

Federal FY 2019 – 2021 DBE Program

Collier County Airport Authority
- Immokalee Regional Airport (IMM)
- Marco Island Executive Airport (MKY)
- Everglades Airpark (X01)

prepared April 2019

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POLICY STATEMENT

Sections 26.1 and 26.23 Objectives / Policy Statement

The Collier County Airport Authority (Authority), a department of Collier County, Florida, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the Federal Aviation Administration (FAA), U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance exceeding \$250,000 from the FAA and, as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26 (herein referred to as "Part 26").

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

1. Ensure non-discrimination in the award and administration of FAA- assisted contracts
2. Create a level playing field on which DBEs can compete fairly for FAA-assisted contracts
3. Ensure that the 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 FAA assisted contracts
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs

Mr. Justin E. Lobb, Airports Manager, has been designated as the DBE Liaison Officer (DBELO). In that capacity, he 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 FAA.

The Authority has disseminated this policy statement to all the components of our organization. We have also distributed this statement to the DBE and non-DBE business communities that perform work on FAA-assisted contracts by placing this notice in the contract documents for Federal projects, with the Florida Department of Transportation (FDOT), and on the Authority's website.

Justin E. Lobb
Airports Manager
Collier County Airport Authority

Date: _____

1. SUBPART A – General Requirements

1.1. Section 26.1 Objectives

The objectives are found on the first page of this program under the title “Policy Statement”.

1.2. Section 26.3 Applicability

The Collier County Airport Authority (Authority) is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

1.3. Section 26.5 Definitions

The Authority will adopt the definitions contained in 49 CFR Part 26.5 for this Program.

1.4. Section 26.7 Non-discrimination Requirements

The Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering the DBE Program (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 Program with respect to individuals of a particular race, color, sex, or national origin.

1.5. Section 26.11 Record Keeping Requirements

Reporting to FAA §26.11(b)

The Authority will submit FAA Form 4630 annually, as modified for use by FAA recipients.

Bidders List §26.11(c)

The Authority will create a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on FAA-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach in calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, and annual gross receipts of firms.

The Authority will collect this information from all prime contractors and subcontractors, DBEs and non-DBEs, and winners and losers of all firms that bid on Federally assisted projects with the Authority. All solicitations and contracts shall contain a clause requiring this information.

Records Retention and Reporting §26.11(d)

The Authority will maintain records documenting a firm’s compliance with the requirements of this Part. The Authority will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Authority’s financial assistance agreement.

1.6. Section 26.13 Federal Financial Assistance Agreement

The Authority will sign the assurance stated in 1.6.1 for all FAA-assisted contracts and their administration.

1.6.1. Assurance: §26.13(a)

Each financial assistance agreement the Authority signs with FAA will include the following assurance.

The Collier County Airport Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FAA 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 non-discrimination in the award and administration of FAA assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by FAA, 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 FAA may impose sanctions as provided for under 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.). This language will appear in financial assistance agreements with sub-recipients.

1.6.2. Contract Assurance: §26.13(b)

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

The contractor, sub-recipient, 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 FAA 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, which may include, but is 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.*

2. SUBPART B - ADMINISTRATIVE REQUIREMENTS

2.1. Section 26.21 DBE Program Updates

The Collier County Airport Authority is required to have a DBE Program meeting the requirements of this part since it will receive grants for airport planning or development and will award prime contracts the total value of which will exceed \$250,000 in FAA funds in a federal fiscal year. The Authority is not eligible to receive FAA financial assistance unless FAA has approved this DBE Program and the Authority is in compliance with it and Part 26. The Authority will continue to carry out this program until all funds from FAA financial assistance have been expended. The Authority does not have to submit regular updates of the DBE Program document as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for FAA approval.

2.2. Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this document.

2.3. Section 26.25 DBE Liaison Officer (DBELO)

The Authority has designated the following person as DBE Liaison Officer (DBELO).

Justin E. Lobb
Collier County Airport Authority
2005 Mainsail Drive
Suite #1
Naples, Florida 34114
(239) 642-7878, Extension 35
Justin.Lobb@colliercountyfl.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Authority concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 1**.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program in coordination with other appropriate Collier County and Authority officials. The DBELO has a staff of one to assist in the administration of the program. The duties and responsibilities of the DBELO include the following.

1. Submits Form 4630 as required by FAA.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall triennial goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the Authority 's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Works with legal counsel and others to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding, and insurance prior to bid advertisement.

