



U.S. Department of Transportation Federal Aviation Administration

FY-2013 COMPLIANCE REVIEW REPORT FOR LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT

Airport Name: Lambert – St. Louis International Airport, St. Louis, Missouri	Site Visit Date(s): July 30-August 1, 2013
Review Conducted By FAA Staff: Patricia Wright and Gene Roth	
Airport Staff: Opening Session: Airport Director, Rhonda Hamm-Niebruegge; Deputy Director Finance/Administration, Susan Kopinski; DBE Program Office Staff: Contract Compliance Officer, Marie Yancey; Contract Compliance Officer, Larry Thurston; and, Program Manager I, Jackie Taylor Closing Session: Airport Director, Rhonda Hamm-Niebruegge; Deputy Director Finance/Administration, Susan Kopinski; DBE Program Office Staff: Contract Compliance Officer, Marie Yancey; Contract Compliance Officer, Larry Thurston; and, Program Manager I, Jackie Taylor; Properties Division Manager, Rob Salarano; Airport Properties Specialist, Ryan Stoffel; Assistant Airport Director Engineering, Gerald Beckmann; Civil Engineer III, Harry Moore	
NOTE: <i>Some of the comments provided herein are a follow-up to an OIG investigation of the airport's April 2004 project to construct a new runway. The primary issues were the airport's lack of monitoring DBE subcontractors of the prime contractor FWI MBI, LLC a Joint Venture ("JV").</i>	

Purpose: Review of monitoring and enforcement aspect of your DBE and ACDBE programs. 49 CFR 26 and 49 CFR 23 requires that you implement appropriate mechanisms to ensure compliance with the parts' requirements by all program participants. You are required to set forth these mechanisms as part of your Disadvantaged Business Enterprise (DBE) Program and Airport Concession Disadvantaged Business Enterprise (ACDBE) Program.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged business by the grant recipients or its sub-recipients, nor to adjudicate these issues on behalf of any party.

SECTION 1 - Title 49 CFR Part 26 – Construction

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
1	Did the airport disseminate its DBE Policy Statement?	X		The Airport states that it made the policy statement available for review but did not disseminate it.	X		Policy statement should be disseminated widely, including all departments, divisions, and levels of St. Louis government; as well as to DBE and non-DBE business communities that perform work at the airport. Recommended avenues of	04/30/14

#	Question	Response		Observations/Comments	Compliance		Recommended Action	Due Date
		Y	N		Y	N		
							distribution include: airport's website; publish in RFPs; distribute at pre-bid meetings; create a brochure, creation of an outreach agency list containing emails, etc.	
2	Does the airport have a DBELO in place that has direct independent access to the Airport Director/CEO concerning DBE program matters?	X		Yes; Susan Kopinski, Airport Deputy Director – Finance & Administration, is the Acting DBELO. In her current position, she has direct and independent access to the Director of Airports, Rhonda Hamm-Niebruegge. The Airport's former DBELO vacated the position several weeks ago so they are in the process of filling the position of Airport Assistant Director, Community Programs and DBE, who served as the DBELO.		X	NONE	
3	Is the DBELO responsible for ensuring that DBEs are not discriminated against in the award and administration of FAA funded contracts and subcontracts?	X		DBELO is well aware of the responsibility to ensure non-discrimination in the award and administration of federally-funded contracts. Contract Compliance Officer reports to DBELO. Prime and subcontractors sign the Notice of Intent (NOI) that is due within 48 hours of bid opening. Contract Compliance Officer attends pre-bid, pre-construction, and progress meetings. Non-discrimination language is included in subcontracts.		X	NONE	
4	Does the airport make reasonable efforts to use DBE financial institutions as well as encourage prime contractors on DOT assisted contracts to make use of DBE financial institutions?	X		The Airport identified two minority-owned banks that are no longer operational. The Airport assures its commitment to ensuring that financial institutions owned and controlled by socially and economically individuals are given every opportunity to		X	NONE	

