HILLSBOROUGH COUNTY AVIATION AUTHORITY

DISADVANTAGED BUSINESS ENTERPRISE~~ (DBE)~~

POLICY AND PROGRAM

FOR PROJECTS FUNDED BY

UNITED STATES DEPARTMENT OF TRANSPORTATION

~~REVISED FEBRUARY 2, 2023~~

Tampa International Airport

HILLSBOROUGH COUNTY AVIATION AUTHORITY

Post Office Box 22287

Tampa, Florida 33622-2287

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~~HILLSBOROUGH COUNTY AVIATION AUTHORITY~~
~~DISADVANTAGED BUSINESS ENTERPRISE POLICY AND PROGRAM~~

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~~1 –~~ POLICY STATEMENT ~~AND OBJECTIVES~~

Section 26.1, 26.23[1] Objectives/Policy Statement

The Hillsborough County Aviation Authority (Authority), owner of ~~United States Congress~~Tampa International Airport (Airport), has ~~determined that certain groups of people described as Disadvantaged Business Enterprises (DBEs) have been disadvantaged due to discrimination in the transportation industry. It is therefore the policy of the Authority that small businesses owned and controlled by socially and economically disadvantaged individuals referred to by Congress as DBEs will have a fair opportunity to compete for and participate in the performance of construction, architectural, engineering, and professional services contracts procured by the Authority funded in whole or in part by the United States Department of Transportation (USDOT).~~

~~The Authority has~~ established a Disadvantaged Business Enterprise (DBE) program~~Program~~ in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR) part 26. The Authority has received Federal financial assistance~~USDOT, 49 CFR Part 26 and as maybe amended~~ from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply~~time to time. Neither the Authority nor its contractors will discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. In accordance~~ with 49 CFR part 26~~Part 26, the Authority is required to recognize and certify these DBEs in its construction, architectural, engineering, and professional services contracts~~.

~~It is the policy of the Authority that no person will be excluded from participation in, or denied the benefits of, or otherwise discriminated against, in connection with the award and performance of any contracts covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE program, it is the policy of the Authority not to use, whether directly or through contractual or other arrangements, criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin. The Authority, as a recipient of airport funds authorized by 49 U.S.C. 47101, et seq., does hereby covenant and agree to maintain its DBE program in accordance with Title 49 CFR Part 26, found at, www.ecfr.gov.~~

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR part~~Part~~ 26, have an equal opportunity to receive and participate in USDOT~~DOT~~-assisted contracts. It is also the ~~Authority's~~ policy of the Authority to engage in the following actions on a continuing basis:

1. ~~1.~~ Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

[1] Section reference in headings throughout correspond to the applicable section of 49 CFR part 26.

2. ~~2.~~ Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

3. ~~3.~~ Ensure that the ~~Authority's~~ DBE program operates~~is narrowly tailored~~ in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of services~~accordance with applicable law~~;

4. ~~4.~~ Ensure that only firms that fully meet 49 CFR part~~Part~~ 26 eligibility standards are permitted to participate as DBEs;

5. ~~5.~~ Help remove barriers to the participation of DBEs in USDOT-assisted contracts;~~and~~

6. ~~6.~~ Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;

7. ~~7.~~ Assist ~~in~~ the development of firms ~~so~~ that ~~they~~ can compete successfully in the marketplace outside the DBE program; and

8. ~~8.~~ Make appropriate use of the flexibility afforded to the Authority ~~recipients~~ of Federal financial assistance in establishing and providing opportunities for DBEs.

The ~~Assistant General Counsel and Director of Ethics and~~ Business Opportunity Programs Manager~~Diversity~~ has been designated as the DBE Liaison Officer (DBELO).~~.~~ In that capacity, the Business Opportunity Programs Manager~~Assistant General Counsel and Director of Ethics and Business Diversity~~ 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 Authority in its financial assistance agreements with the USDOT~~Department of Transportation~~.

The Authority has disseminated this policy statement to its~~the Authority~~ Board of Directors and all of the components of the organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Authority projects by posting the statement on the website~~USDOT-assisted contracts. The distribution was accomplished by posting on www.tampaairport.com/dbe-policies~~.

Michael Stephens

~~Joseph Lopano~~, Chief Executive Officer _______Date

GENERAL REQUIREMENTS

Section 26.1 Objectives~~.1 Application of 49 CFR Part 26~~

The objectives ~~recipients of the following types of federal funds~~ are elaborated in the policy statement on the first page of this program. A link ~~required~~ to ~~comply with~~ 49 CFR Part 26 (Part 26) can be found~~:~~

~~A. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, I05 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.~~

~~B. Federal transit funds authorized by Titles I, II, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws~~ in Attachment 1~~Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405~~.

Section 26.3 Applicability

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

~~D. Federal aid funds authorized by the Infrastructure Investment and Jobs Act, Pub. L. 117-58.~~

Section 26.5 Definitions~~1.2 USDOT Assistance~~

The Authority will use terms in this program that have their meanings defined in 49 CFR part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

~~A. The Authority is a primary recipient of grants for airport planning or development that will award prime contracts the cumulative total value of which exceeds $250,000 in USDOT funds in a Federal fiscal year.~~

~~B.~~ The Authority 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~~continue to carry out~~ its DBE program, the Authority 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.~~Policy~~

Section 26.11 Data Collection and Reporting Requirements

Reporting to USDOT

The Authority will provide data about its DBE program to the USDOT as directed by ~~Program until all~~ USDOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

> The Authority will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments," as described in 49 CFR part 26. The Authority will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

The Authority will collect bidders list information as described in 49 CFR part 26, §26.11(c)(2) and in the form of Attachment 3 and enter the information into the system designated by USDOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on the Airport's federally assisted contracts for use in helping the Authority set overall goals, and to provide the USDOT with data for evaluating the extent to which the objectives listed above in 49 CFR part 26, §26.1~~funds~~ are being achieved~~expended~~.

The Authority will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name;
- Firm address including ZIP code;
- Firm's status as a DBE or non-DBE;
- NAICS code applicable to each scope of work the firm sought to perform in its bid;
- Age of the firm; and
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

The Authority will collect the data from all bidders for its federally assisted contracts by requiring the information in 49 CFR part 26, §26.11(c)(2) to be submitted with their bids or initial responses to negotiated procurements.

The Authority will enter this data into the USDOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a ''design-build'' contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to 49 CFR part 26, §26.53(e), the Authority will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The Authority will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Authority will keep a complete application package for each certified firm. These records will be retained in accordance with all applicable record retention requirements of the Authority financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the ~~C.~~ financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

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

Assurance: Each financial assistance agreement the Authority signs with a USDOT operating administration (or ~~Operating Administration (OA), or~~ a primary recipient) will~~, must~~ include the following assurance:

> The Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contracts~~contract~~ or in the administration of its DBE program or the requirements of 49 CFR part~~Part~~ 26. The Authority shall take all necessary and reasonable steps under 49 CFR part~~Part~~ 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The Authority's DBE program, as required by 49 CFR part~~Part~~ 26 and as approved by USDOT, 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 Authority of its failure to carry out its~~this~~ approved program, the USDOT may impose sanctions as provided for under 49 CFR part~~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:

~~D.~~ The Authority will ensure that ~~not use quotas for DBEs on USDOT-assisted contracts subject to 49 CFR Part 26. The Authority will not set aside contracts for DBEs on USDOT-assisted contracts subject to 49 CFR Part 26, except that, in limited and extreme circumstances, the Authority may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.~~

~~E. The Authority's DBE Policy and Program will be incorporated by reference in every USDOT-assisted agreement.~~

~~F. In the event 49 CFR Part 26 is revised or amended, such changes will be incorporated hereto. In the event of any conflict or inconsistency between the policy and the regulations, the terms and conditions of the regulations will prevail.~~

~~SECTION 2 – DEFINITIONS~~

~~Section 2.1 Applicable Definitions~~

~~The definitions of 49 CFR Part 26.5 are incorporated and supplemented herein as follows:~~

~~A. Affiliation has the same meaning as the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.~~

~~1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:~~

~~(a) One concern controls or has the power to control the other; or~~
~~(b) A third party, or parties, controls or has the power to control both; or~~
~~(c) An identity of interest between or among parties exists such that affiliation may be found.~~

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

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

~~C. Alaska Native Corporation or ANC means any regional corporation, village corporation, urban corporation, or group corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).~~

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

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

~~F. Compliance means correctly implementing the requirements of this policy and program.~~

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

~~H. Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.~~

~~I. Contractor means one who participates, through a contract or subcontract, at any tier, in a USDOT-assisted highway, transit, or airport program.~~

~~J. Days mean calendar days. In computing any period of time described in 49 CFR Part 26, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the Authority's offices are closed for all or part of the last day, the period extends to the next day on which the Authority is open.~~

~~K. Department or USDOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).~~

~~L. Disadvantaged Business Enterprise or DBE means a for-profit small business concern:~~

~~1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and~~

~~2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.~~

~~M. DBE Liaison Officer or DBELO means the individual who is responsible for developing and implementing the DBE Policy and Program in accordance with 49 CFR Part 26.~~

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

~~O. eProcurement Portal or Portal means a database of registered companies interested in doing business with the Authority as prime contractors, subcontractors, and/or suppliers of goods and services.~~

~~P. Florida Unified Certification Program or FLUCP means the uniform standards and criteria utilized in the certification process thus reducing the temptation and opportunity for a firm to "forum" shop for certification. The FLUCP provides "one stop shopping" for all firms seeking certification as a DBE in Florida.~~

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

~~R. Home State means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.~~

~~S. Immediate Family Member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, mother-in-law, father-in-law, sister-in-law, brother-in-law, and domestic partner or participant in a civil union recognized under any applicable State law.~~

~~T. Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the state in which the tribe, band, nation, group, or community resides. See definition of Tribally-Owned Concern in this section.~~

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

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

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

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

~~Y. Noncompliance means the requirements of this policy and program have not been correctly implemented.~~

~~Z. Operating Administration or OA means any of~~ the following clause is included in each USDOT-funded contract it signs with a contractor (and each subcontract the prime~~parts of USDOT: FAA, FHWA, and FTA. The “administrator” of an operating administration includes his or her designees.~~

~~AA. Personal Net Worth or PNW means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include: the individual’s ownership interest in an applicant or participating DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.~~

~~BB. Policy means the general principles or plan by which the Authority is guided in its management of public affairs.~~

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

~~DD. Primary Recipient means a recipient to which USDOT financial assistance is extended and who passes some or all of it on to another recipient.~~

~~EE. Principal place of business means the business location where the individuals who manage the firm’s day-to-day operations spend most working hours. If the offices from which management is directed and where business records are kept are in different locations, the Authority will determine the principal place of business for DBE program purposes.~~

~~FF. Program means any undertaking on the Authority’s part to use USDOT financial assistance, authorized by the laws, to which this policy applies.~~

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

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

~~II. Reconsideration Official is an official who may reconsider the Senior Manager, Business Diversity’s determination that a~~ contractor ~~failed to meet a DBE goal or make adequate good faith efforts to do so; or notice of intent to remove DBE certification.~~

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

~~KK. Secretary means the Secretary of Transportation or his/her designee.~~

~~LL. Senior Manager, Business Diversity means an individual who is responsible for administrating and managing the DBE Policy and Program on a day-to-day basis and for disseminating information on available business opportunities so that DBEs are provided a maximum opportunity to participate in Authority contracts in accordance with 49 CFR Part 26.~~

~~MM. Service-disabled veteran-owned small business or SDVOSB means a business concern certified as a service-disabled veteran-owned small business by:~~

~~1. Office of Supplier Diversity (OSD)~~
~~2. U.S. Department of Veterans Affairs via https://www.vip.vetbiz.gov/~~

~~NN. Sheltered Market means a contracting practice restricting eligibility for the competitive award of a contract solely to a specific category of businesses such as DBEs and SBEs.~~

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

~~PP. SBA Certified Firm means firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.~~

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

~~RR. Small Business Enterprise or SBE is a business size category established to foster the objectives of 49 CFR Section 26.39 for businesses smaller than SBA size standards and which are certified by an Authority-approved certifying agency as a "Small Business," "Small Local Business Enterprise," or "Small Business Enterprise," or which is approved by affidavit to participate as a SBE on a project-by-project basis.~~

~~SS. Socially and economically disadvantaged individual means any individual who is a citizen, or lawfully admitted permanent resident, of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:~~

~~1. Black Americans, which includes persons having origins in any of the Black racial groups of Africa;~~

~~2. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;~~

~~3. Native Americans, which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;~~

~~4. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;~~

~~5. Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;~~

~~6. Women; or~~

~~7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.~~

~~An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition. Any individual who is not a member of one of the above presumptive groups may be found to be a socially and economically disadvantaged individual on a case-by-case basis, if they establish their "social" and "economic" disadvantage in accordance with 49 CFR Part 26.67(d).~~

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

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

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

~~WW. Veteran-owned small business (VOSB) means a business concern certified as a veteran-owned small business by:~~
~~1. Office of Supplier Diversity (OSD)~~
~~2. U.S. Department of Veterans Affairs via https://www.vip.vetbiz.gov/~~

~~Section 2.2 Changes to Definitions~~

~~Unless provided herein, no other definitions will apply. In the event such definitions in 49 CFR Part 26.5 are revised or amended, such changes will be incorporated hereto.~~

~~SECTION 3 – DETERMINING ELIGIBILITY~~

~~Section 3.1 Ownership~~

~~A. In determining whether the socially and economically disadvantaged owners in a firm own the firm, the Authority must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.~~

