



DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PROGRAM

In compliance with - 49 CFR PART 26

Approved by FAA – Civil Rights and DBE Compliance 3 October 2012

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM - POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

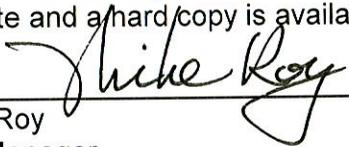
The City of Waterville has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Waterville has received Federal financial assistance from the Department of Transportation, and as a condition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

It is the policy of the City of Waterville 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 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.

Gregory Brown, City Engineer, has been delegated as the DBE Liaison Officer. In that capacity, Greg is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Waterville in its financial assistance agreements with the Department of Transportation.

The City of Waterville has disseminated this policy statement to the City Manager, City Council, and all of the components of our organization. A copy of this policy is posted on the City’s website and a hard copy is available for public viewing at the LaFleur Airport Manager’s Office.



 Mike Roy
 City Manager

10/3/12

 Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The City of Waterville will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The City of Waterville will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor's Form or other similar format.

Bidders List: 26.11(c)

The City of Waterville will utilize the existing MaineDOT bidders list for DBE firms. The City will also collect and forward the following information to the MaineDOT whenever a project funded in whole or in part with FAA funds is awarded. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals.

We will collect the information in the following ways: Contract Bid Forms will require that every bidder submit the information at the time of bid. The information will be required from each prime contractor and all named sub-contractors. In addition to the information gathered through the bid process, as defined above, the successful bidder will also be required to document and update the information for each sub-bidder utilized on the project, before final project closeout.

In the event an unsuccessful Bidder fails to provide this information, the City will request this information be provided as soon as possible after Bid Opening.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) - Each financial assistance agreement The City of Waterville, or any sub-recipient, signs with a DOT operating administration shall include the following assurance:

The City of Waterville shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City of Waterville shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City of Waterville's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Waterville of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

The City of Waterville will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Waterville deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Waterville will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The City of Waterville is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Gregory Brown P.E.
City Engineer
One Common Street
Waterville, Maine 04901
Phone (207) 680-4232
E-mail Address: gbrown@waterville-me.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Waterville complies with all provision of 49 CFR Part 26. An organizational chart is attached documenting the direct line of communication between the DBELO and the City Manager.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO may rely on City administrative staff and/or the City's independent airport engineering consultant(s) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City of Waterville'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. Chairs the DBE Advisory Committee.
10. Determines contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in Maine.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Monitors the City of Waterville's (MaineDOT's) updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Waterville 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.

The City of Waterville will create a list of all financial institutions, within City limits, that could provide financial services to prime contractors or sub-contractors. This list will be provided to the successful low bidder and all subcontractors participating on any FAA funded airport project.

Section 26.29 Prompt Payment Mechanisms

The City of Waterville has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

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

The City of Waterville will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of Waterville. When City of Waterville 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.

The City of Waterville will provide appropriate means to enforce the requirements of this section. These means include requiring the prime contractor to provide lien releases from all subcontractors for the previous pay requisition. Failure to provide lien releases for work that has been accepted as satisfactory will be cause for rejection of the current pay requisition, until said lien releases are received.

The City of Waterville 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 City of Waterville. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed.

Section 26.31 Directory

The City of Waterville uses the State of Maine DBE directory, maintained by the State. 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. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Maine revises the Directory at least annually. We make the MaineDOT directory web link (<http://www.maine.gov/mdot/disadvantaged-business-enterprises/pdf/directory.pdf>) available on our City web site.

Section 26.33 Over-concentration

The City of Waterville has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Waterville has not established a business development program. DBE's interested in participating in a business development program will be directed to the State of Maine and its website that provides business development information and assistance.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. As the sponsor of KWVL-the Robert LaFleur Airport, the City of Waterville will enforce all provisions of each consulting engineer contract and construction project contract, which specifically require consultants and prime contractors to comply with the provisions of 49CFR Part26.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by documenting individual employee work activities on site to verify both work performed and wage rates, and will be reviewed during the close out process when final quantities, final payments, and lien releases are reconciled.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Section 26.39 Fostering small business participation.

The City of Waterville is committed to encouraging small business participation in bidding contracts for transportation work. Our program structures contracting requirements in a way that facilitates competition by small business concerns. We seek to take all reasonable steps to eliminate obstacles and to encourage small business participation, be they DBE's or small business firms. We make every attempt to ensure that no unnecessary and unjustified bundling of contracts will occur that may preclude small businesses from serving as prime contractors or subcontractors on federally funded airport projects.

Small Business Concern Defined:

The City of Waterville defines a small business concern in accordance with 49 CFR § 26.5, § 3 of the Small Business Act and Small Business Administration regulations 13 CFR part 121. The City, through consultation with the Maine DOT, is careful to determine that the small businesses we deal with do not exceed the cap on average annual gross receipts or employment standards specified for North American Industry Classification System (NAICS) codes for a particular business entity.