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		Y	N		Y	N		
				fulfill the financing needs of prime contractors and subcontractors in their respective industries.				
5	Is the DBELO present during the bid openings for FAA funded projects?		X	Bid documents are sent to DBE Program staff who then evaluates the bids.		X	NONE	
6	Does the airport verify written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment?	X		Contract Compliance Officer requests within 48 hours of bid opening a signed <i>Notice of Intent (NOI) to Perform as a Subcontractor and/or Material Supplier</i> form. Prime and subcontractor sign the form acknowledging their commitment to the project.		X	NONE	
7	Does the airport confirm DBE certification prior to awarding the contract?	X		Yes; prime contractors must provide a copy of the DBE's certification. DBE Program Staff verify that the DBEs are certified and also confirm they are certified under the appropriate NAICS codes by checking the State DBE directory.		X	NONE	
8	In situations where a DBE contract goal has been established, does the airport ensure that all DBE information is complete and accurate and adequately documents the bidder's good faith efforts before committing to the performance of the contract by the bidder?	X		DBE Program Staff provided evidence of a <i>GFE Evaluation Worksheet</i> that is used to document efforts of contractor to meet the goal. Staff said goals are always met and they've never had to evaluate a contractor's efforts that were non-responsive to the DBE requirements.		X	NONE	
9	In situations where a DBE contract goal has been established, is the award of the contract conditioned on meeting the requirements of 49 CFR Section 26.53?	X		Yes. The DBE Program Staff evaluates GFE and documents that the contractor has obtained sufficient DBE participation to meet the goal. Also, there is a process in place for staff to document that contractors made adequate good faith efforts to meet the goal, should it not succeed in obtaining enough DBE participation.		X	NONE	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
10	Does the airport have mechanisms in place to ensure that work committed to DBEs at contract award is actually awarded to DBEs?	X		The DBELO and DBE Program Staff monitor commitments to DBEs by way of a tracking sheet that maintains commitments, payments, and progress of the project.		X	NONE	
11	Do the mechanisms provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments?	X		Yes; contract files have a checklist in the front of each folder itemizing required documents including Monthly Pay Estimates & Utilization Reports; Cancelled Checks; Certified Payrolls; and, Affidavits of Payment Received. There is also a Project Tracking Sheet that identifies the project; prime contractor; original contract amount; notice to proceed date; a list of each subcontractor; and dates and amounts of payments to each.		X	NONE	
12	Does the airport have mechanisms in place to verify that the DBEs are managing their work, utilizing their own work forces, equipment, and materials?	X		Currently, the Airport monitors projects through regular and random site visits. The visits are recorded on a Site Visit Report form. The form allows for basic project information; names of prime and subcontractor; staff observations of personnel, equipment, work activities, and incidents; notes for documenting communications with contractors, workers, and others; as well as any additional staff comments. Staff asks questions of contractors to determine DBE firm management, and tracking of equipment and materials procurements.	X		49 CFR part 26.55 (a) (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).	04/30/14

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
13	Does airport staff conduct regular construction site visits and verify that the DBEs are performing a commercially useful function?	X		Airport monitors projects through regular and random site visits. The visits are recorded on a <i>Site Visit Report</i> form. Form allows for basic project information; names of prime and subcontractor; staff observations' of personnel, equipment, work activities, and incidents; notes for documenting communications with contractors, and workers; as well as any additional staff comments. Staff has developed a <i>Commercially Useful Function</i> form containing eleven (11) major areas of review.		X	NONE	
14	During the construction site visits, does the airport verify that business names on equipment and vehicles are not covered with paint or magnetic signs?	X		Yes; during regular and random site visits, staff ensures that business names on equipment and vehicles are not covered with paint or magnetic signs.		X	NONE	
15	During the construction site visits, does the airport verify who employs the workers on site?	X		Yes; staff member assigned to the site visit asks workers whom they work for. Staff inspects the sites and ensures the work is being done by appropriate contractors including DBEs and records this on the site visit form.		X	NONE	
16	Does the airport have a monitoring mechanism in place that provides a written certification that contracting records are being reviewed and work sites are being monitored?	X		The Airport's site visit form and the CUF Review form have a written certification of review. The Contract File Setup form does not contain a certification of review signature.	X		Recommend the Airport create a process for reviewing contracting records and an associated written monitoring mechanism. We also recommend adding a signature line to each form.	04/30/14
17	Does the airport review monthly DBE participation reports? (Provide copy of sample report)	X		Yes, the DBELO and staff review monthly DBE participation reports submitted by contractors and use several different forms	X		The Airport must create a clear delineation of the City's local	04/30/14

