

HILLSBOROUGH COUNTY AVIATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
POLICY AND PROGRAM
FOR PROJECTS FUNDED BY
UNITED STATES DEPARTMENT OF TRANSPORTATION
REVISED ~~SEPTEMBER 1, 2016~~ FEBRUARY 2, 2023



HILLSBOROUGH COUNTY AVIATION AUTHORITY

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- Attachment ~~21~~ – Three-Year Overall Disadvantaged Business Enterprise Goal
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- [Attachment 5 – Florida UCP DBE Directory website link](#)
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HILLSBOROUGH COUNTY AVIATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE POLICY AND PROGRAM

SECTION 1 – POLICY STATEMENT AND OBJECTIVES

The United States Congress 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 in accordance with regulations of the USDOT, 49 CFR Part 26 and as maybe amended from 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, the Authority is required to recognize and certify these DBEs in its construction, architectural, engineering, and professional services contracts. ~~The Authority also will encourage small businesses, services disabled veteran owned small businesses and veteran owned small businesses to participate in all available Authority contracting opportunities. Concession-related contracts will be governed by the Authority's Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program.~~

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 Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Authority's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

3. Ensure that the Authority's DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist in the development of firms so that they can compete successfully in the marketplace outside the DBE program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Assistant General Counsel and Director of Ethics and Business Diversity has been designated as the DBE Liaison Officer. In that capacity, the 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 Department of Transportation.

The Authority has disseminated this policy statement to the Authority Board 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 USDOT-assisted contracts. The distribution was accomplished by posting on www.tampaairport.com/dbe-policies.

Joseph Lopano, Chief Executive Officer

Date

Section 1.1 Disparity Study Update

~~In September 2015, the Authority completed a Disparity Study Update to determine if a significant disparity existed between the availability of ready, willing, and able woman and minority owned business enterprises (W/M/DBE firms) and the utilization of such businesses in the Authority's procurement process. The results of the Disparity Study Update included a statistical analysis and evaluation of the procurement of goods and supplies, construction, professional services, and non-professional services prime contracts and subcontracts awarded to contractors located in the Authority's market area, which the study defined as Hillsborough, Pinellas, Pasco, and Hernando counties. The study found that DBE firms make up approximately 44.8% of the available construction firms in the market area, but received only 11.4% of the federally-funded construction dollars. The Disparity Study Update, as well as other relevant evidence including but not limited to Congressional findings, will be used as the evidentiary basis for the remedial actions in this DBE Policy and Program.~~

Section 1.2 Policy

~~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.~~

Section 1.3 Objectives

~~The Authority's DBE Policy and Program, in accordance with 49 CFR Part 26, seeks to achieve several objectives:~~

- ~~1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;~~
- ~~2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;~~
- ~~3. To ensure that the Authority's DBE program is narrowly tailored in accordance with applicable law;~~
- ~~4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;~~
- ~~5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and~~
- ~~6. To assist in the development of firms so that they can compete successfully in the marketplace outside the DBE program.~~

Section 1.14 Application of 49 CFR Part 26

The recipients of the following types of federal funds are required to comply with 49 CFR Part 26:

- 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, 105 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 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.
- C. Airport funds authorized by 49 U.S.C. 47101, et seq. ~~If a recipient is letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, 49 CFR Part 26 does not apply to the contract. If a recipient is letting a contract in which USDOT financial assistance does not participate, 49 CFR Part 26 does not apply to the contract.~~
- D. Federal aid funds authorized by the Infrastructure Investment and Jobs Act, Pub. L. 117-58. Moving Ahead for Progress in the 21st Century Act (MAP-21).

Section 1.25 USDOT Assistance

- 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 continue to carry out its DBE Policy and Program until all USDOT funds are expended.
- C. Each financial assistance agreement the Authority signs with a USDOT Operating Administration (OA), or a primary recipient, 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 contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Authority shall take all necessary and reasonable steps under 49 CFR 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 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 this approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- D. The Authority will 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.~~
- ~~D. Business and Supplier Portal Directory or Database means a database or directory of registered companies interested in doing business with the Authority as prime contractors, subcontractors, and/or suppliers of goods and services.~~
- ~~E. Business Diversity Manager means an individual who is responsible for administering and managing the DBE Policy and Program on a day-to-day basis; for carrying out technical assistance activities for DBEs; 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.~~
- 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.G. 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.~~
- ~~H. 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. 8:00 a.m. to 5:00 p.m., ET, Monday through Friday, with the exception of Authority holidays.~~
- ~~K.H. 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).~~

- LK. 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.
- ML. 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.
- PM. 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.
- QN. 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.
- SO. 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.
- TP. 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.
- UQ. 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.

