

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

Lincoln County, owner of the Libby 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. Lincoln County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Lincoln County 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 Lincoln County Airport Commission 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 Lincoln County Airport Commission's 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.

Robin Benson, Lincoln County Clerk & Recorder has been delegated as the DBE Liaison Officer. In that capacity, **Ms. Benson, Lincoln County Clerk and Recorder** 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 Lincoln County Airport Commission in its financial assistance agreements with the Department of Transportation.

Lincoln County has disseminated this policy statement to the Lincoln County Airport Commission and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on DOT-assisted contracts. The distribution was accomplished by publishing in the local newspaper, the Montana Department of Transportation's Civil Rights Bureau DBE newsletter and the Lincoln County Website.

Lincoln County Clerk and Recorder Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Lincoln County Airport Commission is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Lincoln County Airport Commission will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

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

DBE participation will be reported to DOT/FAA as follows:

The Lincoln County Airport Commission will transmit to DOT/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. Lincoln County Airport Commission will similarly report the required information about

participating DBE firms. All reporting will be done through the DOT/FAA reporting system, or another format acceptable to DOT/FAA as instructed thereby.

Bidders List

The **Lincoln County Airport Commission** 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 subcontractors who seek to work on FAA & DOT-assisted contracts, for use 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 in the following way(s):

A contract clause requiring prime bidders to report the names/addresses, and other required information, of all firms who quote to them on subcontracts will be made part of the contract documents. A form is provided in **Attachment #3** of this document.

Records retention and reporting:

Lincoln County Airport Commission will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, **Lincoln County Airport Commission** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews.

These records will be retained in accordance with all applicable record retention requirements of **Lincoln County Airport Commission** 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 the financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

Lincoln County Airport Commission has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement **Lincoln County Airport Commission** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The **Lincoln County Airport Commission** 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 **Lincoln County Airport Commission** 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 **Lincoln County Airport Commission'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 **Lincoln County Airport Commission** 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 26.13(b): **Lincoln County Airport Commission** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor and each subcontract the prime contractor signs with a subcontractor:

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 **Lincoln County Airport Commission** deems appropriate, which may include, but is not limited to:

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **Lincoln County Airport Commission** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. **The Lincoln County Airport Commission** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **The Lincoln County Airport Commission** is in compliance with it and Part 26. The Lincoln County Airport Commission will continue to carry out this program until all funds from DOT financial assistance have been expended. **The Lincoln County Airport Commission** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for The Lincoln County Airport Commission:

Robin Benson
County Clerk & Recorder
512 California Ave.
Libby, MT 59923
406-283-2301
lcclerk@libby.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that **The Lincoln County Airport Commission** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Chairman of **The Lincoln County Airport Commission** concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment #2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has the access to the Airport Commission's consultant, Morrison Maierle, to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes **The Lincoln County Airport Commission'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. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.

Section 26.27 DBE Financial Institutions

It is the policy of **The Lincoln County Airport Commission** 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 **Lincoln County Airport Commission** will review the MDT DBE listings for financial institutions in the County.

To date there are no listings identified for such financial institutions in Lincoln County, Montana.

The **Lincoln County Airport Commission** will review the MDT/DBE listing when updating the Goal Methodology.

Section 26.29 Prompt Payment Mechanisms

In accordance with 49 CFR §26.29, **The Lincoln County Airport Commission** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from **The Lincoln County Airport Commission**

The Lincoln County Airport Commission ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, The Lincoln County Airport Commission has selected the following method to comply with this requirement:

- 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 7 days after your payment to the prime contractor.

The Lincoln County Airport Commission 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 **Lincoln County Airport Commission**. When **The Lincoln County Airport Commission** 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 Lincoln County Airport Commission will provide appropriate means to enforce the requirements of this section. These means include:

- Final payment to prime contractor will not be released until all subcontractors work has been accepted and appropriate documentation is received including final payment due to subcontractors that is included in final payment

The **Lincoln County Airport Commission** 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 thirty (30) days from the receipt of each payment the prime contractor receives from the **Lincoln County Airport Commission**. 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 timeframe may occur only for good cause following written approval of the **Lincoln County Airport Commission**. This clause applies to both DBE and non-DBE subcontractors.

