

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



REVISED FEBRUARY 2025

Disadvantaged Business Enterprise Policy Statement

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

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

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in MET's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that MET's 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 promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

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

City of Billings MET Transit has disseminated this policy statement to the Mayor and City Council and all components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing legal ads in the local newspaper, *Yellowstone County News*, and on the City of Billings website.

Signed by:

William A. Cole

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William A. Cole, Mayor

2/27/2025

Date

SUBPART A – GENERAL

Applicability (26.3)

MET Transit is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Public Law 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58. is the recipient to federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240, or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L. 105-178.

Definitions (26.5)

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

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

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

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

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

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

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

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

Disadvantaged Business Enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

FTA Tier I recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier II recipient means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

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

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe or Native American Tribe means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

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

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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

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

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Notice of decision or NOD means determination that denies a firm's application or decertifies a DBE.

Notice of intent or NOI means recipients letter informing a DBE of a suspension or proposed decertification.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth or PNW means the net value of an individual's reportable assets and liabilities, per the calculation rules in § 26.68.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: www.census.gov/naics/.

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

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which

management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

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

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

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

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

Secretary means DOT's Secretary of Transportation or the Secretary's designee.

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

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

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

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

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

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

- (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

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

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

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

Nondiscrimination (26.7)

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

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

Record Keeping Requirements and Bidders List (26.11)

- (a) MET will submit a report on DBE participation to the Federal Transit Administration in the Transit Award Management System (TRAMS) on a semi-annual basis, as required. These reports will reflect the actual payments made to DBEs on DOT-assisted contracts.
- (b) MET will continue to provide data about the DBE program to the Federal Transit Administration, as directed and requested.
- (c) MET will obtain complete and accurate bidders list information (Appendix B of this Plan) as listed and enter it into a system designated by MET. The following bidders list information must be obtained by all DBE and non-DBEs who bid as prime contractors and subcontractors on each of MET's federally assisted contracts:
 - i. Firm name;
 - ii. Firm address including ZIP code;
 - iii. Firm's status as a DBE or non-DBE;
 - iv. Race and gender information for the firm's majority owner;
 - v. NAICS code applicable to each scope of work the firm sought to perform in its bid;
 - vi. Age of the firm; and
 - vii. The annual gross receipts of the firm by gross receipts bracket (Less than \$500k, \$500k-\$1M, \$1M-\$5M, \$5M-\$10M, \$10M+)
- (d) MET will collect the data from all bidders for federally assisted contracts by requiring the information above in paragraph (c) of this section to be submitted with all bids to negotiated procurements. The data will be entered into the online USDOT system of data by December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data must be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).
- (e) MET will maintain records documenting a firm's compliance with the requirements of this part. All bidders and procurement records will be kept in accordance with Montana Municipal General Records Retention Schedule 1 or with guidance provided by the Federal Transit Administration, whichever is longer.

Federal Financial Assistance Agreement Assurance (26.13)

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

Assurances 26.13 (a)

MET shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. MET'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 recipient 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.). This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance 26.13 (b)

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

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

- i. Withholding monthly progress payments;
- ii. Assessing sanctions;
- iii. Liquidated damages; and/or
- iv. Disqualifying the contractor from future bidding as non-responsible.

SUBPART B – ADMINISTRATIVE REQUIREMENTS FOR DBE PROGRAMS FOR FEDERALLY ASSISTED CONTRACTING

DBE Program Updates (26.21)

As a Federal Transit Administration (FTA) Tier I recipient receiving planning, capital, and/or operating assistance over \$670,000, MET must maintain a full DBE program.

MET will submit a conforming DBE program to FTA for approval, continue to carry out this DBE program until all funds from DOT financial assistance have been expended, and provide updates representing any significant changes to the program in the future.

Policy Statement Requirement (26.23)

MET's signed and dated policy statement (26.1) will be circulated throughout the organization and to the DBE and the non-DBE communities that perform work on MET's DOT-assisted contracts.

DBE Liaison Officer (DBELO) (26.25)

MET's Planning and Development Coordinator is designated as the DBE Liaison Officer.

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

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall triennial goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and identifies ways to improve progress.
6. Analyzes MET's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Facilitates implementation of running tally requirement.

DBE Financial Institutions (26.27)

It is the policy of MET to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

One minority bank deposit program is available in Montana:

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

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

Prompt Payment Mechanisms (26.29)

MET includes the following clause in each DOT-assisted prime contract:

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

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

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 recipient. When a recipient 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.

Prompt Payment Monitoring

MET understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, MET undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s): MET will implement a monitoring and enforcement mechanism that will include written certification that MET has reviewed the contracting records and monitored work sites for this purpose. MET 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:

- (a) The name and address of each DBE.
- (b) A description of the work to be performed by each named firm.
- (c) The dollar value of the work to be performed by each named firm.
- (d) 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 the award of the contract.

