

CITY OF BILLINGS
AVIATION AND TRANSIT DEPARTMENT
TRANSIT DIVISION
DISADVANTAGED BUSINESS ENTERPRISE PLAN
MARCH 2012

UPDATED NOVEMBER 2012

Disadvantaged Business Enterprise Policy Statement

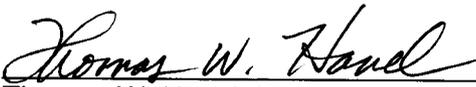
The City of Billings MET Transit (MET) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The MET has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MET has signed an assurance that it will comply with 49 CFR Part 26.

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

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 MET 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Transit Manager has been designated as the DBE Liaison Officer. In that capacity, the Transit Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MET in its financial assistance agreements with the Department of Transportation.

City of Billings MET Transit has disseminated this policy statement to the Mayor and City Council and all components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing legal ads in the national transportation periodical *Passenger Transport*, the local newspaper and minority newspapers as applicable.


Thomas W. Hanel, Mayor

5-13-2013
Date

Applicability (26.3)

The MET is the recipient to federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240, or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L. 105-178.

Definitions (26.5)

Affiliation - Has the same meaning the term has in the Small Business Administration (SBA) Regulations, 13 CFR part 121.

- 1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly: (i) One concern controls or has the power to control the other; or (ii) A third party or parties controls or has the power to control both; or (iii) An identity of interest between or among parties exists such that affiliation may be found.
- 2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native – a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaskan Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) – any Regional Corporation, Village Corporation, Urban Corporation or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U. S. C. 1601, et seq.).

Contract - a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor - one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit or airport program.

Department or DOT – the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or (DBE) - A for-profit small business concern -

- 1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts - efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member - father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe - any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture - an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian - any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization - any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance - that a recipient has not correctly implemented the requirements of this part. Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth - the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary

place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification - the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient - a recipient who receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business - the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program - any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program - one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program - one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient - any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or FTA, or who has applied for such assistance.

Secretary - the Secretary of Transportation or his/her designee.

Set-aside - a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA - the United States Small Business Administration.

Small business concern - 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 Sec. 26.65(b).

Socially and economically disadvantaged individual - any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged

(i) "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans", which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern - any concern at least 51 percent owned by an Indian tribe as defined in this section.

You - refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

Nondiscrimination (26.7)

The MET 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 MET 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.

Record Keeping Requirements (26.11)

Reporting to DOT 26.11 (b)

We will report DBE participation on a semi-annual basis in the Transportation Electronic Award Management System (TEAM). These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Confidentiality

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.

Bidders List 26.11(c)

The MET will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE Non-DBE status, age, and annual gross receipts of firms.

Federal Financial Assistance Agreement Assurance (26.13)

MET has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurances 26.13 (a)

MET 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 recipient'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 MET of its failure to carry out its approved program, the Department may impose sanction 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 26.13 (b)

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

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.

DBE Program Updates (26.21)

Since MET has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

DBE Liaison Officer (DBELO) (26.25)

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

City of Billings MET Transit Manager
1705 Monad Road
Billings, MT 59101
406-657-8218

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

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall triennial 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 identifies ways to improve progress.
6. Analyzes MET's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.

10. Provides outreach to DBEs and community organizations to advise them of opportunities.

Specific Parts of the program will include but not be limited to:

1. Certification – To ensure the program benefits only firms owned and controlled by disadvantaged individuals, DBE's must be certified by the Montana Department of Transportation (MDT) under the Unified Certification Program (UCP). The UCP provides one-stop shopping for applicants and will be binding upon all agencies receiving USDOT funding for Montana transportation projects.
2. Supportive Services – MET staff will provide technical assistance to certified DBE's to help in overcoming barriers. Certified vendors may be referred to the MDOT Civil Rights Bureau for assistance as well. MDOT certified DBE's will also be provided with a monthly newsletter and training opportunities.
3. Setting triennial overall goals.

DBE Financial Institutions (26.27)

It is the policy of the MET to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. MET will contact the Department of Commerce's Financial Division annually to determine if such financial institutions exist.