The ***Lincoln County Airport Commission*** has also established, as part of our DBE program, the following mechanisms to ensure prompt payment:

- A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

Section 26.31 Directory

The ***Lincoln County Airport Commission*** uses the State of Montana Department of Transportation DBE directory, which is updated by MDT, and as applicable DBE directories published by neighboring states, and directories of other certifying agencies required to follow 49 CFR Part 26 maintained by the State.

The directory lists the firm's name, address, phone number, 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 directory is available on the Internet at <http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>. Additional information on the directory can be obtained from the DBE Liaison Officer.

Section 26.33 Over-concentration

The ***Lincoln County Airport Commission*** will rely on the MDT's determination of overconcentration. According to MDT, there are no over-concentrations to date.

If it is determined that an overconcentration of DBE firms does exist, the ***Lincoln County Airport Commission*** will base the race conscious project goals for the next bid letting on that data.

Section 26.35 Business Development Programs

The ***Lincoln County Airport Commission*** has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The ***Lincoln County Airport Commission*** 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 Lincoln County Airport Commission DBE program**.

The Lincoln County Airport Commission 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.

Monitoring Payments to DBEs and Non-DBEs

The Lincoln County Airport Commission 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):

- 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.
- We will notify subcontractors when a prime contractor has been paid on the project and have them report back when they have been paid.

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

- **The Lincoln County Airport Commission** proactively reviews contract payments to subcontractors including DBEs at the completion of each project. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **The Lincoln County Airport Commission** by the prime contractor.

Prompt Payment Dispute Resolution

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

- Meetings between prime and sub, with resident project representative and project manager.

The Lincoln County Airport Commission has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- (1) Prime Contractor and Subcontractor Lien Releases prior to final payment on the project.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. *[Escalation steps should follow prime, Recipient, and Operating Administration (OA) in that order, but specific procedures are to be outlined by the Recipient. **Procedures and wording below are basic descriptions, and should not be used verbatim.**]*

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact **The Lincoln County Airport Commission's consultant** to initiate complaint.
- If filing a prompt payment complaint with the consultant's project manager does not result in timely and meaningful action by **The Lincoln County Airport Commission** to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA/DOT contact.

Enforcement Actions for Noncompliance of Participants

The Lincoln County Airport Commission will provide appropriate means to enforce the requirements of §26.29. These means include:

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 consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 7** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
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. The **Lincoln County Airport Commission** will require all Prime bidders to submit information on DBE subcontractors that will participate in the Contract; at the time bids are submitted. This information will include: (1) the name and address of each DBE; (2) a description of the work to be performed by each named firm; and (3) the dollar value of the work of the subcontract. Failure of the Prime Contractor to provide this information with his or her bid will make the bidder nonresponsive and not eligible for award of the contract. Additionally, bidders are required to certify that any DBE firms engaged to provide materials, services, or supplies in the completion of the project: (1) is a bona fide DBE performing a commercially useful function; and (2) has

executed a binding contract to provide specific materials or services for a specific dollar amount. The **Lincoln County Airport Commission** will verify that proposed DBE firms are currently certified by and listed in the Montana Department of Transportation's DBE Directory. The **Lincoln County Airport Commission** will also verify, as outlined in 49 Part 26, Section 26.55, that the Prime Bidder/Contractor has met the proposed and actual DBE participation. For projects with race-conscious goals, bidders not meeting the specified DBE goals must provide, with the bid, evidence of good faith efforts. Bidders not providing evidence of good faith efforts, as per Appendix A of Part 26 will be considered nonresponsive and not eligible for award of the contract.

Bidders, DBE contractors, DBE subcontractors, and DBE suppliers are required 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 **Lincoln County Airport Commission** or DOT. Failure to maintain accessible records for the three year period will be reported to DOT.

During the course of work, the **Lincoln County Airport Commission** shall review payrolls, and if necessary, conduct interviews with contractor's employees, to determine and ensure that DBE firms are completing work items to the extent indicated in the Prime Contractor's bid, and performing a commercially useful function as defined in 49 CFR Part 26, Section 26.55(c). Should a determination be made that DBE firms are not completing work items or performing a commercially useful function, **Lincoln County Airport Commission** shall notify DOT. Termination of the Prime Contractor's construction contract will be considered.

4. 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.

Lincoln County Airport Commission will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The Lincoln County Airport Commission reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the consultant. Contracting records are reviewed by the consultant. **The Lincoln County Airport Commission** 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 Lincoln County Airport Commission has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as **Attachment #10** to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for The Lincoln County Airport Commission 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 Lincoln County Airport Commission does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Lincoln County Airport Commission 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 Lincoln County Airport Commission** will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA.