~~R.~~ ~~National Institute of Governmental Purchasing, Inc. (NIGP) codes mean a proprietary listing of detailed codes that describe a wide variety of products and services and are nationally recognized and used by government purchasing agents.~~

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

XT. 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.

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

ZV. Operating Administration or OA means any of the following parts of USDOT: FAA, FHWA, and FTA. The “administrator” of an operating administration includes his or her designees.

AAW. 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.

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

CCY. Primary Industry Classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. ~~the Standard Industrial Classification (SIC) code designation that 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/. ~~SIC code designations are described in the SIC Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce, Springfield, VA 22261. NTIS also makes materials available through its web site, www.ntis.gov.~~

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

EEAA. Principal place of business means the business location where the individuals who manage the firm’s day-to-day operations spend most working hours, ~~and where top management’s business~~

~~records are kept.~~ 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.

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

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

~~HHDD.~~ 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.

~~IIEE.~~ Reconsideration Official is an official who may reconsider the Senior Manager, Business Diversity's Manager'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.

~~JJFF.~~ 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.

~~KKGG.~~ 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.

~~MMHH.~~ 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/>

~~NNH.~~ Sheltered Market Set aside 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. ~~firms.~~

~~OOJ.~~ 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.

~~QQKK.~~ 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).

~~RRL.~~ 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.

~~SSMM~~. 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.:

~~1.~~ Any individual whom the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis.

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

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

~~2.b.~~ 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.c.~~ Native Americans, which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

~~4.d.~~ 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 Commonwealth of the~~ Northern Marianas Islands, Samoa, Macao, Fiji, Kiribati, ~~Tuvalu~~, Nauru, Federated States of Micronesia, or Hong Kong;

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

~~6.f.~~ Women; or

~~7.g.~~ 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.

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

VV00. 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.

WWPP. 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.

85. 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 unless:

- 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.

96. 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.

107. 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~~ project 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 ~~must~~ 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/~~NI~~GP code~~s~~, apply a descriptor from ~~a other~~-classification schemes 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/~~NI~~GP code for that type of work. A correct NAICS/~~NI~~GP code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS/~~NI~~GP codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS/~~NI~~GP 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/~~NI~~GP codes 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/~~NI~~GP code designation.
 3. If a firm believes that there is not a NAICS/~~NI~~GP 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/~~NI~~GP 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 licensor 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 MM~~) 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~~~~three~~-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~~~~14~~ million, then the firm is considered small if its average gross receipts in the ~~five~~~~three~~-preceding ~~fiscal~~ years were \$~~16.5~~~~14~~ 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~~three fiscal years, in excess of \$~~28.4823-98~~ 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 (~~OOMM~~)(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 (~~2)(db)~~). 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, ~~Pasco~~, 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 ~~Manager (Non-Capital)~~ 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~~~~offices of the firm~~ 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~~~~owners~~ 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;the ownership of stock in the firm, if it is a corporation;~~
 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, ~~and 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 ~~Manager (Non-Capital)~~ 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. ~~If at any time there is a~~

~~change in ownership or control of the firm, the DBE also must submit with the written affidavit a new Application for DBE Certification and PNW.~~

2. ~~No Change Declaration Affidavit for Continuing Eligibility: Every year o~~ On or before the anniversary of the date of the DBE firm's anniversary date of the DBE's certification, the DBE must submit an No Change Declaration Affidavit for Continuing Eligibility along with the firm's ~~and DBE owner's~~ Federal income tax return for the previous year, ~~an up-to-date PNW and a copy of the current business, occupational and professional licenses and certifications meeting the requirements of 49 CFR Part 26.83(j).~~ Failure to submit this ~~declaration affidavit~~ 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 ~~Manager (Non-Capital)~~ 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 26.865. 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 ~~Manager'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 affidavits 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, ~~and PNW~~ and supporting documentation can be completed and submitted on the Authority's website at <https://www.tampaairport.com/business-diversity> or mailed to: ~~must be submitted to:~~

Business Diversity ~~Department Manager (Non-Capital)~~
Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622-2287
Telephone (813) 554-1450

