



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PLAN
for
FEDERAL AVIATION ADMINISTRATION (FAA)
AIRPORT IMPROVEMENT PROGRAM (AIP)
PROJECTS
at
HANCOCK COUNTY BAR HARBOR AIRPORT
TRENTON, MAINE

September 2020

DRAFT

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The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** has received Federal financial assistance from the Department of Transportation, the **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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.

The **Airport Manager, Leroy Muise**, has been designated as the DBE Liaison Officer. In that capacity, **Mr. Muise** 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 **Hancock County Commission / Hancock County Bar Harbor Airport** in its financial assistance agreements with the Department of Transportation.

The **Hancock County Commission / Hancock County Bar Harbor Airport** has disseminated this policy statement to the **Board of County Commissioners, County of Hancock, Maine** 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 **as part of bid packages and contract documents.**

Leroy Muise, *Airport Manager*

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 **Hancock County Commission / Hancock County Bar Harbor Airport** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The **Hancock County Commission / Hancock County Bar Harbor Airport** will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The **Hancock County Commission / Hancock County Bar Harbor Airport** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to **FAA** annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The **Hancock County Commission / Hancock County Bar Harbor Airport** will similarly report the required information about participating DBE firms. All reporting will be done through the **FAA** official reporting system, or another form acceptable to **FAA** as instructed thereby.

Bidders List

The **Hancock County Commission / Hancock County Bar Harbor Airport** will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontracts who seek to work on the **Hancock County Commission / Hancock County Bar Harbor Airport** DOT-assisted contracts, for us in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected through a contract clause requiring this information.

Records retention and reporting

The **Hancock County Commission / Hancock County Bar Harbor Airport** will maintain record documenting a firm's compliance with the requirements of this part. At a minimum, the **Hancock County Commission / Hancock County Bar Harbor Airport** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. (Note: **The Hancock County Commission/Hancock County Bar Harbor Airport** is a non-certifying member of the state UCP and as such will refer or forward all applications, affidavits, and change notices to the UCP.) These records will be retained in accordance with all applicable record retention requirements of the **Hancock County Commission / Hancock County Bar Harbor Airport** financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for financial assistance agreement, whichever is longer.

The **Hancock County Commission / Hancock County Bar Harbor Airport**, as a member of the **Maine UCP** established pursuant to §26.81, will share to the Department of Transportation's Office of Civil Rights each year upon request the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

1. Women;
2. Socially and economically disadvantaged individuals (other than women); and
3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Federal Financial Assistance Agreement

The **Hancock County Commission / Hancock County Bar Harbor Airport** has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: Each financial assistance agreement the **Hancock County Commission / Hancock County Bar Harbor Airport** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will ensure the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate based on 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 rumination of this contract or such other remedy as the **Hancock County Commission / Hancock County Bar Harbor Airport** deems appropriate, which may include, but is not limited to:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **Hancock County Commission / Hancock County Bar Harbor 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 aware prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The **Hancock County Commission / Hancock County Bar Harbor Airport** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **Hancock County Commission / Hancock County Bar Harbor Airport** is in compliance with it and Part 26. The **Hancock County Commission / Hancock County Bar Harbor Airport** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **Hancock County Commission / Hancock County Bar Harbor 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, included those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Name:	Leroy Muise
Title:	Airport Manager
Address:	Hancock County Bar Harbor Airport 115 Caruso Drive Trenton, ME 04605
Telephone:	207-667-7329
Email:	lmuisse@bhbarport.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that **Hancock County Commission / Hancock County Bar Harbor Airport** complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the **Hancock County Commission** 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 a part 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 Airport. Duties and responsibilities of the DBELO 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 progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the **Hancock County Commission** 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. Acts as liaison to the Uniform Certification Program (UCP) in the State of Maine.

Section 26.27 DBE Financial Institutions

It is the policy of the **Hancock County Commission / Hancock County Bar Harbor 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 the institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Section 26.29 Prompt Payment Mechanisms

The **Hancock County Commission / Hancock County Bar Harbor Airport** requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport**.