~~1. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.~~

~~2. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.~~

~~3. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.~~

~~4. The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.~~

~~5. Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.~~

~~6. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.~~

~~7. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.~~

~~8. All securities that constitute ownership of a firm will be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of the firm. However, securities of assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:~~

~~a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or~~

~~b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.~~

~~9. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in the firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.~~

~~10. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:~~

~~a. The owner's expertise must be:~~
~~(1) in a specialized field;~~
~~(2) of outstanding quality;~~
~~(3) in areas critical to the firm's operations;~~
~~(4) indispensable to the firm's potential success;~~
~~(5) specific to the type of work the firm performs; and~~
~~(6) documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.~~

~~b. The individual whose expertise is relied upon must have a significant financial investment in the firm.~~

~~B. For purposes of determining ownership, all interests in a business or other assets obtained by the individual will be deemed by the Authority as held by a socially and economically disadvantaged individual, if such interests are obtained:~~

~~1. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or~~

~~2. Through inheritance, or otherwise because of the death of the former owner.~~

~~C. For purposes of determining ownership, the Authority must presume as not being held by a socially and economically disadvantaged individual, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:~~

~~1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;~~

~~2. Involved in the same or a similar line of business; or~~

~~3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.~~

~~D. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the Authority, by clear and convincing evidence, that:~~

~~1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and~~

~~2. The disadvantaged individual actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.~~

~~E. The Authority must apply the following rules in situations in which marital assets form a basis for ownership of a firm:~~

~~1. When marital assets, other than the assets of the business in question, held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the Authority must deem ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The Authority cannot count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.~~

~~2. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.~~

~~F. The Authority may consider the following factors in determining the ownership of a firm. However, the Authority will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:~~

~~1. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift or transfer without adequate consideration, other than the types set forth in paragraph C of this section;~~

~~2. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase and sale of real or personal property, bank signature cards, or other documents; or~~

~~3. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, the Authority must give particularly close and~~

~~careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as form, by socially and economically disadvantaged individual.~~

~~G. If the statement of personal net worth and supporting documentation that an individual submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, the Authority will consider factors that include, but are not limited to, the following:~~

~~1. Whether the average adjusted gross income of the owner over the most recent three-year period exceeds $350,000;~~

~~2. Whether the income was unusual and not likely to occur in the future;~~

~~3. Whether the earnings were offset by losses;~~

~~4. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;~~

~~5. Other evidence that income is not indicative of lack of economic disadvantage; and~~

~~6. Whether the total fair market value of the owner's assets exceed $6 million.~~

~~H. The Authority must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of the Authority's review of the firm's annual declaration, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediately family member for that individual's education, medical expenses, or some other form of essential support.~~

~~I. The Authority must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.~~

~~Section 3.2 Control~~

~~A. In determining whether socially and economically disadvantaged owners control a firm, the Authority must consider all the facts in the record, viewed as a whole.~~

~~B. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.~~

~~1. In determining whether a potential DBE is an independent business, the Authority will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.~~

~~2. The Authority will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.~~

~~3. The Authority will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.~~

~~4. In considering factors related to the independence of a potential DBE firm, the Authority will consider the consistency of relationships between the potential DBE firm and non-DBE firms with normal industry practice.~~

~~C. A DBE firm must not be subject to any formal or informal restrictions, which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR Part 26.69(j)(2).~~

~~D. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.~~

~~1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).~~

~~2. In a corporation, disadvantaged owners must control the board of directors.~~

~~3. In a partnership, one or more disadvantaged owners must serve as general partner(s), with control over all partnership decisions.~~

~~E. Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.~~

~~F. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the Authority can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.~~

~~G. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.~~

~~H. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have a license or credential to own and/or control a firm, the Authority will not deny certification solely on the ground that the person lacks the license or credential. However, the Authority may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.~~

~~1. The Authority may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration will be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The Authority may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.~~

~~2. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the Authority may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.~~

~~I. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.~~

~~J. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members, who themselves are not socially and economically~~

~~disadvantaged individuals, participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the Authority must make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as the Authority does in other situations, without regard to whether or not the other persons are immediate family members.~~

~~K. If the Authority cannot determine that the socially and economically disadvantaged owners – as distinct from the family as a whole – control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.~~

~~L. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual, whether or not an immediate family member, ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to the Authority, by clear and convincing evidence, that:~~

~~1. The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and~~

~~2. The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.~~

~~M. In determining whether a firm is controlled by its socially and economically disadvantaged owners, the Authority may consider whether the firm owns equipment necessary to perform its work. However, the Authority will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.~~

~~N. The Authority will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm is required to demonstrate to the Authority only that it is socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The Authority may not require that the firm be re-certified or submit a new application for certification, but the Authority will verify the disadvantaged owner's control of the firm in the additional type of work.~~

~~1. The Authority may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and~~

~~not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.~~

~~2. Firms and certifying agencies must check carefully to make sure that the NAICS code cited in a certification are kept up-to-date and accurately reflect work which the FLUCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.~~

~~3. If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and the certifying agency should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.~~

~~4. The certifying agency is not precluded from changing a certification classification or description if there is a factual basis in the record. Changes in certification classification or description will be in accordance with 49 CFR Part 26.71.~~

~~O. A business operating under a franchise or license agreement may be certified if it meets the standards in 49 CFR Part 26 and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the Authority generally will not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.~~

~~P. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.~~

~~Q. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.~~

~~R. The Authority will not require a DBE firm to be prequalified as a condition for certification.~~

~~Section 3.3 Small Business Concern~~

~~A. Regulations of the SBA, 13 CFR Part 121 (10-1-00 Edition), contain guidelines and standards for determining eligibility as a small business concern.~~

~~B. Any person who has a current certification from the SBA under Section 8(a) of the Small Business Act and who is a member of any of the presumptive groups listed in Section 2.1 (OO) is considered to be socially and economically disadvantaged for purposes of the Authority's DBE Policy and Program.~~

~~Section 3.4 Business Size Determination~~

~~The following will be evaluated with each application for certification:~~

~~A. The dollar financial ceiling listed in 13 CFR Part 121 of the SBA refers to the average annual receipts earned by the firm, including its affiliates, for the previous five-year period. For example, if the standard dollar financial ceiling for electrical contractors, as listed in 13 CFR Part 121 of the SBA, is $16.5 million, then the firm is considered small if its average gross receipts in the five preceding fiscal years were $16.5 million or less. Different trades have different ceilings. Notwithstanding the foregoing, a firm is not an eligible DBE in any federal fiscal year if the firm, including its affiliates, has average annual gross receipts, as defined by SBA regulations, over the firm's previous five fiscal years, in excess of $28.48 million.~~

~~B. In addition, an individual, who claims to own and control a firm applying for DBE certification and whose ownership and control are relied on for certification, cannot have a personal net worth that exceeds $1.32 million. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.~~

~~Section 3.5 Case-by-Case Determination~~

~~Persons who are not members of any of the presumptive groups listed in Section 2.1 (OO)(2) may nevertheless be found to be socially and economically disadvantaged by the Authority on a case-by-case basis as provided by 49 CFR 26.67 (d). For example, a disabled Vietnam veteran, an Appalachian white male or any other person may claim to be disadvantaged due to individual circumstances. If one of these individuals owns a business and applies for eligibility as a DBE, the Authority must determine, as part of the certification, whether that person qualifies as socially and economically disadvantaged. It is emphasized that these persons would have to make an individual showing of disadvantage rather than on the basis of group membership.~~

~~Section 3.6 Florida Unified Certification Program (FLUCP)~~

~~The Authority and other USDOT recipients in the state of Florida signed an agreement establishing the UCP for the state of Florida. All USDOT recipients in the state of Florida accept the FLUCP DBE certification. The Authority is a certifying member of the FLUCP and is responsible for making the decisions regarding DBE certifications in the following counties: Citrus, Hernando, Hillsborough, Levy, Manatee, Pasco, Pinellas, and Sumter.~~

~~Section 3.7 Process for Determining DBE Eligibility~~

~~A. To ensure that its DBE Policy and Program benefits only eligible DBEs as defined by 49 CFR Part 26, the Authority will certify the eligibility of DBEs.~~

~~B. All socially and economically DBEs interested in participating as eligible DBEs in contracting/subcontracting opportunities must be FLUCP DBE certified at the time a bid or proposal containing the DBE's proposed participation is opened by the Authority. Certification may be obtained by submitting a complete Application for DBE Certification and a PNW to a FLUCP certifying member. The Authority will advise each applicant within 30 days of receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. The Senior Manager, Business Diversity will endeavor to make a decision on an applicant's certification within 90 days of receiving a completed application for DBE certification and PNW, including all necessary supporting documentation. The Authority does not charge a fee to apply for FLUCP DBE certification.~~

~~C. If an applicant for DBE certification withdraws its application before the Authority has issued a decision on the application, the applicant can resubmit the application at any time. However, the Authority will place the reapplication at the "end of the line", behind other applications that have been made since the firm's previous application was withdrawn.~~

~~D. In accordance with the regulations establishing uniform standards for certifying the eligibility of DBE firms, and as part of the certification process, the Authority will take at least the following steps in determining whether a firm is eligible:~~

~~1. Perform an on-site visit to the firm's principal place of business and to any job sites on which the firm is working at the time of the eligibility investigation;~~

~~2. Obtain the résumés or work histories of the principal officers of the firm and personally interview these individuals;~~

~~3. Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;~~

~~4. Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;~~

~~5. Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;~~

~~6. Obtain or compile a list of equipment owned by or available to the firm and the licenses of the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program; and~~

~~7. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.~~

~~8. Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.~~

~~E. Once certified, a DBE firm will be required to submit the following information to the Senior Manager, Business Diversity or the DBE's FLUCP certifying member:~~

~~1. Change in circumstances affecting the firm: The DBE must submit a written affidavit within 30 days of the date of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria or any material changes in the information provided in its Application for DBE Certification. DBEs must attach supporting documentation describing in detail the nature of such changes.~~

~~2. No Change Declaration: Every year on or before the anniversary of the date of the DBE firm's certification, the DBE must submit a No Change Declaration along with the firm's Federal income tax return for the previous year. Failure to submit this declaration and supporting documents will be grounds for removal of certification.~~

~~F. Certification will be in accordance with 49 CFR Part 26. When the Senior Manager, Business Diversity denies a request for certification from a firm not currently certified, a written explanation of the reason for the denial must be provided to the firm, specifically referencing the evidence in the record that supports each reason for the denial in accordance with 49 CFR Part 26.86. All documents and other information on which the denial is based must be made available to the applicant, upon request. Any firm denied certification may re-apply for certification no sooner than 12 months, from the date of the Senior Manager, Business Diversity's denial of certification.~~

~~G. The Authority will safeguard from disclosure to third parties information that may reasonably be considered as confidential business information, consistent with federal, state, and local law in accordance with 49 CFR Part 26, Subpart F. Confidential business and personal information may be provided to a third party only with the written consent of the individual to whom the information pertains. This includes applications for DBE certification and supporting information. However, the Authority will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85.~~

~~H. The Authority will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Authority will keep a complete application package for each certified firm and all declarations of no change, change notices, and on-site reviews. These records will be retained in accordance with applicable record retention requirements for the Authority's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Authority's financial assistance agreement, whichever is longer.~~

~~I. The initial Application for DBE Certification, PNW and supporting documentation can be completed and submitted on the Authority's website at https://www.tampaairport.com/business-diversity or mailed to:~~

~~Business Diversity Department~~
~~Hillsborough County Aviation Authority~~
~~Tampa International Airport~~
~~P. O. Box 22287~~
~~Tampa, Florida 33622-2287~~

~~Section 3.8 Denial of Certification~~

~~A firm may appeal a decision by the Senior Manager, Business Diversity denying certification. Such appeal must be made in writing no later than 90 days after the date of the decision and submitted in accordance with 49 CFR Part 26.89 and Section 10.1(A) to:~~

~~U. S. Department of Transportation~~
~~Departmental Office of Civil Rights~~
~~External Civil Rights Programs Division (S-33)~~
~~1200 New Jersey Ave., S.E.~~
~~Washington, DC 20590-0001~~

~~SECTION 4 – PROGRAM STRUCTURE AND RESPONSIBILITIES~~

~~Section 4.1 Overall Responsibility for Authority's DBE Program~~

~~The Chief Executive Officer (CEO) of the Authority exercises overall responsibility and direction of the Authority's DBE Policy and Program; ensures compliance with 49 CFR Part 26; establish realistic goals in all USDOT-assisted projects requiring goals, in accordance with 49 CFR Part 26; and ensures active participation at all staff levels toward the realization of such goals.~~

~~Section 4.2 Implementation and Management of DBE Program~~

~~The DBELO has been appointed by the Authority's CEO and will have direct, independent access to the CEO concerning DBE program matters. Implementation of the DBE Policy and Program is the responsibility of the DBELO. The DBELO for the Authority is:~~

~~Assistant General Counsel and Director of Ethics and Business Diversity~~

~~The DBELO will advise and consult with the Authority staff members as required for the effective and responsive functioning of the DBE Policy and Program. The CEO will assign adequate staff to administer the program in compliance with 49 CFR Part 26.~~

~~Section 4.3 Staff Responsibilities~~

~~Administration of the DBE Policy and Program will be the responsibility of the Senior Manager, Business Diversity. Administration responsibilities will include, but not be limited to, the following activities:~~

~~A. Act as resource for DBE firms.~~

~~B. Maintain files and related record keeping, including literature, forms and reference materials pertaining to DBE matters, and generally keep informed of current trends, regulations and rulings affecting the DBE Policy and Program.~~

~~C. Develop support staff for maintaining the DBE Policy and Program and work with all management/supervisory personnel to implement DBE policies and practices.~~