Prequalification: To ensure that a reasonable number of prime contractors, including DBE's, qualify as small businesses, the City and the MaineDOT now allows contractors to bid on projects with a dollar amount under \$300,000.00 without going through a demanding prequalification process. We heard from contractors that the former limit of \$150,000 discouraged small contractors from bidding on projects because of the more onerous prequalification process.

Bundling and Debundling: The City and MaineDOT looks closely at projects to determine if projects should be bundled. We look at a number of factors such as geography, size of the project, safety, anticipated bidders. As good stewards of public dollars, we strive to ensure that we are using our limited resources prudently. That said, we do also recognize that the more competition in bidding, the more likelihood that we will get our best bid price. Bundling projects is only done when it is beneficial to our program and to the economy.

Subcontracting: The State of Maine also maximizes the potential for small business participation by allowing for the maximum percentage of work to be done through subcontracting. Although federal law allows contractors to subcontract up to 70% of the project work, many states limit this to a smaller percentage. Maine allows primes to subcontract the full 70% of their bid, encouraging more subcontracting and thus employing more small business. The City of Waterville, with assistance from the MaineDOT, will actively implement this element of our DBE program to foster small business participation as required by 49 CFR 26.39.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In the spring of 2012, the City of Waterville applied for AIP funding for a proposed runway repair project. At that time we were required to bid the project to determine the cost of construction. We elected to utilize the MaineDOT's FHWA DBE participation goal of 5.9% as our AIP project DBE goal. The MaineDOT documented its FHWA DBE goal process utilizing public notice and public comment periods as prescribed by 40CFR Part 26.

Since that time, Airport Solutions Group, our Airport Engineering Consultant, calculated a base DBE goal for our Airport based on the methodology defined below. ASG's calculations resulted in a DBE percentage of less than 1 percent.

Within the last week, the MaineDOT modified their FHWA DBE participation goal to 4% effective October 1, 2012.

The City desires to use the MaineDOT FHWA DBE participation goal of 4% for the next 3 years, FY2013-FY2015. If our goal is not met, or if additional data and documentation are required by the FAA, the City will establish an overall DBE goal utilizing the calculated goal and the public participation process outlined below:

The City of Waterville will establish an overall DBE goal covering a three-year federal fiscal year period. three-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City of Waterville will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Small Hub Primary	All Regions	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Hub Primary	All Regions	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established

in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Waterville does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the City of Waterville will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City of Waterville would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, City of Waterville will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning, the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Waterville's efforts to establish a level playing field for the participation of DBEs. Trade organizations, such as, Associated General Contractors, Women in Construction, and Women in Engineering, will be contacted to obtain relevant information.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at City Hall, One Common Street, for 30 days following the date of the notice, and informing the public that the City of Waterville and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, and websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Failure to meet overall goals.

The City of Waterville will maintain an approved DBE Program and overall DBE goal as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City of Waterville's commitments and awards, shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year, are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing the DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully the goal for the new fiscal year;

(3) City of Waterville will create, within 90 days of the end of its fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section, and retain said analysis and corrective actions in our airport project records, for a period of three years. Airport project records will be available to the FAA for review, on request.

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

The City of Waterville does not intend to use race-conscious means of obtaining DBE participation, other than contract goals. If race-conscious means are to be considered to obtain DBE participation in the future, this policy shall be amended.

Section 26.51(d-g) Contract Goals

The City of Waterville will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39..

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the offeror is to make good faith efforts. The 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.

Gregory Brown is responsible for determining whether an offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible. We will ensure that all information is complete, accurate and adequately documents the offeror's good faith efforts before we commit to the performance of the contract by the offeror.

Information to be submitted (26.53(b))

The City of Waterville treats offerors' compliance with good faith efforts' requirements as a matter of **responsibility**.

Responsibility- Each solicitation for which a contract goal has been established will require the offeror to submit the following information within 20 business days of being notified that they are the successful bidders, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm 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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by City of Waterville that it is not responsible because it has not documented sufficient good faith efforts, an offeror may request administrative reconsideration. Offerors should make this request in writing to the following reconsideration official: Mike Roy, City Manager, One Common Street, Waterville, Maine 04901; phone (207) 680-4203; email mroy@waterville-me.gov

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

As part of this reconsideration, the 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 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. We will send the 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))

City of Waterville 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.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, 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) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us 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 we have 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 us its 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

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 offeror in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, our contracting office 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.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the *City of Waterville* to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 5.9 percent has been established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

City of Waterville will use the MaineDOT published list of firms eligible to participate as DBEs in federally-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The MaineDOT list of eligible DBE firms is posted on their website and is periodically updated as DBE firm status is revised / certified by the MaineDOT.

