

Rosebud County Montana

DBE Program

Tillett Field - Forsyth Airport

Ricks Field - Colstrip Airport

February 2017

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

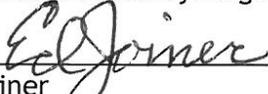
Rosebud County (Sponsor), owner of Colstrip Airport (Ricks Field) and Forsyth Airport (Tillitt Field), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Sponsor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Robert E Lee, Rosebud County Commissioner has been delegated as the DBE Liaison Officer. In that capacity, *Mr Lee* 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 Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor has disseminated this policy statement to the Rosebud County Commission and all of the 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. The distribution was accomplished by posting their Policy Statement on the County website www.rosebudcountymt.gov.



Ed Joiner
Rosebud County Commission Presiding Officer

1-25-17
Date

Rosebud County DBE Program

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SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

Rosebud County (Sponsor) owner of Colstrip Airport (Ricks Field) and Forsyth Airport (Tillitt Field) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (see **Attachment 1**). The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

The Rosebud County Commission (Sponsor) is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Sponsor will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

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

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor's Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

Bidders List: 26.11(c)

The Sponsor 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 our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information by conducting a survey after bids have been received for each FAA-assisted project. Information will be requested and recorded on the form found in **Attachment 2**.

Section 26.13 Federal Financial Assistance Agreement

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

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

The Sponsor 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 Sponsor 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 Sponsor'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 *Sponsor* 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: 26.13b – The Sponsor will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Sponsor deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Rosebud County (Sponsor) 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. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for 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)

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

Robert E. Lee
Rosebud County Commissioner
1200 Main Street
P.O. Box 47, Forsyth, MT 59327
rcc@rosebudcountymt.com
Phone 406-346-2251
Fax 406-346-7551

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Sponsor complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Rosebud County Commission Presiding Officer concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 3** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access to our Consultant Engineer (KLJ) and the Montana Department of Transportation (MDT) for coordination and support resources to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers statistical data and other information as required by the FAA and coordinates reporting.
2. Coordinates with KLJ for the review of 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 Sponsor's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Rosebud County Commission Chairperson on DBE matters and achievement.
9. Coordinates with KLJ to determine contractor compliance with good faith efforts.
10. Acts as liaison to the Uniform Certification Process.
11. Provides outreach to DBEs and community organizations to advise them of opportunities by providing project information to MDT and Builders exchanges.
12. Has access to MDT's updated directory on certified DBEs. MDT is the only Certifying Agency in the State of Montana.

Section 26.27 DBE Financial Institutions

It is the policy of Rosebud County 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.

Rosebud County utilizes the Montana Department of Transportation's (MDT) DBE Directory for identifying DBE firms in the State (See **Attachment 4**). There are no DBE financial institutions listed in the MDT Directory; however, MDT has identified two minority owned institutions within the state:

Eagle Bank
80 Heritage Ln.
Polson, MT 59860
406.883.2940

Native American Bank
125 N. Public Sq.
Browning, MT 59417
406.338.7000

Neither of these institutions are located in the vicinity of Rosebud County. Information on the availability of such institutions can be obtained from the DBE Program Specialists or the Federal Reserve at the following link [Federal Reserve](https://www.federalreserve.gov/releases/mob/current/default.htm). This list is updated quarterly.

<https://www.federalreserve.gov/releases/mob/current/default.htm>

Section 26.29 Prompt Payment Mechanisms

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

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

The Sponsor 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 Sponsor. When the Sponsor 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 Sponsor will provide appropriate means to enforce the requirements of this section. These means are included in the Federal Contract Provisions', included by reference in the Owner-Contractor Agreement, and include:

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 contract receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 3 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontracts.

Failure on the prime contractors' part to make timely payments will result in the suspension of any further payment to the prime contractor until a lien release form is signed and submitted to the Sponsor by the affected subcontractor. If there are no further payments to be made to the prime contractor, the affected subcontractor shall submit a lien against the prime contractor to the Sponsor, who will present it to the prime contractors bonding company for reimbursement.

