



FY 2015

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

AND

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

PROGRAM

COMPLIANCE REVIEW REPORT OF THE

BALTIMORE WASHINGTON INTERNATIONAL AIRPORT (BWI)

BALTIMORE, MARYLAND

REPORT ISSUED: August 6, 2015

PREPARED BY THE

US DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

CIVIL RIGHTS OFFICE

U.S. Department of Transportation Federal Aviation Administration

JURISDICTION AND AUTHORITIES

The Federal Aviation Administration (FAA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (DOT) to conduct civil rights compliance reviews. Reviews are undertaken to ensure compliance of applicants, recipients, and sub-recipients with 49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and 49 CFR, Part 23 Participation by Disadvantaged Business Enterprises in Airport Concessions, referenced in this report as Part 26 and Part 23, respectively. Also, specific sections of the programs are referenced using the nomenclature (23.xx) and (26.xx) in this document.

Part 26 requirements apply to recipients of DOT funds under certain programs including airport funds under 49 U.S.C. 47101 et seq. The program is narrowly tailored under the law. It is designed to allow firms that meet certain eligibility standards to compete fairly, to remove barriers to DBE firms seeking to participate in DOT-funded programs, to assist in developing firms that can compete in the marketplace outside of the DBE program, and to provide flexibility to recipients of federal funds in creating opportunities for DBE firms.

Part 23 requirements apply to airports that had received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code. The requirements to have an ACDBE program under this part apply to those airports classified as primary airports by the National Plan of Integrated Airport Systems (NPIAS). Part 23 is mandated by 49 U.S.C. 47107(e) and addresses the airport concessions disadvantaged business enterprises (ACDBEs) at airports receiving funds under the Airport Improvement Program (AIP). The requirements of this part became effective April 21, 2005 and have been revised several times.

OBJECTIVES

The purposes of Part 26 and Part 23 as stated in the regulations are:

- To ensure nondiscrimination in the award and administration of airport concessions and DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs.
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in airport concessions and DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

SCOPE OF REVIEW

This review process is a high level examination of Baltimore/Washington International Thurgood Marshall Airport (BWI) and Maryland Aviation Administration (MAA) compliance with Parts 26 and 23. Unlike a comprehensive audit where testing and extensive examination of records are normal procedures, this compliance review is designed to maximize available resources in assessing an organization's general understanding and implementation of procedures to meet requirements. Some areas may be more heavily scrutinized than others based on review finding of other recipients, recently released guidance or final rules, or reports that FAA may have received about a specific sponsor's compliance.

To maximize the effectiveness of this review, FAA has identified regulatory requirements prior to the review that have higher priorities in the review process. The review also compared the actual implementation of the Part 26 and Part 23 requirements with the written descriptions found in the DBE and ACDBE programs and reviewed contract files, internal documents, and information from contractors and subcontractors. Interviews were conducted with sponsor officials. Three focus group sessions were held with prime contractors, subcontractors, prime concessionaires, ACDBE firms, and other relevant personnel.

REVIEW PROCESS

The review process began with a desk review of the airport's DBE and ACDBE Programs. This review focused only on the operations of the Baltimore Washington International Airport. We sent a letter to BWI on February 19, 2015, notifying it of the planned on-site review. In the notification letter we requested that the airport send us certain information and respond to questions.

Documents reviewed to verify compliance of requirements under 49 CFR Part 26:

- A. Airport organization chart, showing DBELO's position.
- B. Records documenting monitoring of contracts with DBE participation.
- C. Sample forms used to monitor monthly DBE participation.
- D. Site visits record.
- E. BWI's approved DBE Triennial Goal.
- F. Copy of DBE accomplishment reports for the most recent three years.
- G. List of all active FAA funded projects.
- H. List of active FAA funded projects that have DBE participation, identifying DBE goal and actual contract percentage achieved to date.
- I. Sample of an FAA funded contract.
- J. Sample of a contract that includes a DBE goal requirement.

Documents reviewed to verify compliance of requirements under 49 CFR Part 23:

- A. BWI's organization chart, showing ACDBELO's position.
- B. Records documenting monitoring of contracts with ACDBE participation.
- C. Sample forms used to monitor monthly ACDBE participation.
- D. Records documenting site visits to concessions locations.
- E. Copy of approved ACDBE Triennial Goal.
- F. Copy of accomplishment reports for the most recent three years.
- G. List of all active concession contracts.
- H. List of all active concession contracts that have ACDBE participation, identifying ACDBE goal and actual contract percentage achieved to date.
- I. Copy of the top three revenue generating concession contracts.
- J. Complete listing of all concession contracts including start date, end date, possible contract extensions, total potential term including possible extensions.