FAA:

[https://www.faa.gov/about/office org/headquarters offices/acr/bus ent program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. **If The Lincoln County Airport Commission** 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 Lincoln County Airport Commission will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. **The Lincoln County Airport Commission** will use *DBE Directory information and Census Bureau Data* as a method to determine the base figure. **The Lincoln County Airport Commission** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. **The Lincoln County Airport Commission** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in **The Lincoln County Airport Commission** market.

In establishing the overall goal, **The Lincoln County Airport Commission** will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by [Recipient] 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 Lincoln County Airport Commission** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which **The Lincoln County Airport Commission** 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 Lincoln County Airport Commission** will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on **Lincoln County's** official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of Lincoln County Clerk & Recorder. This notice will provide that **The Lincoln County Airport Commission** and FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) 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 the FAA will include a summary of information and comments received, if any, during this public participation process and **The Lincoln County Airport Commission** responses.

The Lincoln County Airport Commission will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

If permitted or required by the FAA 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 overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established 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 Lincoln County Airport Commission understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by **The Lincoln County Airport Commission** for calculating goals is inadequate, the FAA may, after consulting with **The Lincoln County Airport Commission**, adjust the overall goal or require that the goal be adjusted by **The Lincoln County Airport Commission**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment #5** to this program.

Section 26.47 Failure to meet overall goals

The Lincoln County Airport Commission 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 [Recipient] fails to administer its DBE program in good faith.

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

The Lincoln County Airport Commission understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;

(3) **The Lincoln County Airport Commission** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.49 How are overall goals established for transit vehicle manufacturers?

Not Applicable.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The Lincoln County Airport Commission will meet the maximum feasible portion of its overall goal by using race- neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

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

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work,

handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment #5 to this program.

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

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order 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 Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The *DBELO* 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 Lincoln County Airport Commission will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) 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;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) 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.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures; Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient

Administrative reconsideration

Within five (5) business days of being informed by **The Lincoln County Airport Commission** that it is not *responsive* because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: *Patrick McFadden, 514 California Ave., Libby, MT 59923, 406-283-2345, pmcfadden@libby.org*. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts procedural requirements (post-solicitation)

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 materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

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 Lincoln County Airport Commission**. 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 only if **The Lincoln County Airport Commission** agrees, for reasons stated in the 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) **The Lincoln County Airport Commission** determined that the listed DBE subcontractor is not a responsible contractor;
 - (7) The listed DBE subcontractor voluntarily withdraws from the project and provides **The Lincoln County Airport Commission** 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission**, 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission** 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 Lincoln County Airport Commission** 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).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Lincoln County Airport Commission is a non-certifying member of the Montana Unified Certification Program (UCP). Montana UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Montana UCP members make all certification decisions based on the facts as a whole.

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

Name: Maggie Metzger

Title: DBE Program Specialist

Address: Montana Department of Transportation, Civil Rights Bureau

P.O Box 201001, Helena, MT 59620-1001

Telephone Number: 406-444-6337

Fax Number: 406-444-7243

mmetzger@mt.gov

The Uniform Certification Application form and documentation requirements are found in Attachment #9 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Lincoln County Airport Commission is the member of a Unified Certification Program (UCP) administered by The Montana Department of Transportation. In accordance with 49 CFR 26.81(b), the Montana Department of Transportation will assume the responsibilities as the Unified Certification Program (UCP) Lead Agency for Montana. As the UCP Lead Agency, MDT will make all certification decisions on behalf of all DOT recipients in the state of Montana with respect to participation in the USDOT DBE Program.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to The Lincoln County Airport Commission

The Lincoln County Airport Commission understands that if it fails to comply with any requirement of this part, **The Lincoln County Airport Commission** 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 and intimidation or retaliation

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 Lincoln County Airport Commission, 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 Lincoln County Airport Commission** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

[List and append]

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

ATTACHMENT 1

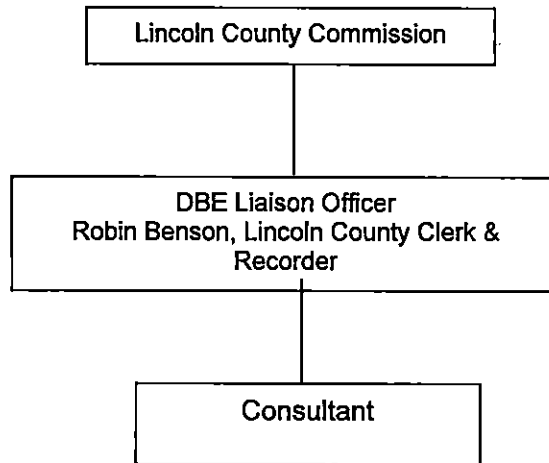
Regulations: 49 CFR Part 26, or link to website