The Sponsor will include the following clause in the Federal Contract Provisions of 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 three (3) days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within three (3) days after the subcontractors 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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.

Monitoring Payments to DBEs

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

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Section 26.31 Directory

The Sponsor uses the State of Montana's DBE directory, maintained by the State's Department of Transportation (MDT). Directory availability is included as **Attachment 4**.

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.

MDT revises their DBE Directory daily. Interested persons may call in a request for a paper copy or electronic copy of the DBE Directory to be mailed to them by contacting MDT's office at: 406-444-6337, 800-531-2047, or (TTY) 800-335-7592.

The Directory is also available on the website at this web address:

<http://www.mdt.mt.gov/business/contracting/civil/dbe-newdir.shtml>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The counties of Custer, Powder River, Rosebud and Treasure are served by the Southeastern Montana Development Corporation (SEMDC). Their planning document is known as the Comprehensive Economic Development Strategy (CEDS). This document, as well as further information and contacts, can be viewed at www.semdc.org.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 5** 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. This will be accomplished by reviewing contractor and subcontractor certified payrolls and annual FAA Uniform Reporting.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Section 26.39 Fostering small business participation.

Rosebud County, in association with MDT, has implemented 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.

Rosebud County's small business element is incorporated as **Attachment 6** to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1, 2014 (2015/2016/2017)	August 1, 2017 (2018/2019/2020)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Sponsor does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the Sponsor will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use DBE Directories and Census Bureau Data as a method to determine our base figure. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

Our methodology 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 our market. We understand 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the Sponsor 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 Sponsor's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the Sponsor's goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the Sponsor will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site (www.rosebudcountymt.gov) and may be published in the local area newspaper. If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the Sponsor and DOT/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.**

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45(f) Prior Operating Administration Concurrent

The Sponsor understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. 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 7** to this program.

Section 26.47 Failure to meet overall goals.

The Sponsor will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) Sponsor 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 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

(a) The *Sponsor* 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 of this part.
- (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 your 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 7 to this program.

Section 26.51(d-g) Contract Goals

The Sponsor 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.

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

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

Section 26.53 Good Faith Efforts Procedures

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

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

The 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.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require 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 to the recipient, at the time provided in paragraph (b)(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 (see Appendix A of this part). 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) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by Sponsor that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: C. Kristine White, Rosebud County Attorney, 1200 Main Street, 1st Floor, Rosebud County Courthouse, P.O. Box 69, Forsyth, MT 59327, email address ckwhite@rosebudcoatty.com. 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the 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.

Section 26.55 Counting DBE Participation

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

If the 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, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

The Sponsor has accepted the Unified Certification Program (UCP) developed by the MDT to verify the eligibility of DBE subcontractors on our projects. If a subcontractor presented for use as a DBE is not on this listing, we will direct them to apply to MDT on the form developed by the MDT for certification and included on their web site.

To be certified as a DBE, a firm must meet all certification eligibility standards set down by MDT Civil Rights DBE program. The MDT will make certification decisions based on the facts presented to them as a whole.

For information about the certification process or to apply for certification, firms should contact the MDT office, or on their web site at:

Shannon Hahn, DBE Supportive Services
Civil Rights Bureau
MT Department of Transportation
2701 Prospect Ave.
PO Box 201001
Helena, MT 59620-1001
(800) 883-5811 Phone
(406) 444-7287 Phone
(406) 444-7685 Fax
(800) 335-7592 TTY
E-Mail: shahn@mt.gov

<http://www.mdt.mt.gov/business/contracting/civil/dbe-interested.shtml>

A link to MDT certification application forms and documentation requirements are found in **Attachment 8** to this program. Decertification of a DBE contractor will be processed by MDT in conformance with their current procedure. Reapplication for certification should follow MDT guidelines. MDT is the only DBE certifying agent in the state of Montana.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Rosebud County (Sponsor) is the member of a Unified Certification Program (UCP) administered by the Montana Department of Transportation. The UCP will meet all of the requirements of this section. A signed copy of this agreement is located as **Attachment 9**.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Rosebud County (Sponsor) will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

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 Sponsor, 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. If we violate this prohibition, we are in noncompliance with this part.