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		Y	N		Y	N		
				<p>to monitor and track participation. However, forms are confusing in that they include the City's local M/W participation tracking. Also, it is also not readily apparent what some of the form fields are and how they are calculated.</p> <p>During interviews with construction contractors, there was significant confusion about goals. Contractors were unclear if and how M/W or DBE goals applied to federally funded projects.</p>			<p>M/W program and the Federal DBE program.</p> <p>Recommend a separate set of forms for the Federal DBE program and the City's M/W program.</p> <p>We also recommend outreach to contractors to ensure they understand the difference between the federal and local programs.</p>	
18	Does the airport randomly verify who orders and pays for the necessary supplies being used by the DBE subcontractor?	X		Yes; Airport requests copies of and validates subcontractors' checks and invoices.		X	NONE	
19	Does the airport have prompt payment mechanisms in place?	X		The contract specification has Prompt Payment language in it; however, the timeframe for payment to the subcontractor differs from what the DBE Plan documents says. Staff will revise DBE Program document and submit an updated copy to the FAA for approval. It appears Airport ensures prompt payment to DBEs by use of various monitoring forms. However, there does not appear to be a surefire mechanism of ensuring prompt payment.	X		We strongly advise Airport to closely monitor and ensure payments to DBEs and other small businesses are being paid pursuant to DBE Plan. Also, DBELO should review and monitor retainage policy.	04/30/14
20	In the case of post-award terminations, pre-award deletions or substitutions of DBE firms, does the airport verify that the DBE has been notified AND given time to respond before approving the termination/substitution?	X		DBE Plan and specification don't include aspects of due process for substitution of DBEs. The Airport should have a process in place to verify good cause before a DBE is terminated or substituted.	X		The Airport must amend its DBE Plan and standard language in specifications for federally-funded projects to include clear language on the process for post-award	04/30/14

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
							terminations, pre-award deletions or substitutions of DBE firms, per 49 CFR 26.53(h): <i>You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.</i>	
21	Before approving a termination and/or substitution of a DBE subcontractor, does the airport verify the documented good cause that compels the termination of the DBE subcontractor?	X		There was no evidence that the Airport includes verification of good cause before approving a termination and/or substitution of a DBE subcontractor.	X		Airport must ensure an approved process for verifying a contractor's good cause related to a termination and/or substitution of a DBE contractor.	04/30/14
22	Does the airport submit its Uniform Report on DBE participation to the DOORS system?	X		The Airport submits the reports in the DOORS system as required.		X	NONE	
23	Was the airport required to prepare a DBE goal accountability report for fiscal year 2012?		X	The Airport exceeded its goal; therefore, an accountability report is not required.		X	NONE	
24	Has the airport implemented its Small Business element for the DBE Program?	X		No; the Airport submitted a small business element (SBE) to the FAA on February 28, 2012. A description of the program was included in the Airport's DBE Plan. FAA has recently reviewed and provided STL with comments on the SBE.		X	NONE	
25	Does the airport have a mentor-protégé program?		X	N/A		X	NONE	
26	Does the airport have a current and approved DBE Program in place?	X		Yes; the FAA approved an updated DBE Program dated March 28, 2011.		X	NONE	

#	Question	Response		Observations/Comments	Compliance		Recommended Action	Due Date
		Y	N		Y	N		
27	Has the airport submitted its three year DBE goal and received concurrence with its methodology from the FAA.	X		Yes; the FAA approved a DBE goal covering Federal Fiscal Years 2011-2013. The next triennial goal covering FY-2014-2016 was due August 1, 2013. Airport DBELO asked for an extension to submit. Submission has been received by the FAA.		X	Airport should anticipate when goals are due and be prepared to submit them on time. FAA will provide a schedule of DBE and ACDBE goals submittals.	