Below is the electronic code of Federal Regulations website

<http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

<u>Firm Name</u>	<u>Address</u>	<u>Certified DBE (Y or N)</u>	<u>Age of Firm</u>	<u>GRS*</u>	<u>Type of Work and/or Supplies</u>

*GRS – Annual Gross Receipts
 Enter 1 for less than \$1 million
 Enter 2 for more than \$1 million, less than \$5 million
 Enter 3 for more than \$5 million, less than \$10 million
 Enter 4 for more than \$10 million, less than \$15 million
 Enter 5 for more than \$15 million.

ATTACHMENT 4

Montana DBE Directory *or web link to DBE directory*

Link to MDT DBE directory:

<https://app.mdt.mt.gov/dbe/dbe/search>

ATTACHMENT 5

5: Overall Goal Calculation

Name of Recipient: *Lincoln County – Lincoln County Airport Commission*

Goal Period: FY-2021, 2022, 2023 – October 1, 2021 through September 30, 2023

DBE Goal: 1.25%

Describe the Number and Type of Projects for this FY:

The projects for the next three years at the Libby Airport shall consist of

Projects Fiscal Year #1 (FY-21) - **\$3,000,000.00** (\$2,700,000.00 is Federal Share)
Project 1 – Runway and Taxiway Rehabilitation

Projects Fiscal Year #2 (FY-22) – **\$0.00** (\$0.00 is Federal Share)
No Project Scheduled

Projects Fiscal Year #3 (FY-23) – **\$165,000** (\$150,000 is Federal Share)
Project 1 – Airfield Pavement Maintenance

The Eureka Airport does not have any projects with FAA funding greater than \$250,000 and therefore does not have a DBE goal for FY 2021-2023.

STEP 1 OF OVERALL GOAL DETERMINATION

Step 1 of the overall goal determination is computed by determining the number of ready, willing, and able DBEs performing the types of work noted above as listed in the current DBE Directory prepared and maintained by the Montana Department of Transportation against the number of ready, willing, and able businesses available in the same NAICS code. The total number of businesses was obtained from the Census Bureau's Data Tables, at <https://data.census.gov/cedsci/>. The latest information currently available from this site is from 2017.

The geographical area used to determine the number of ready, willing, and able DBEs and total businesses were **Lincoln County, Flathead County, Missoula County, Sanders County, Mineral County, and Lake County**. For a larger scale paving project, this represents the area from which a majority of the contractors and subcontractors come from. This market area also encompasses the larger cities of Kalispell and Missoula. This market area is also the area in which **the airport** spends a majority of its contracting dollars.

Finally, by applying the ratio of ready, willing, and able DBE firms and the total number of ready, willing, and able firms from the census data to the estimated percentage of total project costs, the Step 1 goal is determined.

The Step 1 goal was determined for each project anticipated over \$250,000 for the **Libby Airport**. A summary of the Step 1 goal determinations are summarized for each project below.

Determination of Market Area:

Market Area: Lincoln County, Flathead County, Missoula County, Sanders County, Mineral County, and Lake County.

Step 1. Analysis: Actual relative availability of DBE's

Method: Used DBE Directories and Census Data Tables

NAICS Code	Type of Work	Total DBE's MDT DBE Directory	Cost of Work	% of Work	Total Firms Available census.gov	DBE/Total
237310	Highway, Street, and Bridge Construction (Pavement Milling, Asphalt Pavement, Pavement Markings)	0	\$2,600,000.00	86.67%	27	0.00%
541330	Engineering Services	1	\$250,000.00	8.33%	91	1.10%
541380	Testing Laboratories	0	\$50,000.00	1.67%	10	0.00%
541370	Surveying and Mapping Services	2	\$50,000.00	1.67%	24	8.33%
	Total	3	\$3,000,000.00	100.00%	240	9.43%
DBE GOAL = DBE /Total			1.25%			

Step 1 DBE Goal is 1.25%

Step 2: Adjustments to Step 1 base figure. After examining all evidence available and evaluating all Step 2 adjustment options, **Lincoln County** elected to not make any adjustments to the Base Figure; since there was no previous DBE participation from FY 2018-2020 and prior to that there was no past participation on similar projects. Therefore, the overall DBE participation goal for **the Libby Airport** for Fiscal Years 2021 through 2023 is **1.25%**. While it is recommended to provide a weighted goal in step 1, this would have resulted in a step 1 goal of 0.14% for the Libby Airport. For this reason, no adjustment was made to the step 1 goal.