MET 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 MET by the prime contractor.

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

Prompt Payment Dispute Resolution

MET will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required.

- Meetings between the prime contractor and affected subcontractor will be held as a measure to resolve disputes, in the presence of MET's designated representative, as well as the Resident Project Representative and/or Project Manager, as appropriate.

MET has established the following mechanism(s) to ensure prompt payment and return of retainage:

- Prompt Payment (§26.29) - 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 MET. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MET. This clause applies to both DBE and non-DBE subcontractors.

To ensure that prompt payment and return of retainage is provided to subcontractors under the covered contract, all subcontractors on the project will be provided contract information for the DBELO for the covered contract. Interested subcontractors will be encouraged to contact the DBELO for any question regarding payments to prime contractors and timing of when they should receive payments.

Prompt Payment Complaints

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

1. If the concerned subcontractor is not comfortable contracting the prime directly regarding payment(s) or unable to settle payment discrepancies with the prime, the subcontractor should contact the DBELO to begin a complaint.
2. The DBELO and their consultant will review the complaint and discuss the complaint with the prime contractor.
3. The prime contractor shall provide justification to the DBELO for nonpayment to the DBE. If non-payment is not justified, the prime contractor shall provide a corrective action plan for meeting the prompt payment requirements of the contract.
4. If filing a prompt payment complaint with the DBELO does not result in a suitable and meaningful action by MET to resolve the prompt payment disputes, then the affected subcontractor may contact the FTA Office of Civil Rights.

Enforcement Actions for Noncompliance of Participants

MET provides appropriate means to enforce the requirements of § 26.29. These means include:

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

MET will actively implement the enforcement actions detailed above.

Directory (26.31)

The MET maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, email address and website, NAICS code(s), date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. MET utilizes the existing Montana DOT directory, which is revised annually. The Montana DOT directory is available online at www.mdt.mt.gov. The Directory is also available by contacting MET's DBELO at 1705 Monad Road, Billings, MT 59101 or by calling 406-657-8218.

Overconcentration (26.33)

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

Business Development Programs (26.35)

MET has not established a business development program.

Monitoring and Enforcement Mechanisms (26.37)

MET will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. MET will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

As a smaller transit agency, MET personnel can effectively monitor all aspects of projects, as staff are intensely involved in the complete process including procurement, bidding, construction management, accounts payable, and DBE participation. MET staff will ensure that work committed, or in the case of race-neutral participation, the work subcontracted, to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of § 26.55. This will include a written verification that we have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. In instances where MET utilizes a third-party firm, such as a contracted A&E, to manage a project, governing contracts of the project management activities will require the third-party to monitor and report on relevant DBE activities and data.

With respect to achieving MET's overall goal, we use a running tally, in the form of spreadsheets, that provides for a frequent and continuous comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our current implementation of contract goals is projected to be sufficient to meet our annual goal. This mechanism will inform our decisions to implement goals on contracts to be advertised according to our established contract goal-setting process.

Also, MET will use a running tally, in the form of spreadsheets and general ledger accounts using distinct project and account numbers, that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Fostering Small Business Participation (26.39)

MET will structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. Small business participation may be obtained using the following strategies. This list is not all inclusive.

- In a multi-year design-build contract or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform rather than self-performing all the work involved.

- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

MET will actively implement its DBE program elements to foster small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Statutory 10 Percent Goal (26.41)

MET understands that the 10 percent goal set by the Secretary is an aspirational goal at the national level, which the DOT uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts, the 10-percent goal does not authorize or require recipients, including MET, to set overall or contract goals at the 10-percent level, or any particular level, or to take any special administrative steps if their goals are above or below 10 percent.

Quotas (26.43)

MET does not use quotas in any way in the administration of its DBE program.

Overall Goals (26.45)

Goal Methodology

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

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

- Primary Business Activity Codes or Standard Industry Classification codes based on the North American Industry Classification System (NAICS) are selected which correspond to the services used by MET.
- The list of Business Activity Codes will be compared to information contained in the MET Bidders List and the Montana Department of Transportation's Bidders List.
- All firms bidding on prime contracts and bidding or quoting on subcontracts on DOT-assisted project will provide MET with firm name, firm address, firm status as DBE or non-DBE, age of the firm, annual gross receipts of the firm and the firm's primary business activity code.
- The total number of certified DBE's will be divided by the total number of firms. This is the DBE base figure. According to 49 CFR §26.45(c), this is considered Step 1.
- Once the base figure has been established, MET will examine all evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. According to 49 CFR §26.45(d), this is considered Step 2.
- Once Step 2 is complete, MET will allow public participation on the overall goal. This participation will include, but not be limited to:
 - Consultation with minority, women's and general contractor groups, community organizations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for

DBEs and MET's efforts to establish a level playing field for the participation of DBEs.

