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**Policy Statement (49 CFR §26.1, 26.23)**

The United States Congress has made a determination that certain classes of businesses described as Disadvantaged Business Enterprises (“DBEs”), have been underutilized because of discrimination. Congress authorized and the U.S. Department of Transportation (“DOT”) has implemented rules to promote utilization of DBEs in projects utilizing federal funding. The Greater Orlando Aviation Authority (the “Authority”) is required to recognize and certify these DBEs in its federally funded projects.

The Authority has established a DBE program in accordance with the DOT regulations issued under 49 CFR Part 26 (“Part 26”). The Authority has received and expects to receive Federal financial assistance from the DOT, and as a condition of receiving this assistance, the Authority has signed assurances that it will comply with Part 26.

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 awarded by the Authority.

In order to implement the Authority’s policy, staff is directed as follows:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and;
- To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of the Office of Small Business Development has been designated as the DBE Liaison Officer. In that capacity, the Director 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 DOT.

This policy shall be disseminated to all the departments of the Authority. The Authority has distributed this statement to the DBE and non-DBE business communities that perform work for the Authority on DOT-assisted contracts through the representative chambers of commerce and technical assistance organizations.

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One Jeff Fuqua Boulevard  
Orlando, FL 32827-4399  
Telephone: 407-825-3144

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

**I. Definitions**

“Affiliation” has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in the 13 CFR Part 21, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or
  - (ii) A third party or parties controls or has the power to control both; or
  - (iii) 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.

“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.

“Alaska Native Corporation (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.).

“Compliance” means: a recipient has correctly implemented the requirements of this part.

“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.

“Contractor” means: one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

“Department or DOT 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).

“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 individuals 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.

“DOT-assisted contract” means: any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

“Executive Director” means: the Executive Director of the Authority or the person or persons designated by the Executive Director to act on his behalf with respect to issues delegated to the Executive Director's authority in this policy.

“Good faith efforts” means: efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

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

“Immediate family member” means: father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

“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.

“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.

“Native Hawaiian” means: any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

“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.

“Noncompliance” means: a recipient has not correctly implemented the requirements of this part.

“Operating Administration or OA” means: any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

“Personal Net Worth” 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.

“North American Industry Classification System” means: the six digit North American Industrial Classification System (NAICS) code designation which best describes the primary business of a firm. The NAICS code designations are described in the North American Industry Classification System Manual. NAICS Manual is 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/naics](http://www.ntis.gov/naics)).

“Primary recipient” means: a recipient, which receives DOT financial assistance and passes some, or all of it on to another recipient.

“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 recipient will determine the principal place of business for DBE program purposes.

“Program” means: any undertaking on a recipient’s part to use DOT financial assistance authorized by the laws to which this part applies.

“Race-conscious measure or program” means: one that is focused specifically on assisting only DBEs, including women-owned DBEs.

“Race-neutral measure or program” means: one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

“Recipient” means: any entity, public or private, to which DOT 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.

“Secretary” means: the Secretary of Transportation or his/her designee.

“Set-aside” means: a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

“Small business administration or SBA” means: the United States Small Business Administration.

“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).

“Socially and economically disadvantaged individual” means: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) “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;
  - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) “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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time, as the SBA designation becomes effective.

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

"You" refers to a recipient unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ). Other terms shall have the meaning as established in 49 CFR Part 26.

## **II. Nondiscrimination. (§26.7)**

The Authority will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Part 26 on the basis of race, color, sex, or national origin.

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

## **III. DBE Program Updates. (§26.21)**

The Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. The Authority will provide to DOT updates representing significant changes in the program.

## **IV. Quotas. (§26.43)**



The Authority does not use quotas in any way in the administration of this DBE program. However, in egregious instances of discrimination, certain set asides as approved by the Federal Aviation Administration and/or the US Department of Transportation that may be used by the Authority to assure that DBE's have equal opportunity to receive and participate in DOT-assisted contracts awarded by the Authority.

**V. Designation of DBE Liaison Officer. (§26.45)**

The Authority has designated the Director of the Office of Small Business Development as the DBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that the Authority complies with all provisions of Part 26. The Director shall have direct, independent access to the Executive Director concerning DBE program matters.