According to FAA AIP grant history, in the most recent three years, the FAA awarded BWI two (2) Airport Improvement Program (AIP) grants for the planning and development of public-use airports that are included in the NPIAS. This review focused on active FAA funded projects funded by the following grants:

FY-2014

- Improve Runway Safety Area [construction Phase 2] \$ 15,000,000.00
- Construct Taxiway [Construct new exit taxiways runway 15R/33L]
Construct Taxiway [Taxiway "D" (Phase 2 paving and lighting)] \$ 15,000,000.00

FY-2013

- Construct Taxiway "D" [Phase 1] \$ 5,775,000.00
- Improve Runway Safety Area [Construction - Phase 1] - 15R/33L \$15,236,991.00

A site visit has been conducted, as noted below:

Review Conducted By FAA Staff:	Elizabeth Unrath and Keturah Pristell, ACR-4	Site Visit Date(s):	May 18-19, 2015
BWI/MAA Day 1 (DBE)	Ned Carey, Chief Administrative Officer, MAA Louis W. Jones, Director, Office of Diversity and Equity, MDOT Angela Martin, Director, Office of Fair Practices, MAA Vonzella Perry, Compliance Officer, MAA Morris Williams, Division of Commercial Business Activities, Officer of Commercial Management, MAA Tracie Watkins-Rhodes, Office of Minority Business Enterprise, MDOT Suzette Moore, Director, Procurement, MAA Paul L. Shank, Chief Engineer, MAA Benjamin Chin, Director, Office of Design and Construction, MAA Lisa RS Grant, Compliance Officer, MAA		
BWI/MAA Day 2 (ACDBE)	Angela Martin, Director, Office of Fair Practices, MAA Ned Carey, Chief Administrative Officer, MAA Morris Williams, Division of Commercial Business Activities, Officer of Commercial Management, MAA Andrea Bickley, Manager, Division of Concession Activities, MAA Linda Budzynski, Administrative Specialist III, MAA Louis W. Jones, Director, Office of Diversity and Equity, MDOT		

DESCRIPTION / HISTORY OF THE BALTIMORE WASHINGTON INTERNATIONAL AIRPORT (BWI):

The Baltimore/Washington International Thurgood Marshall Airport (BWI) is owned and operated by the Maryland Aviation Administration (MAA), which also owns and operates Martin State Airport. BWI is one of three airports serving the Baltimore-Washington Metropolitan area. The other two are Ronald Reagan Washington National Airport and Washington Dulles International Airport. The airport is located in Linthicum, in Anne Arundel County, Maryland, approximately 10 miles south of the city of Baltimore and 32 miles northeast of Washington, D.C. Southwest has built a presence at BWI. In 2005 2 concourses (A and B) were expanded to accommodate it. In 2013, a new concourse C security checkpoint was opened as well as a new concourses A/B-C connector. As part of a larger, multi-year airport renovation, BWI is currently working on a 3 year, \$125M project to link concourse D and E and modernize concourse D. The project began in 2014 and is expected to be completed in 2016.

FINDINGS: BWI - Title 49 CFR Part 26 – AIRPORT CONSTRUCTION

PART 1 –DBE Program Questions:

Administrative Requirements

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
1	Do you have an FAA approved DBE Program in place? (§ 26.21(b))	YES	Baltimore Washington International Airport's (BWI) 2014 DBE Program was approved by the FAA on September 3, 2014 and also covers Martin State Airport. Information about BWI's DBE program is available at BWI's website at https://bwiairport.com/content/doingbusinesswithmaa/mbeprogram/index.html It is recommended that BWI put the full DBE Program on their website. Currently the program appears on the MDOT website.	NO	N/A
2	Did you sign and disseminate your DBE Policy Statement? (§ 26.23)	NO	The current DBE Program does not show that its policy statement was signed by the previous acting Secretary Darrell B. Mobley (acting secretary at time and has since resigned). Recommendation: It is recommended that Maryland Aviation Administration's Executive Director, Paul J. Wiedefeld review and sign BWI/MAA/Martin State's current DBE Program.	YES	9/1/15
3	Does your DBE Liaison Officer have independent program implementation authority and independent (direct) access to the Airport Director/CEO? (§ 26.25)	YES	Ms. Angela Martin, Director, Fair Practices, with Maryland Aviation Administration serves as the DBELO/ACDBELO for BWI. She reports directly to the Chief Administrative Officer (CAO) Edward P. Carey and Ms. Martin reports via a dotted line to the Executive Director/Chief Executive Officer (CEO), Mr. Paul J. Wiedefeld, on all aspects of the DBE program. For the DBE Program, Ms. Martin has 2 Compliance Officers and 2 Managers (as well as administrative and accounting assistance).	NO	N/A
4	Do you 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? (§ 26.27)	YES	MAA/BWI has reviewed the availability of DBE financial institutions, as part of the process in updating their DBE Program.	NO	N/A
5	Do you conduct regular outreach sessions to ensure the inclusion of DBE firms in your DBE	YES	MDOT conducts outreach events in its market area. Below are examples of outreach efforts.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	program? (§ 26.51)		http://www.marylandaviation.com/_media/client/doingbusinesswithmaa/mdb/be/Car%20Rental%20%20March%202013.pdf http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/HomePage.html		
6	Has your Small Business element been implemented? (§ 26.39)	YES	BWI has implemented its Small Business Element in accordance with 49 CFR Section 26.39.	NO	N/A
7	Does your DBE program have a method to address over-concentration? (§ 26.33)	YES	The DBE Plan identifies overconcentration through assessments of contracting information in the three federally financed MDOT administrations by using measures that may include the use of incentives, technical assistance, business development programs, (Pg. 75 DBE Plan)	NO	N/A
8	Do you submit your annual overall goal by August 1, every three years, pursuant to the schedule established by FAA? (§26.45(f))	NO	BWI submitted its FY 14-16 Overall DBE goal methodology on August 20, 2015.	NO	N/A
9	Has the Airport DBE goal methodology been approved by the FAA? (§ 26.45)	YES	BWI's FY 14-16 overall DBE goal methodology was approved by the FAA on January 12, 2015.	NO	N/A
10	In the past three years, has the Airport had any complaints filed alleging that it did not comply with the DBE regulations?	NO	BWI has not received any formal or informal DBE complaints of alleged violation of 49 CFR Part 26 in the last 3 years.	NO	N/A
11	Does the Airport have an FAA approved business development for mentor-protégé program? (§ 26.35(b))	NO	BWI does not have a mentor-protégé program but reserves the right to create one in their DBE Plan Document.	NO	N/A