Attachment 1
49 CFR Part 26 link to website

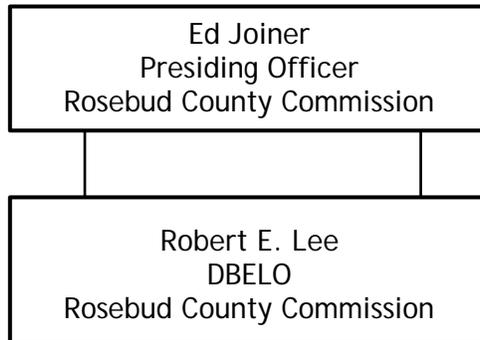
[49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs](#)

Attachment 2 Bidder's List Collection Form

Project Title: _____
 Date: _____
 Prime Contractor: _____
 Address: _____
 Phone/Fax: _____

Subcontractor Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via MDT's DBE Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
7			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

Attachment 3
Organizational Chart



Attachment 4
Montana Department of Transportation DBE Directory

MDT revises their DBE Directory daily. Interested persons may call in a request for a paper copy or electronic copy of the DBE Directory to be mailed to them by contacting MDT's office at: 406-444-6337, 800-531-2047, or (TTY) 800-335-7592.

The Directory is also available on the website at this web address:

<http://www.mdt.mt.gov/business/contracting/civil/dbe-newdir.shtml>

Attachment 5 DBE Monitoring and Enforcement Mechanisms

The Sponsor 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 MCA 27-1-311;
3. MDT Equal Employment Opportunity Policy;
4. Sexual Harassment Policy;
5. Americans with Disabilities Act Policy;
6. Title VII of the Civil Rights Act of 1964;
7. Title VI of the Civil Rights Act of 1964;
8. Title 49 Montana Code Annotated.

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 6 Small Business Element

Montana is largely a rural state. The Sponsor has implemented many processes in association with MDT to assist DBE and non-DBE small business enterprises. Airport projects are reviewed in the developmental stage to determine the feasibility of unbundling large projects to a size and scope that small businesses can participate. The Sponsor is committed to taking all reasonable steps to eliminate obstacles to small businesses that may limit their participation as prime contractors or subcontractors.

Unbundling: Where feasible, the Sponsor “unbundles” projects or separates large contracts into smaller contracts which are more suitable for small business participation. This determination is made based on the estimated availability of small businesses able to provide specific scopes of work and considers any economic or administrative burdens which may be associated with unbundling. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses. All small business enterprises are covered under the Prompt Payment and Retainage specification (49 CFR Part 26.29)

The Sponsor will continue to meet its Small Business Element objectives using the unbundling method.

Attachment 7

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: Rosebud County (Sponsor), owner of Colstrip Airport (Ricks Field) and Forsyth Airport (Tillitt Field). This Overall DBE Three-Year Goal Methodology is for Forsyth Airport (Tillitt Field).

Goal Period: FY-2016 through FY-2017

DOT-assisted contract amount:	FY-2016	<u>\$1,999,741</u>
	FY-2017	<u>\$ 0.00</u>
	Total	<u>\$1,999,741</u>

Overall Two-Year Goal: 5.29%, to be accomplished through 0% RC and 5.29% RN

Total dollar amount to be expended on DBE's: \$95,668

Describe the Number and Type of Contracts that the airport anticipates awarding:

Contracts Fiscal Year #1

1. Project at Tillitt Field, Forsyth Airport, Pavement Rehabilitation (Construction)

Contracts Fiscal Year #2

1. No project over \$250,000, no goal requirement.

Market Area: The market area is the State of Montana, in which the majority of the Sponsor's contractors and subcontractors that seek to do business with the Airport are located and the area in which the Sponsor spends the majority of its contracting dollars.

Step 1. 26.45(c) Actual relative availability of DBE's

The base figure for the relative availability of DBEs was determined by using DBE Directories and Census Bureau Data. The base figure for the relative availability was calculated as follows:

Method: Use DBE Directories

http://www3.mdt.mt.gov:7782/mtwtrn/mtwtrn.wtrk0002.contractor_init

and Census Bureau Data <http://www.census.gov/econ/snapshots/index.php>

The following information was used for the Pavement Rehabilitation Project conducted in FY 2016.