The Director has a staff of three (3) professional employees and one (1) full time administrative assistant assigned to the DBE program on a full-time basis. Any correspondence or questions for the Office of Small Business Development can be directed to:

Director, Office of Small Business Development  
Greater Orlando Aviation Authority  
5850-B Cargo Road Orlando, Florida 32827  
Telephone: 407-825-7171  
Facsimile: 407-825-7173  
mtatom@goaa.org

Duties and responsibilities of the DBE Liaison Officer include the following:

1. Gather and report statistical data and other information as required by DOT.
2. Review third party contracts and purchasing requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements so that DBE goals, both race-neutral and contract specific, are included in solicitations.
6. Monitor results of solicitations containing DBE goals.

7. Analyze the Authority's progress toward goal attainment and identify ways to improve progress.
8. Participate in pre-bid/pre-proposal meetings.
9. Advise the Executive Director on DBE matters and achievement.
10. Participate with legal counsel and project directors to determine contractor compliance with good faith efforts.
11. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plan and participate in DBE training seminars.
13. Certify DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Florida upon its implementation.
14. Provide outreach to DBEs and community organizations to advise them of opportunities.
15. Maintain the Authority's updated directory on certified DBEs.

#### **VI. Federal Financial Assistance Agreement Assurance. (§26.13)**

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

The Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

#### **VII. DBE Financial Institutions**

It is the policy of the Authority to periodically investigate the full extent possible, services offered by financial institutions owned and controlled by socially and

economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. To date we have identified the following such institutions: Banco Popular, Metro Savings Bank, and Union Trust. The Authority will encourage contractors for the Authority to enter into escrow and deposit agreements with those institutions. The Authority will continue to encourage its contractors to use socially and economically disadvantaged owned and controlled banks.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **VIII. Development of a DBE Directory. (§26.31)**

The Authority currently maintains a DBE directory, which is available from the Authority's DBE office and via the Authority's website. The directory is located on the website at [www.orlandoairports.net/small\\_business/index.htm](http://www.orlandoairports.net/small_business/index.htm). The directory lists the firm's name, address, telephone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE by using the most specific NAICS code available to describe each type of work. The Authority's directory is updated monthly in accordance with the requirements contained in the regulations. The Authority is a certifying member with the State of Florida Unified Certification Program (UCP). Access to DBE's under the UCP can be obtained by visiting the website at <http://www.fl.dot.state.us/equalopportunity>.

### **IX. Over Concentration. (§26.33)**

The Authority has not identified over concentration of DBEs such that it would require program provisions to address the over concentration

### **X. Business Development Programs. (§26.35)**

In order to encourage the development of DBEs who are ready, willing and able to bid for and participate in Authority awarded contracts, both as part of and outside of the DBE program, the Authority will participate in the business development program of the Black Business Initiative Fund, the Hispanic Business Initiative Fund, and other such community organizations whose emphasis is on business development. Such business development programs will conform to the guidelines of Appendix "C". Persons interested in participating in the Business Development Program may contact the Authority's Office of Small Business Development.

### **XI. Required Contract Clauses (§§26.13, 26.29)**

#### **A. Contract Assurance**

The Authority will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**B. Prompt Payment**

The Authority will include the following clause in each DOT-assisted prime contract:

If, in any Application for Payment, the contractor requests payment for items of work performed by a subcontractor or materials supplied by a supplier, then the contractor must pay such subcontractor or supplier, within fifteen (15) days following receipt from the Authority, then the Authority may, at its option, following a request from the unpaid subcontractor or supplier, pay such subcontractor or supplier the applicable sums paid the contractor on account of the subcontractor's work or supplier's materials and deduct such sums from any monies due the contractor in the future unless the contractor can furnish information satisfactory to the Authority that the payment should not be made. The contractor must also promptly return any retainage payments to subcontractor within forty-five (45) days after subcontractor's work is substantially completed.

Any delay or postponement of payment from contractors to subcontractors or suppliers may take place only for good cause, with prior written approval of the Authority. The Authority's options in this paragraph are in addition to any other rights set forth in the Contract.

**XII. Monitoring and Enforcement Mechanisms. (§26.37)**

The Authority will require contractors to submit information certifying work performed by, and payment made to DBE subcontractors on each contract. The Authority retains the right to audit a contractor's books and records to determine the accuracy of the information reported. In the event the Authority determines a contractor has failed to comply with the DBE participation submitted by contractor and accepted by the Authority, Authority may require contractor to comply, default contractor pursuant to the Authority's contract provisions, and/or disqualify contractor from consideration for award of future Authority contracts.

The Authority will monitor contracts and work sites to ensure work committed to DBEs is actually performed by the DBE to which the work was committed. The Authority will provide written certification of review of contracting records and monitored work sites.

The Authority will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109.

Appendix “C” lists the regulations, provisions and contract remedies available to the Authority in the event of noncompliance with the DBE Regulation by a participant in procurement activities.