Documents Reviewed:

- A. Airport organization chart, showing DBELO’s position.
- B. Records showing approval and/or rejection of DBE firms’ terminations/substitution.
- C. Sample forms used to monitor monthly DBE participation.
- D. Records documenting work site visits.
- E. Copy of airport’s approved DBE Triennial Goal.
- F. Records documenting Good Faith Effort reviews. N/A
- G. Copy of DBE accomplishment reports for the most recent three years.
- H. List of all active FAA funded projects.
- I. List of active FAA funded projects that have DBE participation, identifying DBE goal and actual contract percentage achieved to date. .
- J. Sample of an FAA funded contract.
- K. Sample of a contract that includes a DBE goal requirement.
- L. Sample of a DBE sub-contract agreement.

SECTION II - Title 49 CFR Part 23 – Concessions

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
1	Has the airport's ACDBE program been approved by FAA?		X	On 9/24/2007, the FAA approved the ACDBE program submitted by the Airport. The ACDBE Regulation 49 CFR 23 has been modified since 2007 so the Airport should ensure its program is up-to-date.	X		The Airport should update its ACDBE program plan and be prepared to submit it prior to October 1, 2014 when its updated ACDBE goals for federal FY 2015-2016-2017 are due.	10/01/14
2	Did the airport distribute its ACDBE Policy Statement?	X		The Airport disseminated the policy statement to the local African-American focused newspaper, the St. Louis American, and to airport staff.	X		While not a regulatory requirement, FAA recommends the Airport more widely disseminate its policy statement to the general population by either advertising in other newspapers along with the St. Louis American; publishing the policy statement on its website; and distributing it to local community organizations. FAA recommended development of a community outreach agency list whereby one email distribution would cover all groups.	
3	Does the airport have an ACDBELO in place that has direct independent access to the Airport Director/CEO concerning DBE/ACDBE program matters?	X		Yes; Susan Kopinski, Deputy Director, Finance/Administration, is acting as DBELO and ACDBELO. The Airport is in the process of hiring for the recently vacated position of Assistant Airport Director, Certification and Compliance, who will serve as DBELO and ACDBELO.		X	NONE	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
4	Is the ACDBELO responsible for ensuring that DBEs are not discriminated against in the award and administration of FAA funded contracts and subcontracts?	X		The ACDBELO provides oversight on the ACDBE Program to concessionaires at the Airport.		X	NONE	
5	Does the approved ACDBE program on file with FAA reflect the current organizational structure of the agency?		X	The Airport has provided an updated organizational chart during the compliance review visit.		X	NONE	
6	Does the airport include enforcement provisions in concession agreements?	X		The Airport includes enforcement provisions in its concession agreements pursuant to 49 CFR 23.9.		X	NONE	
7	Does the airport verify that the prime or master concessionaire and ACDBE have entered into a written commitment prior to submitting a response to an RFP/RFQ?	X		There is no evidence of documentation attesting to a commitment by the prime or master concessionaire and ACDBE prior to submission of a written response to an RFP/RFQ.	X		FAA recommends Airport create a Letter of Intent form, similar to Part 26, which will serve as written verification of a commitment between prime or master concessionaire and the ACDBE prior to the submission of an RFP. RFP should also include a copy of the ACDBE certification document.	04/30/14
8	Does the airport require a prime or master concessionaire to submit written documentation to confirm that the ACDBE firm has agreed to participate in the concession contract?	X		There is no evidence of documentation attesting to confirmation that the ACDBE has agreed to participate in the concession contract.	X		FAA recommends Airport create a form that will be signed by the ACDBE which will serve as written verification that the ACDBE firm has agreed to participate in the concession contract.	04/30/14
9	Does the airport confirm ACDBE certification prior to awarding the contract?	X		Marie Yancey, Contract Compliance Officer, verifies that the ACDBEs are certified and also confirms they are certified under the appropriate NAICS codes by checking the State DBE/ACDBE directory.		X	NONE	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
10	In situations where an ACDBE contract goal has been established, is the award of the concession contract conditioned on meeting the requirements of 49 CFR Part 23?	X		The ACDBELO and Airports Property Manager work together to ensure compliance with the Good Faith Efforts requirement of 49 CFR 23. The concession contract Section 1201 clearly spells out the federal compliance requirements.		X	NONE	
11	In situations where an ACDBE concession contract goal has been established, does the airport ensure that all ACDBE information is complete and accurate and adequately documents the bidder's good faith efforts before awarding the concession contract?	X		The Airport maintains a Good Faith Efforts Evaluation Worksheet on each prime concessionaire's submittal. Each concessionaire is listed with a primary contact along with their address, phone number and email address. The subconcessionaires are identified with a primary contact; address and phone number; ACDBE certification status; type of concession; proposed revenue and percentage amount; and, detailed notes on each.		X	NONE	
12	Does the airport have a monitoring mechanism in place that provides a written certification that contracting records are being reviewed and work sites are being monitored?	X		The Airport conducts informal visits of concessionaires. The Airport is working on developing a uniform system to conduct on-site visits. The Airport does not currently have a written certification process that indicates that contracting records are being reviewed.	X		Recommend Airport implements a mechanism that provides a written certification that concession contracting records are being reviewed. Augment the existing site visit process to included written certification that the sites are being monitored. Inform FAA when these processes have been completed.	04/30/14
13	Does the airport verify that the work committed to ACDBEs is actually performed by the ACDBEs?	X		This is accomplished by informal site visits currently being conducted by Contract		X	NONE	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
				Compliance Officer. Each site visit is documented on a Site Visit form.				
14	Does the airport prohibit prime or master concessionaires from terminating ACDBE firms for convenience?	X		The prime or master concessionaire must submit written justification to the ACDBELO prior to any change in ACDBE participation or termination of an ACDBE firm.		X	NONE	
15	Does the airport require prime or master concessionaires include administrative remedies if a prime or master concessionaire fails to comply with ACDBE requirements?	X		There does not appear to be a process for the prime concessionaire to follow regarding administrative remedies if prime fails to comply with ACDBE requirements.	X		You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes. (Section 23.29)	04/30/14

