the DBE requirements contained in its contracts, including but not limited to, the following:
 - a. Breach of contract action, pursuant to the terms of the contract;
 - b. Breach of contract action, pursuant to Section 26.109;
 - c. Penalties and Sanctions, pursuant to the City of Bangor Code, Article II, §33-15 Ethics in Contracting.
 - d. The State of Maine's Constitution, Article 1, Section 6A, of the Maine State Constitution prohibits discrimination against anyone because of race, color, creed, or religion by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision thereof.

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

- a. Suspension or debarment proceedings pursuant to 49 CFR Part 26.
 - b. Enforcement action pursuant to 49 CFR Part 31.
 - c. Prosecution pursuant to 18 US 1001.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments.

4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.

Section 26.39 Fostering Small Business Participation

The Airport has created a practice to foster small business participation. This practice consists of the follow strategies:

1. Track contract awards to determine baseline conditions. That is, the Airport will determine the number of small business typically participating. This will be completed by having Prime Contractor(s) for Construction Work Items and for Professional Services Work Items complete the form entitled, Fostering Small Business Participation, located in Attachment 7.
2. Structure contracts 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.

For clarification purposes, 49 CFR Part 26.5 states, Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).” 13 CFR 121.402 defines “What size standards are applicable to Federal Government Contracting programs?” The Table of Small Business Size Standards matched to North American Industry Classification Codes as compiled by the U. S. Small Business Administration (found at www.sba.gov) will be used to implement strategy 1.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Bangor does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City of Bangor will establish the overall goal every three years. The overall goal is established in accordance with the 2-Step process as specified in 49 CFR Part 26.45. We will begin using our overall goal on October 1 of the 3-year goal period, unless we have received other instructions from the DOT. A description of the methodology, the goal calculations and break out of race-neutral and race-conscious participation can be found in Attachment 4 and 5, respectively.

Process

The AIRPORT submits its overall goal to DOT on or about August 1 prior to the 3-year goal period (i.e. Aug 1, 2011 for FY 2012 – 2014, Aug 1, 2014 for FY 2015-2017, and so on.)

Before establishing the overall goal each year, the AIRPORT will consult with the Maine DOT’s Civil Rights Office, minority, woman’s and general contractor groups, community organizations and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the AIRPORT’s efforts to establish a level playing field for the participation of DBEs. The following groups and organizations will be notified in writing of the goal determination process:

Maine Department of Transportation
Civil Rights Office
Attn: Theresa Savoy
#16 State House Station
Augusta, ME 04333-0016
Tel. 207-624-3402

Associated Constructors of Maine Inc.
Attn: Sandy Metrano
188 Whitten Rd.
Augusta, ME 04337
Tel. 207-622-4741
<http://www.agcmaine.org/index.aspx>

National Association of Women in Construction (NAWIC) – Chapter 329
c/o Cianbro Corporation
Attn: Billie Clark
P.O. Box 1000
Pittsfield, ME 04967
Tel: 207-679.2185

Women Unlimited
Attn: Trisha Mosher
103 Winthrop Street
Augusta, ME 04330
Tel: 207-623-7576

Maine Better Transportation Association
Attn: Maria Fuentes – Executive Director
146 State Street
Augusta, ME 04330
Tel: 207-622-0526

Following this consultation, the City of Bangor will publish a legal notice of the proposed overall goal in on the city web site(s) informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the AIRPORT office for 30 days following the date of the notice, and informing the public that the AIRPORT or FAA will accept comments on the goals for 45 days from the date of the notice. During the consultation period, the AIRPORT will conduct a public meeting to review the DBE goal. Normally, the City of Bangor will issue this notice on or about June 1 of each year. The notice must include addresses to which comments may be sent and addresses where the proposal may be reviewed. A sample notice is included in Attachment 4.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated every three years when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The Airport will use contract goals to meet any portion of the overall goal the Airport does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

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

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

The DBE Liaison Officer, or his representative, should be responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

Information to be submitted (26.53(b))

The City of Bangor treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within 7 calendar days of being notified that they are the successful bidders, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract
2. A description of the work that each DBE will perform
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 days of being informed by the City of Bangor that it is not a responsible bidder/offeror because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. Norm Heitman - City Solicitor
City of Bangor
Legal Department
73 Harlow Street
Bangor, ME 04401

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

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of Bangor will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. Administrative remedies for noncompliance executed in accordance with 49CFR Part 26.53. If the contractor fails or refuses to comply in the time specified, the City of Bangor will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City of Bangor may terminate the contract.

Sample Bid Specification:

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

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts."

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Bangor 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.