- A published notice announcing MET's proposed overall goal before submission to FTA on August 1st. The notice will be posted on our official Internet Web site, www.mettransit.com. If the proposed goal changes following review by FTA, the revised goal will be posted to our official Internet Web site. A published notice with the proposed overall goal and its rationale are available for inspection during normal business hours at the MET office for 30 days following the date of notice. MET and USDOT will accept comments on the goal for a period of 30 days from the date of notice.

MET's overall DBE goals provide for participation by all certified DBEs and are not subdivided into group-specific goals.

Failure to Meet Overall DBE Goals (26.47)

In the event that MET falls short of our Triennial DBE goal after administering the program in good faith, MET will:

- Analyze in detail the reasons for the difference between the overall goal and awards and commitments in the fiscal year;
- Establish specific steps and milestones to correct the problems we identified in the analysis and to enable MET to meet fully our goal for the new fiscal year;
- Develop a short-fall analysis that is available to FTA upon request during a Triennial Review, or sooner, and retain in our records for three years.

Transit Vehicle Manufacturers Goals (26.49)

MET will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MET may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program. To support the request to develop a project goal, recipients must demonstrate that no TVMs are available to manufacture the vehicle.

Within 30 days of becoming contractually required to procure a transit vehicle, MET agrees to report to FTA the name of the TVM that was the successful bidder and the Federal share of the contractual commitment at that time.

Race-Neutral and Contract Goals (26.51)

MET will strive to meet the maximum feasible portion of our 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 includes, but are not limited to: arranging times for presentations and delivery schedules in ways that facilitate participation by DBEs and other small businesses by making contracts more accessible by small businesses, providing assistance in overcoming limitations such as inability to obtain bonding or financing, providing technical assistance, and establishing

a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.

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

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

Good Faith Efforts (26.53)

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

In MET's solicitations for DOT-assisted contracts for which a contract goal has been established, MET requires the following:

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 of this section to the recipient, at the time of sealed bid submittal:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform with NAICS certification in applicable code to the kind of work the firm will perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e. Written confirmation from each listed DBE that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
 - f. If the contract goal is not met, evidence of good faith efforts. The documentation must include copies of each DBE and non-DBE contractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

MET will ensure 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.

For each DBE listed as a regular dealer or distributor MET will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in § 26.55(e)(2)(iv)(A), (B), and (C) and (e)(3) under the contract at issue. MET's preliminary determination shall be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially

useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, MET is required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

Should MET determine that the apparent successful bidder/offeror has failed to meet the requirements to meet the contract goal or document good faith efforts, MET will provide an opportunity for administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official: Assistant Transit Director, 1705 Monad Road, Billings, MT 59101 within ten (10) business days.

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

In a design-build contracting situation, in which MET solicits proposals to design and build a project with minimal-project details at time of letting, MET may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required on the previous page of this section that applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, MET will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. MET and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

MET will require that a prime contractor not terminate a DBE or any portion of its work without MET's prior written consent, unless MET causes the termination or reduction. We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If

the contractor still fails to comply, the contracting officer may issue a termination for default proceedings.

Prime contractors may not terminate a DBE subcontractor for convenience. When a termination is necessary due to an inability to perform all or part of its subcontract due to default, over extension, or no longer being certified, the prime contractor must submit a written request to the DBELO explaining the need for a substitution.

The following procedure shall be followed and information submitted to MET:

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

The reasons why a designated DBE needs to be replaced must be supported by evidence, along with documented good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. A list of DBE substitutes available and willing to replace the designated DBE should be provided. If requested, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, upon request.

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

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

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

MET will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

Counting DBE Participation Toward Goals (26.55)

MET will only count the value of work performed by the DBE toward DBE goals; this will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased, and the entire amount of fees or commissions charged for services. Participation of a DBE subcontract will not be counted until the contractor has paid the DBE.

SUBPART D – CERTIFICATION STANDARDS

MET will rely on the certification process of the Montana DOT as provided in the standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

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

For information about the certification process, firms should contact:

Transit Planning & Development Coordinator
1705 Monad Road
Billings, MT 59101
406-657-8218

SUBPART E – CERTIFICATION PROCEDURES

Unified Certification Program (26.81)

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

Decertification (26.87)