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
16	In the case of post-award terminations, pre-award deletions, or substitutions of ACDBE firms, does the airport verify that the ACDBE has been notified AND given time to respond before approving the termination/substitution?	X		The Airport's contract with the prime concessionaire does not address the process for handling post-award terminations, pre-award deletions, or substitutions of ACDBE firms.	X		Airport should clearly spell out the process for any type of ACDBE replacement. ACDBE must be notified and given time to respond to an intent to replace them by Prime Concessionaire.	04/30/14
17	Before approving a termination and/or substitution of an ACDBE subcontractor, does the airport verify the documented good cause that compels the termination of the DBE sub-concession?	X		The Airport's contract language states a replacement ACDBE must be approved by the Airport Director. The Airport does not have a process in place which includes verification of good cause before approving a termination and/or substitution of an ACDBE sub-concession.	X		Recommend implementation and documentation of the process to verify that that good cause exists.	04/30/14
18	Does the airport conduct concession sites visits regularly?	X		Airport Contract Compliance Officer, ACDBELO, Deputy Airport Director/ACDBELO, and Airport Director randomly and frequently inspect the sites and ensure appropriate concessionaires are doing the work.		X	NONE	
19	During the concession site visits, does the airport verify general managers and to whom they report?	X		The Airport staff conducts site visits and verifies this requirement. However, site visit reports do not specifically state that this type of question was asked.	X		Recommend updating site visit form to clearly identify the questions and responses received from concession workers.	04/30/14
20	Does the airport verify that the ACDBE is actively managing the concession location(s)?	X		The Airport staff conducts site visits and verifies this requirement. However, site visit reports do not specifically state that this type of question was asked.	X		Recommend updating site visit form to clearly identify the questions and responses received from concession workers.	04/30/14