NAICS #	Type of Work	Total DBE's	Total All Firms
238910	Site Preparation	8	380
237310	Hwy & Street Construction	10	95
561730	Landscaping Services	2	457
541330	Engineering	5	344
Total:		25	1,276

The Base Figure was derived by dividing the total number of DBE's (25) by the total number of All Firms (1,276) = base figure (1.96%).

Base figure = 1.96 of all firms ready, willing and able.

The data source or demonstrable evidence used to derive the numerator was the Montana Department of Transportation's DBE Directory

The data source or demonstrable evidence used to derive the denominator was the US Census Bureau.

Our proposed goal will be reflected as a weighted percentage. Our proposed overall two-year goal for FY 2016 and FY 2017 is 5.29% of the total Federally assisted amount bid. (There will not be a project awarded over \$250,000 in FY-2017.)

Step 2. 26.45(d): Adjustments to Step 1 base figure.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

An examination of the anticipated contracts for each fiscal year, the availability of the DBE firms by trade classification and the volume of work performed by DBE firms over previous years.

Fiscal Year #1

For FY-2016, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I	J	L
Project Name	Trade Description	NAICS Description	NAICS	Federal Funds (\$)	% of Project (H/G*E)	Census	DBE Directory	DBE (%) (= H/G)	DBE (\$) (=E x I)	weighted
Project - Rehabilitate and Reconfigure Apron, Rehabilitate Taxiway A and C, Construct Hangar Access	Asphalt, Edge Underdrain, Striping	Hwy & Street Construction	237310	704,709	38.52%	95	10	10.53%	74,206	4.11%
	Excavation, Earthwork, Mobilization, Traffic Control, Building Demolition	Site Preparation	238910	816,181	44.61%	380	8	2.11%	17,221	0.95%
	Erosion Control: Seed	Landscaping Services	561730	23,437	1.28%	457	2	0.44%	103	0.00%
	Design Constr Mgmt /	Engineering	541330	285,373	15.60%	344	5	1.45%	4,138	0.23%
TOTAL PROJECT #1				\$1,829,700	100.01%	1,276	25	1.96%	\$95,668	5.29%
TOTAL FY - 2016				\$1,829,700		1,276	25	1.96%	\$95,668	

Past History Participation

During FY 2013 and FY 2014 there were no projects in excess of \$250,000 to require a DBE goal during those years. FY 2015 had a 4.23% RC goal, the actual accomplishment for the goal was 4.39% DBE participation, an overage of .16%.

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 13	N/A							
FY 14	N/A							
FY 15		4.23%	0%	4.23%	4.39	0%	4.39%	Runway Rehab

Disparity Study

Per 49 CFR Section 26.51, the Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures. Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs.

MDT prepared a 2016 Availability and Disparity Study, which focused on participation of minority- and women-owned firms in MDT’s contracts from October 2009 through September 2014. The contractors that MDT awards projects to are in most cases the same contractors that are awarded FAA-assisted contracts for airport projects in the State of Montana. The Disparity Study was completed and published in July of 2016.

Based on the past participation and the findings of the disparity study, no adjustments were deemed necessary. Therefore, the Sponsor is adopting the Step 1 weighted base figure of 5.29% as its overall goal for this two-year period, to be achieved by a race neutral component.

Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender 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. Race- and gender-neutral steps include:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
- Unbundling of large contracts;
- Subcontract work the prime contractor may self-perform;
- Provide bonding or financing assistance
- Provide technical assistance,
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Ensuring distribution of MDT’s DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

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;
- 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).

Rosebud County announced its fiscal Year 2016/2017 goal of 5.29% for Disadvantaged Business Enterprise (DBE) Airport Construction projects at the Rosebud County Commission Meeting on April 19th at 10 am. The meeting was open to public input and was publicly advertised in the local newspaper (Independent Press), which included advertising on the statewide classified ad web site www.montanaclassified.com.