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will include the following clause in each DOT-assisted prime contract to comply with this requirement:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the Hancock County Commission / Hancock County Bar Harbor Airport. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Hancock County Commission / Hancock County Bar Harbor Airport. This clause applies to both DBE and non-DBE subcontractors.

To implement this measure, **The Hancock County Commission / Hancock County Bar Harbor Airport** includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

From the total of the amount determined to be payable on a partial payment, **ten (10)** percent of such total amount will be deducted and retained by the **Hancock County Commission / Hancock County Bar Harbor Airport** for protection of the **Hancock County Commission / Hancock County Bar Harbor Airport's** interests. Unless otherwise instructed by the **Hancock County Commission / Hancock County Bar Harbor Airport**, the amount retained will be in effect until the final payment is made except as follows:

1. Contractor may request release of retainage on work that has been partially accepted by the **Hancock County Commission / Hancock County Bar Harbor Airport** in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the **Hancock County Commission / Hancock County Bar Harbor Airport** for partially accepted work.
2. In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the **Hancock County Commission / Hancock County Bar Harbor Airport** evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract has been accomplished and documented as required by the **Hancock County Commission / Hancock County Bar Harbor Airport**. When the **Hancock County Commission / Hancock County Bar Harbor Airport** has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

When at least 95% of the work has been completed to the satisfaction of the Resident Project Representative (RPR), the RPR shall, at the **Hancock County Commission / Hancock County Bar Harbor Airport's** discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The **Hancock County Commission / Hancock County Bar Harbor Airport** may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The **Hancock County Commission / Hancock County Bar Harbor Airport** is a non-certifying member of the Maine Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all elements required by §26.31.

The **Hancock County Commission / Hancock County Bar Harbor Airport** uses the State of Maine DBE Directory, maintained by the state. 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>

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

Section 26.33 Over-concentration

The **Hancock County Commission / Hancock County Bar Harbor Airport** has not identified that over-concentration existing in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The **Hancock County Commission / Hancock County Bar Harbor Airport** has not established a Business Development Program.

Section 26.37 Monitoring

The **Hancock County Commission / Hancock County Bar Harbor Airport** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the **Hancock County Commission / Hancock County Bar Harbor Airport's** DBE program.

The **Hancock County Commission / Hancock County Bar Harbor Airport** actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. This review is typically conducted during contract close-out reviews.

Monitoring Payments to DBEs and Non-DBEs

The **Hancock County Commission / Hancock County Bar Harbor Airport** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Review of subcontractor/supplier payment certifications submitted with each monthly payment application.
- Review of the project expenditure reports that are submitted with each monthly payment application.
- Review of subcontractor and supplier release and waiver of liens and claims.
- When alerted to potential payment issues to subcontractors and suppliers, each subcontractor / supplier will be contacted to confirm timely payments have been made. This includes follow-ups as required.

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport's** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by an authorized representative of the **Hancock County Commission / Hancock County Bar Harbor Airport** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The **Hancock County Commission / Hancock County Bar Harbor Airport** proactively reviews contract payments to subcontractors including DBEs. Payment reviews will evaluate whether the actual amount paid to the DBE subcontractors is equivalent to the amounts reported to the **Hancock County Commission / Hancock County Bar Harbor Airport** by the prime contractor.

Prompt Payment Dispute Resolution

The **Hancock County Commission / Hancock County Bar Harbor Airport** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

The **Hancock County Commission / Hancock County Bar Harbor 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)
2. A contract clause provided 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.
3. Other mechanisms

Prompt Payment Complaints

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

1. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initial complaint.
2. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **Hancock County Commission / Hancock County Bar Harbor Airport** to resolve prompt payment disputes, affected subcontractor may contact the responsible **MEDOT** contact.
3. Pursuant to Section 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in format acceptable to the FAA, including the nature and origin of the complain and its resolution.