2.4. Section 26.27 DBE Financial Institutions

As part of this DBE Program, the Collier County Airport Authority's DBE consultant has investigated services offered by banks owned and controlled by socially and economically disadvantaged individuals in the local area. The Federal Deposit Insurance Corporation (FDIC) Minority Depository Institutions (MDI) Program supports the Treasury Department's policy of preserving existing minority depository institutions and promoting the creation of new MDIs. A minority depository institution is defined as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. The latest FDIC list of MDIs, released September 30, 2018, lists no MDI institutions in Collier or Lee Counties. Future DBE Program updates will conduct research to determine if any new banks are established in the area that may be owned by socially and economically disadvantaged individuals.

2.5. Section 26.29 Prompt Payment Mechanisms

The Authority requires that all subcontractors performing work on FAA-assisted contracts shall be promptly paid for work performed pursuant to their agreements in accordance with all relevant federal, state, and local law. To comply with 49 CFR 26.29, the Authority will include the following clause from FAA Advisory Circular (AC) 150/5370-10 in each FAA-assisted prime contract.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Collier County Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 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 Collier County Airport Authority. This clause applies to both DBE and non-DBE subcontracts.

The Authority ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Authority has selected the following method to comply with this requirement.

- (1) The Authority will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to contractors based on these acceptances, and require a contract clause obligating the contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

2.6. Section 26.31 Directory

The Collier County Airport Authority uses the publicly-available Florida Unified Certification Program (UCP) Disadvantaged Business Enterprise (DBE) Directory as its DBE directory, which contains all the elements required by §26.31. The Directory is maintained by the Florida Department of Transportation and can be accessed via the Departments website.

Section 26.33 Overconcentration

The Authority has not identified that an overconcentration exists in the types of work that DBEs perform.

2.7. Section 26.35 Business Development Programs

The Authority has not established a business development program.

2.8. Section 26.37 Monitoring and Enforcement Mechanisms

The Authority will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The Authority will require prime contractors participating in the DBE Program to submit a statement with each design or construction progress report and invoice that states current progress in meeting the project DBE goal. The Authority will notify a contractor if insufficient progress towards meeting the DBE goal has been accomplished and request a statement from the contractor explaining how the goal will be met or, if meeting the goal is not attainable, a justification for why the goal cannot be achieved.
2. The Authority will maintain a record of actual payment amounts to DBE firms that will be provided by the prime contractor. The actual payment amounts will be compared to notices of intent (refer to **Attachment 6**) or similar communication between the DBE and the prime contractor submitted as part of the contract documents and compared to the amount paid to the DBE to the amount of the letter of intent or other similar communication and determine if work committed to the DBE is actually being performed by the DBE. Contractors will be directed to submit verification of payment with each progress report or invoice that is submitted.
3. If warranted, the Authority will bring to the attention of the FAA any false, fraudulent, or dishonest conduct in connection with the program, so that FAA can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the FAA Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. Refer to **Attachment 2** for further clarification.

2.10 Section 26.39 Fostering Small Business Participation

To foster greater participation by small businesses in projects, the Authority has established a policy of “unbundling” to facilitate competition by small business concerns and to foster small business participation. Implementation of unbundling is required in order for the Authority to be considered by FAA as implementing this DBE Program in good faith. In addition, The Authority will provide an outreach and technical assistance program to better inform small business concerns about pursuing and being selected for airport projects.

1. Unbundling projects: Where feasible, the Authority may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Authority will conduct an annual review of the Capital Improvement Plan to determine whether portions of FAA-assisted projects could be “unbundled” or bid separately. This determination will be made based on the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, the Authority will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses. The Authority will document the factors used to determine whether an FAA-assisted contract will be unbundled or bid separately during the annual review of the Capital Improvement Plan.

3. SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

3.1. Section 26.43 Set-asides or Quotas

The Collier County Airport Authority does not use quotas in any way in the administration of this DBE Program.

3.2. Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 3**. In accordance with Section 26.45(f), the Authority will submit its overall goal to FAA on October 1st of each year. Before establishing the overall goal each year, the Authority may consult with local/state organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs. For this Program, consultation was submitted to the organizations listed below. Copies of all consultation requests and responses are included in **Attachment 5**.

- Florida Advisory Council on Small and Minority Business Development
- Florida Diversity Council
- Florida Department of Management Services/Office of Supplier Diversity
- Florida State Minority Supplier Development Council
- Florida Women's Business Center
- Enterprise Florida

The Authority will begin using the established overall goal on October 1st of each year, unless other instructions are received from FAA. If a goal is established on a project basis, the goal will be included in the first solicitation for a FAA-assisted contract for the project.