For information about the certification process or to apply for certification, firms should call, write, or browse to the following:

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, ME 04333-0016
Tel. 207-624-3042 (Director) or at the following web site:
<http://www.maine.gov/mdot/civilrights/dbe.htm>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Bangor is a non-certifying partner of the Maine Department of Transportation (MDOT) Unified Certification Program (UCP). Refer to Attachment 6 for the agreement between the City of Bangor and the MEDOT.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The City of Bangor will consult with the State UCP on the review of the eligibility of DBEs that were certified under Part 23 (Airport Concessions), to make sure that they meet the standards of Subpart E of Part 26 (Airport Improvements Program). The City of Bangor will complete this consultation no later than three (3) years from the most recent certification date of each firm.

For firms that have been certified or reviewed and found eligible under Part 26, shall be reviewed as to their status of eligibility every three (3) years.

“No Change” Affidavits and Notices of Change

The UCP administrator shall require all DBEs to inform the State UCP, in a written affidavit, any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

The UCP administrator also requires all owners of DBEs that have been certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of Section 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the State of Maine UCP under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$22.41 million.

The UCP administrator shall require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

The UCP administrator will notify all DBE firms currently certified by the State UCP of these obligations by certified mail. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement, (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

The UCP administrator will require all disadvantaged owners of applicants and of DBEs currently certified by the UCP whose eligibility under Part 26 requires review, to submit a statement of personal net worth at the time of the review.

Section 26.86 Denials of Initial Requests for Certification

If the UCP’s deny a firm’s application or decertifies the DBE, the firm may not reapply until 12 months have passed from the UCP’s action.

Section 26.87 Removal of a DBE’s Eligibility

In the event the City of Bangor proposes to remove a DBE’s certification, the City of Bangor will follow procedures consistent with 49 CFR Part 26 Section 26.87. To ensure separation of functions in a decertification, we have determined that the City Solicitor will serve as the decision-maker in decertification proceedings. The City of Bangor has established an administrative “firewall” to ensure that the City Solicitor will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal the AIRPORT's decision in a certification matter to the US DOT. Such appeals may be sent to:

US Department of Transportation - Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754, TTY: 202-366-9696, Fax: 202-366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our U.S. DOT-assisted contracting (e.g., certify a firm if U.S. DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

End of Plan after Attachments

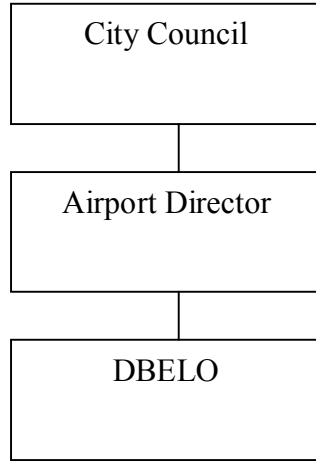
Attachment 1

Regulations: 49 CFR Part 26

Available by internet connection at the following:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Attachment 2
Organizational Chart



**Attachment 3
DBE Questionnaire**

**Bangor International Airport
Bangor, ME**

As part of a recent bid form received by the City of Bangor, your firm was identified as a Disadvantaged Business Enterprise (DBE) who submitted a bid or provided a price quote to another firm(s) submitting bids on a federally funded project. Per the requirements of 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs", the City of Bangor has established a DBE plan. This plan is updated every three years to reflect the Airport's upcoming projects and the availability of qualified DBE firms that are ready, able and willing to participate in federally funded projects at the Bangor International Airport. The information below will assist the Airport in maintaining an accurate DBE directory of firms bidding, or are interested in the opportunity to participate in these projects.

Please provide the following information:

Name of Firm: _____

Address: _____

Contact Person: _____

Phone: _____

Fax: _____

DBE Certifications (include expiration date): _____

Type of Work Done by Firm: _____

Age of Firm: _____ Annual Gross Revenues of Firm: _____

Bonding Capacities of Firm: Max. Single Contract: _____

Max. Aggregate: _____

Please remit this information to:

DBE Liaison Officer
Bangor International Airport
287 Godfrey Boulevard
Bangor, Maine 04401

Your participation in this effort is appreciated and will help establish realistic DBE goals for future projects at the Bangor International Airport.

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. The City of Bangor, ME's (the City) overall goal for Federal Fiscal Year (FFY) 2015-2017 is the following: 4.0% of the Federal Financial assistance expended in FAA-assisted contracts.
2. The federal dollar amount of FAA-assisted contracts that the City expects to award during FFY 2015-2017 is approximately \$11,146,000. The awards are anticipated to be in airport related engineering services, heavy civil construction projects, building construction, airfield electrical, topographic surveying, and construction materials testing. This means that the City has set a goal of expending approximately \$445,840 ($\$11,146,000 \times 4.0\%$) of federal dollars with DBE firms during this period.