Bid Processing and Contract Reviews

1	Do you maintain a bidders list of all firms who bid or quote whether or not the bidders were successful? (§ 26.11(c))	YES	The MDOT/MAA office maintains a Bidding Results Sheet of all projects' bidders including DBE firms.	NO	N/A
2	Does the bidders list capture information for both successful and unsuccessful subcontractors? (§ 26.11(c))	NO	The Bidding Results Sheets BWI uses do not capture information for both successful and unsuccessful subcontractors. <u>Recommendation:</u> Put in place tracking system/database that contains all required information for Federally-assisted contracts in accordance with 49 CFR Section	YES	9/15/15

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			26.11(c).		
3	In situations where a DBE contract goal has been established, are bidders required to submit DBE information as required by regulation? (§ 26.53(b))	YES	<p>BWI requires bidders to submit DBE information via Form D providing DBE firm name & address, description of work to be performed by the DBE firm, dollar amount of the DBE firm's participation, written documentation of the commitment of the Prime firm to utilize the DBE firm, written documentation of the DBE firm's agreement to participate as indicated, and good faith efforts documentation as needed, concurrent with the bid. BWI's current goal is a combination of 20% race-conscious and 3.3% race-neutral.</p> <p><u>Recommended Corrective Action:</u></p> <p>The airport should consider putting in place a tracking system/database that contains all required information for Federally-assisted contracts in accordance with 49 CFR Section 26.11(c).</p>	NO	N/A
4	In situations where a DBE contract goal has been established, during the review of good faith efforts, do you consider the guidance in Appendix A of the DBE program requirements? (§26.53(a))	YES	<p>BWI currently reviews good faith efforts as per Appendix A of the DBE regulations.</p> <p>The reviews are conducted by Linda Budzynski, Administrative Specialist III, and Vonzella Perry, Compliance Officer.</p>	NO	N/A
5	In the case of Good Faith Efforts reconsideration, are reconsideration decisions made by an official who did not take part in the original good faith effort determinations? (§ 26.53(d))	YES	BWI currently has a good faith efforts reconsideration official that does not take part in the original good faith effort determinations. The reconsideration official is a MDOT employee (Assistant Secretary of Transportation). BWI has not had to use the reconsideration person to date.	NO	N/A
6	Do you have a process in place to verify there is written confirmation from the DBE firm that it had agreed to participate in the contract as provided in the prime contractor's commitment?	YES	BWI documents the prime contractor's commitment via writing including their "Form D", with signatures. BWI also sends out notification letters to each individual subcontractor.	NO	N/A
7	In situations where a DBE contract goal has been established, do you confirm that the DBE firm is certified in the specified NAICS codes prior to awarding the contract? (§ 26.53)	YES	BWI uses the MDOT directory to confirm the proposed DBE firm's status and approved NAICS code(s). The codes are included in the bid packages that are reviewed, signed, and approved by the DBE Liaison Officer	NO	N/A
8	Do you have a system to verify and audit that the required assurances are being incorporated in prime contracts and subcontracts? (§ 26.13(a))	YES	BWI has established a system to verify that prime contracts with subcontracts to include DBE firms are in compliance with the DBE program and non-discrimination assurances. The airport uses their financial	NO	N/A

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			management information system, iFMIS, to track and consistently audit DBE program contracts.		
9	Do you have a prompt payment provision in your contracts that requires prime contractors to pay all subcontractors within 30 days of receipt of payment? (§ 26.29(a))	YES	BWI has established a prompt payment provision in its DBE Program document. The provision requires all prime contractors to make payments to all sub-contractors to include DBE firms within 30 days of receipt of payment to the prime contractor from MDOT.	NO	N/A
10	Do you have a return of retainage provision in your contract that identifies one of three options allowed by the regulation? (§ 26.29(b))	YES	MDOT has selected Option #3 which is to hold retainage from the prime contractor and provide for prompt, regular incremental acceptances of portions of the prime contracts and ultimately final payment to the primes/subs based on those acceptances. The retainage held is 5% as per Maryland state law.	NO	N/A
11	Does the Airport have written certification that contracting records are being reviewed? (§ 26.37)	YES	BWI's Office of Fair Practices has a documented monitoring program in place utilizing program checklists, iFMIS, and review of executed contracting documents to ensure that the required language is contained within the documents.	NO	N/A