3.3. Section 26.47 Failure to Meet Overall Goals

The Collier County Airport Authority cannot be penalized or treated by the FAA as being in noncompliance with Part 26 because DBE participation falls short of an overall goal, unless the Authority fails to administer the DBE Program in good faith. The Authority understands that to be in compliance with Part 26, an approved DBE Program and overall DBE goal, if applicable, must be maintained and this DBE Program must be administered in good faith. The Authority understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the FAA as implementing this 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; and
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.

3.4. Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 4** to this Program. This section of the Program will be updated annually when the goal calculation is updated.

3.5. Section 26.51(d-g) Contract Goals

The Authority will use contract goals to meet any portion of the overall goal where the Authority does not anticipate being able to meet with race-neutral means. The FY 2019 -2021 DBE goal is **4.2%**. The calculation of the goal is shown in **Attachment 3**. 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 Authority will establish contract goals only on those FAA-assisted contracts that have subcontracting possibilities. They need not establish a contract goal on every such contract. 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 the contract goals as a percentage of the federal share of a FAA-assisted contract.

3.5.1. Section 26.53 Demonstration of good faith efforts (§26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The Authority will ensure that all information is complete and accurate, and adequately document the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

3.5.2. Information to be submitted (§26.53(b))

The Authority will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror. In all solicitations for FAA assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror.

- (1) Award of the contract will be conditioned on meeting the requirements of this section.
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation meets a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- (3) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26) will be documented. 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.
- (4) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

- (5) In a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

3.5.3. Administrative reconsideration (§26.53(d))

Within seven calendar days of being informed by the Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official.

Mr. Gene Shue
Operations Support Director
Growth Management Division
Collier County
2885 S. Horseshoe Drive, Naples, Florida 34104
239-252-5169
Gene.Shue@colliercountyfl.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the DBELO to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the bidder/offeror 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 Florida Department of Transportation.

3.5.4. Good Faith Efforts when a DBE is replaced on a contract (§26.53(f))

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, to the extent needed to meet the contract goal. The Authority will require the prime contractor to notify the DBELO within seven days of receiving notice of the DBE's inability or unwillingness to perform. The contractor will provide reasonable documentation of the termination, including a written notice of proposed termination provided to the DBE with a five-day period for response for the DBE and a dated copy of the response from the DBE. In this situation, the Authority will require the prime contractor to obtain prior approval of the substitute DBE from the Authority and 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 contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

3.6. Sample Bid Specification

The following paragraphs will be inserted into bid specifications for all projects using FAA funding.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Collier County Airport Authority to practice non-discrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who

qualify as a DBE. A DBE contract goal of 4.2% percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 7 of the DBE Program document), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation meets the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

3.7. Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. In the case of post-award substitutions or additions, if a firm is not certified as a DBE in accordance with the standards of Subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

4. SUBPART D - CERTIFICATION STANDARDS

4.1. Sections 26.61 - 26.73 Certification Process

The Collier County Airport Authority is not a certifying agency and will not certify DBEs for this Program. The Authority is not a member of the Unified Certification Program (UCP) for the State of Florida but will accept all certifications approved by the UCP and those organizations that have reciprocity agreements with the State of Florida UCP.

4.2. Section 26.81 Unified Certification Programs

The Authority is not a member of the UCP for the State of Florida but will accept all certifications approved by the UCP and those organizations that have reciprocity agreements with the State of Florida UCP.

5. SUBPART F - COMPLIANCE AND ENFORCEMENT

5.1. Section 26.109 Information, Confidentiality, Cooperation

The Collier County Airport Authority will safeguard from disclosure to a third-party information that may be reasonably regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Authority will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than FAA) without the written consent of the submitter.