~~or, in person at the Authority's offices located on the third floor of the Main Terminal Building, Tampa International Airport.~~

Section 3.8 Denial of Certification

A firm may appeal a decision by the Senior Manager, Business Diversity ~~Manager (Non-Capital)~~ 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
~~Telephone (202) 366-1930
Alt Phone (800) 532-1169
Fax (202) 366-7228~~

SECTION 4 – PROGRAM STRUCTURE AND RESPONSIBILITIES

Section 4.1 Overall Responsibility for Authority's DBE Program

The Chief Executive Officer (CEO) of the Authority ~~will exercise~~ s 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~~ will be 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 will be~~ the responsibility of the DBELO. The DBELO for the Authority is:

~~Assistant General Counsel and Director of Ethics and Business Diversity~~
~~Administration~~
~~Hillsborough County Aviation Authority~~
~~Tampa International Airport~~
~~P. O. Box 22287~~
~~Tampa, Florida 33622-2287~~
~~Telephone (813) 554-1450~~

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. ~~Key departments with significant procurement opportunities, such as Planning and Development, Maintenance and Information Technology (IT), will assign a business diversity coordinator to facilitate the exchange of information about business~~

~~opportunities for DBE companies with the Authority, plan outreach activities for major procurement activities, and to foster administration of the DBE Policy and Program.~~

Section 4.3 Staff Responsibilities

Administration of the DBE Policy and Program will be the responsibility of the Senior Manager, Business Diversity ~~Manager (Capital)~~. 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 ~~technical assistance activities for DBEs~~ 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 ~~P~~policy and ~~P~~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 ~~Manager (Capital)~~ 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 primes contractors, the above information will be obtained from the Authority's [eProcurement Supplier Portal Directory](#) 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. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;~~
 - ~~3. Provide technical assistance and other project related services;~~

24. Ensure availability of the FLUCP DBE directory through electronic means to the widest universe of potential prime contractors;
35. Utilize the Authority's on-line eProcurement Portal Business and Supplier Portal Directory to announce procurement bid opportunities; ~~and website to post eligible bids, request for proposals (RFPs) and request for qualifications (RFQs) documents for greater convenience to contractors;~~
46. Transmit notices of outreach activities via e-mail and other on-line services; and
57. 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 ~~\$85~~ 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 ~~\$85~~ 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 ~~\$85~~ 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 \$85 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 ~~\$51~~ 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 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 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 will:

- ~~1. Identify opportunities to establish vendor rotation lists of pre-qualified businesses to provide segmented portions of work on a rotating basis for a defined period of time;~~
- ~~2. In multi-year design-build contracts or other large contracts, require bidders to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.~~
- ~~3. 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.

~~E. The Authority has a business development program that is intended to provide Surety Assistance for contractors and subcontractors that are unable to obtain bonding or are unable to increase~~

~~their bonding limit. The Surety Assistance Program provides services to help Small Businesses obtain bid, fidelity, or performance and payment bonds. The Surety Assistance Program services include:~~

- ~~a. One-on-one assistance completing bond application;~~
- ~~b. Workshops and seminars;~~
- ~~c. Technical Assistance;~~
- ~~d. Business Assessments and Strategic Plans; and~~
- ~~e. Referral to resources for credit enhancement and working capital.~~

~~Information regarding the Authority's business development program is made available on the Authority's website at www.TampaAirport.com or through the Business Diversity Manager.~~

Section 4.5 Program Compliance

The ~~Senior Manager,~~ Business Diversity ~~Manager (Capital)~~ 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 ~~Manager~~ 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 ~~Manager~~ 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 are one two~~ minority owned banks located in the Tampa Bay area: ~~Axiom Bank and~~ 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 ~~Manager~~.

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/~~NAICP~~ 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. Small Business Certification Status;~~
- ~~9. Service-Disabled Veteran Owned Small Business Status;~~
- ~~10. Veteran Owned Small Business Status; and~~
- 8.11. Services, products and materials supplied.