Lincoln County Airport Commission has previously undertaken projects at the Libby Airport and Eureka Airport requiring an overall goal under 49 CFR Part 26.

Past History Participation

FY 2020

Projects Fiscal Year (FY-20)

Project 1 – Snow Removal Equipment - Snow Plow Acquisition

Grant AIP-30-0049-014-2020 at the Libby Airport was a single grant project consisting of Acquiring new SRE equipment. The project was constructed under this grant. The FAA grant amount for AIP 014 is \$220,801.

DBE participation was encouraged with the construction bid; however, there was no DBE participation with the project. DBE Utilization on this project was 0.0%.

FY 2019

Projects Fiscal Year (FY-19)

Project 1 – No Project.

FY 2018

Projects Fiscal Year (FY-18)

Project 1 – No Project.

STEP 2 GOAL CALCULATION					
PAST PARTICIPATION HISTORY					
Fiscal Year	Total Goal	RN Goal	RC Goal	Achievement	Primary Work Type
FY 2018	2.49	2.49	0		No Project
FY 2019	2.49	2.49	0		No Project
FY 2020	2.49	2.49	0	0	Equipment Acquisition
Median Achievement				0%	

There was no past participation for FY 2018 – FY 2020 at the **Libby Airport**. However, it should be noted that in FY-2015 the Libby Airport achieved a DBE participation of 1.8% on their Taxiway Lighting Project. The DBE subcontractor performed construction surveying services on that project. It has been verified that this company is still listed on the Montana Department of Transportation's DBE directory and they could be used on the FY-21 project. Even though, it's possible to use this DBE contractor, there are still very few DBE contractors within the market area for the Libby Airport. For this reason, no adjustments were made in the step 2 calculation.

Therefore, the goal for FY 2021-2023 is 1.25%.

To arrive at an overall goal, we used our Step 1 base figure, and averaged it with our Step 2 figure. We feel the goal figure of **1.25%** will accurately reflect DBE participation that can be achieved for the type of work being awarded during this three-year period.

The **Lincoln County Airport Commission-Libby Airport** will attempt to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

The **Libby Airport** will also use the following **race neutral** means to increase DBE participation:

- Unbundling large contracts to make them more accessible to small businesses where feasible
- Ensure the inclusion of DBE's and other small businesses on recipient mailing lists for bidders
- Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors

Considering these factors, a **race/gender neutral** means of acquiring the overall goal of **1.25%** has been established.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract
- DBE obtains through customary competitive procurement procedures
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal
- DBE participation on a prime contract exceeding a contract goal
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The State of Montana, Department of Transportation acts as a lead organization for the development and solicitation of minority and women owned firms. They provide a web site distribution of a bid distribution form, which was sent to all DBE firms in the State. The State of Montana has also developed a Referral Resource list of organizations that also assist minority and women owned businesses. MDOT conducted a statewide disparity study with respect to highway construction. The 2016 Disparity Study Update is the last full disparity and availability study conducted. Provided is a link to the DBE program's Disparity & Availability Studies webpage.

<https://www.mdt.mt.gov/business/contracting/civil/programinfo.shtml>

MDT engaged a consultant (Keen Independent) to conduct an Availability and Disparity Study, which focused on participation of minority and women owned firms in MDT's

contracts from October 2009 through September 2014. This Study was completed in 2016 and did not examine.

contracts using Federal Aviation Administration (FAA) funds; MDT and other agencies might review information in the report regarding DBE availability as they relate to operating the Program for FAA-funded contracts. Since contractors that participated on MDT contracts during the Study period are in most cases the same contractors that are awarded FAA-funded contracts.

The other factors examined in the 2016 MDT Disparity Study were related to success of minority- and women-owned firms relative to majority-owned businesses in the Montana marketplace. The Study noted quantitative evidence that minority- and women-owned firms are less successful than majority-owned firms and face greater barriers in the marketplace. There was also qualitative information that suggests discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Montana transportation contracting industry. Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified (*2016 MDT Disparity Study, Chapter 9, page 9*).