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
21	Does the airport verify gross sales reports accounting for ACDBE participation?		X	The Contract Compliance Officer and Deputy Airport Director/ACDBELO verify these quarterly reports and reconciles them with the Properties Department.		X	NONE	
22	Does the airport submit its Uniform Report on ACDBE participation to the DOORS system?		X	The Airport submits the Uniform Report of ACDBE Participation in DOORS as required.		X	NONE	
23	Has the airport received any complaints alleging that it was not complying with ACDBE regulations in the past three years?	X		The Airport has not received any complaints in the last 3 years of alleged non-compliance in its ACDBE program.		X	NONE	
24	Does the airport have any joint venture agreements currently in place? If YES, please answer the following:		X	The Airport has reviewed existing joint venture agreements and confirms that they are in compliance with the FAA Joint Venture Guidance. Airport is currently reviewing a Hudson joint venture agreement to ensure it also meets the guidance. No changes in the counting of ACDBE participation was deemed necessary as a result of these reviews.		X	NONE	
	a) Has the airport undertaken an internal review of its joint venture agreements, if any, in order to verify that they are in compliance with the FAA Joint Venture Guidance?		X					
	b) Did the airport make any change in the counting of ACDBE participation of the joint venture toward ACDBE goals as a result of its joint venture agreement reviews findings?		X					
25	Does the airport have Long Term (5+ years) and Exclusive contract(s) currently in place?	X		The airport has a current Long Term Exclusive contract in place that was approved by the FAA due to local circumstance.		X	NONE	
26	If the airport has current Long Term and Exclusive contracts in place, were these contracts submitted to the FAA for approval?		X	Yes.		X	NONE	
27	Does the airport have an ACDBE mentor-protégé program?		X	No; the development of a mentor-protégé program is optional.		X	NONE	
28	Was the airport required to prepare and/or submit an ACDBE goal accountability report for fiscal year 2012?		X	The Airport reported ACDBE participation exceeding its ACDBE goals; therefore, an accountability report is not required.		X	NONE	

Documents Reviewed:

- Records showing approval and/or rejection of ACDBE firm terminations/substitution.
- Records documenting monitoring of contracts with ACDBE participation.
- Sample forms used to monitor monthly ACDBE participation.
- Copy of your approved ACDBE Triennial Goal.
- Form used to document Good Faith Effort reviews.
- Copy of ACDBE accomplishment reports for the most recent three years.
- List of all active concession contracts that have ACDBE participation, identifying ACDBE goal and actual contract percentage achieved to date.
- Copy of the top three revenue generating concession contracts.
- Copy of revenue generating sub-concession agreements.
- Copy of the bottom three revenue generating sub-concession agreements
- Summary of the findings of the Joint Venture agreements reviews along with supporting documents.

SECTION III – OIG Investigation Issues Related to STL Airport’s April 2004 Award of Contract BPS #8248; New Runway Paving, Lighting, Access Roads and Perimeter Security Lighting