Section 4.8 eProcurement Portal~~Business and Supplier Portal Directory~~

- A. The Authority's ~~eProcurement Portal Business and Supplier Portal Directory~~ 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. ~~a database of companies that have registered~~ 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 and Supplier Portal Directory was implemented in response to the 2007 Disparity Study which recommended allowing certified DBEs and woman and minority-owned business enterprises (W/MBEs) to register their interest in doing business with the Authority.~~ The Business Diversity ~~Department Manager~~ as well as the Procurement Department will encourage all potential contractors, suppliers or vendors, including ACDBEs, DBEs and SBEs, and W/MBEs, to register in the Authority's Portal Directory to facilitate greater supplier diversity. ~~The Database is used by the Authority to obtain pricing for goods and services and to collect data on potential suppliers to enhance the Authority's contracting efforts.~~ The link to the Portal Database is posted on the Authority's website at www.TampaAirport.com. ~~Companies registered in the Database have the opportunity to receive automatic bid and proposal notices via email on all competitive Authority procurements.~~
- B. All entries in the Portal Database are performed by the registering supplier and can be updated as often as necessary depending on company's need. ~~Other than verifying ACDBE, DBE, and W/MBE certification related information, T~~he Authority does not enter or update company information in the Portal Database.

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

~~D.E.~~ 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.F.~~ 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 ~~Manager~~ 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 ~~a-Senior Manager, Business Diversity, Manager,~~ 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 Manager 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 Manager 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~~Communication with the United States

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 ~~Manager~~ 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;
 - 2. A description of the work each named certified DBE firm will perform. ~~To~~ To count toward meeting a goal, each DBE firm must be certified in a NAICS/~~NAICP~~ 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, Bid/Proposal Solicitation 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 Manager 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 Bid/Proposal Solicitation 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, ~~Manager (Capital)~~

Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622-2287
Telephone (813) 554-1450
Fax (813) 554-1467

Section 6.3 Reconsideration of Lack of Good Faith Efforts

- A. Within five days of being informed by the Senior Manager, Business Diversity ~~Manager~~ 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 Facilities and Administration~~
Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622-2287
Email: vpofprocurement@tampairport.com Telephone (813) 870-8741

- 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 failed to meet the DBE goal or to 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 ~~in person~~ 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, ~~no later than five days after receipt of the written documentation or meeting, whichever occurs later~~, 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 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 and~~ 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 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 Authority deems appropriate, which may include, but not limited to:

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

- B. Authority Payment Mechanism. In accordance with 49 CFR Part 26.29, all contractors must pay their subcontractors for satisfactory performance of their contracts. Subcontractors who have submitted invoices for work already performed must be paid within 10 calendar days 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 subcontractors 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 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.

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

1. 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 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 work is satisfactorily completed. 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.

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.

ED. 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 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.

Section 7.3 Counting DBE Participation toward Goals

- A. The Authority will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55. The Authority will count only the value of the work actually performed by the DBE toward DBE goals on a contract in accordance with the following:
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 of the work subcontracted by one DBE subcontractor to another DBE subcontractor. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE 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 ~~Manager~~ 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.
- I. 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 7.4 Procedure Relating to DBE Terminations

- A. A prime contractor is prohibited from terminating a DBE subcontractor without prior written approval of the Authority. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
- B. Should the prime contractor desire to terminate a DBE subcontractor, the prime contractor must 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 days. The Authority in turn will provide written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. 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 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 180, 215 and 1200 or applicable state or local law;
 6. The Authority has 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. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 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 compelled the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime

contractor seeks to terminate a DBE it 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.

- 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, these provisions apply to pre-award deletions of or 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 have~~ 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 Manager~~ 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 Facilities and Administration~~

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

Email: vpofprocurement@tampaairport.com Telephone ~~(813) 870-8741~~

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 an ~~an~~ No Change Declaration Affidavit for Continuing Eligibility 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 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 ~~an~~ no change declaration affidavit of no change 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~~~~U.S. Department of Transportation~~ 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 Certification

- A. Following a decision by the ~~Senior Manager~~, Business Diversity ~~Manager~~ 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 Actions the Authority May Take Following USDOT Certification Appeal Decisions

- 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 26.89 is applicable, 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 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 certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision.

Section 10.3 Enforcement Actions that Apply to Firms Participating in the DBE Program

- A. If a firm that does not meet the eligibility criteria of subpart D of 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. The Authority may suspend doing any further business with the company, pursuant to the Authority's Policy P414, Suspension/Debarment of Contractors.
- 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 49 CFR Part 26, the USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR 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 paragraph A or B of this section, the concerned 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 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR 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 make a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

Gary W. Harrod, Robert I. Watkins, Chairman
Hillsborough County Aviation Authority

Date