### **XIII. Overall Goals (§26.45)**

Code of Federal Regulations (CFR) 49 Part 26.45 requires the recipient of DOT funds to utilize a two-step process in the development of its overall DBE goals

Step One: Calculation of a base figure that represents the availability of DBEs ready, willing and able to work on Authority contracts.

Step Two: Adjustment of the base figure so the final overall goal represents the amount of participation the Authority might expect in the absence of discrimination or its effects.

#### Method

The DOT regulations require that the base figure be adjusted for a number of factors. One such factor is the DBE capacity. An acceptable method to make this adjustment to the base figure is not defined. The regulations direct you to consider current capacity of DBEs by measuring volume of work DBEs have performed in recent years in one’s DOT-assisted program; evidence from a disparity study that was not included in calculating the base figure; data relating to the ability of DBEs to get financing and bonding; employment, self-employment, education, training and union apprenticeship programs to the extent you can relate it to the opportunities for DBEs to perform in your program.

#### **“But For” Discrimination and the Adjustment of DBE Availability**

The regulations also provide that an agency may adjust its baseline DBE availability estimate for factors that suppress DBE availability. In other words, what would DBE availability be “but for” discrimination.

It is in the Authority's best judgment, that at a minimum, it must increase the capacity adjusted availability for "but for" discrimination factors by 2 percent for private sector

exclusion of construction firms and 1 percent each for the evidence of disparities within GOAA's procurement system, and private sector financing barriers.

**A. Process**

The Authority shall submit its overall DBE goal to DOT on August 1 every three years. Before establishing the overall triennial goal, the Authority will review the United States Census Bureau County Business Patterns to assess the availability of minority owned as well as non-minority owned businesses located within the Authority's normal market area, in addition staff, local contractors, and will consult with chambers of commerce that represent minority and non-minority firms as well as organizations comprised of minority and non-minority contractors to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Authority's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the Authority will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Authority's principal office for 45 days following the date of the notice, and informing the public that the Authority and DOT will accept comments on the goals for forty-five (45) days from the date of the notice. The submitted plan is subject to modifications based upon the Authority's review of any comments received through the date closing the comment period. Following the review period, the Authority will hold a public meeting to explain the goal methodology and provide an opportunity for questions and comments on the proposed goal.

The Authority's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the Authority's responses.

The Authority will begin using the overall goal on October 1 of each year, unless the Authority has received other instructions from DOT.

**B. Breakout of Estimated Race-Neutral and Race-Conscious Participation**

The Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Authority uses the following race-neutral means to increase DBE participation:

1. Notification to DBE and other small business community organizations that Authority contracting and subcontracting opportunities are available;

2. Providing plans and specifications to DBE and other small business contractor organizations at a reduced cost;
3. Conducting pre-bid conferences to provide firms with an opportunity to ask questions about DBE requirements; DBE contractors will be encouraged to attend these conferences;
4. Providing DBE and other small business community organizations with lists of firms bidding as prime contractors;
5. Disseminating the Authority's DBE policy by advertising in news media, including minority-focus news media, and by notifying and discussing this policy with all contractors and suppliers;
6. Subdividing as many trade items as prudently possible into small contractual work elements which will enable small trade contractors to compete effectively;
7. Providing procedures for accelerated semi-monthly progress payments to meet certain cash flow needs of DBE and other small business firms;
8. Where reasonable, providing for relaxed bonding requirements;
9. Making monthly or semi-monthly payments to contractors, so that critical cash flow needs of DBE subcontractors can be met;
10. Reimbursing contractors for aggregate purchases of materials and equipment (which have been properly received and satisfactorily stored) in the next succeeding monthly or semi-monthly payment;
11. Assisting prime contractors in efforts to obtain the names and addresses of DBE firms that may be utilized as subcontractors;
12. Providing technical assistance through distribution of the Authority's DBE directory through participation in organizations such as the Alliance and its community partners.

The Authority will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see §26.51(f)) and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a

subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

C. Disclosure to the FAA

The Authority will disclose as a percentage to the FAA funds that it anticipates expending on FAA-assisted contracts in the three (3) forthcoming fiscal years.

D. Adjustment of goal

In the event there are changed circumstances, the Authority may adjust its three year goal. Such adjusted goal will be submitted to the DOT for review and approval.

**XIV. Small Business Participation. (§26.39)**

The Authority is committed to procuring race and gender-neutral small business enterprise participation in construction, professional services and procurement, as prime contractors or subcontractors. These efforts will augment the Authority's race-neutral efforts to meet the DBE goal. By facilitating participation for small businesses, the Authority intends to make possible more DBE participation, and participation by additional DBE firms.