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

Sherry Tompkins, Civil Rights Office
MaineDOT
State House Station 16
Augusta, Maine 04333-0016
Telephone: (207) 624- 3066
Email: sherry.tompkins@maine.gov

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

MaineDOT is the Certifying agency for all USDOT recipients in Maine for the DBE program, which was approved by USDOT in 2000. All recipients are required to have signed the UPC agreements in order to participate in USDOT assisted programs. MaineDOT has a list of all participating recipients and has signed copies of agreements on file at the MaineDOT.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the Maine Freedom of Information Act, MSRS Title5 CH 65 section 791. Records and correspondence utilized by us or any other agency in the certification of WBEs, MBEs, or DBEs, which pertain to: the applicant's financial or tax status, to private contracts made by the applicant, to the applicants trade secrets, or any other matter customarily regarded as confidential business information shall be confidential and shall not be open for public inspection.

Nothing in this section prevents the disclosure of any records, correspondence or other materials to: authorized officers, or employees of Local Government, State Government, or Federal Government.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information, however, we will must transmit this

information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

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 City of Waterville 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.

ATTACHMENTS and APPENDICIES

Attachment 1 Regulations: Website link to 49 CFR Part 26

Attachment 2 Organizational Chart

Attachment 3 Bidder's List Collection Form

Attachment 4 Link to MaineDOT DBE Directory

Attachment 5 Adopted MaineDOT Goal Calculations

Attachment 1 Regulations: 49 CFR Part 26 or website link

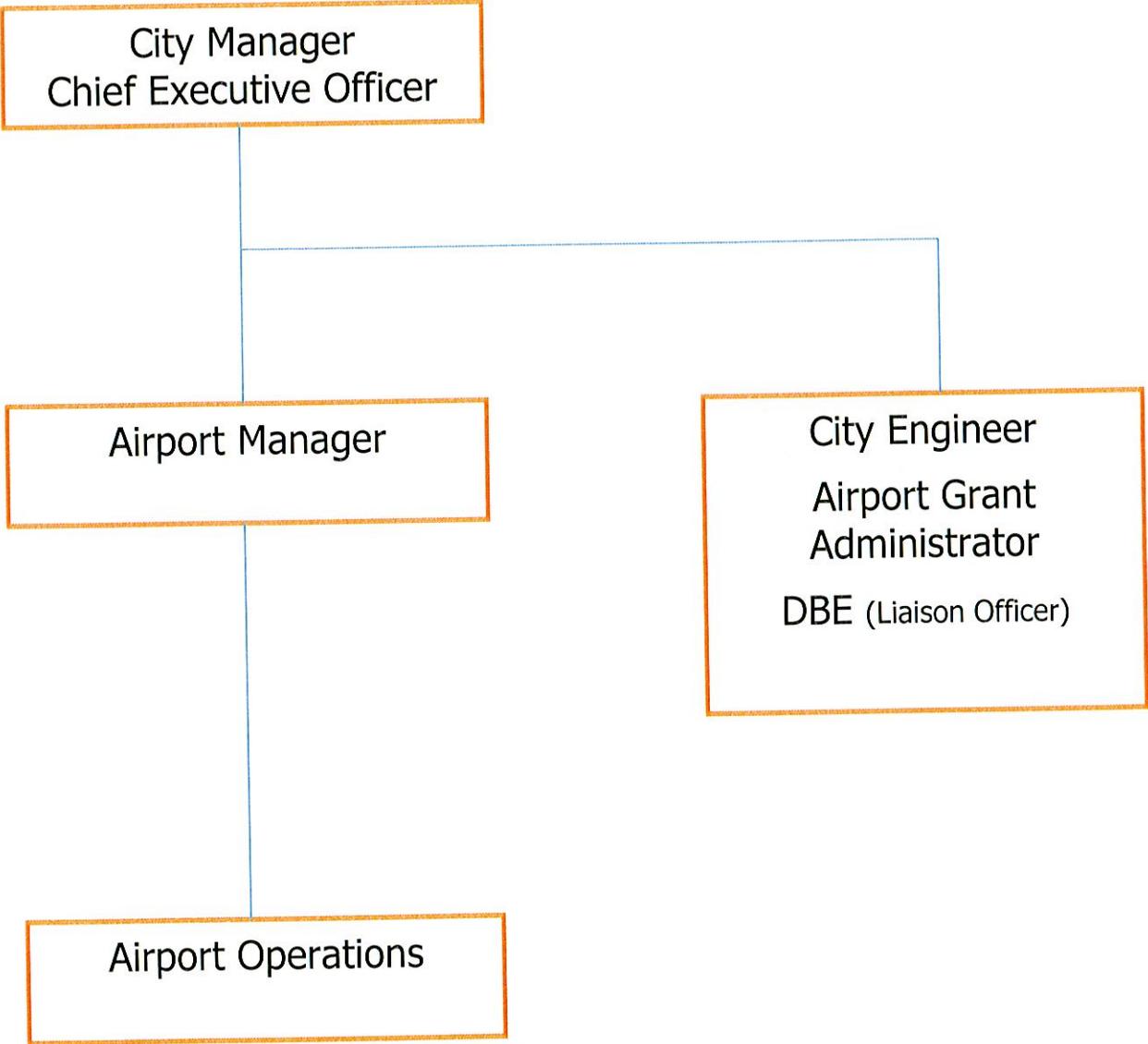
[Appendices to the CFR](#) – Guidance, Guidelines, Application