An adjustment to the base figure for barriers related to other factors was not made in the determination of the current because the MDT Disparity study indicated the impact of the barriers related to this category could not be quantified.

Lincoln County Airport Commission will utilize the findings of the Montana Department of Transportation's disparity study to determine the existence of discrimination or its effects in the market.

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.

26.51(b)(1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

Lincoln County Airport Commission estimates that in meeting its overall goal **1.25%**, it will obtain **1.25%** from RN participation and **0%** through RC measures.

Considering these factors, a race/gender neutral means of acquiring the overall goal **1.25%**, has been established.

Lincoln County Airport Commission does not have a history of DBE under-participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, we are applying the entire goal of **1.25%** to race neutral participation.

The County will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a 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.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

The **Lincoln County Airport Commission** submits its overall DBE three-year goal to DOT on August 1 as required by the set schedule.

Before establishing the overall goal, the **Lincoln County Airport Commission** consulted with the **Montana Department of Transportation, DBE Office** without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **Lincoln County Airport Commission** efforts to establish a level playing field for the participation of DBEs.

As part of the requirements for **Lincoln County Airport Commission** to receive FAA Grants for Airport improvements, in accordance with 49 CFR Part 26, **Lincoln County Airport Commission** is required to conduct a scheduled 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 Disadvantaged Business Enterprises (DBEs), and the **Lincoln County Airport Commission** efforts to establish a level playing field for the participation of DBEs. An open meeting was held with as many interested stakeholders as possible focused on obtaining information relevant to the Disadvantaged Business Enterprise (DBE) goal setting methodology. The meeting was held via teleconference on July 16th.

Also, a notice regarding the above meeting was sent as an e-mail distribution of the announcement by the State of Montana to their current list of DBEs.

There were four people who called into the meeting. It was attended by the consultant (Morrison Maierle) and the 1 member of the Montana Department of Transportation.

Following the consultation, we published a notice in the local newspaper, **The Western News**, for the proposed overall goal, informing the public that the proposed goal and its rationale were available for inspection during normal business hours at the Lincoln County Clerk and Recorder Office for 30 days following the date of the notice, and informing the public that the **Lincoln County Airport Commission** and DOT will accept comments on the goals for 30 days from the date of the notice.

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

PUBLIC NOTICE

The **Lincoln County Airport Commission** hereby announces its fiscal years 2021 through 2023 goal of 1.25% at the Libby Airport for Disadvantaged Business Enterprise (DBE) airport construction contracts. The proposed goals and rationale is available for inspection **on the Lincoln County Website** for 30 days from the date of this publication. The Eureka Airport has not established a goal for these fiscal years since no projects exceed the threshold for goal preparation.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Nick Enblom, Project Manager, Morrison Maierle, 1 Engineering Place, Helena, MT 59602 (406) 495-3417, nenblom@m-m.net

AND

Federal Aviation Administration, Office of Civil Rights Staff, Sonia Cruz, Compliance Specialist, Northwest Mountain Region, Federal Aviation Administration, Office of Civil Rights, P.O. Box 92007, Los Angeles, California 90009-2007, (310) 725-3940, Sonia.Cruz@faa.gov.

Contract Goals

The **Lincoln County Airport Commission** will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN 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 the recipient's overall goal that is not projected to be met through the use of RN means.

The **Lincoln County Airport Commission** will establish contract goals only on those FAA/DOT-assisted contracts that have subcontracting possibilities. It 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 and availability of DBE's to perform the particular type of work).

Lincoln County Airport Commission will express our contract goals as a percentage of the Federal share of an FAA/DOT-assisted contract.