Monitoring Post Contract Award

1	Do you have monitoring mechanisms in place to ensure that work committed to DBEs at contract award or subsequently is actually awarded to DBEs to whom the work was committed? (§ 26.37(b))	YES	To ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, BWI conducts on-site compliance reviews on all USDOT assisted contracts with DBE participation. BWI uses iFMIS which sends out a notice to each prime contractor once a month which the prime needs to send back with payment information.	NO	N/A
2	Do you have monitoring mechanisms in place to verify that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to whom the work was committed and that those DBEs are managing their work and utilizing their own work forces, equipment, and materials? (§ 26.37)	YES	The Office of Fair Practices sends the Project/Contract Manager a list of DBE firms for each project/contract. The Project/Contract Manager monitors the worksites and verifies that the work committed to the identified DBE firms is actually being achieved by the DBE firms without substitutions.	NO	N/A
3	In the case of post-award terminations, pre-award deletions or substitutions of DBE firms, do	YES	The Project/Contract Manager receives the initial request for termination and informs the DBE Liaison Office of it. The designated DBE is provided	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	you have mechanisms in place to allow you to verify that the DBE has been notified AND given time to respond before approving the termination/ substitution as well as verify the documented good cause that compels the termination before approving a termination/substitution? (§ 26.53(f))		the option to respond to the prime contractor and airport within five (5) days with a copy to the Project/Contract Manager. The designated DBE's response shall include an explanation as to why it objects to the proposed termination of its subcontract and why the requested action by the contractor should not be approved. The Project/Contract Manager shall provide the DBE Liaison Officer (the approving official) with a copy of the designated DBE's response to determine if the request for termination should be approved. If applicable, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute the original DBE.		
4	In situations where a DBE contract goal has been established and a DBE subcontractor is terminated or fails to complete its work on the contract, do you require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE to perform at least the same amount of work or to the extent needed to meet the established contract goal?(§ 26.37)	YES	Any change in the DBE Participation Schedule must be approved in advance and in writing by the DBE Liaison Officer. After consideration of the notice, response, and any other information, the Contract Manager or DBE Compliance Officer deems necessary, the prime contractor shall indicate that it will substitute the terminated firm with a certified DBE firm. If no DBE firm is substituted, the prime contractor must demonstrate good faith efforts to substitute another certified DBE firm to perform the remainder of the work. The prime contractor may not terminate a DBE firm for convenience; the prime contractor cannot perform the work of the terminated subcontract with its own forces or those of an affiliate, without just cause and the prior written consent of the DBE Liaison Officer.	NO	N/A
5	Do you conduct regular site visits to verify that business names on equipment and vehicles are not covered with paint or magnetic signs as well as verify who employs the workers on site. Do you have written certification of this process? (§ 26.37)	YES	The Project/Contract manager verifies the ownership all equipment and vehicles on worksites and names of the present employees. This is reported to Office of Fair Practices, and staff will go out and investigate when there are fraud indicators to conduct a site visit. The Office of Fair Practices conducts training with the Project/Contract Managers to educate them regarding common DBE fraud and noncompliance indicators. BWI maintains monthly site visit reports	NO	N/A
6	Do you have monitoring mechanisms in place that 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? (§ 26.37)	YES	BWI, through the Office of Fair Practices, has two Compliance Officers who track all contracts through iFMIS; prime contractors are required to utilize the system for reporting DBE participation monthly.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
7	Do you randomly verify who orders and pays for the necessary supplies being used by the DBE subcontractor? (§ 26.37)	YES	The Office of Fair Practices has 2 DBE Compliance Officers that obtain copies of cancelled checks and invoices that document supply orders.	NO	N/A
8	Do you have prompt payment mechanisms in place to ensure retainage is returned to all subcontractors upon substantial completion of their work on the project? (§ 26.39)	YES	MDOT has selected Option Three to hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the prime contracts, and ultimate payment to the primes/subs based on those acceptances.	NO	N/A
9	Do you have a monitoring mechanism in place to verify that prime contractors pay all subcontractors within 30 days of receipt of payment? (49 CFR 26.29 (a))	YES	BWI uses iFMIS verify payments electronically. DBE firms use the system to confirm payments received, and these figures are cross-checked with the prime firm monthly participation reports.	NO	N/A
10	Do you conduct compliance reviews, audits and/or assessments of all program participants (e.g., contractors, subcontractors, suppliers)? (§ 26.37(a))	YES	Every contract is audited at least once by a BWI Office of Fair Practices Compliance Officer. iFIMIS is the primary tool used for auditing efforts.	NO	N/A