~~D. Secure and submit statistical reports and data regarding DBE goals and objectives in accordance with federal requirements.~~

~~E. Develop, manage and implement the DBE Policy and Program on a day-to-day basis, carrying out and disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Authority contracts.~~

~~F. Provide the USDOT with updates representing significant changes in the Authority's DBE Policy and Program.~~

~~Section 4.4 Race Neutral Activities to Increase Participation~~

~~The following activities are designed to ensure that DBEs have the maximum opportunity to participate in contracts and increase DBE participation on Authority contracts through race-neutral means where possible.~~

~~A. It is the responsibility of the Senior Manager, Business Diversity to perform the following activities:~~

~~1. Inform and communicate the Authority's contracting procedures and specific contracting opportunities by planning and participating in business development training seminars and community outreach activities for the purpose of informing potential contractors of available business opportunities and programs.~~

~~2. Assist in identifying problems confronting DBEs in performing Authority contracts and work diligently to arrive at acceptable solutions.~~

~~3. Facilitate the receipt of timely progress payments to DBEs for work completed, following such request for payment.~~

~~4. Encourage DBE attendance at pre-bid/pre-proposal meetings.~~

5. ~~Certify and monitor the eligibility of DBEs and joint venture DBEs named by the prime contractors who are making proposals on a particular project in accordance with the criteria set by the USDOT under 49 CFR Part 26.~~

6. ~~Coordinate with other Authority departments to review contract bonding and insurance requirements for adjustments, as may be appropriate based on a risk assessment, in order to facilitate DBE participation, to the extent allowed by law.~~

7. ~~Maintain a system of records and reports documenting:~~

   a. ~~specific efforts made to identify and award contracts to DBEs;~~
   b. ~~specific awards made to DBEs; and~~
   c. ~~all contract advertising prepared in accordance with procedures established by the Authority.~~

8. ~~The Authority will provide data about its DBE Policy and Program to the USDOT as directed by the USDOT OA.~~

9. ~~For all USDOT-assisted contracts, in accordance with 49 CFR Part 26.11(2), the Authority will create and maintain a bidders list consisting of all firms bidding prime contracts. For every firm submitting a bid, the following information must be included:~~

   a. ~~Firm name;~~
   b. ~~Firm address;~~
   c. ~~Firm's status as a DBE or non-DBE;~~
   d. ~~The age of the firm; and~~
   e. ~~The annual gross receipts of the firm.~~

   ~~For all firms bidding as prime contractors, the above information will be obtained from the Authority's eProcurement or via the firm's audited financial statement submitted with their bid or proposal. For DBEs, the information will be obtained from their application and financial information submitted for certification. DBEs are not required to submit their financial information to prime contractors.~~

B. ~~The Authority, as a whole, will utilize the following race neutral means to maximize outreach for DBE participation:~~

1. ~~Arrange solicitation times for presentation of bids and pre-bid meetings that facilitate DBE and other small firm participation;~~

2. ~~Ensure availability of the FLUCP DBE directory through electronic means to the widest universe of potential prime contractors;~~

3. ~~Utilize the Authority's on-line eProcurement Portal to announce procurement opportunities;~~

4. ~~Transmit notices of outreach activities via e-mail and other on-line services; and~~

~~5. Recognize contractors and consultants who exceed DBE utilization on contracts.~~

~~C. 49 CFR Section 26.39 requires DBE programs to include an element to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation on USDOT-assisted contracts. To foster small business participation on projects funded in whole or in part by the USDOT, the Small Business Enterprise (SBE) size category is established to support the objectives of 49 CFR Section 26.39 for businesses smaller than the SBA size standards set forth in 13 CFR Part 121.~~

~~1. In order to participate as an SBE, the firm must be certified as a "Small Business," "Small Local Business Enterprise", or "Small Business Enterprise" by one of the following Authority-approved certifying agencies:~~

~~a. City of Tampa~~
~~b. Hillsborough County~~
~~c. Pinellas County~~
~~d. City of St. Petersburg~~

~~The average annual gross receipts cap for SBE eligibility of the above Authority approved agencies do not exceed \$8 million, which is less than the size cap for DBE business size standards contained in 13 CFR Part 121. If at any time an agency's size standard exceeds \$8 million, the Authority reserves the right to reject the SBE certification from that agency.~~

~~2. A business not certified by one of the Authority approved certifying agencies listed in this section, but whose average annual gross receipts over the past three fiscal years does not exceed \$8 million, may submit an affidavit of eligibility for approval on a "project by project" basis during the solicitation or bid submittal. DBE firms and Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business firms whose average annual gross receipts do not exceed \$8 million are encouraged to participate as a SBE by submitting an affidavit of eligibility.~~

~~3. To facilitate participation by SBE firms, the Authority may utilize the following strategies:~~

~~a. Small Business Enterprise Sheltered Market. USDOT-funded contracts with an estimated contract award amount of less than \$5 million will be evaluated to be set aside on a race-neutral basis for competition by SBE firms only. When appropriate, bids, proposals, and quotations will only be accepted for such projects from businesses certified or approved to participate as an SBE.~~

~~b. Small Business Enterprise Subcontract Goals. USDOT funded contracts with subcontracting opportunities that do not have a DBE goal will be evaluated for a SBE subcontract goals. A SBE subcontract goal will be established utilizing the procedures for setting a DBE subcontract goal set forth in Section 5.3 based on the availability of small businesses. A prime contractor will be required to specify in its bid or proposal the SBE firm(s) that will be used to meet the subcontract goal. A bid or proposal that fails to meet the SBE subcontract goal may be considered non-responsive.~~

~~c.~~ ~~The Authority will~~ signs with a ~~monitor prime contractors' performance of SBE subcontracting commitments after the award of the contract and apply the procedure related to DBE~~ subcontractor): ~~terminations set forth in Section 7.4 (B) to termination of SBE subcontractors.~~

~~d.~~ The contractor, sub recipient or ~~The Authority will track and report to FAA participation by SBE firms on USDOT-funded contracts.~~

~~D. In addition to the SBE strategies to enhance small business participation, the Authority's Development Committee will review all capital projects for unbundling opportunities to facilitate competition by small businesses to participate as prime contractors. For each capital project selected for inclusion in the annual capital budget, the Project Director will evaluate the project for unbundling using the Project Management Plan (PMP). At a minimum, the following will be reviewed and considered:~~

~~a. Whether the project takes place in more than one location;~~
~~b. The size and complexity of the project;~~
~~c. The similarity of the work involved;~~
~~d. The types of work involved;~~
~~e. Difficulty in segmenting the project;~~
~~f. Public safety and convenience;~~
~~g. Additional costs associated with segmentation;~~
~~h. Risk to the Authority in dividing the project;~~
~~i. Time constraints of the project; and~~
~~j. Constraints in staffing in managing multiple projects.~~

~~Section 4.5 Program Compliance~~

~~The Senior Manager, Business Diversity is responsible for reviewing and approving DBE~~ subcontractor ~~opportunities identified for all construction, architectural and engineering contracts, and all management and professional services contracts. Such opportunities will be identified as soon as the project scope is developed. In addition, the Senior Manager, Business Diversity is responsible for monitoring the performance and actual utilization of DBEs as proposed at the time bids/proposals are opened, as well as throughout the term of the contract. In the event of termination, if a DBE is unable to perform the work, the Senior Manager, Business Diversity will ensure that the contractor makes a good faith effort to replace the DBE subcontractor with a qualified DBE who is also certified with the Authority.~~

~~Section 4.6 Banks and Financial Institutions Owned and Controlled by Minorities~~

~~49 CFR Section 26.27 requires recipients to thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. 49 CFR Section 26.27 also requires recipients to encourage prime contractors to use such institutions. The Authority has made an investigation in an effort to locate minority owned banks or financial institutions in the Tampa Bay metropolitan area. The investigation revealed that there is one minority owned bank located in the Tampa Bay area: Central Bank. In addition, the Tampa Bay Black Business Investment Corporation~~

~~provides financial services and technical assistance in the development and expansion of African American owned businesses. The Authority will make reasonable efforts to use these institutions and encourage prime contractors to use such institutions. Information on these institutions will be available to the public through the Authority's Senior Manager, Business Diversity.~~

~~Section 4.7 Disadvantaged Business Enterprise Directory~~

~~A. The FLUCP DBE directory, containing a current listing of all FLUCP certified DBEs, is available for use by prospective contractors in identifying DBEs with skills particular to their contracting and business needs. The FLUCP DBE directory, copies of the Authority's DBE Policy and Program, DBE UCP Application and PNW forms are posted on the Authority's website at www.TampaAirport.com for download.~~

~~B. The FLUCP DBE directory will be updated on a daily basis and will include the following information on FLUCP certified DBE firms:~~

~~1. Company Name;~~
~~2. NAICS Code of Company;~~
~~3. Name of DBE;~~
~~4. Address of DBE;~~
~~5. Work Phone Number;~~
~~6. E-mail Address;~~
~~7. DBE Certification Status; and~~
~~8. Services, products and materials supplied.~~

~~Section 4.8 eProcurement Portal~~

~~A. The Authority's eProcurement Portal is used by the Authority to obtain bids and proposals for competitive solicitations and to collect data on potential suppliers to enhance the Authority's contracting efforts. Companies are able to register on the Portal an interest in bidding or proposing on Authority contracts as suppliers, prime contractors, and/or subcontractors. Companies registered in the Portal have the opportunity to receive automatic bid and proposal notices via email on all competitive Authority procurements. The Business Diversity Department as well as the Procurement Department will encourage all potential contractors, suppliers or vendors, including DBEs and SBEs, to register in the Authority's Portal to facilitate greater supplier diversity. The link to the Portal is posted on the Authority's website at www.TampaAirport.com.~~

~~B. All entries in the Portal are performed by the registering supplier and can be updated as often as necessary depending on company's need. The Authority does not enter or update company information in the Portal.~~

~~Section 4.9 Project Monitoring~~

~~A. The Authority will use 49 CFR Part 26 to enforce the requirements of the Authority's DBE Policy and Program. In addition, the Authority will utilize any and all available federal, state, and local laws if the Authority's DBE Policy and Program participants fail to comply with 49 CFR Part 26 or this policy and program. The Authority has not identified that over-concentration exists in the~~

~~types of work that DBEs perform, however, the Senior Manager, Business Diversity will monitor all USDOT funded contracts to ensure that there is not an overconcentration of DBEs in certain areas of work. Should an over concentration occur, the Authority will submit a recommended solution to the concerned USDOT operating administration for its approval in accordance with 49 CFR Part 26.33.~~

~~B. Authority staff will monitor project inspection reports to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) on all USDOT funded contracts is actually performed by the DBEs to which the work was committed. The Senior Manager, Business Diversity will perform random contract performance records inspections; monitor work sites; review monthly progress payments from the prime contractor; and analyze project closeout documents to ensure that DBE participation is accurately credited toward overall or contract goals. A written certification will document that compliance requirements have been met by all program participants.~~

~~C. Authority staff will collect information from prime contractors on the payments to all subcontractors at major project milestones and/or at project closeout.~~

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

~~E. The Authority may 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 5 – DBE PROJECT OPPORTUNITIES~~

~~The purpose of the DBE Policy and Program is to identify opportunities for ready, willing, and able DBEs to participate on all USDOT-assisted contracts. In accordance with 49 CFR Part 26.45, the Authority will establish a triennial overall goal for DBE participation. This overall goal will be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on USDOT-assisted contracts procured by the Authority ("relative availability of DBEs") over the three-year period.~~

~~Section 5.1 Triennial Review~~

~~A. On a triennial basis, the Senior Manager, Business Diversity will review the Authority's five-year Capital Improvement Program and estimate the level of DBE participation on USDOT assisted projects to be bid or proposed during the upcoming three fiscal years based on the relative availability of DBEs in the Authority's market. Estimated levels of participation will be set forth as a goal, representing a percentage of the total cost of USDOT assisted projects in accordance with the methodology set forth in 49 CFR Part 26.45. A description of the methodology used to calculate the overall goal for USDOT-assisted contracts and the data the Authority relied on can~~

~~be found in Attachment 1 to this policy and program. This Attachment will be updated every three years and submitted to FAA without further amendment to this policy and program.~~

~~B. DBE goals on USDOT-assisted contracts will be set by utilizing the FLUCP DBE directory, bidder's lists, and other data, as applicable. The maximum feasible portion of the overall goal will be met by using race-neutral means of facilitating DBE participation. After race-neutral measures are utilized, race-conscious means (contract goals) will be utilized to achieve the remaining DBE participation of the DBE goal.~~

~~C. If DBE goals as shown on the Authority's Uniform Report of DBE Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Authority will document the following items regarding the DBE program in good faith:~~

~~1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;~~

~~2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the Authority to meet fully the goal for the new fiscal year; and~~

~~3. Retain analysis and corrective actions records for three years and make it available to the FAA for review upon request.~~

~~Section 5.2 Race-Neutral Means~~

~~The Authority will meet the maximum feasible portion of its overall goal by using the race-neutral means described in Section 4.4 to facilitate DBE participation.~~

~~Section 5.3 Contract Goals~~

~~A. The Authority will use contract goals to meet any portion of the overall goal that is not met by using race-neutral means. Further, contract goals will be established so they will cumulatively result in meeting any portion of the overall goal that is not accomplished through the use of race-neutral means.~~

~~B. To estimate contract goals, the Senior Manager, Business Diversity, in conjunction with the appropriate department, will review proposed contracts in order to identify opportunities for participation by certified DBEs on proposed contracts for construction, engineering, architecture, and professional and management services. The level of participation will be determined on the basis of DBE participation on previous projects, the type of work involved, and the availability of certified DBEs for the work of the particular project. The procedure for determining such participation will be as follows:~~