ATTACHMENT 5 – EUREKA AIRPORT

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: Lincoln County Airport Commission

Name of Airport: Eureka Airport

Goal Period: FY 2021-2022-2023 – October 1, 2020 through
September 30, 2023)

Overall Goal: *Not Required*

<u>DOT –assisted contract amount:</u>	FY 2021:	\$0 (No Goal Required)
	FY 2022:	\$0 (No Goal Required)
	FY 2023:	\$165,000 (No Goal Required)
	TOTAL:	\$165,000

Overall Three Year Goal: NA

The Lincoln County Airport Commission does not plan on received more than \$250,000 of FAA funds at the Eureka Airport in any of the fiscal years in the goal period. A DBE goal is not required and has not been established for FY 2021-FY2023.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.
The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

Date: _____

(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The [*Recipient*] has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to MT Code § 27-1-311

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

ATTACHMENT 8
DBE Certification Application Form

Link to MDT application form:

<https://www.mdt.mt.gov/other/webdata/external/civilrights/forms/DOT-DBE-Certification-Application.pdf>

ATTACHMENT 9
State's UCP Agreement

A copy of the State of Montana UCP information can be found at the following link:

<https://www.mdt.mt.gov/other/webdata/external/civilrights/dba/ucp-approval.pdf>

ATTACHMENT 10

Small Business Element

The following are the objectives/strategies for the small business element at the ***Lincoln County Airports***.

1. Objective/Strategies

In order to promote Small Business participation the ***Lincoln County Airport Commission*** will implement the following procedures to assist certified Small Business participation as a prime or subcontractor on ***Lincoln County Airport*** Projects

- For larger projects that will have subcontracting opportunities eligible for SBE or DBE participation the ***Lincoln County Airport Commission*** will encourage prime bidders to provide these subcontracting opportunities to SBE and DBE contractors. We will encourage prime bidders to provide a bidders' list identifying who they contacted and who will provide services as a subcontractor and if they are an SBE or DBE. This information will be used to determine if there was adequate opportunities on the project for SBE or DBE firms and if the prime contractor provided those opportunities for future projects.

2. Definition

A. **Small Business:** A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

B. Disadvantaged Business Enterprise:

A for-profit small business (as defined by the Small Business Administration) —

- - That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- - Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) as described in 49 CFR Part 26.
- - Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- - Has been certified as a DBE by the State of Montana Department of Transportation, DBE Office in accordance with 49 CFR Part 26.

For the purposes of the small business element of the Airport DBE Program, small businesses which are also owned and controlled by disadvantaged individuals will be encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA assisted contracts.

3. Verification

The Airport will accept the following certifications for participation in this small business element of the DBE Program with applicable stipulations:

A DBE Certification by the MDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by State of Montana DBE Civil Rights Department.

4. Monitoring/Record Keeping

The **Lincoln County Airport Commission** will require all Prime bidders to submit information on DBE subcontractors that will participate in the Contract; at the time bids are submitted. This information will include: (1) the name and address of each DBE; (2) a description of the work to be performed by each named firm; and (3) the dollar value of the work of the subcontract. Failure of the Prime Contractor to provide this information with his or her bid will make the bidder nonresponsive and not eligible for award of the contract. Additionally, bidders are required to certify that any DBE firms engaged to provide materials, services, or supplies in the completion of the project: (1) is a bona fide DBE performing a commercially useful function; and (2) has executed a binding contract to provide specific materials or services for a specific dollar amount. The **Lincoln County Airport Commission** will verify that proposed DBE firms are currently certified by and listed in the Montana Department of Transportation's DBE Directory. The County will also verify, as outlined in 49 Part 26, Section 26.55, that the Prime Bidder/Contractor has met the proposed and actual DBE participation. For projects with race-conscious goals, bidders not meeting the specified DBE goals must provide, with the bid, evidence of good faith efforts. Bidders not providing evidence of good faith efforts, as per Appendix A of Part 26 will be considered nonresponsive and not eligible for award of the contract.

Bidders, DBE contractors, DBE subcontractors, and DBE suppliers are required 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 **Lincoln County Airport Commission** or DOT. Failure to maintain accessible records for the three year period will be reported to DOT.

During the course of work, the **Lincoln County Airport Commission** shall review payrolls, and if necessary, conduct interviews with contractor's employees, to determine and ensure that DBE firms are completing work items to the extent indicated in the Prime Contractor's bid, and performing a commercially useful function as defined in 49 CFR Part 26, Section 26.55(c). Should a determination be made that DBE firms are not completing work items or performing a commercially useful function, **Lincoln County Airport Commission** shall notify DOT. Termination of the Prime Contractor's construction contract will be considered.

We will require that the bidder/offeror present the information required under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

5. Implementation Timeline

- The Airport Commission will implement this small business element within nine (9) months of the FAA's approval of this DBE Plan.

6. Assurance

The Airport makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in this small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
5. Reasonable effort will be taken to encourage the minority and women owned firms that are eligible for DBE certification to become certified.
6. The program is open to small businesses regardless of their location.