#	OIG Finding: Lack of Monitoring and Oversight	Airport Response	FAA Observations/Comments/Recommendations
1	<p>Submittal by Prime Contractor of Final Record of Payment with overstatement of DBE Participation <i>(Airport did not cross-check documentation to verify prime contractor’s Final Record of Payment report.)</i></p> <ul style="list-style-type: none"> • <i>Prime Contractor’s numbers do not match up in all cases with the numbers on the “paid to date final pay request document”</i> 	<p>“The DBE Office is no longer waiting for the Final Record of Payment report to establish DBE participation. The Affidavit of Payments is required and matched to the utilization report on an on-going basis for each project. In addition, we are asking for lien waivers at the end of the project. By taking these actions, DBE participation is tracked constantly and consistently. There should no longer be a problem in this area.”</p>	<p>FAA Compliance Review team observed copies of Affidavit of Payment and utilization report. Staff said they are following this process.</p> <p>FAA recommends Airport create a DBE Program manual documenting all steps it uses to monitor compliance and enforcement of DBE participation. The manual should include all forms used by the Airport in its DBE Program. FAA offers to assist by reviewing the manual and providing feedback.</p>
2	<p>Double counting of DBE firms</p>	<p>“There is constant internal monitoring for each project to assure this problem will not occur again. The DBE Office must be notified, in writing, of any changes in the Utilization Plan. Any substitutions must be requested, and then approved, in writing.”</p>	<p>Staff is aware that firms listed on a contractor’s Utilization Plan may or may not be the firms actually doing the site work. FAA reviewed onsite reports and determined that Airport staff is diligently interviewing onsite workers to determine for whom they work.</p>
3	<p>Failure to reduce participation of DBE suppliers from 100% to 60%</p> <ul style="list-style-type: none"> • <i>Nothing which identifies if the final number used discounted the DBE participation by 40%, as suppliers only count at 60% of the total</i> 	<p>“Once again, internal controls have been tightened so this should not occur again.”</p>	<p>During the contract in question, Airport staff was not aware that DBE suppliers only counted for 60% participation. Staff is fully aware of that now and currently counts only 60% DBE participation for suppliers.</p>
4	<p>Failure to check ICR Construction Services’ (subparticipant) participation, including the counting of non-DBE subcontractors</p> <ul style="list-style-type: none"> • <i>DBE owner was certified as an HVAC contractor and subcontracted work to non-DBE companies. The non-DBE work value should have been subtracted from the total DBE participation figure.</i> 	<p>“ICR has been out of business since May, 2010. Our monthly review of payment applications will prevent the counting of non-DBE subcontractors.”</p>	<p>Airport’s response is inadequate and will not necessarily ensure the prevention of the Airport counting non-DBE subcontractors. The Airport must provide detailed documentation of the steps it is using to determine the existence of second- and third-tier subcontractors, as well as the verification of said contractors’ DBE status.</p>
5	<p>Discussion of DKW (subparticipant) and their involvement in the project</p> <ul style="list-style-type: none"> • <i>DBE firm’s original bid was \$353,100 to supply labor only. Firm subsequently provided and installed rebar and other runway construction</i> 	<p>“DKW was decertified on December 2, 2008 by the Missouri Regional Certification Committee (MRCC). In addition, this company is no longer in business.”</p>	<p>Airport now requests copies of and verifies contractor invoices, but has not addressed the past issue.</p>

#	OIG Finding: Lack of Monitoring and Oversight	Airport Response	FAA Observations/Comments/Recommendations
	<i>materials valued at approximately \$2,332,900. DBE was then instructed by prime contractor to add the cost of materials to its bid, thereby increasing its DBE participation value. DBE stated to OIG under oath that her company had nothing to do with the purchase or ordering of the supplies her company installed.</i>		
6	Discussion of Tramar (subparticipant) and their involvement in the project <ul style="list-style-type: none"> DBE purchased asphalt material used on this project from prime's Materials Division 	"Tramar is still in business and certified as a DBE by the Missouri Department of Transportation (MoDOT). However, they have not worked on a STL Airport project since 2007."	Airport has a process in place to review and scrutinize contractors' invoices but has not addressed the past issue.
7	Counting of several DBE firms whom clearly did not perform a commercially useful function (Centrex, DKW, etc.) <ul style="list-style-type: none"> Prime contractor listed DBEs it knew would not be performing a commercially useful function in order to meet the DBE goal requirement. 	"This is all part of the stronger procedures to monitor compliance. See the attached forms that are used to interview on site visits (short form) and to assure a commercially useful function (long form)."	The Airport has developed and we observed them using a seven-page Commercially Useful Function form that to ensure compliance. The form includes sections on monitoring the Management, Workforce, Equipment, and Materials. It also contains a checklist of "red flags" to caution preparer on potential fraud issues.
Airport acknowledged and concurred with the OIG, stating the findings "...were very apparent in the investigation," and "...Airport agrees with the OIG investigation that indicates there was misrepresentation regarding DBE participation and failure to meet expected goals." See Attachments "B" and "C".			