Enforcement Actions for Noncompliance of Participants

The **Hancock County Commission / Hancock County Bar Harbor Airport** will provide appropriate means to enforce the requirements of §26.29. These means include:

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

The **Hancock County Commission / Hancock County Bar Harbor Airport** will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The **Hancock County Commission / Hancock County Bar Harbor Airport** reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract aware or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by **Consulting Engineer**. Contracting records are reviewed by **Consulting Engineer**. The **Hancock County**

Commission / Hancock County Bar Harbor Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport's** small business program element is incorporated as **Attachment 6** to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for the **Hancock County Commission / Hancock County Bar Harbor Airport** to be considered by DOT as implementing this DBE program in good faith.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **Hancock County Commission / Hancock County Bar Harbor Airport** does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 and posted to the website of the **FAA**.

[https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of DBE and ACDBE Reporting Requirements Dec 2017 Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DB_E_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will see 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will use the MEDOT Disadvantaged Business Enterprise Directory and Census Bureau Data as a method to determine the base figure. The **Hancock County Commission / Hancock County Bar Harbor Airport** understands that the exclusive list of prequalified contractors or plan holders, or as 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 **Hancock County Commission / Hancock County Bar Harbor Airport** 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will examine all 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 relative availability of DBEs in the **Hancock County Commission / Hancock County Bar Harbor Airport** market.

In establishing the overall goal, the **Hancock County Commission / Hancock County Bar Harbor 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 effort by the **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** is required to submit the goal methodology to the **FAA** for review pursuant to §26.45(f). The goal submission will document the consultation process in which the **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport’s** official internet web site and may be posted to 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 official web site.

The public will also be informed that the proposed overall goal and its rational area available for inspection during normal business hours at the principal office of the **Hancock County Commission / Hancock County Bar Harbor Airport**. This notice will provide that the **Hancock County Commission / Hancock County Bar Harbor Airport** and **FAA** will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

The Overall Three-Year DBE Goal submission to **FAA** will include a summary of information and comments received, if any, during this public participation process and the **Hancock County Commission / Hancock County Bar Harbor Airport’s** responses.

The **Hancock County Commission / Hancock County Bar Harbor Airport** will begin using the overall goal on October 1st of the relevant period, unless other instruction from **FAA** have been received.

Project Goals

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

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

Prior Operating Administration Concurrence

The **Hancock County Commission / Hancock County Bar Harbor Airport** understands that prior FAA concurrence with the overall goal is not required. However, if the FAA reviews suggest that the overall goal has not been correctly calculated or that the method employed by the **Hancock County Commission / Hancock County Bar Harbor Airport** for calculating goals is inadequate, FAA may, after consulting with the **Hancock County Commission / Hancock County Bar Harbor Airport**, adjust the overall goal or require that the goal be adjusted by the **Hancock County Commission / Hancock County Bar Harbor 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 4** to this program.

Section 26.47 Failure to meet overall goals

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** fails to administer its DBE program in good faith.

The **Hancock County Commission / Hancock County Bar Harbor Airport** understands that to be considered to be in compliance with this part, an approved DBE Project and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The **Hancock County Commission / Hancock County Bar Harbor Airport** understands that if the awards and commitments shown on the Uniform Report of Awards and 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;

Section 26.51 Mean Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **Hancock County Commission / Hancock County Bar Harbor Airport** will meet the maximum feasible portion of its overall goal by using 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 presentations 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 bond 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 list for bidders; ensuring the dissemination to bidders on prime contract 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 variety of kinds of work, handle increasingly significant project, and achieve eventual self-sufficiency;
6. Establishing a program to assist new, start-up firms, particularly in field in which DBE participation has historically been low;
7. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
8. 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 **Hancock County Commission / Hancock County Bar Harbor Airport** will arrange solicitations, times for 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 to meet the overall goal.

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

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

Section 26.53 Good Faith Efforts Procedures in Situation where there are Contract Goals

Demonstration of good faith effort (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to the 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 can be found in Appendix A to Part 26.

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

The **Hancock County Commission / Hancock County Bar Harbor 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 for 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 **Hancock County Commission / Hancock County Bar Harbor Airport**, 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.
 - f. If the contract goal is not met, evidence of good faith (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor was selected over a DBE for work on the contract; and
3. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section;
4. Under sealed bid procedure, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Administrative reconsideration

Within **7 calendar** days of being informed by the **Hancock County Commission / Hancock County Bar Harbor Airport** that it is a **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 **Hancock County Commission / Hancock County Bar Harbor Airport**, as designated on the "Invitation for Bids".