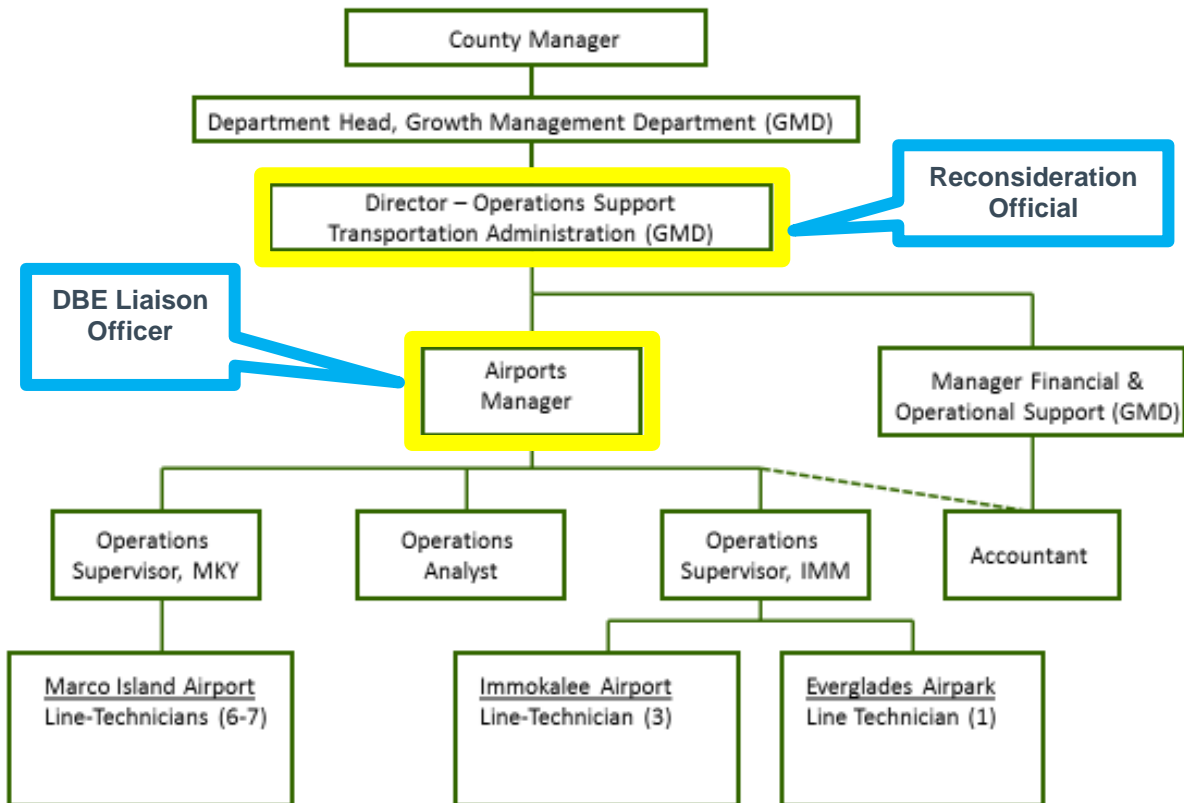
5.2. Monitoring Payments to DBEs

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

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.

Attachment 1: Organization Chart for Collier County Airport Authority

Collier County Airport Authority Organizational Chart



Attachment 2: Monitoring and Enforcement Mechanisms

The Collier County Airport Authority has several remedies available to enforce the DBE requirements contained in its contracts including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract; and
2. Breach of contract action, pursuant to State of Florida Statute 337 and 339 and Florida Administrative Code 14-78.

In addition, the Federal government has several enforcement mechanisms available that it may apply to firms participating in the DBE Program including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26;
2. Enforcement action pursuant to 49 CFR Part 31; and
3. Prosecution pursuant to 18 USC 1001 and/or 31 USC 3801, *et seq.*

Attachment 3: Section 26.45 - Overall Goal Calculation

DBE Goals Process

The Collier County Airport Authority must submit its construction Disadvantaged Business Enterprise (DBE) goals to the Federal Aviation Administration (FAA) every three years. The goal period for this DBE Program is for Fiscal Years (FY) 2019 through 2021, beginning on October 1, 2019, and ending on September 30, 2021.

Methodology

The methodology described in 49 CFR Part 26.45(c)(1) was used to determine the base figure for the relative availability of DBEs. The overall DBE goal was determined in two steps.

- Step 1 determined a base figure based on available DBE firms in certain NAICS categories as compared to all firms in those categories in the established market area. The Authority started the determination of its FY 2019-2021 goal setting process by identifying a base figure for the relative availability of DBEs based on demonstrable evidence of the availability of DBEs certified to work on aviation projects within a NAICS Code as listed in the Florida DOT DBE Directory as compared to the availability of all DBEs listed under a particular NAICS Code to participate on FAA-assisted contracts.
- Step 2 consisted of a search and review of socioeconomic, business, and ethnicity conditions in the market area. Based on an analysis of these conditions, an adjustment factor was added to the base figure to determine the overall DBE goal.