Methodology used to Calculate Overall DBE Goal

The City has established the overall DBE goal in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step determined the relative availability of DBEs in the market area, the "base figure". The second step adjusted the "base figure" percentage from Step 1 so that it reflects, as accurately as possible, the DBE participation expected in the absence of discrimination based on past participation and local data.

Step 1: 26.45(c) DBE Base Figure Calculation

Based on a review of the FFY 2015-2017 projects, it is anticipated that the program will attract firms that perform work under the North American Industry Classification System (NAICS) codes as indicated in the following table.

Table 1 – Capital Improvement Plan (CIP) Projects with Industry Code Descriptions

Year	CIP Project	Industry Code Descriptions – NAICS Codes²
2015	Construction – TWY A Ctr (ARFF to ‘M’); TWY N Shoulders; Dock Area Taxilane	Highway, street, and bridge construction (237310) Electrical Contractors and Other Wiring Installation Contractors (238210) Engineering Services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2015	Construction – Trench Drain ASR Mitigation Phase 2; South GA Apron	Highway, street, and bridge construction (237310) Electrical Contractors and Other Wiring Installation Contractors (238210) Engineering Services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2015	Design Only – Terminal Connector Walkway & Gate 5 Passenger Boarding Bridge Replacement	Engineering services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2015	Domestic Terminal Improvements	Commercial and Institutional Building Construction (236220) Electrical Contractors and Other Wiring Installation Contractors (238210) Engineering Services (541330) Testing laboratories (541380)
2016	Design Only – Taxiway A South (TWY J to RWY 33)	Engineering services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2016	Domestic Terminal Improvements	Commercial and Institutional Building Construction (236220) Electrical Contractors and Other Wiring Installation Contractors (238210) Engineering Services (541330) Testing Laboratories (541380)
2016	Construct Terminal Connector Walkway & Gate 5 Passenger Boarding Bridge Replacement	Commercial and Institutional Building Construction (236220) Electrical Contractors and Other Wiring Installation Contractors (238210) Engineering Services (541330) Testing laboratories (541380)
2017	Design Only – Taxiway A North	Engineering Services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2017	Rehabilitate Taxiway A South (TWY J to RWY 33)	Highway, street, and bridge construction (237310) Engineering Services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)

Source: ¹ Airport Capital Improvement Plan (10/6/2014); ² County Business Patterns (NAICS) U.S. Census Bureau.

Market Area

The market area is considered the counties of Hancock, Kennebec, Penobscot, Somerset, and Waldo in the State of Maine. Based on past contracts, the substantial majority of contractors and subcontractors have been located in the above listed counties located in Maine.

Weighted Goal Calculations

Step 1A – Group NAICS Codes

In this step, similar NAICS codes from Table 1 are grouped so that only one NAICS code is represented in Table 2 (below). The NAICS codes are presented in column 1 of Table 2.

Step 1B – Calculate the % of Work for each NAICS code

In this step, the dollar value of each NAICS code is estimated over the 3-year goal calculation period. This value is then converted into a “% of Work” based on the total 3-year funding. This is calculated as follows: the dollar value of the individual NAICS code is divided by the total estimated cost of all the projects in the 3-year goal calculation period. For example, Engineering Services cost is estimated at \$1,178,270 and the total of all the projects in the 3-year goal calculation period are estimated value as \$11,146,000. Thus, the “% of Work” value for Engineering Services is $\$1,178,270/\$11,146,000 \times 100\% = 10.6\%$. The values are provided in column 2 of Table 2.

Step 1C – Determine the number of DBE firms

In this step, the number of DBE firms located in the market area with services that relate to the projects listed are identified in the MEDOT Disadvantaged Business Enterprise Directory.

<http://www.maine.gov/mdot/civilrights/dbe.htm>

The number of identified DBE firms is summed by NAICS code. The values are provided in column 3 of the Table 2.

Step 1D – Determine the number of Businesses

In this step, the numbers of related businesses (DBE and non-DBE) located in the market area are determined from the latest NAICS database provided by the U.S. Census Bureau.

<http://censtats.census.gov/cbpnaic/cbpnaic.shtml> The values are provided in column 4 of the Table 2.