The Sponsor published a notice of the proposed overall goal informing the public that the proposed goal and its rationale were available for inspection Monday - Friday during normal business hours (8 AM - 5 PM) at the Rosebud County Courthouse for 30 days following the date of the notice, and informing the public that the Sponsor would accept comments sent to KLJ, Attn: Craig Canfield, Project Manager, PO Box 80303, Billings, MT 59108-0303 on the goal for 45 days from the date of the notice.

In an effort to further obtain relevant information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the sponsor's efforts to establish a level playing field for the participation of DBEs, a meeting announcement was sent via e-mail invitation for a "teleconference consultation" to firms listed on State-wide DBE list and previous airport project bidder's lists.

A follow-up teleconference consultation was held on February 6, 2017 to receive any further comments.

There was one attendee on the conference call. Her comments were not Forsyth Airport specific, but rather the lack of time prime contractors spent on reaching out to DBE firms other than the standard manual labor (including pouring concrete, landscaping, striping, etc.) She felt professional services firms could act as an extension of the prime contractors and follow them from job to job - thus making DBE goals easier to fulfill. Services her firm could offer were HR, certified payroll.

Comments on the DBE goal will be accepted for 30 days following this teleconference, and can be sent to Attn: Craig Canfield, Project Manager, PO Box 80303, Billings, MT 59108-0303 on the goal for 45 days from the date of the notice.

PUBLIC NOTICE (Published)

Rosebud County hereby announces its fiscal year 2016 goal of 5.29% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection Monday - Friday during normal business hours (8 AM - 5 PM) at the Rosebud County Courthouse for 30 days from the date of this publication.

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

KLJ
Craig Canfield, Project Manager
PO Box 80303, Billings, MT 59108-0303
Craig.canfield@kljeng.com

CONTRACT GOALS

The recipient 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 recipient will establish contract goals only on those 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).

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

1. Once a project is to the bidding stage, we routinely advertise in Montana Building Exchanges. We also advertise in the local official county paper and associated general contractor publications.
2. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
3. Providing MDT's assistance in:
 - a. over-coming 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);
 - b. technical assistance and other services;
 - c. 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);
- d. Implementing 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;
 - e. 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;
 - f. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 - g. Ensuring distribution of Montana's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - h. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Based on the guidance we have received and forwarded to all of the airports, we will use a Race Neutral Goal.

5.29% DBE Goal

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

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

DBE participation will be counted towards meeting a goal only after successful completion of their contracted work items. The items used must be bona fide contract work items and actually performed by the DBE and their own work force.

Attachment 8
DBE Certification Application Form

MDT is the only DBE certifying agent in the state of Montana.

For information about the DBE Certification process or to apply for certification, firms should contact the MDT office, or on their web site at:

Shannon Hahn, DBE Supportive Services
Civil Rights Bureau
MT Department of Transportation
2701 Prospect Ave.
PO Box 201001
Helena, MT 59620-1001
(800) 883-5811 Phone
(406) 444-7287 Phone
(406) 444-7685 Fax
(800) 335-7592 TTY
E-Mail: shahn@mt.gov

[Information on DBE Certification](#)

Or visit <http://www.mdt.mt.gov/business/contracting/civil/dbe-interested.shtml>

DBE Certification information and application forms can be found at the following link

[MDT DBE Certification Information and Application Forms](#)

Or visit:

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

Attachment 9 Unified Certification Program Agreement

The undersigned, a duly appointed representative of the following agency:

Rosebud County Commission
(agency name)

agrees to and accepts the Unified Certification Program (UCP), as outlined in the Montana Department of Transportation DBE Program, and required by 49 CFR §26.81. By this agreement and acceptance, the above-named agency will ensure that:

- This agency 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 §26 on the basis of race, color, sex or national origin;
- This agency 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;
- Each financial assistance agreement this agency sign with a DOT operating administration (or a primary recipient) will include the following assurance:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contracts or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR §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 approved for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)"

- Each contract this agency signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

"The contractor, subrecipient, 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 § 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."

- And this agency will accept all DBEs certified by MDT as certified for participation in this agency's DBE Program.



(Signed)

12-29-16

(Dated)