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

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 to do. 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 results of the consideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post solicitation)

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

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

Such written consent will be provided if the **Hancock County Commission / Hancock County Bar Harbor Airport** agrees, for reasons stated in concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposed of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute the written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The **Hancock County Commission / Hancock County Bar Harbor Airport** determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the **Hancock County Commission / Hancock County Bar Harbor Airport** written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that the **Hancock County Commission / Hancock County Bar Harbor Airport** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the **Hancock County Commission / Hancock County Bar Harbor Airport** a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor with a copy to the **Hancock County Commission / Hancock County Bar Harbor Airport**, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's **bid** response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the **Hancock County Commission / Hancock County Bar Harbor Airport** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

Section 26.55 Counting DBE Participation

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

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **Hancock County Commission / Hancock County Bar Harbor Airport** 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. 207-624-3056 (Amy Hughes, Director) or at the following web site:
<http://www.maine.gov/mdot/civilrights/dbe>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The **Hancock County Commission / Hancock County Bar Harbor Airport** is a member of a Unified Certification Program (UCP) administered by the Maine Department of Transportation (MaineDOT).

Section 26.83 Procedures for Certification Decisions

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. The **Hancock County Commission / Hancock County Bar Harbor Airport** take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of **Hancock County Commission / Hancock County Bar Harbor Airport** that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

“No Change” Affidavits and Notices of Change

The UCP requires all DBEs owners to provide a written affidavit of 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 DBE firm's original application for certification.

The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §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 [name of DBE firm] has provided written notice to the **Hancock County Commission / Hancock County Bar Harbor Airport** pursuant to §26.83(i). [Name of DBE 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 \$23.98 million.

The UCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The UCP will notify all currently certified DBE firms of these obligations **by certified mail**. This notification will inform DBEs that to submit the "no change" Revision Date: 2020-07-13 27 affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that 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, business size), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently listed in its home state ("State A") applies to a member of this State's UCP ("State B") for DBE certification, the UCP will follow the procedures defined in §26.85(b).

Section 26.86 Denials of initial Request for Certification

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until **12 months** have passed for such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Removal of a DBE's Eligibility

In the event the **Hancock County Commission / Hancock County Bar Harbor Airport** proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. To ensure separation of functions in a proposal to remove a firm's eligibility, the **Hancock County Commission / Hancock County Bar Harbor Airport** has determined that the **County Administrator** will serve as the decision-maker in the required proceedings. The **Hancock County Commission / Hancock County Bar Harbor Airport** has established an administrative "firewall" to ensure that the **County Administrator** will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from

the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification.

The **Hancock County Commission / Hancock County Bar Harbor Airport** will follow procedures consistent with §26.88 regarding suspension of DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), the **Hancock County Commission / Hancock County Bar Harbor Airport** will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the **Hancock County Commission / Hancock County Bar Harbor Airport** information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of the **Hancock County Commission / Hancock County Bar Harbor Airport** to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of the **Hancock County Commission / Hancock County Bar Harbor Airport** in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of the **Hancock County Commission / Hancock County Bar Harbor Airport** including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) the **Hancock County Commission / Hancock County Bar Harbor Airport** failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Hancock County Commission / Hancock County Bar Harbor Airport

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

Section 26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal

proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

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

The **Hancock County Commission / Hancock County Bar Harbor 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 **Hancock County Commission / Hancock County Bar Harbor Airport** understands that it is in noncompliance with Part 26 if it violates this prohibition