~~1. At 90 percent design review or during the development of an RFP/RFQ, the Senior Manager, Business Diversity will meet with project staff to review the proposed scope of work for the project and identify potential areas of subcontracting.~~

~~2. Once the final scope of work has been determined, the scope will be submitted to the Senior Manager, Business Diversity with a detailed assessment of all subcontracting opportunities including suggestions for participation by DBEs on the project.~~

~~C. The Authority will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Authority may not establish a contract goal on every contract, and the size of contract goals will be adapted to the circumstances of each such contract, such as the location of the work and the availability of DBEs to perform the particular type of work.~~

~~D. The Authority will express its contract goals as a percentage of the total dollar amount of a USDOT-assisted contract.~~

~~Section 5.4 Reporting~~

~~All documentation required by the Federal Agencies concerning proposed DBE goals or actual DBE participation accomplishments on construction, engineering, architectural and professional services contracts will be transmitted to the respective Federal Agencies by the Senior Manager, Business Diversity on an annual basis on USDOT Uniform Report of DBE Awards or Commitments and Payments, and other reports as requested.~~

~~SECTION 6 – PROCEDURES TO ENSURE GOOD FAITH EFFORTS~~

~~Section 6.1 Bid/Proposal Information~~

~~A. On all contracts for which contract goals have been established, the Authority will inform all competitors that they will be required to submit documentation to the Authority as part of their bid or proposal indicating either that the bidder or proposer has obtained enough DBE participation to meet the goal or that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. Pertinent information regarding skills and services of certified DBEs will be available to prime contractors but will, in no way, relieve contractors of their responsibility to use any and all sources of information available to them in locating certified DBEs. Failure of a contractor to submit all of the DBE information stated below as part of their bid or proposal may render the bid or proposal non-responsive:~~

~~1. The names and addresses of certified DBE firms that will participate in the contract;~~

~~a. 2. A description of the work each named certified DBE firm 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;~~

~~3. The dollar amount of participation by each named certified DBE firm;~~

~~4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;~~

~~5. Written confirmation from each listed DBE firm that is participating in the contract in the kind and amount of work provided in the prime contractor's commitment;~~

~~6. If the contract goal is not met, evidence of good faith efforts (see Section 6.2). 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~~

~~7. A copy of each named DBE's certification letter from the FLUCP certifying member.~~

~~B. To be considered responsive to the DBE requirements, firms proposed to participate as DBEs must be certified at the time bids/proposals are opened by the Authority.~~

~~Section 6.2 Good Faith Efforts~~

~~A. In all USDOT-funded contracts with DBE goals, the apparent successful bidder or proposer will satisfy the Authority that it has made good faith efforts to utilize certified DBEs in meeting the established DBE goal. Good faith efforts are those efforts that could reasonably be expected to result in DBE goal attainment by a contractor who aggressively and actively seeks to maintain DBE participation. Efforts that are merely pro forma are not good faith efforts to meet DBE goals. Bidders or proposers will be required to submit the DBE Subcontractor Good Faith Effort Worksheet, contained in Attachment 3, with their bid if they fail to meet the contract goal.~~

~~B. Within 48 hours following receipt of bids or proposals, the Senior Manager, Business Diversity will evaluate the good faith efforts of the apparent successful contractor. In determining whether or not the apparent successful contractor has made such good faith efforts, the Authority will review the DBE Subcontractor Good Faith Effort Worksheet to consider the following factors:~~

~~1. Whether the contractor attended any pre-solicitation or pre-bid/proposal meetings scheduled by the Authority to inform certified DBEs of contracting and subcontracting opportunities.~~

~~2. Whether the contractor advertised at least ten days prior to bid opening or proposal submission in newspapers of general circulation, trade associations, and minority-focus media concerning subcontracting opportunities.~~

~~3. Whether the contractor provided written notice by certified mail, first class mail, facsimile, or electronic mail at least ten days prior to bid/proposal opening to a reasonable number of specific certified DBEs that their interest in the contract was being solicited and giving DBEs sufficient time to respond.~~

~~4. Whether the contractor followed up initial solicitations of interest by contacting certified DBEs to determine with certainty whether the certified DBEs were interested.~~

~~5. Whether the contractor selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goals including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.~~

~~6. Whether the contractor provided interested specified DBEs with adequate information about the plans, specifications or requirements of the contract.~~

~~7. Whether the contractor negotiated in good faith with interested certified DBEs, not rejecting certified DBEs as unqualified without sound reasons after a thorough investigation of their capabilities.~~

~~8. Whether the contractor made efforts to assist interested certified DBEs in obtaining bonding, lines of credit, or insurance required by the Authority or contractor.~~

~~9. Whether the contractor effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of certified DBEs.~~

~~10. Whether the scope of work submitted by the contractor to any certified DBE contractor, certified DBE subcontractor, certified DBE sub-subcontractor, certified DBE supplier, certified DBE sub-supplier or certified DBE sub-sub-supplier, and so on, either directly or indirectly, was intended to achieve, in whole or in part, the specified DBE participation.~~

~~11. Whether the replies or quotes from certified DBEs in response to scopes of work submitted to them by contractors, either directly or indirectly, were fair and responsive.~~

~~12. Whether the contractor fairly represented the DBE quotations in the formulation of the contractor's bid as shown on the contractor's bid tabulation or other work documents to support the contractor's bid.~~

~~13. Whether all other bidders or proposers achieved the DBE goal but the apparent low bidder or proposer did not.~~

~~B. Bidders or proposers who do not meet the DBE contract goal may alternately satisfy the good faith efforts requirement by documenting their efforts to do so. 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. On a finding by the Authority that the bidder or proposer did not meet the DBE goal or demonstrate a good faith effort to do so, are entitled, at their option, to administrative reconsideration.~~

~~C. Any contractor who meets the DBE goal will be deemed to have made the necessary good faith efforts without the need for further proof. Failure to meet these goals may be grounds for refusing to award the contract to the contractor if, upon investigation by the Authority, such~~

~~investigation shows that the contractor failed to make a good faith effort to meet the goal, or that the failure was due to discrimination.~~

~~D. The Authority will require bidders or proposers to submit documents that show bidders or proposers obtained enough DBE participation to meet the DBE goal. Failure to provide such information may render the bid or proposal non-responsive. However, the Authority reserves the right to require such additional and supplemental information solely for the purpose of clarifying the DBE information submitted. The individual responsible for making initial good faith effort determinations for the Authority will be the Senior Manager, Business Diversity.~~

~~Section 6.3 Reconsideration of Lack of Good Faith Efforts~~

~~A. Within five days of being informed by the Senior Manager, Business Diversity that a bidder or proposer is not responsive because it has not documented sufficient good faith efforts, the bidder or proposer may request administrative reconsideration. The bidder or proposer must make this request in writing to the following Reconsideration Official:~~

~~Vice President of Procurement~~
~~Hillsborough County Aviation Authority~~
~~Tampa International Airport~~
~~P. O. Box 22287~~
~~Tampa, Florida 33622-2287~~
~~Email: vpofprocurement@tampaairport.com~~

~~B. The Reconsideration Official will assign a Director of Procurement or other senior Procurement official not responsible for the particular solicitation to conduct the administrative reconsideration. The Reconsideration Official will not have played any role in the original determination that a bidder or proposer did not document sufficient good faith efforts.~~

~~C. As part of the reconsideration, the bidder or proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the DBE goal or made adequate good faith efforts to do so. The bidder or proposer will have the opportunity to meet the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts. The Reconsideration Official will send the bidder or proposer a written decision on reconsideration, explaining the basis for finding that the bidder or proposer did or did not meet the DBE goal or make adequate good faith efforts. In the event a bidder or proposer protests the decision of the Reconsideration Official, the bidder or proposer must submit a formal bid protest of the decision in accordance with the Authority's Policy P512, Procurement Protests which is available on the Authority's website. The result of the reconsideration process is not administratively appealable to the USDOT.~~

~~**SECTION 7 – CONTRACTOR COMPLIANCE REQUIREMENTS**~~

~~Section~~ shall~~7.1 Required Contract Provisions~~

~~A. Contractor's Duty to Comply with Governmental Regulations. In all USDOT-assisted contracts, the contract signed by the contractor and each subcontract the prime contractor signs with a subcontractor must assure the Authority that:~~

~~The contractor, sub-recipient or sub-contractor will~~ 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~~Part~~ 26 in the award and administration of USDOT-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~~Authority~~ deems appropriate, which may include, but is not limited to:

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

ADMINISTRATIVE REQUIREMENTS

~~B.~~

Section 26.21 DBE Program Updates

The Authority is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds $250,000 in FAA funds in a federal fiscal year.

The Authority is not eligible to receive USDOT financial assistance unless USDOT has approved this DBE program and the Authority is in compliance with the DBE program and 49 CFR part 26. The Authority will continue to carry out this program until all funds from USDOT financial assistance have been expended. The Authority does not have to submit regular updates of the DBE program document to the FAA, as long as it remains in compliance with the DBE program and 49 CFR part 26. However, significant changes in the program, including those required by regulatory updates, will be submitted to the FAA~~Payment Mechanism.~~ .

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the Authority:

Business Opportunity Programs Manager
Tampa International Airport
P.O. Box 22287
Tampa, Florida 33622
(813) 554-1450
BusinessOpportunity@TampaAirport.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Authority complies with all provisions of 49 CFR part 26. The DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) to assist in the administration of the program. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by USDOT.

2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with various departments to set overall tri-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 DBE-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the Authority 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 USDOT-assisted contracts to make use of these institutions. There are currently no certified DBE Financial Institutions in Florida.

Section 26.29 Prompt Payment Mechanisms

The Authority requires that all subcontractors performing work on USDOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant Federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR part~~Part~~ 26, §26.29, the Authority established the following contract clause implementing this requirement and requires prime ~~all~~ contractors to~~must~~ pay ~~their~~ subcontractors for satisfactory performance of their contracts no later than~~. Subcontractors who have submitted invoices for work already performed must be paid within~~ 10 ~~calendar~~ days from the prime ~~of being paid by the Authority. In addition to promptly paying all subcontractors within 10 calendar days following receipt of payment, contractors must also release their retainage to those sub-contractors who have submitted an invoice for completed work accepted by the contractor and the Authority within 10 calendar days of the~~ contractor's receipt of each payment from the Authority~~retainage~~.

~~C. Prompt Payment Clause. The following prompt payment clause is required in each USDOT-assisted prime contract and the prime contractor will require all subcontractors to have this clause in their subcontracts:~~

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from the receipt of each payment the prime contractor receives from the Authority. The prime contractor agrees further to release retainage payments to each subcontractor within 10 calendar 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 Authority. This clause applies to both DBE and non-DBE subcontractors.

Any exception to this prompt payment provision will only be for good cause with prior written notice to the Authority. On USDOT-assisted contracts, these prompt payment and prompt payment of retainage requirements apply to all sub-contractors on the prime contract, DBE and non-DBE.

The Authority ensures prompt~~D. Retainage. The following clause is required in each USDOT-assisted prime contract~~ and full payment~~the prime contractor will require all subcontractors to have this clause in their subcontracts:~~

~~The Owner will pay to the Contractor 95%~~ of ~~all Applications for Payment submitted by Contractor. The Applications for Payment will represent the actual value, based on the Contract amount, of the Work satisfactorily performed on the Schedule of Values, less the aggregate of all previous payments, and will reflect a~~ retainage ~~of [*insert retainage percentage not to exceed 10%*] of the total amount payable for Work satisfactorily completed to date. Upon written request~~ from the prime contractor ~~Contractor, retainage may be released to the Contractor, in the sole discretion of the Owner, for the Work or designated portions thereof upon reaching Substantial Completion, as defined in Section 9.07, Substantial Completion. Any amounts that are the subject of a good-faith dispute, the subject of a claim brought pursuant to F.S. § 255.05, or are otherwise the subject of a claim or demand, will not be released. Retainage will not be withheld on design and construction administration fees, if any.~~

~~The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 10 days after the Contractor has received a partial payment. The Contractor is required to fully pay retainage~~ to the subcontractor within 10 days after the subcontractor's~~subcontractor's~~ work is satisfactorily completed. Pursuant to 49 CFR part 26, § 26.29, the Authority has selected the following method to comply with this requirement:~~A subcontractor's work is satisfactorily completed when (1) all the tasks called for in the subcontract have been accomplished and documented as required by the Owner, (2) the Work or a designated portion of the Work which the subcontractor worked on has~~

~~reached Substantial Completion (incremental acceptance) and (3) no good-faith disputes or claims involving the subcontractor have manifested.~~

(Option 3) The Authority will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 10 days after the Authority's payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, the Authority includes the applicable clause (Option 3) from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim, and thirty (30) days will be revised to reflect Authority's 10-day payment requirement.

Prompt Payment Monitoring for DBEs and Non-DBEs: The Authority clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the Authority undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR part 26.

The Authority requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Authority's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Authority or USDOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

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

- If the affected subcontractor is not comfortable contacting the prime contractor directly regarding payment or unable to resolve payment discrepancies with the prime and the subcontractor should contact the DBELO to initiate a complaint.

- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Authority to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

~~Notwithstanding the foregoing, at the Owner's sole option, when at least 95% of the Work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the Contract value and the cost of the remaining Work to be done. Subject to Fla. Stat. Section 255.078 (if applicable), the Owner may retain an amount not less than twice the Contract value or estimated cost, whichever is greater, of the Work remaining to be done. Upon written request from the Contractor, the remainder (if any) may be released to the Contractor.~~

~~Notwithstanding the foregoing, at the Contractor's option, the Contractor may request that the Owner deposit the retainage into an escrow account. The Owner's deposit of retainage into an escrow account is subject to the following conditions:~~

~~a. The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.~~

~~b. The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.~~

~~c. The Contractor shall enter into an escrow agreement satisfactory to the Owner.~~

~~d. The Contractor shall obtain the written consent of the surety to such agreement.~~

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

~~Section 7.2 Sanctions for Non-Compliance~~

~~A.~~ In the event of the contractor's non-compliance with the Authority's DBE Policy and Program or failure to meet the prescribed DBE goal set forth in a contract, or to establish a good faith effort to do so, the Authority, after due process, will impose such contract sanctions as the Authority, the FAA or both may determine to be appropriate, including but not limited to:

1. Withholding of partial or full payments to the contractor under the contract until the contractor complies; and/or

2. Assessing sanctions; and/or

3. Liquidated damages; and/or

4. Cancellation, termination or suspension of the contract in whole or in part; and/or

5. Suspension or debarment of contractor from eligibility to contract with the Authority in the future or to receive bid packages or Request for Proposal (RFP)/Request for Qualifications (RFQ) packages, pursuant to the Authority's Policy P414, Suspension/Debarment of Contractors.

The Authority will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The Authority is a certifying member of the Florida Unified Certification Program (FLUCP). A link to the directory may be found at (https://www.fdot.gov/BusinessGrowth).

The UCP will maintain a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
  1. Physical location
  2. NAICS code(s)
  3. Work descriptions

4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 Over-Concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

The Authority has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

The Authority implements and carries out appropriate mechanisms to ensure compliance with 49 CFR part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE Policy and Program.

The Authority actively monitors attainment toward overall goals by 49 CFR part 26, §26.53(g).

Monitoring Contracts and Work Sites

The Authority reviews contracting records and engages in active monitoring of worksites 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, and such work is counted according to the requirements of 49 CFR part 26, §26.55. Worksite monitoring for counting and commercially useful function review is performed by the DBELO or staff designated by the DBELO. The monitoring of worksites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by the DBELO or staff designated by the DBELO. The Authority will require prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. The Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Additional DBE monitoring and enforcement mechanisms are contained in Attachment 5 to this DBE Policy and Program.

Section 26.39 Fostering Small Business Participation

The Authority has created a small business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 9 to this DBE Policy and Program. The program elements will be actively implemented to foster small business participation. The Authority acknowledges that implementation of the small business element is required for it to be considered by USDOT as implementing its DBE Program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-Asides or Quotas

The Authority does not use DBE-conscious quotas or set-asides in any way in the administration of this DBE Policy and Program.

Section 26.45 Overall Goals

The Authority will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding USDOT-funded prime contracts the cumulative total value of which exceeds $250,000 in USDOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with 49 CFR part 26, §26.45(f), the Authority will submit its overall three-year DBE goal to the FAA by August 1 of the year in which the goal is due, as required by the schedule established by the FAA.

The DBE goals will be established in accordance with the two-step process as specified in 49 CFR part 26, §26.45. If the Authority does not anticipate awarding prime contracts the cumulative total value of which exceeds $250,000 in USDOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Policy and Program will remain in effect, and the Authority will seek to fulfill the objectives outlined in 49 CFR part 26, §26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Authority will use the FLUCP directory information and Census Bureau Data as a method to determine the base figure. The Authority understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR part 26, §26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the base figure percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of social and economic disadvantage. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry into past competitiveness of DBEs on contracts. Any disparity study utilized must provide a detailed capacity analysis, including the methodology used. The Authority will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the Authority will provide for consultation and publication. This includes consultation with general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, and the efforts by the Authority to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Authority is required to submit the goal methodology to the operating administration for review pursuant to 49 CFR part 26, §26.45(f). The goal submission will document the consultation process in which the Authority engaged. Notwithstanding 49 CFR part 26, §26.45(f)(4), the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the Authority will publish a notice announcing the proposed overall goal before submission to the FAA on August 1. The notice will be posted on the Airport's official internet website and may be posted in other sources (e.g., trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the Airport's official internet website.

The overall three-year DBE goal submission to the FAA will include any information and comments received, who provided the comment, and how the Authority considered and responded to any comments and information received before finalizing the goal.

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

Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

The Authority understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Authority for calculating goals is inadequate, the FAA may, after consulting with the Authority, adjust the overall goal or require that the goal be adjusted by the Authority. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the USDOT operating administration will be guided by the goal setting principles and best practices identified by the USDOT in guidance issued pursuant to 49 CFR part 26, §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this DBE Policy and Program and may be updated upon approval by the Board of Directors, without amendment to this DBE Policy and Program.

Section 26.47 Failure to Meet Overall Goals

The Authority cannot be penalized or treated by the USDOT as being in noncompliance with 49 CFR part 26, because DBE participation falls short of an overall goal, unless the Authority fails to administer its DBE Program in good faith.

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

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

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met; and
3. Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated~~7.3 Counting~~ DBE-Neutral and DBE-Conscious Participation~~ toward Goals~~

~~A.~~ The Authority will meet the maximum feasible portion of its overall goal by using DBE-neutral means of facilitating~~count~~ DBE participation. DBE-neutral 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.

DBE-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 ~~toward overall and contract goals as~~ provided in 49 CFR part~~Part~~ 26, §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing

bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring availability of the FLUCP DBE directory 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 DBE-neutral and DBE-conscious participation can be found in Attachment 4 to this program.

Contract Goals

If the approved projection under 49 CFR part 26, §26.51(c) estimates that the entire overall goal for a given year can be met through DBE-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

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

Contract goals will be expressed as a percentage of the total amount of a USDOT-assisted contract.

~~.55.~~

Section 26.53 Good Faith Efforts Procedures in Situations Where There Are Contract Goals

Demonstration of Good Faith Efforts (Pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to 49 CFR part 26.

The DBELO or designee is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The Authority will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.~~count only the value of the work actually performed by the DBE toward DBE goals on a contract in accordance with the following:~~

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

1. Award of the contract will be conditioned on meeting the requirements of paragraphs 2 and 3;
2. All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph 3:~~1. One hundred percent of that portion of a construction contract, or other contract not covered by 49 CFR Part 26.55(a)(2), that is performed by the DBE's own forces, including the cost of supplies and materials purchased or equipment leased by the DBE, except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.~~

~~2. One hundred percent of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the Authority determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.~~

~~a. One hundred percent of the value~~

   a. The names and addresses of DBE firms that will participate in the contract;
   b. A description of the work that each DBE will perform. 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;
   c. The dollar amount of the participation of each DBE firm participating;

d. Written documentation of the bidder/offeror's commitment to use a ~~subcontracted by one~~ DBE subcontractor whose participation it submits to meet a contract goal in the form of ~~to another~~ DBE Assurance and Participation, Letter of Intent and DBE Subcontractor Good Faith Effort form (Attachment 6); and

e. Written confirmation in the form of a letter of intent (Attachment 6) for each listed ~~subcontractor. Work that a DBE subcontracts to a non-~~DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each~~does not count toward~~ DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of 49 CFR part 26, §26.53(c)(1) in the form of Form 3: DBE Regular Dealer/Distributor Affirmation Form (Attachment 7).~~goals.~~

~~b. A portion of the total dollar value of the contract performed by a DBE as a participant in a joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.~~

~~B. Expenditures by a DBE contractor will count toward DBE goals only if the DBE is performing a commercially useful function on that contract. The following factors are considered in determining commercially useful function:~~

~~1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors.~~

~~2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Authority will examine similar transactions, particularly those in which DBEs do not participate.~~

~~3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice for the type of work involved, the Authority will presume that it is not performing a commercially useful function.~~

~~4. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Authority may determine that the~~

~~firm is performing a commercially useful function given the type of work involved and normal industry practices.~~

~~5. The Authority's decisions on commercially useful function matters are subject to review by the concerned OA, but are not administratively appealable to USDOT.~~

~~C. For example, the following factors are used in determining whether a DBE trucking company is performing a commercially useful function:~~

~~1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.~~

~~2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.~~

~~3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.~~

~~4. The DBE may lease trucks from another DBE firm, including from an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.~~

~~5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If the Authority chooses this approach, the Authority must obtain written consent from FAA.~~

~~6. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.~~

~~7. For purposes of 49 CFR Part 26.55, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.~~

~~D. Expenditures with certified DBEs for materials or supplies will be counted toward DBE goals as provided in the following:~~

~~1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the~~

~~materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.~~

~~2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.~~

~~E. A regular dealer is a firm who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.~~

~~1. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.~~

~~2. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.~~

~~3. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.~~

~~4. With respect to materials or supplies purchased from a certified DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the Authority determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.~~

~~F. If the Authority determines if there is an opportunity for a benefit to the Authority to directly purchase equipment, materials and/or supplies required in a project directly from the supplier (Owner Direct Purchase or ODP), expenditures with certified DBEs will be reported to the Senior Manager, Business Diversity in accordance with Standard Procedure S410.19. The Authority will count the value of equipment, materials and/or supplies purchased directly from a certified DBE under the ODP program toward the overall goal in accordance with Sections D and E of this section.~~

~~G. If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, Subpart D at the time a bid or proposal is submitted, the Authority will not count the firm's participation toward any DBE goals, except as provided in 49 CFR Part 26.87(i).~~

~~H. The Authority will not count toward the Authority's overall USDOT-funded DBE goal the dollar value of work performed under a contract with a firm after it has ceased to be certified.~~

~~l. The Authority will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or its overall goal until the amount being counted toward the goal has been paid to the DBE.~~

~~Section~~ If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix ~~7.4 Procedure Relating to DBE Terminations~~

f. A of Part 26 including any amendments thereto) in the form of DBE Assurance and Participation, Letter of Intent and DBE Subcontractor Good Faith Effort (Attachment 6). 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.

3. The bidder/offeror will be required to present the information stipulated in 49 CFR part 26, §26.53.

   a. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by 49 CFR part 26, §26.53(b)(2) before the final selection for the contract is made by the Authority. 49 CFR part 26, §26.53(b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in 49 CFR part 26, §26.53(e).

For each DBE listed as a regular dealer or distributor the Authority will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in 49 CFR part 26, §26.55(e)(2)(iv)(~~.~~ A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the Authority will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which the Authority solicits proposals to design and build a project with minimal project details at time of letting, the Authority may set a DBE goal that proposers must meet by submitting an Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in 49 CFR part 26, §26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the Authority will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The Authority and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

The Authority will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the Authority will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts Determinations

Within five (5) days of being informed by the Authority that it is not responsive because it has not met the DBE goal or documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Vice President of Procurement
Hillsborough County Aviation Authority
Tampa International Airport
P.O. Box 22287
Tampa, Florida 33622-2287
E-mail: vpofprocurement@tampaairport.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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The reconsideration official will send 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 USDOT.

Good Faith Efforts Procedural Requirements (Post-solicitation/award)

The Authority will include in each prime contract the contract clause required by 49 CFR part 26, §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the Authority deems appropriate if the prime contractor fails to comply with the requirements of this section.

The Authority will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the~~is prohibited from terminating a DBE~~ subcontractor and all lower tier subcontractors perform in accordance with the provisions of 49 CFR part 26~~without prior written approval of the Authority. This includes, but is~~ .

The Authority will require that a prime contractor not terminate a DBE or any portion of its work listed in response to 49 CFR part 26, §26.53(b)(2) (or an approved substitute DBE firm per 49 CFR part 26, §26.53(g)) without prior written consent, unless the Authority causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to when ~~, instances in which~~ a prime contractor seeks to perform work originally designed~~designated~~ for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Authority will include in each ~~B. Should the~~ prime contract a provision stating that:

1. The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Authority's written consent as provided in 49 CFR part 26, §26.53(f); and
2. Unless the Authority's consent is provided, under 49 CFR part 26, §26.53(f),~~desire to terminate a DBE subcontractor,~~ the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The ~~give written notice to the DBE subcontractor, with a copy to the Authority, of its intent to request to terminate and/or substitute the DBE, and the reason for the request. The prime contractor must give the DBE at least five days to respond to the notice and advise the~~ Authority ~~and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five~~ may~~days. The Authority in turn will~~ provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

~~DBE firm.~~ Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of 49 CFR part 26, §26.53(f)(3), good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;

2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness~~unworthiness~~;

5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts~~Parts~~ 180, 215~~,~~ and 1200 or applicable state~~ or local~~ law;

6. The Authority has determined~~confirmed~~ that the listed DBE subcontractor is not a responsible contractor;

7. The listed DBE subcontractor voluntarily withdraws from the project and provides the Authority written notice of its withdrawal;

8. The listed DBE is ineligible to receive DBE credit for the type of work required;

9~~8~~. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and

10

~~9. The listed DBE materially breach its contract;~~

~~10. The listed DBE materially fails to comply with Authority policies or procedures;~~

~~11~~. Other documented good cause that the Authority determines compels~~compelled~~ the termination of the DBE subcontractor.

Before transmitting to the Authority, ~~Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain~~ the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Authority sent concurrently, of its intent to request to terminate and the reason for the proposed request~~contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award~~.

The prime contractor's written notice must give the DBE five (5) days to respond, advising the Authority and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the Authority should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five (5) days.

~~C. If the Authority approves a prime contractor's request to terminate a DBE subcontractor, the prime contractor will be required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts will be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Authority established for the procurement.~~

~~D.~~ In addition to post-award terminations, the~~these~~ provisions of this section apply to pre-award deletions or changes to DBEs ~~of~~ or their listed work ~~substitutions for DBE firms~~ put forward by offerors in negotiated procurements.