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

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

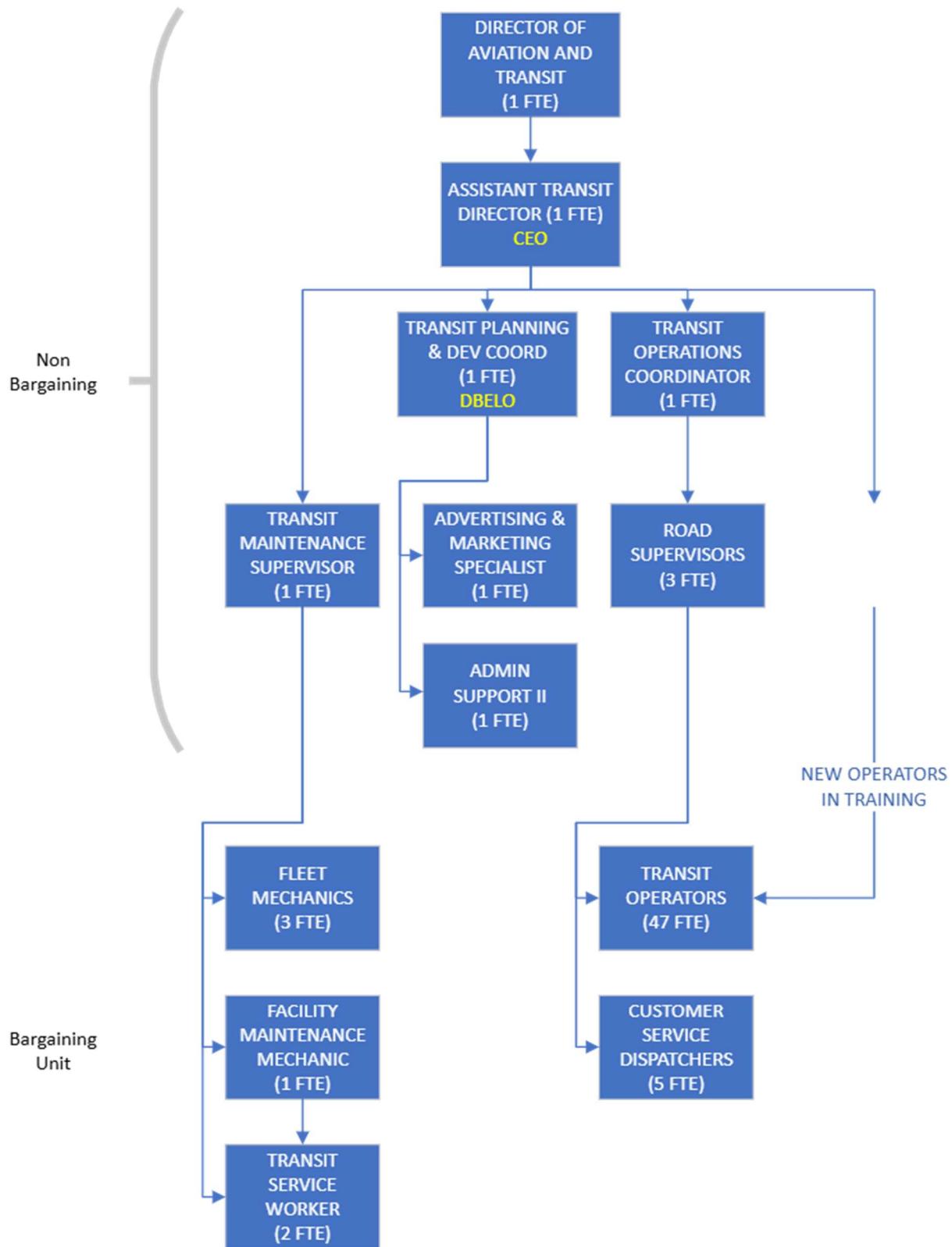
Certification Appeals (26.89)

Any firm or complainant may appeal the decision in a certification matter to DOT within 45 days of the date of the decision. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights – DBE Programs Division
1200 New Jersey Ave SE
Washington, DC 20590
DBEAppeals@dot.gov

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

APPENDIX A – ORGANIZATIONAL STRUCTURE



APPENDIX B – MET'S BIDDER'S LIST INFORMATION FORM

Bidder List Required Information

The bidder listed below acknowledges that this information is required to be compiled and reported in accordance with the City's DBE Program and with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. 11(c). This form must be completed for all prime and sub contractors. Failure to provide this data will result in a non-responsive bid.

Business Name: _____

Business Address: _____

Years in Business: _____ Telephone: _____

Fax: _____ Email: _____

Name of Majority Owner: _____

Race of Majority Owner: _____ Gender of Majority Owner: _____

NAICS Code(s) Applicable in Scope of Work: _____

Type of Organization (Check one):

a. Sole Proprietorship () b. Partnership () c. Corporation () d. Joint Venture ()

Is Business Registered with the State of Montana as a Disadvantaged Business Enterprise?

a. Yes () b. No ()

Annual Gross Receipts of Business:

Less than \$500,000 ()

\$500,000 - \$1,000,000 ()

\$1,000,000 - \$5,000,000 ()

\$5,000,000 - \$10,000,000 ()

Over \$10,000,000 ()

Signature

Title