DBE Participation Reporting

1	Do you count the DBE firm's value of work toward contract goals only if the DBE performs a Commercially Useful Function (CUF)? (§ 26.55(c))	YES	MDOT only counts the value of the work actually performed by the DBE firms toward DBE goals when the DBE has sufficiently demonstrated that they are performing as expected within the approved contract. The construction/project manager is primarily responsible for ensuring CUF.	NO	N/A
2	Do you allow a DBE firm's participation to count toward the DBE goal if the firm was not certified at the time it executed the contract with the Prime contractor? (§ 26.55(f))	YES	BWI/MDOT only counts DBE participation towards set goals for DBE firms that are certified prior to the execution of a contract with the prime contractor.	NO	N/A
3	Do you ensure that the contractor has actually paid its DBEs and is in compliance with all program requirements before determining whether a contractor met its DBE goal? (§ 26.55(h))	YES	BWI requires all prime contractors to make payments to all sub-contractors to include DBE firms within 30 days of receipt of payment from BWI. The iFIMIS system is used to verify payment.	NO	N/A
4	If a DBE firm's certification eligibility is removed during performance of a subcontract, do you	YES	BWI only counts the amount of work performed by the DBE firm prior to the	NO	N/A

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	deduct that subcontract amount from the Airport's overall goal? (§ 26.55(g))		removal of the certification.		
5	In the case where 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 goal, do you count the DBE participation as Race-neutral? (§ 26.55(a))	YES	BWI counts DBE prime contracts as race-neutral participation in the situations presented in the question.	NO	N/A
6	Were you required to submit a Uniform Report of DBE Awards/Commitment and Payments for federal FY 2014? (§ 26.11)	YES	BWI submitted its annual Uniform Report of DBE Awards / Commitment and Payments for federal FY 2014 via the FAA dbE-Connect system.	NO	N/A
7	Have you achieved your annual goal each year in the past three years? (§ 26.47(c))	NO	BWI did not achieve its DBE goal but was within 2% of the goal. DBE firms that could not perform caused the shortfall. Substitution was not feasible at that stage of the project. BWI fell short in 2012 of its goal of 23.3% by 2.46%. In 2013 and 2014 it achieved its goal and exceeded it by 3.39% and 1.39% respectively.	NO	N/A
8	In any years that you did not meet the DBE goal, did you analyze the reasons why the goal was not achieved and established specific steps to correct the problem? (§ 26.47(c))	YES	BWI was required to prepare a DBE shortfall analysis in FY 2014. The overall DBE goal was analyzed to determine why the goal was not achieved. BWI submitted the analysis to the FAA for approval.	NO	N/A

FINDINGS: BWI/MAA - Title 49 CFR Part 23 – AIRPORT CONCESSIONS

PART 1 –ACDBE Program Questions:

Administrative Requirements

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
1	Do you have an FAA approved ACDBE Program in place? (§ 23.21(a))	YES	MDOT/MAA/BWI's ACDBE Program was approved by the FAA in 2006. <u>Recommended Corrective Action:</u> MDOT/MAA/BWI must update their ACDBE Program Document and send to the FAA for approval.	YES	9/1/15
2	Did you sign and disseminate your ACDBE Policy Statement? (§ 23.23(a))	YES	MDOT's last ACDBE document is from 2006; therefore, the policy statement is out of date. The 2006 policy was approved and disseminated in line with § 23.23(a). <u>Recommended Corrective Action:</u> MDOT/MAA/BWI must update their ACDBE document, and the current CEO must sign the updated ACDBE Program Policy Statement.	YES	9/1/15
3	Does your ACDBE Liaison Officer have independent program implementation authority and independent (direct) access to the Airport Director/CEO? (§ 23.23)	YES	Ms. Angela Martin, Director, Fair Practices, with Maryland Aviation Administration, serves as the DBELO/ACDBELO for BWI. She reports directly to the Chief Administrative Officer (CAO) Edward P. Carey and reports to the Executive Director/Chief Executive Officer (CEO), Mr. Paul J. Wiedefeld, on all aspects of the DBE program. The ACDBELO has ready access to the Airport Director. <u>Recommended Corrective Action:</u> It is recommended that MAA fill the vacant MBE/DBE/SBE Manager position as soon as possible.	YES	ASAP
4	Do you submit your annual overall goal by October 1, every three years pursuant to the established schedule? (§ 23.45)	YES	BWI submitted its FY 15-17 overall ACDBE goal to the FAA in October 2014.	NO	N/A
5	Has the Airport ACDBE goal methodology been approved by the FAA? (§ 23.45)	YES	BWI's ACDBE Goal Methodology document was	NO	N/A