One minority bank deposit program is available in Montana:

Eagle Bank
80 Heritage Lane
PO Box 849 Polson, MT 59860
406-883-2940

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Prompt Payment Mechanisms (26.29)

We 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 30 days from the receipt of each payment the prime contractor receives from the City of Billings MET Transit. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MET. This clause applies to both DBE and non-DBE subcontractors. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

Directory (26.31)

The MET maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. MET shall utilize the existing Montana

DOT directory, which is revised annually. The Montana DOT directory is available online at www.mdt.mt.gov. The Directory is also available by contacting MET's DBELO at 1705 Monad Road, Billings, MT 59101 or by calling 406-657-8818.

Overconcentration (26.33)

MET has not identified that overconcentration exists in the types of work that DBEs perform.

Business Development Programs (26.35)

MET has not established a business development program.

Monitoring and Enforcement Mechanisms (26.37)

MET 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 26.109. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Fostering Small Business Participation (26.39)

MET will 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. Small business participation may be obtained using the following strategies. This list is not all inclusive.

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

Verification of Business Size

MET will rely on the certification process of the Montana DOT to determine the eligibility of firms as SBEs in DOT-assisted contracts. To be certified as a SBE, a firm must meet all certification eligibility standards.

For information about the certification process, firms should contact: Transit Manager, 1705 Monad Road, Billings, MT 59101, 406-657-8818.

Implementation of the Small Business Element

MET intends to include the small business element beginning with the FFY13 DBE program, provided FTA approval of the DBE program plan has been received at this time.

Quotas (26.43)

We do not use quotas in any way in the administration of this DBE program.

Overall Goals (26.45)

Goal Methodology

MET will determine a triennial DBE goal to create a level playing field in which DBE's can compete fairly for USDOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

MET will calculate the goal using the criteria outlined in 49 CFR Part 26.45. The determination will be based on a level of DBE participation relative to all businesses that are ready, willing and able to participate on USDOT-assisted contracts, and reflect a level of participation that MDT would expect in absence of discrimination. The Goal Setting Process is based on the following steps:

- Primary Business Activity Codes or Standard Industry Classification codes based on the North American Industry Classification System (NAICS) are selected which correspond to the services used by MET.
- The list of Business Activity Codes will be compared to information contained in the MET Bidders List and the Montana Department of Transportation's Bidders List.

All firms bidding on prime contracts and bidding or quoting on subcontracts on DOT-assisted project will provide MET with firm name, firm address, firm status as DBE or non-DBE, age of the firm, annual gross receipts of the firm and the firms primary business activity code.

- The total number of certified DBE's will be divided by the total number of firms. This is the DBE base figure. According to 49 CFR §26.45(c), this is considered Step 1.
- Once the base figure has been established, MET will examine all evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. According to 49 CFR §26.45(d), this is considered Step 2.
- Once Step 2 is complete, MET will allow public participation on the overall goal. This participation will include, but not be limited to:
 - 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 MET's efforts to establish a level playing field for the participation of DBEs.
 - A published notice announcing the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal

business hours at the MET office for 30 days following the date of notice, and informing the public that MET and USDOT will accept comments on the goal for a period of 45 days from the date of notice.

Transit Vehicle Manufacturers Goals (26.49)

MET will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MET may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Contract Goals (26.51 d-g)

MET will use contract goals to meet any portion of the overall goal MET 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 the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform that particular type of work).

Good Faith Efforts (26.53)

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 Part 26.

The following personnel are 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: Evaluation committee for individual procurements.

We 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))

MET treats bidder/offers' 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 no later than the deadline set forth in the procurement documentation.

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 participating;
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 MET that it is not responsible 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: Director of Aviation and Transit, 1705 Monad Road, Billings, MT 59101, 406-657-8218. 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 Department of Transportation.

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

We 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. If the contractor fails or refuses to comply in the time specified, our contracting office 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 contracting officer may issue a termination for default proceeding.

Terminations

Prime contractors may not terminate a DBE subcontractor for convenience.