Step 1E – Calculate the % Contribution of each NAICS code

In this step, the % contribution for each NAICS code is calculated. The calculation is weighted based on the “% of Work”, the number of DBE firms by NAICS code and the number of Businesses by NAICS code. An example of the weighting calculation is as follows:

$$\begin{aligned} \text{Ex.: \% contribution of each NAICS code} &= \% \text{ of Work} \times (\text{ME DBE Firms} / \text{ME Businesses}) \times 100\% \\ &= \text{Column (2)} \times (\text{Column 3} / \text{Column 4}) \times 100\% \\ &= 10.6\% \times (3/78) \times 100\% = 0.41\% \end{aligned}$$

Each NAICS code contribution is calculated and summed to determine the overall goal. The values are provided in column 5 of the Table 2. Therefore, the FFY 2015-2017 “base figure” goal is 5.2%.

Table 2 – Weighted Average Goal Calculation

(1)	(2)	(3)	(4)	(5)
NAICS Code ¹	% of Work	DBE Firms ²	Businesses	% Contribution
Commercial and Institutional Building Construction (236220)	24.1	1	47	0.51%
Highway, street, and bridge construction (237310)	42.4	3	31	4.10%
Electrical contractors and other wiring installation contractors (238210)	21.2	0	154	0.00%
Engineering services (541330)	10.6	3	78	0.41%
Surveying and mapping (except geophysical) services (541370)	0.4	1	40	0.01%
Testing laboratories (541380)	1.3	1	8	0.16%
			Base figure (rounded) =	5.2%

Source: ¹ County Business Patterns (NAICS) U.S. Census Bureau; ² MEDOT Disadvantaged Business Enterprise Directory

Step 2: 26.45(d) Base Figure Adjustment

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

The first evidence for basis of adjustment considers the current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years (ref. 26.45(d)(1)(i)). DBE firms have had equal opportunity to perform work on airport projects in recent years through normal contracting procedures. The volume of work performed in recent years has been neither excessively high nor low in comparison to all the work conducted. Based on this evidence, no adjustment to the “base figure” has been made.

The second evidence for basis of adjustment considers any existing disparity studies within the airport’s jurisdiction (ref. 26.45(d)(1)(ii)). We contacted the MEDOT Director of Civil Rights Office regarding evidence of existing disparity studies. MEDOT indicated there are no relevant disparity studies. Based on this evidence, no adjustment to the “base figure” has been made.

The third evidence that must be evaluated is the evidence from related fields that affect the opportunities for DBEs to form, grow and compete (ref. 26.45(d)(2)). This evaluation is conducted in 2 parts.

1) This includes evaluating statistical disparity in the abilities of DBEs to get the financing, bonding and insurance required perform work (ref. 26.45(d)(2)(i)). As noted previously, the MEDOT Director of Civil Rights Office was contacted and could provide no evidence of disparity studies. Based on this evidence, no adjustment to the “base figure” has been made.

2) Additionally this includes evaluation of data on employment, self-employment, education, training and union apprenticeship programs as these relate to opportunities for DBEs to perform (ref. 26.45(d)(2)(ii)). Our effort to evaluate this information included contacting the MEDOT Director of Civil Rights Office with regard to effects of financing, bonding, insurance, employment, education and/or training on women and minorities in ME. MEDOT had no evidence in the form of reports and studies to offer that studies these items. We also consulted, in writing, with Maine Department of Transportation, the Associated Constructors of Maine Inc., the National Association of Women in Construction, Women Unlimited, and the Maine Better Transportation Association seeking feed back on the goal methodology and the evidence of data related to opportunities for DBE’s to perform work in ME. The Airport received no feedback from this written consultation. Based on this evidence, no adjustment to the “base figure” has been made.

Finally we considered the historic DBE accomplishments at the airport as a basis for adjustment. The following table displays the overall goal as well as the actual DBE participation for the years on record.

Fiscal Year	Overall Goal	Actual DBE Participation
2006	3.5%	3.8%
2007	3.1%	4.3%
2008	3.4%	1.6%
2009	2.8%	0.8 %
2010	2.6%	0.7 %
2011	2.9%	0.7 %
2012	2.9%	0.4%
2013	2.9%	2.0%

The data above indicates that the Airport has on average been 1.2% below the overall goal. Therefore, based on this historical performance, the calculated goal has been reduced by 1.2%. The adjusted goal is 4.0% (5.2%-1.2%).

Public Participation:

The following notice was posted in the Bangor Daily News on October 15, 2014.

PUBLIC NOTICE

The City of Bangor hereby announces its federal fiscal years 2015-2017 goal of 4.0% for Disadvantaged Business Enterprise (DBE) related to FAA-assisted contracts for airport engineering, civil and building construction. The proposed goal and rationale is available for inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the 3rd floor Administrative Office of the Bangor International Airport, 287 Godfrey Boulevard, Bangor, ME 04401 or on the City of Bangor's website <http://www.bangormaine.gov/> for 30 days from the date of this publication.