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			<p>approved by the FAA on December 10, 2014.</p> <p>In advance of the program submittal, BWI has consulted with FAA staff regarding the methodology used to calculate the 3-year participation goal. In addition to market analysis with past participation taken into account, BWI uses evidence from recent disparity studies in their goal methodology calculations.</p> <p>BWI uses the current capacity of ACDBEs to perform work in MAA's concessions program, as measured by the volume of work ACDBEs have performed in recent years and evidence from disparity studies in their calculation.</p>		
6	Does your ACDBE program provide for seeking ACDBE participation in all types of concession activities rather than concentrating participation in one category or a few categories to the exclusion of others? (§23.25 (c))	YES	<p>BWI encourages ACDBE participation in all areas of concessions. In particular, BWI attends industry/trade events in the market area and brings AirMall, the concessions management firm contracting with BWI, to those events to meet and greet potential ACDBEs. BWI (through the Office of Fair Practices and the Office of Commercial Management) attends 7 to 9 of these events per year.</p> <p>BWI uses race neutral measures, which assist small firms, to increase small business opportunities for a variety of types of small business firms including ACDBE firms. The small business firms include those that provide airport goods and services. The Office of Fair Practices also provides supportive services to potential ACDBE firms regarding certification efforts and keeps lists of interested ACDBEs. When an opportunity arises, the Office of Fair practices mails out information to the primes and ACDBEs about the new opportunity.</p> <p>AirMall has the Concession Program's management contract from 2004-2022 with right of first refusal to manage new retail space (in the upcoming new terminal connectors) that are being added to the airport.</p>	NO	N/A
7	Does your ACDBE program require businesses subject to ACDBE goals (except car rental companies) to make good faith efforts to explore all available options to meet goals, to	YES	BWI currently administers a completely race-neutral program.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	the maximum extent practicable, through direct ownership arrangements with ACDBEs? (§23.25 (f))		Currently, BWI has a few prime concessionaire direct leases dating back to 2004 (and runs through 2022) (30% retail and 15% food and beverage ACDBE participation); BWI's prime concessionaire management firm is Airmall. AirMall regularly achieves the opposite of the goal figures (15% retail and 40% food and beverage). There is also a direct prime management contract for parking (less than 5 years) that has 25% ACDBE participation. With the majority of concessionaires, ACDBE & non-ACDBE, having a subcontract with the airport's prime concessions management firm, the concessions environment at BWI is such that very few of its large or small concessionaires have direct agreements with the airport.		
8	Do you conduct regular outreach sessions to ensure the inclusion of ACDBEs firms in your ACDBE program? (§ 23.25(e))	YES	<p>BWI attends multiple types of market area outreach sessions for the small business community that are intended to encourage the inclusion of ACDBE and other small/minority-owned businesses in the program. First, the BWI Office of Fair Practices & its Office of Commercial Management participates in regular outreach through attending 7 to 9 various airport concessions industry related events). The publicity for these events is particularly targeted to small and minority owned businesses; for example one form of publicity is with advertisements in the area's minority publications and online media.</p> <p><u>Recommended Corrective Action:</u></p> <p>The airport should host informational meetings at BWI periodically. It should also develop an extensive email list for small business firms in the community. This list may be used to provide program information and to conduct additional area marketing</p>	YES	ASAP
9	Does the Airport assess potential for ACDBE participation when an extension, an option to renew, or a material amendment of a concession agreement is made? (§ 23.71)	YES	When an ACDBE opportunity is coming up for renewal or extension, BWI's Office of Fair Practices assesses the ACDBE market. The Office of Commercial Management reaches out to MDOT certified ACDBEs	NO	N/A

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			through direct mail about upcoming opportunities.		
10	If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, does the Airport submit an appropriate adjustment to the overall goal to the FAA for approval? (§ 23.45(j))	YES	When BWI adds a new concession opportunity, Airport staff evaluates the anticipated gross sales, to determine if it has the potential for ACDBE participation, and if the increased sales projections for it would warrant an adjustment to the FAA goal. Due to the size of current ACDBE participation (\$30 million non-car rental in FY 2013-14), a \$200,000 increase would not measurably affect participation levels, nonetheless the airport confirmed that it would consult with the FAA about an adjustment as appropriate.	NO	N/A
11	Does the airport have Long Term (5+ years) and Exclusive contract(s) currently in place? (§ 23.75)	YES	There is one LTE contract currently in place for advertising. BWI has recently requested an LTE for a hotel concession which the FAA is processing.	NO	N/A

Bid Processing and Contract Reviews

1	In situations where an ACDBE contract goal has been established, are bidders required to submit ACDBE information as required by regulation? (§ 23.25(e))	YES	BWI requires bidders to submit ACDBE information with their bid as required by (§ 23.25(e)).	NO	N/A
2	In situations where an ACDBE concession goal has been established, during the review of good faith efforts, do you consider the guidance in Appendix A of the DBE program requirements? (§ 23.25(e))	YES	BWI reviews good faith efforts in line with the guidance in Appendix A per (§ 23.25(e)).	NO	N/A
3	In situations of good faith efforts reconsideration, are reconsideration decisions made by an official who did not take part in the original good faith efforts determinations? (§ 23.25(e))	YES	BWI has a reconsideration official (same as DBE official) but BWI has not had to go to the official for reconsideration.	NO	N/A
4	Does the Airport verify that there is written confirmation from the ACDBE that it had agreed to participate in the contract as provided in the prime RFP/RFQ? (§ 23.29(e))	YES	BWI requires that the prime submit with their bid a subcontract with the ACDBE (if using an ACDBE via subcontract).	NO	N/A
5	Does the Airport include enforcement provisions to ensure compliance of part 23 in concession agreements? (§ 23.29)	YES	BWI maintains an effective contract enforcement program to assure monitoring and enforcement compliance within its ACDBE Program. This includes	NO	N/A