A. Definitions

"Small Business Enterprise" or "SBE" for the purposes of this section XIV means a for-profit business:

1. That is at least 51% owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens;
2. Whose management and daily business operations are controlled by one or more of the individuals who own the small business; and
3. That is not dominant in its field, and which its size is not greater than 50% of the Small Business Administration business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts under this section of the Authority's DBE Program.

B. Verification

For initial verification of SBEs, the Authority shall require submittal of three (3) years business tax returns for the applicant and affiliates, and an affidavit of gross revenues to the Authority's Office of Small Business Development ("OSBD"). At the option of the Aviation Authority, the OSBD may request and review additional documents including but not limited to a financial statement



from a Certified Public Accountant. Upon review of the stated documents from prospective SBEs, the Authority's OSBD shall make the determination of whether to add the prospective SBE to the Authority's approved list of SBEs. SBEs shall renew their eligibility to participate in the SBE program every year by providing previous years' business tax return, affidavit of gross revenues and at the Authority's option, any additional documents including but not limited to a financial statement from a Certified Public Accountant.

C. Methods

In an attempt to procure small business participation under this section, the Executive Director in conjunction with the Chairman of the Construction Committee and the OSBD may, but is not required or limited to utilizing any of the following strategies:

- (1) Establishing SBE set-asides for specific prime projects under the following amounts:

Construction:	\$3,000,000
Construction Professional Services:	total project cost: \$325,000 Professional fees: \$35,000
Procurement of Goods and Services:	(Varying by specific goods or services as directed by the Executive Director).

Florida statutes does not allow set asides for construction professional services selection. However, the Executive Director may for certain projects provide for the small business criterion of the construction professional services overall criterion to carry a higher weight.

- (2) On a case-by-case basis, the Authority may consider dividing a project into smaller-sized packages that are within the financial resources and capacity of SBEs. Solicitation documents will clearly identify these contract opportunities.
- (3) In certain multi-year design-build contracts or other large contracts the Authority will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- (4) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

- (5) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts; and
- (6) Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

**D. Implementation Schedule**

The Authority will implement this SBE Program element of its DBE Program within 90 days of receipt of the FAA's approval.

**XV. Contract Goals. (§26.51)**

The Authority will use contract goals to meet any portion of the overall goal the Authority does not project being able to meet using race-neutral means including but not limited to arranging solicitations, time for the presentation of bids, quantities. Specifications and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses.

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The DBE Liaison Officer will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

The Authority will express contract goals as a percentage of the total amount of a DOT-assisted contract.

**XVI. Good Faith Efforts (§26.53)**

**A. Information to be Submitted**

Each bidder must submit to the Authority, at the times designated in the bid documents:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts; and
7. Such other information as the Authority may request in the invitation or request for bids/proposals.

**B. Demonstration of Good Faith Efforts**

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

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.  
  
(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well

as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Within two (2) business days after receipt of a request from the Authority, competitors failing to meet the DBE contract goal must submit documentation of the good faith efforts they made before submission of the bid/proposal, to achieve the DBE goal. The Authority may evaluate not only the different kinds of efforts made by the bidder, but also the quantity and intensity of those efforts. Efforts made by the competitor after submission of the bid/proposal to meet the DBE contract goal will not be considered by the Authority. The DBE Liaison Officer shall make the determination whether a bidder has made a good faith effort to meet the contract goal.

The Authority will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before it commits to the performance of the contract by the bidder.

C. Administrative Reconsideration

1. In the event the Authority's DBE Liaison Officer determines that a bid be rejected for failing to demonstrate good faith efforts, the Authority's Office of Small Business Development shall promptly provide a written explanation of the basis for rejection. A bidder may appeal the DBE Liaison Officer's determination to the Executive Director. The Executive Director is the sole administrative reconsideration contact. The Executive Director plays no role in determining whether good faith efforts were made. The reconsideration must be filed within five (5) working days after receipt of the written explanation of the basis for rejection. The reconsideration shall be submitted in writing to the Executive Director, Greater Orlando Aviation Authority, Orlando International Airport, One Jeff Fuqua Boulevard, Orlando, Florida 32827, 407-825-2001.
2. As part of this reconsideration, the bidder will have the opportunity to provide written argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have the opportunity for a hearing before the Executive Director to address the issue of whether it met the goal or made adequate good faith efforts to do. The Executive Director will issue a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

**D. Good Faith Efforts When a DBE is Replaced on a Contract**

A contractor may only terminate a DBE with good cause and not simply for the convenience of the prime contractor. The Authority will require the prime contractor to obtain the Executive Director's prior written approval to terminate the DBE or substitute the DBE. Upon a showing of good cause for the termination by the prime contractor, the Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. The Authority will require the prime contractor to notify the DBE Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The Executive Director may require the prime contractor to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Authority may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply contractor may be deemed in default under the contract.