~~E. The Authority will include in each prime contract a provision for appropriate administrative remedies that it will invoke if the prime contractor fails to comply with the requirements of this section. Failure to comply with the procedure relating to DBE terminations or changes during the contract will be a material violation of the contract and will invoke the sanctions for non-compliance specified in this policy and program.~~

~~Section 7.5 Contractor's Bids or Proposal Documents~~

~~A. All invitations to bid, RFPs, or RFQs for construction, engineering, architectural, professional services and management contracts, prepared by contractors and/or subcontractors on USDOT-funded Authority projects, having established goals for DBE participation, will comply with the DBE requirements of 49 CFR Part 26 and the Authority's DBE Policy and Program.~~

~~B. All invitations to bid, RFPs, or RFQs will state that "Failure to comply with the requirements for participation by DBEs in the performance of the contract may disqualify the contractor for award of the contract." Any precondition applicable to the project will be fully explained in the bid specifications, RFP, or RFQ.~~

~~SECTION 8 – REMOVAL OF CERTIFICATION~~

~~Section~~ 8.1 Third Party Complaints

~~A. Any third party may challenge whether the owner of a firm certified by the Authority or seeking certification, which is presumed to be socially and economically disadvantaged, actually is disadvantaged. The Authority may also make such a challenge. The USDOT also may challenge a certification made by the Authority. However, the disadvantaged status of an individual who has a current certification under Section 8(a) of the Small Business Act is not subject to challenge.~~

~~B. The confidentiality of the complainant will be protected in accordance with 49 CFR Part 26.109(b). The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. However, the Authority is not required to accept a general allegation that a firm is ineligible or an anonymous complaint.~~

~~Section 8.2 Authority-Initiated Proceedings~~

~~Based on notification by the firm of a change in its circumstances or other information that comes to the Authority's attention, the Authority may determine that there is reasonable cause to believe that a currently certified firm is ineligible. In accordance with 49 CFR Part 26.87, at that time, the Authority will provide written notice to the firm that the Authority proposes to remove the DBE certification of the firm, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.~~
~~Section 8.3 USDOT Directive to Initiate Proceeding~~

~~A. If the concerned OA determines that information in the Authority's certification records, or other information available to the concerned OA, provides reasonable cause to believe that an Authority-certified firm does not meet the eligibility criteria of 49 CFR Part 26, the concerned OA may direct the Authority to initiate a proceeding to remove the firm's certification.~~

~~B. In so doing, the concerned OA must provide the Authority and the firm a notice setting forth the reasons of the directive, including any relevant documentation or other information. The Authority will immediately commence and prosecute a proceeding to remove eligibility as provided in 49 CFR Part 26.87(b).~~

~~Section 8.4 Hearing~~

~~If a firm is notified that the Authority, either by third party challenge, Authority determination, or USDOT determination, intends to remove the firm's DBE eligibility, the Authority will give the firm an opportunity for an informal hearing in accordance with 49 CFR Part 26.87(d). The Authority will maintain a complete record of the hearing and provide a copy to the firm of the hearing if the firm requests. The Authority will charge the firm for the cost of copying the record of the hearing.~~

~~Section 8.5 Separation of Functions~~

~~A. The Authority's decision in a proceeding to remove a firm's eligibility will be made by an office and personnel who did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.~~

~~1. The Authority's method of implementing this requirement is a part of its DBE Policy and Program.~~

~~2. The decision maker in such circumstances will be an individual who is knowledgeable about the certification requirements of the Authority's DBE Policy and Program and 49 CFR Part 26 and not subject to direction from the Senior Manager, Business Diversity or DBELO.~~

~~B. The Reconsideration Official is the individual responsible for making the administratively final determination to remove a firm's DBE eligibility for the Authority who is:~~

~~Vice President of Procurement~~
~~Hillsborough County Aviation Authority~~
~~Tampa International Airport~~
~~P. O. Box 22287~~
~~Tampa, Florida 33622-2287~~
~~Email: vpofprocurement@tampaairport.com~~

~~Section~~ ~~8.6 Grounds for Decision~~

~~A. The Authority will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the Authority at the time of its certification of the firm. The Authority may base such a decision only on one or more of the following:~~

~~1. Changes in the firm's circumstances since the certification of the firm by the Authority that render the firm unable to meet the eligibility standards of 49 CFR Part 26;~~

~~2. Information or evidence not reasonably available to the Authority at the time the firm was certified;~~

~~3. Information relevant to eligibility that was concealed or misrepresented by the firm;~~

~~4. A change in the certification standards or requirements of the USDOT since the Authority certified the firm;~~

~~5. A documented finding that the Authority's determination to certify the firm was clearly erroneous;~~

~~6. Failure to submit a No Change Declaration and supporting documents within 30 days from certification anniversary date;~~

~~7. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a) (2)); or~~

~~8. The firm has been suspended or debarred by the Authority or other agency for conduct related to a DBE Program. The notice required by Section 8.7 Notice of the Authority's Decision must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in Section 8.4.~~

~~Section~~ When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in 49 CFR part 26, §26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the Authority requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. The Authority shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in 49 CFR part 26, §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in 49 CFR part 26, §26.87(j).

For FAA-funded projects only, firms that exceed the business size standard in 49 CFR part 26, §26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

CERTIFICATION STANDARDS

~~8.7 Notice of the Authority's Decision~~

~~Following the Authority's decision, the Authority will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the Authority's decision and of the availability of an appeal to the USDOT under 49 CFR Part 26.89 and Section 9. The Authority will send copies of the notice to the complainant in an ineligibility complaint or to the concerned OA that had directed the Authority to initiate the proceeding.~~

~~Section 8.8 Status of Firm during Proceedings~~

~~Subject to Section 9, a firm remains an eligible certified DBE during the pendency of the Authority's proceedings to remove its eligibility. The firm does not become ineligible until the issuance of the notice provided for in 49 CFR Part 26.87(g).~~

~~Section 8.9 Effects of Removal of Eligibility~~

~~When the Authority removes a firm's eligibility, the Authority will take the following action:~~

~~A. If a prime contractor has made a commitment to use the ineligible firm, or the Authority has made a commitment to using a certified DBE prime contractor, but a subcontract or contract has not been executed at the time the Authority issues removal of certification notice provided for in 49 CFR Part 26.87(g), the ineligible firm will not count toward the contract goal or overall goal. The Authority will direct the prime contractor to meet the contract goal with an eligible certified DBE firm or demonstrate to the Authority that it has made a good faith effort to do so.~~

~~B. If a prime contractor has executed a subcontract with the firm before the Authority has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the Authority has let a prime contract to the certified DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Authority has issued the notice of its ineligibility will not count toward the Authority's overall goal but may count toward the contract goal.~~

~~C. If the certified DBE's ineligibility is caused solely by having exceeded the size standard during the performance of the contract, the Authority may continue to count its participation on that contract toward overall and contract goals.~~

~~SECTION 9 – SUSPENSION OF CERTIFICATION~~

~~A. The Authority will immediately suspend a DBE firm's certification without adhering to the requirements in 49 CFR §26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.~~

~~B. The Authority may immediately suspend a DBE firm's certification without adhering to the requirements in 49 CFR §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by 49 CFR §26.83(i) or fails to timely file a no change declaration under 49 CFR §26.83(j).~~

~~C. In determining the adequacy of the evidence to issue a suspension under paragraph A and B of this section, the Authority shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.~~

~~D. When a firm is suspended pursuant to paragraph A or B of this section, the Authority shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.~~

~~E. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR §26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.~~

~~F. While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward the Authority's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.~~

~~G. Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the Authority information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the Authority will either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR §26.87. If the Authority commences a decertification proceeding, the suspension remains in effect during the proceeding.~~

~~H. The decision to immediately suspend a DBE under paragraph A or B of this section is not appealable to the USDOT. The failure of the Authority to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph G of this section, is appealable to the USDOT under 49 CFR §26.89, as a constructive decertification.~~

~~**SECTION 10 – USDOT CERTIFICATION APPEAL PROCEDURES AND ENFORCEMENT ACTIONS**~~

~~Section 10.1 Actions Firms May Take Following Denial or Removal of~~
Section 26.61 – 26.73 Certification Process

The Authority is a certifying member of the Florida Unified Certification Program (FLUCP). The Authority will use the certification standards of subpart D of 49 CFR part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Authority makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the FLUCP agreement (see link in Attachment 10). Any procedures included here are highlights only.

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

Hillsborough County Aviation Authority
DBE/ACDBE Certification
Tampa International Airport
P. O. Box 22287
Tampa, FL 33622
Telephone: (813) 554-1450
Email: BusinessOpportunity@Tampaairport.com
Application portal: https://tampaairport.gob2g.com/

Section 26.83 Procedures for Certification Decisions

The Authority will take all required steps outlined in 49 CFR part 26, §26.83(c) in determining whether a DBE firm meets the standards of subpart D of 49 CFR part 26. In the case of a denial of certification, the Authority will make an entry in the Department of Civil Rights' Online Portal within five (5) days of the denial. The Authority will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part (*i.e.*, NAICS code removal), through the procedures of 49 CFR part 26, §26.87.

The Authority will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or any functionally equivalent requirement. However, a certification review of a certified DBE firm may be conducted at a reasonable time and/or at a regular interval of three years. The certification review may, at the Authority's discretion, include a new onsite review. The Authority may also make an unannounced visit to the DBE's offices and/or job site. The Authority may also rely on another certifier's report of its onsite review of the DBE.

Notices of Change and Annual Declarations of Eligibility

The FLUCP requires all DBEs to submit every year, on the anniversary of the date in which they were certified in their Jurisdiction of Original Certification (JOC), a new Declaration of Eligibility (DOE) along with documentation verifying the gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the FLUCP will generally consider the following documents to be safe harbors, provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. The FLUCP will treat non-compliance, whether full or partial, as a 49 CFR part 26, §26.109(c) failure to cooperate.

The FLUCP also requires all DBEs to provide written notice of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR part 26, or of any material changes in the information provided with DBEs' applications for certification. DBEs must provide the FLUCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice~~A.~~

~~Following a decision by the Senior Manager, Business Diversity to deny certification or by the Reconsideration Official to remove a firm's certification, the firm may appeal the denial or removal of certification to the USDOT under 49 CFR Part 26.89. Firms that have been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated socially and economically disadvantaged group, or for whose owner the presumption of disadvantage has been rebutted, must provide a letter stating the name and address of any other recipient which currently certified the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of appeal, or before which an application for certification or a removal of eligibility is pending. Failure of the appellant to provide any information requested by the USDOT may be deemed a failure to cooperate in accordance with 49 CFR Part 26.109(c). This appeal must be submitted to the USDOT within 90 days of the date of the Reconsideration Official's final decision to deny or remove certification in accordance with 49 CFR Part 26.89 to:~~

~~U. S. Department of Transportation~~
~~Departmental Office of Civil Rights~~
~~External Civil Rights Programs Division (S-33)~~
~~1200 New Jersey Ave., S.E.~~

~~Washington, DC 20590~~

~~B. The USDOT makes its decision on the appeal based solely on the entire administrative record. The USDOT does not make a de novo review of the matter and does not conduct a hearing.~~

~~Section 10.2~~ .

Section 26.85 Interstate Certification

The Authority complies with certification procedures requirements of subpart E of 49 CFR part 26 in all matters related to interstate certification. Any procedures included here are highlights only. Detailed interstate certification procedures are enumerated in the full FLUCP agreement.

When a DBE certified in any UCP applies to the Authority for certification, the Authority will accept the DBE's certification from its JOC. To obtain interstate certification, the DBE must provide:

1. A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it);
2. An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
3. A new DOE.

Within ten (10) business days of receiving the documents required above, the Authority will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this section and the Authority confirms the DBE's certification, the Authority will certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

The Authority will require DBEs to provide an annual DOE with documentation of gross receipts, under 49 CFR part 26, §26.83(j), on the anniversary date of the DBE's original certification by its JOC.

If the Authority has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), the Authority will notify the other UCPs in which the DBE is certified (other jurisdictions) via email. The notice will explain the Authority's reasons for believing the DBE's certification should be removed.

If the Authority receives such a notification from another UCP, within 30 days of receiving the notice the Authority will email the UCP contemplating decertification a concurrence or non-concurrence with the proposed action. The Authority's responses may provide written arguments and evidence and may propose additional reasons to remove certification. The

Authority understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If the Authority finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. The Authority will email a copy of its decision to the other jurisdictions within three (3) business days.

Section 26.86 Decision Letters

When the Authority denies a firm's request for certification or decertifies the firm, the Authority will provide the firm a Notice of Decision (NOD) explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. The Authority will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at https://www.transportation.gov/dbeappeal. If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date the decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. The Authority will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

If an applicant appeals this decision to the USDOT pursuant to 49 CFR part 26, §26.89 below, such an appeal does not extend the waiting period.

Section 26.87 Decertification

The Authority complies with all decertification procedures requirements of subpart E of 49 CFR part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Florida UCP agreement.

The Authority's first step in any decertification proceeding will be to email a Notice of Intent (NOI) to the DBE. The NOI will clearly and succinctly state each reason for the proposed action and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both. The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE Program, the Authority will issue a NOD decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

The Authority has determined that the Vice President of Procurement will serve as the hearing officer for informal hearings provided pursuant to 49 CFR part 26, §26.87(c)-(e). The hearing is an informal proceeding with rules set by the hearing officer. The Vice President of Procurement does not report to any staff member involved in the original decision.

The Authority will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of 49 CFR part 26, §26.87(g). The Authority will make an entry in DOCR's Online Portal within 5 days of the action, entering the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until the Authority issues a NOD.