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			review of program-related contracts for appropriate language, quarterly reports from the primes indicating and confirming current participation, regular site visits to review sales documentation consistency and ensure the contract(s) are being fulfilled as shown in the contractual agreements, and interviews with employees to ensure direct employment with the ACDBE firm..		
6	Does the Airport have a system to verify and audit that the required assurances are being incorporated in concession contracts? (§ 23.29)	YES	BWI has a system to verify and audit that required assurances are being incorporated in concession contracts. It monitors by requiring primes to turn in quarterly reports. BWI will then correspond with companies out of compliance with quarterly reporting through a notice and also reviews gross receipts monthly. Additionally, BWI conducts audits.	NO	N/A
7	Does the Airport have written certification that all contracts, leases, joint venture agreements, or other concession-related agreements are being reviewed? (§ 23.29)	YES	BWI uses an evaluation panel that reviews bidding documents. When a contract is awarded, the contracts/leases/joint venture agreements, etc. are reviewed by BWI's legal department as well as the finance department.	NO	N/A
8	Does the Airport require the concessionaire awarded the contract/agreement to make available upon request a copy of all ACDBE contracts, leases, joint venture agreements, or other concession-related agreements? (§ 23.25(e))	YES	BWI requires prime concessionaire operators as well as direct lease tenants to provide relevant documentation to the airport upon request.	NO	N/A

Monitoring Post Contract Award

1	Do you have monitoring mechanisms in place to ensure that work committed to ACDBEs at contract award or subsequently is actually <u>awarded</u> to ACDBEs to whom the work was committed? (§ 23.25(e))	YES	BWI confirms that the ACDBE is legitimate. BWI conducts compliance reviews to ensure ACDBE contracts have been awarded properly (meets with ACDBEs at their home offices). If a prime is out of compliance, a letter is sent and the prime will be terminated if it does not correct the non-compliance.	NO	N/A
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2	Do you have monitoring mechanisms in place to verify that work committed to ACDBEs at contract award or subsequently is actually <u>performed</u> by the ACDBEs to whom the work was committed and those DBEs are managing their work, utilizing their own work forces? (§ 23.25(e))	YES	BWI, through the Office of Fair Practices and Office of Commercial Management confirms the work is performed by reviewing monthly gross receipts, quarterly participation reports from the primes, and site visits.	NO	N/A
3	In the case of post-award terminations, pre-award deletions or substitutions of ACDBE firms, do you have mechanisms in place to allow you to verify that the ACDBE has been notified AND given time to respond before approving the termination/ substitution as well as verify the documented good cause that compels the termination before approving a termination/substitution? (§ 26.25(e))	YES	BWI has a mechanism in place to verify notification, including review by staff. BWI has not had a prime terminate an ACDBE without prior written approval. Good Cause for termination is verified prior to approving the request.	NO	N/A
4	In situations where an ACDBE contract goal has been established and an ACDBE firm is terminated or fails to perform, do you require the prime concessionaire to make good faith efforts to find another ACDBE firm to substitute for the original ACDBE to participate in the contract to the extent needed to meet the established contract goal? (§ 23.25(e))	YES	BWI makes sure that the prime makes good faith efforts to find another ACDBE firm to substitute for the original ACDBE.	NO	N/A
5	Do you, and/or your designee conduct regular concession site visits to verify who employs the employees on site, as well as who manages the location. If so, do you have written certification of this process? (§ 23.29)	YES	The ACDBELO, conducts regular site visits at ACDBE locations and has a close working relationship with the concessions lessees and concession management firm, AirMall. She has also regularly conducted home office visits to ACDBEs to verify readiness and useful function/ability of willing ACDBE firms to perform in the airport environment. The airport's Office of Fair Practices documents for review prior to the site visit including documentation of the certification, including a list of employees, financial reporting including payroll verification, employee interview to assess that the firm actively manages the concessions, etc.	NO	N/A
6	Do you review monthly ACDBE participation reports?	YES	BWI reviews monthly gross receipts by which staff can monitor participation on its own. In addition, quarterly reports are provided by the primes to BWI where the Office of Fair Practices crosschecks and assess the ACDBE participation.	NO	N/A

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7	Do you conduct compliance reviews, audits and/or assessments of all program participants (e.g., prime concessionaires, sub-concessionaires, joint venture partners)? (§ 23.29)	YES	BWI's concession contracts (Prime and sub-concessionaires) are audited once a year, and a report is issued to document the review. BWI will discipline the primes, issue a letter if there is no compliance, and follow other enforcement procedures as described within each contract.	NO	N/A
8	Have you undertaken an internal review of your joint venture agreements, if any, in order to verify that they are in compliance with the FAA Joint Venture Guidance? (§ 23.29)	YES	BWI has an upcoming hotel joint venture which is in the RFP stage.	NO	N/A