The following links to 49CFR Part 26 are applicable to this DBE policy

- [Appendix A to Part 26](#) --Guidance Concerning Good Faith Efforts
- [Appendix B to Part 26](#) --Uniform Report of DBE Awards or Commitments and Payments Form
- [Appendix C to Part 26](#) --DBE Business Development Program Guidelines
- [Appendix D to Part 26](#) --Mentor-Protégé Program Guidelines
- [Appendix E to Part 26](#) --Individual Determinations of Social and Economic Disadvantage
- [Appendix F to Part 26](#) --**Uniform Certification Application Form**

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

**City of Waterville CONTRACTOR'S DBE/SUBCONTRACTOR
PROPOSED UTILIZATION FORM**

All Bidders must furnish this form with their bid on Bid Opening day

Contractor: _____ Telephone: _____ Ext _____

Contact Person: _____ Fax: _____

E-mail: _____

BID DATE: _____

FEDERAL PROJECT PIN # _____ PROJECT LOCATION: _____

TOTAL ANTICIPATED DBE ____ % PARTICIPATION FOR THIS CONTRACT

W B E	D B E	Non DBE	Firm Name	Item Number & Description of Work	Quantity	Cost Per Unit/Item	Anticipated \$ Value
Subcontractor Total >							
DBE Total >							

NOTE: THIS INFORMATION IS USED TO TRACK AND REPORT ANTICIPATED DBE PARTICIPATION IN ALL FEDERALLY FUNDED MAINE DOT CONTRACTS. THE ANTICIPATED DBE AMOUNT IS VOLUNTARY AND WILL NOT BECOME A PART OF THE CONTRACTUAL TERMS.

Equal Opportunity Use:
Form received: ___/___/___ Verified by: _____

For a complete list of certified firms and company designation (WBE/DBE) go to <http://www.maine.gov/mdot>

ATTACHMENT 4

MaineDOT DBE Directory

The State of Maine Department of Transportation maintains a current list of Certified Disadvantaged Enterprise Directory at the following link:

<http://www.maine.gov/mdot/disadvantaged-business-enterprises/pdf/directory.pdf>

ATTACHMENT 5

ADOPTED MAINEDOT GOAL CALCULATIONS

Below is a link to MaineDOT's last approved FHWA goal and methodology. Set in 2012 the goal is 4%.

<http://www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php>



U.S. Department
of Transportation
**Federal Aviation
Administration**

Reply to:
Federal Aviation Administration
Great Lakes Region, Room 440
Attn: Nancy Cibic
2300 E. Devon Avenue
Des Plaines, Illinois 60018

October 3, 2012

Mr. Mike Roy
City Manager
LaFleur Airport
City Hall, 1 Common Street
Waterville, ME 04901

Dear Mr. Roy:

This letter is in reference to the Disadvantaged Business Enterprise (DBE) fiscal year (FY) 2013-2014-2015 program and goal that you submitted for the LaFleur Airport, Waterville, ME. Based on our review, we have determined that the program and goal meet the standards in 49 CFR Part 26, Department of Transportation regulations.

The goal is described as follows:

FY-13/14/15 Overall goal: 4.0% DBE Participation
To be obtained through 4.0% Race-Neutral and 0% Race-Conscious means
Covering the period October 1, 2012 through September 30, 2015

DBE Accomplishments continue to be due annually on December 1 for the previous fiscal year. Accomplishments can be submitted either through our new DOORS system at <http://osdbu.dot.gov/DOORS/Application/logon.aspx> or by completing the Uniform Report of DBE Awards/Commitments and Payments form and submitting via email to nancy.cibic@faa.gov. If you need a DOORS user account, please contact Nancy Cibic at nancy.cibic@faa.gov or phone 847-294-7182. Our blank forms can be found at http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/.

If you have any questions or need assistance, please contact Nancy Cibic, Compliance Specialist at 847-294-7182 or nancy.cibic@faa.gov.

Sincerely,

Nancy Cibic

for

Michael D. Freilich, Director
Civil Rights and DBE Compliance
Western-Pacific Region

cc:

Gregory Brown P.E.
City Engineer
One Common Street
Waterville, Maine 04901