The City will hold a public meeting to discuss the methodology used to establish the goal. The meeting will be at 3rd floor Administrative Office of the Bangor International Airport, 287 Godfrey Boulevard, Bangor, ME 04401 on October 28, 2014 from 2:30 PM to 3:00 PM.

Comments on the DBE goal will be accepted for 45 days from the date of availability of this notice and can be sent to the following:

Mr. Robbie Beaton
Superintendent of Operations
Bangor International Airport
287 Godfrey Boulevard
Bangor, ME 04401
rbeaton@flybangor.com

or

Ms. Keturah Pristell
DBE & ACDBE Compliance Specialist
Eastern (AEA) & New England (ANE) Regions
FAA Office of Civil Rights DBE Program
1701 Columbia Avenue, C190 Stop 151
College Park, GA 30337
keturah.pristell@faa.gov

Consultation

The City consulted in writing with the agencies listed in Section 26.45 of the plan. **The agencies provided no comments.**

The City conducted a public information meeting on October 28, 2014 at 3rd floor Administrative Office of the Bangor International Airport, 287 Godfrey Boulevard, Bangor, ME 04401. **{INCLUDE ATTENDEES HERE}**

Comments from the Public Participation and Consultation

The public comment period ended on November 29, 2014 (45 days after the public notice). **{INCLUDE COMMENTS HERE}**

Attachment 5

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The City will attempt to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, specifications, and delivery schedules in ways that facilitate DBE participation (e.g., encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors);
3. Ensuring distribution of the MEDOT DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
4. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
5. Ensuring the DBE goals are published in all bid and contract documents.

Historically, DBE goals for airport projects in Maine have only been met through implementing contract goals. In order to ensure that our DBE Program will be narrowly tailored to overcome the effects of discrimination, the City anticipates using contract goals. The City will monitor the DBE participation and adjust contract goals as required.

In meeting the overall DBE goal of 4.0%, the City anticipates it will obtain 0% from race-neutral participation and 4.0% through race conscious measures.

The City will also adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and the City will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

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

Attachment 6
UCP Agreement between City of Bangor and the State of Maine



ANGUS S. KING, JR.
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

JOHN G. MELROSE
COMMISSIONER

April 17, 2002

US Department of Transportation
Office of the General Counsel
Uniform Certification Program
Attention: Robert Ashby C-50
Room 10428
400 Seventh Street, SW
Washington, DC 20590

Mr. Ashby:

Please find enclosed copies of the various UCP Agreements entered between Maine Department of Transportation and FTA, FAA, FRA (via Northern New England Passenger Rail Authority, the Metropolitan/County or Regional Planning Organizations, Cities or Municipalities with jurisdictional authority for aviation facilities, and the Maine Department of Environmental Protection.

These agreements serve to formalize informal relationships with these agencies and the Maine Department of Transportation regarding the certification of Disadvantaged Business Enterprises. As you may know, the Maine Department of Transportation is the only certifying entity in Maine, and as such these agreements while required by 49 CFR Part 26 § 81 simply reaffirm many years of professional relationships with these entities.

We have chosen to enter into separate agreements with each grantee and they are provided as an enclosure to this letter.

Inquiries may be directed to me at 207-624-3066.

Sincerely,

Penny Flourde, Manager
Small Business Programs

Encs
Cc: Maine Division FHWA



PRINTED ON RECYCLED PAPER

THE MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION - EQUAL OPPORTUNITY EMPLOYER

AGREEMENT

Between the

MAINE DEPARTMENT OF TRANSPORTATION
OFFICE OF HUMAN RESOURCES

And

City of Bangor, Maine

This Agreement is made this 10th 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
the City of Bangor, with an address of 123 Herlow Street
Bangor, 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

David W. Pellegrina Purchasing Agent
By: David W. Pellegrina Title

Attachment 7
Fostering Small Business Participation Form

Fostering Small Business Participation	
Sponsor's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

Small Business Firms to be Utilized (Name, Address, Phone)		Work to be Performed	Total Estimated Cost of Work
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(Duplicate form as necessary.)

The following notation is for Sponsor Use Only:

Accepted by: _____ Date: _____

Attachment 8
Revision Log

The following revisions were made in October 2014 (The date which the airport CIP was set):

1. Airport Director changed since original plan. Signed Policy Statement by Airport Director added.
2. Added Section 26.39 Fostering Small Business Participation.
3. Updated Attachment 4 and 5 for FFY 2015-2017.
4. Added Attachment 7 Fostering Small Business Participation Form.
5. Added Attachment 8 Revisions Log
6. Updated web links as required.

END OF DBE PLAN