ACDBE Participation Reporting

1	Do you count toward concession contract goals the value of work only if the ACDBE performs a Commercially Useful Function (CUF)? (§ 23.55(a))	YES	BWI only counts ACDBE participation if the work has a commercially useful function as verified by the ACDBELO's quarterly review.	NO	N/A
2	Do you allow an ACDBE to count toward the ACDBE goal if it was not certified at the time its contract was executed? (§ 23.55/26.87(j))	NO	BWI only counts participation by ACDBEs certified prior to the execution of the contract.	NO	N/A
3	Do you count the DBE participation and any costs incurred in connection with the renovation, repair, or construction of a concession facility (build-out)? (§ 23.55(k))	NO	BWI only counts ACDBE participation that provides a service or product to the general public. Construction and renovations inside the terminals is not counted as ACDBE participation.	NO	N/A
4	When an ACDBE performs as a participant in a joint venture, do you only count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals? (§ 23.55(d))	YES	BWI does not currently have any joint ventures. BWI has two management agreements (AirMall and parking) which contain ACDBE participation.	NO	N/A
5	When counting participation of fees or commissions (i.e. professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial) charged by an ACDBE firm, do you review to ensure the amount is reasonable and not excessive as compared with fees customarily allowed for similar services? (§ 23.55(e))	YES	BWI staff review the fees charged by an ACDBE firm to ensure the amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Currently, there is one contract in which BWI counts participation in this manner (advertising).	NO	N/A
6	In the case where an ACDBE wins a prime concession through customary competitive procurement procedures or is awarded a sub-concessionaire on a prime concession	YES	BWI counts ACDBE participation as race-neutral participation where an ACDBE wins a prime concession	NO	N/A

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	contract that did not carry an ACDBE goal, do you count the ACDBE participation as Race-neutral participation? (§ 23.55(a))		through customary competitive procurement procedures or is awarded a sub-concessionaire on a prime concession contract that did not carry an ACDBE goal in line with § 23.55(a).		
7	Were you required to submit the Uniform Report of ACDBE participation for federal FY 2014? (§ 23.55)	YES	BWI has submitted the Uniform Report for FY 2014 as required.	NO	N/A
8	In the past three years, have you consistently achieved your annual goal for concessions other than car rentals? (§ 23.57)	NO	<p>In the past three years, BWI has not met its annual goal for concessions participation. BWI's goal for FY 2014 was overall 36.75% (31.07% RC and 5.68% RN) for non-car rental. BWI submitted a shortfall analysis because it achieved 30.09% RC participation and 0% RN participation.</p> <p>BWI identified three corrective actions in its shortfall analysis:</p> <ol style="list-style-type: none"> 1. Work to ensure that AirMall makes good faith efforts to replace any outgoing concessionaires with ACDBE firms 2. Meet with and encourage potential ACDBE concessionaires to apply for ACDBE certification 3. Work on outreach efforts <p>For FY 15-17 the overall goal is 43.15%, made up of 37.76% RC participation and 5.39% RN participation.</p>	NO	N/A
9	In the past three years, have you consistently achieved your annual goal for car rental concessions? (§ 23.57)	YES	BWI has not consistently achieved its annual goal for car rental concessions. BWI's goal for FY 2014 for car rental participation was 2.36% RC. It has reduced its car rental goal to 2.19% for FY 15-17. BWI advises it has been working with car rental companies to increase goods and services.	NO	N/A
10	In the past three years, have you had any complaints filed alleging that the Airport did not comply with ACDBE regulations?	NO	BWI has not received any complaints alleging that the Airport did not comply with ACDBE regulations in the past 3 years.	NO	N/A
11	Do you have an FAA approved business development or mentor-protégé program? (§ 23.25)	NO	BWI does not currently have an FAA approved business development or mentor-protégé program.	NO	N/A

REVIEW SUMMARY

The Federal Aviation Administration (FAA) Office of Civil Rights would like to thank you for your participation in this DBE & ACDBE Compliance Review. We appreciate the substantial effort taken by BWI/MAA/MDOT in providing 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 have been 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 have been registered in each area that was examined.

Areas requiring your attention have been noted as a Compliance Issue under each specific question and corrective actions must be taken by each set deadline. To supplement this year's review, we conducted four focus group meetings with prime contractors, DBEs, master/prime concessionaires, and ACDBEs. The primary objective during these meetings was to evaluate the administration of the DBE and ACDBE programs from the perspective of the participants. Generally speaking, we found that participants are happy to be doing business at BWI. Particularly, many of the participants stated they were happy with the level of service they received from the Office of Fair Practices. In addition, most participants felt that MAA/BWI has designed and implemented its DBE and ACDBE Programs with the spirit and intent of 49 CFR Parts 23 and 26. However, participants also noted that they would like more transparency and inclusion in the DBE & ACDBE goal setting processes. They would also like to be notified more directly of upcoming opportunities and goals during the goal-setting comment periods. Lastly, some prime contractors stated that they had difficulty meeting the goals when local goals were added to a contract on top of Federal goals.

BWI/MAA should be commended for several aspects of its DBE and ACDBE programs. For example, BWI has exceeded its DBE participation goals in fiscal years 2013 and 2014. Additionally, MAA has set robust participation goals for BWI for fiscal year 2015, 2016, and 2017, both for DBE and ACDBE programs.

The FAA Office of Civil Rights looks forward to continuing to work with you in ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs," and 49 CFR Part 23, "Participation of Disadvantaged Business Enterprise in Airport Concessions."

REPORT PREPARED BY:

Elizabeth Unrath

Elizabeth Unrath
Eastern Region DBE Compliance Specialist

Keturah Pristell

Keturah Pristell
Southern Region DBE Compliance Specialist

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 Small and Disadvantaged Business Utilization

<http://www.osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/index.cfm>

DOT Departmental Office of Civil Rights <https://www.civilrights.dot.gov/disadvantaged-business-enterprise>