Once a firm is decertified the Authority will take appropriate actions related to contract and overall goals and DBE participation as described in 49 CFR part 26, §26.87(j).

Section 26.88 Summary Suspension of Certification

The Authority will follow procedures consistent with 49 CFR part 26, §26.88 regarding the suspension of a DBE's certification.

The Authority will mandatorily and immediately suspend a DBE's certification when the Authority has clear and credible evidence of the DBE's or its Socially and Economically Disadvantaged Owner's (SEDO) involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

The Authority may elect to suspend a DBE's certification when the Authority has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that 49 CFR part 26 §26.83(j) requires.

The Authority will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which the Authority relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the Authority should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, the Authority will follow all procedures required under 49 CFR part 26, §26.88(d)(2)-(5).

Section 26.89 Appeals to the Department

Applicants and decertified firms may appeal adverse NODs to the USDOT. An ineligibility complainant or applicable Operating Administration (the latter by the terms of 49 CFR part 26,

§26.87(c)) may appeal to the USDOT if the Authority does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

Appellants must email appeals as directed in the Authority's NOD within 45 days of the date of NOD. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what 49 CFR part 26 provisions the Authority misapplied.

The UCP will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for its USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that the denial of its application was erroneous).

Section 26.91 Actions ~~the Authority May Take~~ Following USDOT Certification Appeal Decisions

If the Authority is a certifier~~A. If the Authority is the recipient from whose action an appeal under 49 CFR Part 26.89 is taken, the decision by USDOT is binding. It is not binding on other recipients.~~

~~B. If the Authority is the recipient~~ to which a USDOT determination under 49 CFR part~~Part~~ 26, §26.89 is applicable, it~~the Authority must take the following action:~~

~~1. If the USDOT determines that the Authority erroneously certified a firm, the Authority must remove the firm's eligibility on receipt of the determination, without further proceedings on its part. Effective on the date of the Authority's receipt of the USDOT's determination, the consequences of a removal of eligibility set forth in 49 CFR Part 26.87(i) take effect.~~

~~2. If the USDOT determines that the Authority erroneously failed to find reasonable cause to remove the firm's eligibility, the Authority must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR Part 26.87.~~

~~3. If the USDOT determines that the Authority erroneously declined to certify or removed the eligibility of the firm, the Authority~~ will take ~~certify the firm, effective on the date of its receipt of the written notice of USDOT's determination.~~

~~4. If the USDOT determines that the Authority erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the Authority will take appropriate corrective action as determined by the USDOT.~~

~~5. If the USDOT affirms the Authority's determination, no further action is necessary. Where USDOT has upheld the Authority's denial of certification or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR Part 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed the Authority's denial of certification or removal of eligibility from a firm, other recipients must take the USDOT action into account~~

~~in~~ any and all required~~certification~~ action(s) pursuant to 49 CFR part 26, §26.91 ~~involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision~~.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Authority

The Authority understands that if it fails to comply with any requirement of this part, the Authority may be subject to formal enforcement action under 49 CFR part 26, §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. §47106(d), §47111(d), and §47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

The Authority understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of 49 CFR part 26, §26.101 because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional
~~Section 10.3~~ .

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. §47106(d), §47111(d), and §47122, and regulations implementing them.

The provisions of 49 CFR part 26, §26.103(b) and this section apply to enforcement actions in FAA programs. The language in the provision states:

(2) ***Compliance Reviews.*** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable~~that Apply~~ to ~~Firms~~ Participating Firms~~in the DBE Program~~

~~A.~~ If a firm that does not meet the eligibility criteria of subpart D of this part~~49 CFR Part 26~~ attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200~~Parts 180 and 1200. The Authority may suspend doing any further business with the company, pursuant to the Authority's Policy P414, Suspension/Debarment of Contractors~~.

If~~B. For~~ a firm ~~that~~, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part~~49 CFR Part 26~~, the USDOT may initiate suspension or debarment proceedings against it~~the firm~~ under 2 CFR parts~~Parts~~ 180 and 1200~~. The Authority may suspend doing any further business with the company, pursuant to the Authority's Policy P414, Suspension/Debarment of Contractors~~.

~~C.~~ In a suspension or debarment proceeding brought under 49 CFR part 26, §26.107(a)~~paragraph A~~ or (b),~~B of this section,~~ the concerned operating administration~~OA~~ may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

~~D.~~ The USDOT may take enforcement action under 49 CFR part~~Part~~ 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part~~Part~~ 31.

~~E.~~ The USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §1001 or other applicable provisions of law, any person who makes~~make~~ a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the USDOT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The USDOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to USDOT in any certification appeal proceeding under 49 CFR part 26, §26.89 or to any other state to which the individual's firm has applied for certification under 49 CFR part 26, §26.85.

All participants in the USDOT'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 USDOT 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 Authority, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Authority understands that it is in noncompliance with 49 CFR part 26 if it violates this prohibition.

ATTACHMENTS

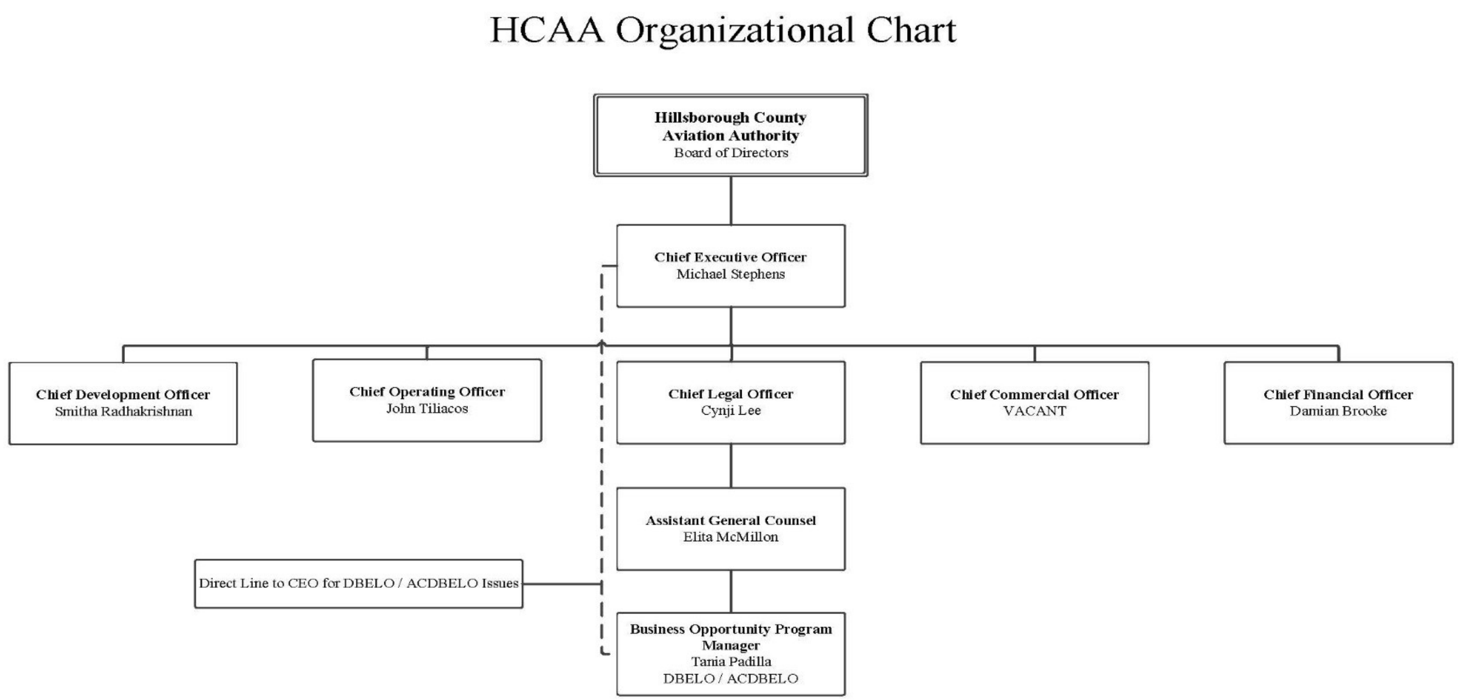
Attachment 1 Regulations: Link to 49 CFR part 26 (eCFR)
Attachment 2 Organizational Chart
Attachment 3 Bidders List Collection Form
Attachment 4 Overall Goal Methodology
Attachment 5 DBE Monitoring and Enforcement Mechanisms
Attachment 6 DBE Assurance and Participation, Letter of Intent and Worksheet
Attachment 7 Form 3: DBE Regular Dealer/Distributor Affirmation Form
Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
Attachment 9 Small Business Element
Attachment 10 FLUCP Memorandum of Understanding

Attachment 1 - Regulations: Link to 49 CFR part 26 (eCFR)

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, part 26. The following is a link to the Electronic Code of Federal Regulations:

https://www.ecfr.gov/current/title-49/subtitle-A/part-26

Attachment 2 - Organizational Chart



Attachment 3 - Bidders List Collection Form

Bidder’s List Form

This form is required to be submitted with the bid/proposal. Failure to submit this form may result in a finding of non-responsiveness. The form must include information for every sub bidder/supplier that provided a verbal or written quote to the bidder for this project.

Prime Contractor (Bidder) Name	Bidder Address/ Phone #	DBE or Non-DBE Status	NAICS Code Applicable to the Work Bid for this Contract	Age of Firm	Annual Gross Receipts
		☐ DBE ☐ Non-DBE		☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $1 million ☐ $1-3 million ☐ $3-6 million ☐ $6-10 million ☐ Greater than $10 million
		☐ DBE ☐ Non-DBE		☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $1 million ☐ $1-3 million ☐ $3-6 million ☐ $6-10 million ☐ Greater than $10 million
		☐ DBE ☐ Non-DBE		☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $1 million ☐ $1-3 million ☐ $3-6 million ☐ $6-10 million ☐ Greater than $10 million

(Use additional pages as necessary)

Attachment 4 – Link to Overall Goal Methodology

The overall goal methodology for FY 2026 – 2028 can be found at the following link:

https://www.tampaairport.com/business/business-opportunities/policies-and-programs

Attachment 5 - DBE Monitoring and Enforcement Mechanisms

The Authority has available the following remedy to enforce the DBE requirements contained in its contracts: breach of contract action, pursuant to the default and termination terms of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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; and
3) Prosecution pursuant to 18 USC § 1001.

The Authority will implement various mechanisms to monitor program participants to ensure they comply with 49 CFR part 26, including, but not limited to the following:

1) The Authority will monitor the compliance and good faith efforts of contractors in meeting the requirements of this Program. The Authority will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Program, including, but not limited to records of expenditures, subcontracts between contractor and the DBE participant(s), and other records pertaining to the DBE participation plan. Without limiting the requirements of the agreement, the Authority reserves the right to review and approve all subcontracts utilized by the contractor for the achievement of its goals.

2) The Authority will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished by observation (e.g., site visits) and monthly reporting of payments to the Authority's online compliance system. In carrying out these monitoring and enforcement activities, the Authority will analyze its organization structure and staff resources needed to ensure compliance with these DBE regulations and recommend additional staff as needed.

3) The Authority will insert paragraph 1 above into its federally funded contracts.

Attachment 6 – DBE ASSURANCE AND PARTICIPATION, LETTER OF INTENT AND WORKSHEET

~~Gary W. Harrod, Chairman~~
~~Hillsborough County Aviation Authority~~

~~Date~~

SECTION 00417 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCE AND PARTICIPATION

TITLE OF PROJECT AUTHORITY PROJECT NO. ________________________ AIRPORT

Select one of the following responses. Failure to complete this section may be grounds for rejection of the Bid.

☐ **Yes – Bidder Assures Prescribed DBE Goal.**

The Bidder assures that it will meet the DBE requirements stated in this Solicitation and the Hillsborough County Aviation Authority's DBE Policy and Program, and will subcontract with DBE firms certified under the Florida Unified Certification Program (FLUCP) in an amount equal to at least ____% of the total dollar amount of the awarded Contract. The DBE goal stated above is the minimum prescribed goal; however, additional DBE participation is encouraged. The Bidder is required to submit a Letter of Intent for each DBE that will participate in the awarded Contract at the time the Bid is submitted to the Owner. The actual DBE contractual commitment will be the total amount of participation shown on the validated Letter(s) of Intent submitted by the Bidder. It is understood that the amounts shown on the Letter(s) of Intent are estimates and that actual amounts paid to DBE subcontractors may vary depending on the final adjustments of the estimated quantities; however, the Bidder’s DBE contractual commitment can only be modified by an amendment or change order.

OR

☐ **No - Bidder Does NOT Assure Prescribed DBE Goal.**

The Bidder is unable to assure DBE participation of the prescribed goal of ____%, but will subcontract with DBE firms in an amount equal to at least ____% of the total dollar amount of the awarded Contract. The Bidder must submit with its Bid a completed DBE Subcontractor Good Faith Effort Worksheet documenting Bidder’s good faith efforts to meet the prescribed goal. In determining whether or not the Bidder made sufficient good faith efforts to meet the goal, the Owner will consider the factors listed in the DBE Policy and Program. The Bidder is required to submit a Letter of Intent for each DBE that will participate in the awarded Contract at the time the Bid is submitted to the Owner. The actual DBE contractual commitment will be the total amount of participation shown on the validated Letter(s) of Intent submitted by the Bidder. It is understood that the amounts shown on the Letter(s) of Intent are estimates and that actual amounts paid to DBE subcontractors may vary depending on the final adjustments of the estimated quantities; however, the Bidder’s DBE contractual commitment can only be modified by an amendment or change order.