**XVII. Counting DBE Participation (§26.55)**

The Authority will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

Additionally, in projects utilizing a CM or CMAR method of delivery, the DBE participation goals shall be established by the Capital Management Committee (“CMC”), the Executive Director, or his designee for each division or portion of work. For satisfying the goals established at each division or portion of work, the participation to be counted shall include participation at the first and second tier subcontract levels.

### **XVIII. Certification (§§26.61 – 26.91)**

The Authority will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

#### Process

The Authority’s certification application form and documentation requirements are found in Exhibit “A” and “B” to this program.

For information about the certification process or to apply for certification, firms should contact the Authority’s Office of Small Business Development, Orlando International Airport, 5850 Cargo Road-B Orlando, Florida 32827-4399, (407) 825-3481.

In the event the Authority proposes to remove a DBE’s certification, the Authority will follow procedures consistent with §26.87. Exhibit “C” to this program sets forth these procedures in detail. To ensure separation of functions in a decertification, the Authority has determined that the Executive Director will serve as the decision maker in decertification proceedings.

The Authority has established an administrative separation to ensure that the Executive Director will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

If the Authority denies a firm’s application or decertifies it, it may not reapply until twelve (12) months have passed from the Authority’s action. Upon the Authority’s denial and a request by the firm, the Authority must provide the firm a written explanation for the reasons of the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant on request.

Unified Certification Program

The Authority is a certifying member of the State of Florida Department of Transportation Unified Certification Program.

A. Certification Appeals

Any firm or complainant may appeal the Authority's decision in a certification matter to DOT. If a firm or complainant would like to file an appeal, the firm or complainant must send a letter to the department within ninety (90) days of the date of the Authority's decision including information and arguments concerning why the Authority's decision should be reversed. The Department may accept an appeal filed later than ninety (90) days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights, Certification Appeals Branch  
400 7th St., SW, Room 2104  
Washington, DC 20590

The Authority will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous), but only as to contracts to be awarded after the DOT appeal decisions.

B. "No Change" Affidavits and Notices of Change

The Authority requires all DBEs to inform the Authority, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of Part 26 or of any material changes in the information provided within an application for certification.

The Authority also requires all owners of all DBEs that it has certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The Authority shall notify all currently certified DBE firms of the obligations to submit such affidavit and notice of change.

Notifications are submitted to the DBE every year. This notification informs DBEs that to submit the no-change affidavit, the owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she or the

firm fails to meet Part 26 Eligibility Requirement, the obligation to submit a notice of change applies.

C. Personal Net Worth

The Authority requires all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under Part 26 is reviewed, to submit a statement of personal net worth with the application for certification, attached hereto as Exhibit "D".

Section 26.67(2)(ii) sets the personal net worth cap for each disadvantaged owner of a firm applying to participate as a DBE at \$1,320,000. In determining net worth the Authority will exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence with the exception of any portion of such equity that is attributable to excessive withdrawals from the applicant firm. A contingent liability will not reduce an individual's net worth.

**XIX. Information Collection and Reporting.**

A. Bidders List

The Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status.

The Authority will collect this information as to subcontractors by requiring bidders to include a list of all firms quoting on subcontract work for each project.

B. Monitoring Payments to DBEs

The Authority will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. Any authorized representative of the Authority or DOT will make these records available for inspection upon request. This reporting requirement also extends to any certified DBE subcontractor.

The Authority will maintain totals of actual payments to DBE firms for work committed to them at the time of contract award.

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



C. Reporting to DOT

The Authority will report DBE participation to DOT by submitting annually DOT Form 4630, as modified for use by FAA recipients. Additionally, the Authority will transmit the Uniform Report of Awards or Commitments and Payments found in Appendix B of Part 26 to the FAA.

D. Confidentiality

The Authority will safeguard from disclosure to third parties personal financial information submitted in response to the personal net worth requirement (other than DOT) without the written consent of the submitter.

**APPROVAL AND  
UPDATE HISTORY**

**Last Approval** Authority Board: August 15, 2012  
Executive Director:

**Supersedes**