Attachments:

- "A" – Letter dated December 15, 2010, and findings report from OIG to FAA
- "B" – Letter dated October 12, 2009, from Airport to Millstone-Bangert, Inc. (one party to the joint venture prime contractor firm FWI MBI, LLC)
- "C" – Letter dated October 12, 2009, from Airport to SPK Management Co. (consultant hired by airport to monitor DBE participation)
- "D" – Email dated May 3, 2012, from FAA to Airport requesting actions taken by Airport to strengthen the monitoring and enforcement actions related to its DBE Program
- "E" – Letter dated May 21, 2012, from Airport to FAA in response to May 3, 2012 email
- "F" – Email dated July 12, 2012, from FAA to Airport requesting response to OIG issues
- "G" – Letter dated August 9, 2012, from Airport in response to Attachment "F"

REVIEW SUMMARY

The Federal Aviation Administration (FAA) Office of Civil Rights would like to thank you for your participation in the FY 2013 DBE & ACDBE Compliance Review. We appreciate the substantial effort taken by Lambert - St. Louis International Airport (Airport) in providing the numerous documents and meeting with the FAA team during this on-site visit. Your timely response and active participation was an essential element in the successful completion of this important initiative. The collective assessments made during the review are incorporated into this report.

The FAA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub-recipients in order to provide technical assistance, note best practices, identify areas for improvement, and ensure program compliance. This review has examined the Airport's compliance with the DBE Program and ACDBE Program. Observations and comments are registered in each area that was examined.

The objectives of the compliance reviews are not only to ensure compliance, identify areas requiring improvement, provide technical assistance, but also to identify best practices in the Airport's administration of its DBE Program and ACDBE Program.

Area(s) requiring your attention have been noted as a Compliance Issue under each specific question, corrective actions must be taken by each set deadline. To supplement this year's review, we conducted focus group meetings with prime contractors, DBEs, master/prime concessionaires, as well as ACDBEs. The primary objective during these meetings was to evaluate the administration of the DBE and ACDBE program from the participants' perspective. We found that on the good side, participants are very satisfied working at the Airport. However, participants also noted their concern regarding the race conscious goals not being properly tailored.

This compliance review also contains a section addressing the Office of Inspector General's (OIG) 2004 investigation of misrepresented DBE participation related to the April 2004 contract BPS #8248; New Runway Paving, Lighting, Access Roads and Perimeter Security Lighting. This section identifies the OIG's findings, the Airport's response, and the FAA's observations/comments/recommendations. Following are the specific steps FAA recommends to address deficiencies in DBE program management.

FAA Recommendations:

1. Overcounted or overstated DBE Achievement Reports by the Airport for the period of this contract should be revised and re-submitted.
2. FAA to institute a 2-year monitoring program for STL; including FAA review of airport's back-up documentation for DBE achievement report submittals. Monitoring program will consist of quarterly submittals and review during Year 1, and semi-annual submittals of monitoring program during Year 2.
3. Create and submit to FAA a five-year (2004 – 2008) project goals chart with stated vs. actual attainment.
4. Create and maintain a DBE Program Manual documenting all steps it uses to monitor compliance and enforcement of DBE participation. FAA offers to review and provide feedback.
5. Develop and maintain process to determine the existence of second- and third-tier subcontractors, as well as the verification of sub-tier contractors' DBE status.
6. Advise on the separation of MBE/WBE Program from DBE/ACDBE Program in all forms, documents and procedures. See: <http://www.mwdbe.org/certification/pdf/All-Apps.pdf> (UNIFORM CERTIFICATION APPLICATION FOR MBE/WBE/DBE/ACDBE) The preamble to the 2003 rule states that the uniform application must be used without modification. Therefore, the Missouri Regional Certification Committee is in non-compliance by combining all programs into one application.

Based on the OIG findings and FAA observations during this compliance review, we will design a specialized technical assistance plan to focus on the monitoring and enforcement of Part 26 related to the Airport's DBE program.

REPORT PREPARED BY:

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Recommended Resources:

FAA website, http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/fed_reg/

FAA dbE-Connect System, <https://faa.dbesystem.com/Default.asp?>

U.S. Department of Transportation Office of Inspector General <http://www.oig.dot.gov/oig-investigative-priorities>

U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization <http://www.dot.gov/osdbu/disadvantaged-business-enterprise>