End of Plan after Attachments

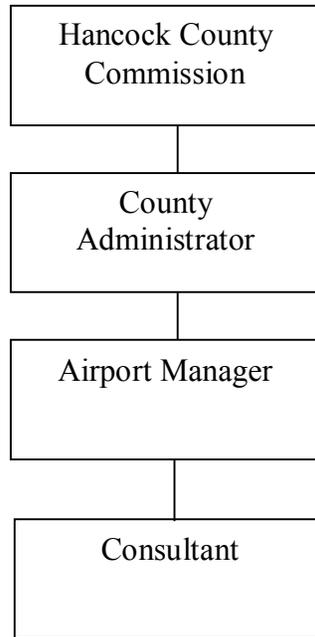
Attachment 1

Regulations: 49 CFR Part 26

Available by internet connection at the following:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Attachment 2
Organizational Chart



**Attachment 3
DBE Questionnaire**

**Hancock County Bar Harbor Airport
Trenton, ME**

As part of a recent bid form received by the Hancock County Bar Harbor Airport, 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 Hancock County Bar Harbor Airport 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 Hancock County Bar Harbor 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:

Airport Manager
Hancock County Bar Harbor Airport
115 Caruso Drive
Trenton, Maine 04605

Your participation in this effort is appreciated and will help establish realistic DBE goals for future projects at the Hancock County Bar Harbor Airport.

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. The **Hancock County Commission / Hancock County Bar Harbor Airport's** overall goal for Federal **Fiscal Year (FFY) 2021-2023** is the following: **5.78%** of the Federal Financial assistance expended in FAA-assisted contracts.

2. The federal dollar amount of FAA-assisted contracts that the Airport expects to award during FFY 2021-2023 is approximately **\$4.88M**. The awards are anticipated to be in airport related engineering services, real estate appraisers, heavy civil construction projects, airfield electrical, topographic surveying, and construction materials testing. This means that the Airport has set a goal of expending approximately **\$282,064** (**\$4.88M x 5.78%**) of federal dollars with DBE firms during this period.

Methodology used to Calculate Overall DBE Goal

The **Hancock County Commission / Hancock County Bar Harbor Airport** 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 DBE Base Figure Calculation

Based on a review of the FFY 2021-2023 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 Project¹	Industry Code Descriptions – NAICS Codes²
2021	Easement / Land Acquisition for Runways 4, 22 and 17 – Phase 2	Office of Real Estate Appraisers (531320) Engineering Services (541330) Surveying and mapping (except geophysical) services (541370)
2021	Airfield Pavement Markings	Engineering Services (541330) Highway, street and bridge construction (237310)
2021	Construct Snow Removal Equipment Building	Engineering Services (541330) Commercial and Institutional Building Construction (236220) Testing Laboratories (541380) Electrical Contractors and Other Wiring Installation Contractors (238210)
2021	PCI Survey and Develop Basic Pavement Management Program	Engineering Services (541330)
2022	Obstruction removal to Clear Approaches (to include shoreline zone stabilization on the 22 end and permitting)	Highway, street, and bridge construction (237310) Engineering Services (541330) Surveying and mapping (except geophysical) services (541370) Testing laboratories (541380)
2022	Acquire Snow Removal Equipment (Rotary Sweeper)	Engineering Services (541330) Construction Machinery Manufacturing (333120)
2022	Airport Master Plan Update	Engineering Services (541330)
2023	Airfield Pavement Markings	Engineering Services (541330) Highway, street and bridge construction (237310)
2023	Reconstruct Eligible Portion of Caruso Drive and ST Parking Lot	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 (10/2019); ² North American Industry Classification System (NAICS), U.S. Census Bureau.

Market Area

The market area is considered the State of Maine. Based on past contracts, the substantial majority of contractors and subcontractors have been 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 \$1,016,000 and the total of all the projects in the 3-year goal calculation period are estimated value as \$4,880,000. Thus, the “% of Work” value for Engineering Services is $\$1,016,000/\$4,880,000 \times 100\% = 20.82\%$. 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>

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.

<https://www.census.gov/programs-surveys/cbp/data.html> 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:

$$\begin{aligned} \text{Ex.: \% contribution of each NAICS code} &= \% \text{ of Work} \times (\text{ME DBE Firms} / \text{ME Businesses}) \times 100\% \\ &= \text{Column (2)} \times (\text{Column 3} / \text{Column 4}) \times 100\% \\ &= 23.0\% \times (13/303) \times 100\% = 0.99\% \end{aligned}$$

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 2021-2023 “base figure” goal is **8.01%**.