By: Name of Bidder: ______________________________ Date: ______________________

Bidder Representative's Name:

______________________________ Title: ______________________________

____

(Bidder Representative's Signature)

TITLE OF PROJECT AUTHORITY PROJECT NO. ____________ ________________________________ AIRPORT

Letter of Intent Instructions Checklist

Follow this checklist when completing the Letter of Intent.

- ☐ A separate Letter of Intent has been completed for each proposed DBE firm.
- ☐ The Bidder's name, address, telephone number, FAX number and e-mail address has been entered.
- ☐ The proposed DBE firm's name, address, telephone number, FAX number and e-mail address has been entered.
- ☐ The description of the work to be performed by the DBE firm has been entered.
- ☐ The amount of the proposed DBE firm's subcontract has been entered.
- ☐ The Bidder has completed and signed the Commitment section.
- ☐ The DBE firm has completed and signed the Affirmation section.
- ☐ A copy of the DBE firm's certification letter under the Florida Unified Certification Program (FLUCP) is attached to the Letter of Intent. DBE firm should be certified in the NAICS code and/or description of work that Bidder has indicated as scope of services DBE will perform under the Contract.

TITLE OF PROJECT
AUTHORITY PROJECT NO. __________
______________________________ AIRPORT

Letter of Intent

NOTE: Failure to complete this section may be grounds for rejection of the Bid.

Name of Bidder's firm: ______________________________
Address: ______________________________
City: ____________________ State: ______________ Zip Code: ______________
Phone: ____________________ Fax number: ______________
E-mail: ______________________________

Name of DBE firm: ______________________________
Address: ______________________________
City: ____________________ State: ______________ Zip Code: ______________
Phone: ____________________ Fax number: ______________
E-mail: ______________________________

Description of work to be performed by DBE firm: ______________________________

Amount of the DBE firm's subcontract $ ______________

Commitment

The Bidder is committed to utilizing the above-named DBE firm for the work described above.

By: Name of Bidder: ______________________________ Date: ______________

Bidder Representative's Name:
______________________________ Title: ______________________________

____
(Bidder's Representative Signature)

Affirmation

By: Name of DBE Firm: ______________________________ Date: ______________

DBE Representative's Name:
______________________________ Title: ______________________________

____
(DBE Representative's Signature)

SECTION 00417 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCE AND PARTICIPATION

PROJECT TITLE
AUTHORITY PROJECT NO. __________
__________________________ AIRPORT

Letter of Intent

If the Bidder does not receive award of the Contract, any and all representations in this Letter of Intent will be null and void.

NOTE: The cost of materials and/or supplies obtained and/or equipment leased by the DBE to perform the subcontract work (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) may be included in the subcontract amount. In addition, the Owner will count 100% of the expenditures on materials and/or supplies obtained from a DBE manufacturer and 60% of the expenditures on materials and/or supplies obtained from a DBE regular dealer toward the DBE contract goal. The Owner will count 40% of the expenditures on distributors. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Owner will count only the amount of fees or commissions charged for assistance with the procurement of the material or supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site.

PROJECT TITLE
AUTHORITY PROJECT NO. _________
_________________________ AIRPORT

DBE Subcontractor Good Faith Effort Worksheet

In determining if the Bidder made sufficient good faith efforts to meet the prescribed DBE Contract Goal, the Owner will consider the factors listed in the DBE Policy and Program. If the Bidder is unable to meet the prescribed DBE contract goal, this Worksheet must be completed and submitted with the Bid. Failure to complete this Worksheet may be grounds for rejection of the Bid. Bidders must attach to this form sufficient documentation to enable the Owner to verify the information provided. Failure to complete this Worksheet form or provide sufficient supporting documentation may be grounds for rejection of the Bid. The Owner reserves the right to conduct further investigation concerning the Good Faith Efforts indicated and reserves the right to find that the Bidder did not make a Good Faith Effort even if this form is filled out. The Bidder may, although it is not required, document any other good faith efforts on separate sheets.

NOTE: Thorough written backup documentation in addition to this worksheet is required to substantiate the good faith effort.

Name of DBE Firm	**Date of contact with DBE Firm**	**How DBE Firm contacted**	**Follow-Up (Telephone calls, e-mails, other contact)**	**Response to Follow-Up**	**Did DBE Firm submit a quote?**		**Explain**
					Yes	**No**	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	
					☐	☐	

PROJECT TITLE
AUTHORITY PROJECT NO. ________
________________ AIRPORT

The following is a list of types of actions which the Owner will consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. Other examples of good faith efforts are found in 49 CFR, part 26. The Owner reserves the right to conduct further investigation concerning the Good Faith Efforts indicated and reserves the right to find that the Bidder did not make a Good Faith Effort even if this form is filled out. The Bidder may, although it is not required, document any other good faith efforts on separate sheets.

Good Faith Efforts: (Check Yes or No for each statement below)	**Yes**	**No**	**Explain**
1. Advertised in newspapers of general circulation, websites, trade associations, and small business-focused media concerning subcontracting opportunities prior to the Bid Due Date.	☐	☐	
2. Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the prescribed DBE goal including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.	☐	☐	
3. Provided interested DBEs with adequate information about the plans, specifications or requirements of the Contract.	☐	☐	
4. Negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons after a thorough investigation of their capabilities.	☐	☐	
5. Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Owner or the Bidder.	☐	☐	
6. Effectively used the services of available community organizations; trade or business groups; local, state and federal business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.	☐	☐	
7. Submitted a scope of work to DBE subcontractors, DBE sub-subcontractors, DBE suppliers, DBE sub-suppliers and so on, either directly or indirectly, with the intention of achieving, in whole or in part, the specified DBE goal.	☐	☐	
8. Fairly represented the DBE quotations in the formulation of its Bid.	☐	☐	
9. Conducted Outreach Meeting(s)	☐	☐	

END OF SECTION

Attachment 7 - Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024

U.S. Department of Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.
DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characterisics (aka specialty items)?
☐ YES ☐ NO **(If "YES," Go to Question 2. If "NO" Continue.)**

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO* **(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.**

***If 1.,1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)**

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?
☐ YES ☐ NO[1]

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)

[1] If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility) ? ☐ YES[2] ☐ NO[3]

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ? ☐ YES[2] ☐ NO[3]

[2] If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

[3] If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.
Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.
Printed Name and Signature of Bidder's Authorized Representative:

Attachment 8 - Links to Certification Application Form and Personal Net Worth Statement

The USDOT is in the process of revising the DBE Certification Application Form and Personal Net Worth Statement and will be available when the revisions are completed.

Certification Application and Personal Net Worth Statement:
https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/

B2Gnow Certification Portal:
https://tampaairport.gob2g.com/

Attachment 9 - Small Business Element

I. SMALL BUSINESS ENTERPRISE PROGRAM POLICY

The Hillsborough County Aviation Authority (Authority) is committed to ensuring that small businesses are offered an equitable opportunity to participate in the contracting and procurement process. The Authority has a long history of supporting small businesses, including DBEs, through its DBE Policy and Program for projects that include federal funding. This Small Business Enterprise Program was created as an element of the DBE Policy and Program to provide additional opportunities for small businesses to participate in contracting at airports operated by the Authority.

The Authority's Small Business Enterprise Program, as described herein, applies to certain federally funded contracts and expenditures. The program does not replace the DBE program or otherwise operate as a substitute for the DBE program. It operates as a race-and gender-neutral tool that may assist small businesses, including DBEs, to more fully participate in contracting opportunities at the Airport.

This Small Business Enterprise Program will not be used to discriminate against any company or groups of companies. The Program is designed to include all segments of the business community and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age, disability or geographic location. The Program is designed to create a level playing field on which small businesses can compete fairly.

The Small Business Enterprise Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender-neutral measures in their operations.

II. AUTHORIZATION

In accordance with the regulations governing the USDOT Disadvantaged Business Enterprise (DBE) Program, the Authority is required to set triennial overall DBE goals for contracts that are funded in whole or in part with federal funds. The Authority is obligated to meet the maximum feasible portion of its overall goal through race and gender-neutral means of facilitating DBE participation (49 CFR part 26, § 26.51). In January 2011, 49 CFR part 26 was amended and the following section entitled "Fostering Small Business Participation" was added:

§26.39 Fostering small business participation.

> *(a) Your DBE program must include an 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.*

(b) *This element must be submitted to the appropriate USDOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:*

(1) *Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., $1 million).*

(2) *In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.*

(3) *On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*

(4) *Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*

(5) *To meet the portion of your overall goal you project to meet through DBE-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*

(c) *You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.*

This Small Business Enterprise Program has been developed in compliance with the above stated sections of 49 CFR part 26 and further guidance issued by USDOT in December 2011, which are incorporated herein.

It is the policy of the Authority, that the Airports, their contractors and subcontractors shall not discriminate on the basis of race, color, religion, national origin, or sex in the award and performance of contracts and subcontracts and to remove barriers for small businesses, including businesses owned by minority, women and disadvantaged individuals, to compete for contracts and subcontracts awarded by the Authority.

This Small Business Enterprise Program has been developed in furtherance of these policies.

III. SMALL BUSINESS ENTERPRISE DEFINITION

A Small Business Enterprise (SBE) shall be defined as follows:

1. An SBE, for purposes of this program, is a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121.201) who is at least 51% owned by an

individual who is economically disadvantaged and has been in business for at least one year prior to applying for certification.

The owner(s) having a minimum of 51% of the firm must submit a personal net worth statement demonstrating that their personal net worth does not exceed $2,047,000 excluding the value of their ownership in the applicant firm, their primary residence, and retirement accounts. The rules for evaluating an individual's personal net worth will be consistent with 49 CFR part 26, § 26.68 which may be found at: https://www.ecfr.gov/current/title-49/subtitle-A/part-26/subpart-D/section-26.68.

IV. SMALL BUSINESS ENTERPRISE VERIFICATION

A firm who wishes to participate as an SBE on an Authority project may apply for certification as an SBE. DBE firms who have been recertified under the new certification standards, as set forth in the October 3, 2025, Interim Final Rule (IFR), will be automatically eligible for certification as an SBE.

Firms applying for certification as an SBE must provide all required information and documentation necessary to verify that they meet the definition of a Small Business Enterprise and the personal net worth standard defined in 49 CFR part 26. The SBE application form can be accessed through the Tampa International Airport - Business Opportunity Management System certification portal at https://tampaairport.gob2g.com/. The Authority manages the DBE certification process and will follow the administrative procedures currently in place for the DBE program.

V. SCOPE OF THE PROGRAM

The intent of the Authority's Small Business Enterprise Program is to provide full and fair opportunities for equal participation by small businesses in federally-funded Airport contracting and procurement opportunities.

The Small Business Enterprise Program requires contractors to make good faith efforts to use small businesses in certain contracting and procurement opportunities when a small business goal is set. Good faith efforts will be measured utilizing guidance provided in 49 CFR part 26, Appendix A.

All construction, professional services, goods and services solicitations that include federal funding shall be reviewed by the DBELO to determine if a race-neutral SBE set aside or goal is appropriate for the solicitation. SBE contract goals may be set for a contract when it has been determined that a DBE-conscious contract goal will not be set and that, instead, DBE-neutral measures will be used. An SBE goal may be used as a DBE-neutral measure for contracts that have subcontracting opportunities. SBE goals do not replace DBE goals but merely provide a DBE-neutral method for achieving neutral DBE participation which can be used in concert with other established DBE-neutral measures discussed in 49 CFR part 26, § 26.51 (a) - (c).

A decision to use DBE-neutral goals will be made in accordance with 49 CFR part 26, § 26.51, including a determination that DBE-neutral methods are sufficient to meet the Authority's overall DBE goal. The Authority may determine that an SBE goal is an appropriate DBE-neutral measure to be used for certain contracts. The criteria used to set a DBE-neutral SBE goal shall include small business capacity, small business availability, nature of the contract, past experiences with small business participation with similar contracts, price competitiveness, and subcontracting opportunities.

Procedures for implementation, including good faith efforts requirements, forms and information submitted with bid and reporting procedures shall be consistent with procedures utilized in the Authority's DBE Policy and Program under a DBE-neutral environment.

Good faith efforts to achieve a DBE-neutral goal shall apply only when an SBE goal has been set for a project. Other DBE-neutral methods, including those listed in 49 CFR part 26, §26.51, are not subject to good faith efforts on the part of the bidder.

VI. TRACKING SBE PARTICIPATION

The Authority will monitor and track participation by SBEs in federally-funded projects. Only small businesses that are also certified as DBEs will be counted as DBE-neutral participation, towards the Authority's overall DBE goal. Participation by SBEs who are not certified as DBEs will be tracked separately from DBE participation.

VII. COMPLIANCE PROCEDURES

Monitoring and enforcement procedures applicable to a DBE-neutral environment for this element of the DBE Policy and Program will be implemented as indicated in the Authority's DBE Policy and Program.

VIII. ASSURANCES

The Authority provides the following assurances regarding the development and implementation of the Small Business Enterprise Program described herein:

1. The development of this Small Business Enterprise Program is not prohibited by Florida law.

2. Certified DBEs that meet the size and personal net worth criteria established under the program are presumptively eligible to participate in the Authority's Small Business Enterprise Program.

3. There will be no geographic preferences or limitations imposed on any federally assisted procurement included in the Authority's Small Business Enterprise Program.

4. There will be no limits on the number of contracts awarded to firms participating in the program.

5. The Authority will make every effort to avoid creating barriers to the use of new, emerging, or untried businesses.

6. The Authority's Small Business Enterprise Program is open to small businesses regardless of their location. There will be no local or other geographic preference.

Attachment 10 - FLUCP Memorandum of Understanding

The Florida Memorandum of Understanding can be accessed at:

https://www.tampaairport.com/business/business-opportunities/policies-and-programs