When a termination is necessary due to inability to perform all or part of its subcontract due to default, over extension, or no longer being certified, the prime contractor must submit a written request to the DBELO explaining the need for a substitution. The following procedure shall be followed and information submitted to MET:

The listed DBE must submit a signed request requesting relief from all or part of its subcontract with specific reasons through the prime contractor, who will send it to the DBELO for written consent for the substitution. The DBE's failure or refusal to submit the request will not authorize the prime contractor to unreasonably delay or fail to submit its substitution request. MET may consider the request without the DBE's request for relief.

The reasons why a designated DBE needs to be replaced must be supported by evidence.

A list of DBE substitutes available and willing to replace the designated DBE.

The written request must clearly identify that the subcontractor which is requesting substitution is a DBE, and that the subcontractor sought to be added is also a certified DBE. Such consent, when given, will not relieve the prime contractor of any responsibility for the contract's fulfillment or the percentage of DBE work committed.

Written consent will be given only after MET has closely reviewed and ensured that each subcontract is evidenced in writing and contains all pertinent provisions required by the prime contract.

MET will closely monitor all substitutions to ensure the DBE is performing a commercially useful function in accordance with the DBE Program and Substitution Procedures contained therein.

Counting DBE Participation (26.55)

We will only count the value of work actually performed by DBE participants toward overall and contract goals only when the DBE participant has been paid as provided in 49 CFR 26.55.

Certification (26.61 - 26.91)

MET will rely on the certification process of the Montana DOT as provided in the standards of Subpart D of part 26 and the certification procedures of Subpart E 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.

The process to be certified by the Montana DOT is available online at www.mdt.mt.gov

For information about the certification process, firms should contact: Transit Manager, 1705 Monad Road, Billings, MT 59101, 406-657-8218.

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. To ensure separation of functions in a decertification, we have determined that the MET's Aviation and Transit Director will serve as the decision maker in decertification proceedings. We have established an administrative "firewall" to ensure that MET's Aviation and Transit Director will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action.

Unified Certification Program (26.81)

MET is a member of the Unified Certification Program (UCP) administered by the Montana DOT. The UCP will meet all the requirements of this section.

Certification Appeals

Any firm or complainant may appeal the decision of the Montana DOT in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street West
Room 2104
Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting.

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 the MET or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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.

Regular City Council Meeting

Meeting Date: 05/13/2013

TITLE: Approval of Aviation and Transit's Updated Disadvantaged Business Enterprise Programs

PRESENTED BY: Thomas H. Binford

Department: Transit

Information

PROBLEM/ISSUE STATEMENT

As recipients of Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) grant funding, the Aviation and Transit Department is required to have Disadvantaged Business Enterprise (DBE) Programs in place. A DBE is a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. The DBE Program's intent is to provide a level playing field for DBE companies wanting to do business with the MET Transit, the Airport, and other agencies receiving Federal funds from the U.S. Department of Transportation. In addition to the requirement to submit an updated DBE Program every three years, on September 6, 2012, a notice in the Federal Register announced changes to the DBE Circular. One of the new requirements of the Circular is that the DBE Programs must now be approved by the City Council and signed by the Mayor. Copies of the DBE Programs are available for review in the City Clerk's office.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the updated DBE Programs; or
- Not approve the updated DBE Programs and jeopardize any future FTA or FAA grant funding.

FINANCIAL IMPACT

As recipients of Federal funding, MET Transit and the Airport are required to have DBE Programs in place. Failure to submit updated Programs may jeopardize or delay award of the annual FTA operating and capital grants, and the FAA Airport Improvement Program (AIP) grants. The FTA grants can range between \$1.6 million and \$2 million annually. The AIP grants are approximately \$3 million annually, and up to \$6 million or more on larger projects.

RECOMMENDATION

Staff recommends that City Council approve and the Mayor sign the updated DBE Program.

APPROVED BY CITY ADMINISTRATOR

COUNCIL ACTION <i>Approved</i>
MAY 13 2013
<i>dh</i> CITY CLERK