Table 2 – Weighted Average Goal Calculation

(1)	(2)	(3)	(4)	(5)
NAICS Code ¹	% of Work	DBE Firms ²	Businesses	% Contribution
Highway, street, and bridge construction (237310)	26.54	13	72	4.79%
Engineering services (541330)	20.82	23	290	1.65%
Electrical Contractors and Other Wiring Installation Contractors (238210)	3.44	3	564	0.02%
Commercial and Institutional Building Construction (236220)	23.50	8	158	1.19%
Office of Real Estate Appraisers (531320)	2.56	1	86	0.03%
Construction Machinery Manufacturing (333120)	17.52	0	5	0.00%
Surveying and mapping (except geophysical) services (541370)	4.51	5	99	0.23%
Testing laboratories (541380)	1.11	3	32	0.10%
			Base figure (rounded) =	8.01%

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

Step 2: 26.45 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 in the State of Maine. 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) We also consulted, in writing, with Maine Department of Transportation, the Associated Constructors of Maine Inc., the National Association of Women in Construction, 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 as of {pending possible future reply}. 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 actual DBE participation on on-going contracts for the last four years on record.

Fiscal Year	Total Dollars	DBE Dollars	%
2016	\$559,315	\$45,637	8.16%
2017	\$240,354	\$0	0.00%
2018	\$739,385	\$10,124	1.37%
2019	\$651,988	\$22,121	3.39%
Total DBE Participation	\$2,191,042	\$77,882	3.55%

The data above indicates that the Airport has an average DBE participation of **3.55%** on recent completed projects. To arrive at an overall goal, we added our Step 1 base figure (**8.01%**) with our Step 2 adjustment (average value = **3.55%**) figure and then averaged the total arriving at an overall goal of **5.78%** for the type of work being awarded during this three-year period.

Public Participation:

The following notice will be posted on the Hancock County Bar Harbor Airport website.

PUBLIC NOTICE

The Hancock County Commission / Hancock County Bar Harbor Airport hereby announces its federal fiscal years 2021-2023 goal of 5.78% 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 3:00 p.m., Monday through Friday at Hancock County Bar Harbor Airport, 115 Caruso Drive, Trenton, ME 04605 or on the Hancock County's website <http://www.bhbairport.com/index.html> 30 days from the date of this publication.

The Hancock County Commission / Hancock County Bar Harbor Airport will hold a teleconference open to the public to discuss the methodology used to establish the goal. To obtain the call number and conference call code please contact Mr. Jason Homiak at jason.homiak@jacobs.com. The call will be held on **Thursday October 22, 2020 at 11AM.**

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. Leroy Muise
Airport Manager
Hancock County Bar Harbor Airport
115 Caruso Drive
Trenton, ME 04605
lmuisse@bhbairport.com

Consultation

The Airport consulted in writing with the agencies listed in Section 26.45 of the plan. **The agencies provided no comments. {pending possible future reply}**

The Airport made available a teleconference open to the public to discuss the methodology used to establish the goal and seek further input. Interested participants included: **{PARTICIPANTS, IN ANY, WILL BE LISTED HERE PENDING POSSIBLE FUTURE REPLY}**

Comments from the Public Participation and Consultation

The public comment period ended 45 days after the public notice was issued. **{COMMENTS, IF ANY, WILL BE LISTED HERE PENDING POSSIBLE FUTURE REPLY}**

Attachment 5

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

The Hancock County Commission / Hancock County Bar Harbor Airport will attempt to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Airport 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 Airport anticipates using contract goals. The Airport will monitor the DBE participation and adjust contract goals as required.

In meeting the overall DBE goal of **5.78%**, the Airport anticipates it will obtain 0% from race-neutral participation and **5.78%** through race conscious measures.

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

Attachment 6
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 7
Revision Log

The following revisions were made in August 2020

1. Updated plan to meet current guidance
2. Updated web links as required
3. 3-year goal update for FY2021-2023
4. Updated DBELO

END OF DBE PLAN