Step 1. Determining the Base Figure

Since the Collier County Airport Authority acts as a single unit in administering and managing projects and funding for all three airports under their control, the determination of a base figure was for the Authority as a single operating unit and not individually for each airport. Airfield improvement is the prevalent type of project receiving FAA assistance at the three airports managed by the Authority. Airfield projects managed by the Authority in the past include runway construction, runway rehabilitation, taxiway construction, taxiway rehabilitation, apron rehabilitation, and perimeter road reconstruction. Based on this information and the experience of the Authority staff, NAICS codes relevant to airfield work were identified. **Table A3-1** lists the selected NAICS codes and their descriptions.

With the relevant NAICS codes selected, a search of the 2019 Florida DOT DBE Directory was undertaken to determine how many DBE firms were listed per each NAICS code. The search was limited to Collier and Lee counties, which comprise the market area for the Authority. This limitation was based on the location of successful DBE bidders from past contracts as shown in **Table A3-2**. Since all of the selected DBE contractors on projects between 2010 and 2018 were from Collier and Lee counties, that was established as the market area.

The number of DBE firms in each NAICS category were compared to the number of all firms in those NAICS categories. The number of all firms was derived from the 2016 U.S. Census Bureau County Business Patterns data for Collier and Lee counties. The resulting comparison is shown in **Table A3-3**. This is the basis for determining the Base Figure which represents the statistical percentage of DBE firms available to perform the most prevalent type of work engaged in by the Authority.

Table A3-1. Firms by NAICS Code

NAICS Code	Business Type
237310	Highway, Street, and Bridge Construction
238190	Other Foundation, Structure, and Building Exterior Contractor
238210	Electrical Contractors and Other Wiring Installation Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors
484220	Specialized Freight
541330	Engineering Services
541370	Surveying and Mapping
541690	Other Scientific and Technical Consulting Services
541620	Environmental Consulting Services
541990	All Other Professional, Scientific, and Technical Services
561730	Landscaping Services

Source: 2019 FDOT DBE Directory.

Table A3-2. Location of DBE Bidders

Firm	NAICS Code	City	County
All Ways Electric	238210	Fort Myers	Lee
Tate Transport	238910	Naples	Collier
MJS Trucking	484220	N. Fort Myers	Lee
Kate Environmental	541620	Bonita Springs	Lee
Big Tree Inc	561730	Fort Myers	Lee
GCE Services	238990	Cape Coral	Lee

Source: Collier County Airport Authority

Table A3-3. Base Figure Calculations

NAICS Code	Business Type	Available DBE Firms	Available Firms	Percent DBE
237310	Highway, Street, and Bridge Construction	3	25	12.0%
238190	Other Foundation, Structure, and Building Exterior Contractor	2	46	4.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	2	337	0.6%
238910	Site Preparation Contractors	4	78	5.1%
238990	All Other Specialty Trade Contractors	4	262	1.5%
484220	Specialized Freight	5	48	10.4%
541330	Engineering Services	3	202	1.5%
541370	Surveying and Mapping	2	40	5.0%
541690	Other Scientific and Technical Consulting Services	3	34	8.8%
541620	Environmental Consulting Services	2	80	2.5%
541990	All Other Professional, Scientific, and Technical Services	1	99	1.0%
561730	Landscaping Services	3	721	0.4%
TOTALS		34	1972	
			Median	3.4%

Sources: 2019 FDOT DBE Directory, 2016 US Census Bureau County Business Patterns

The Base Figure from **Table A3-3** is **3.4%**. DBE firms in Collier and Lee counties represent 3.4% of all firms in Collier and Lee counties in the same NAICS categories. The median value was used instead of the mean value because of the outliers at either end of the data. In those cases, the median value is considered best at determining the midpoint of the data set.

Step 2. Determining Adjustments to the Base Figure

Section 26.45 (d) identifies numerous examples of the various types of data to examine in order to adjust the Base Figure to make it as precise as possible. This step is intended to adjust the participation the recipient would expect in the absence of discrimination. All factors listed in the above-referenced documents were considered in order to determine whether an adjustment was necessary. Considerations of those factors include the following.

Disparity Studies

Neither the Authority nor any other agencies in the market area have conducted disparity studies related to minority participation in government contracting such as those activities engaged in by the Collier County Airport Authority. After a thorough internet search, no disparity studies were discovered for Collier or Lee counties. Disparity studies have been conducted for southern Florida locations in the last five years, but after a review of the studies it was determined by the DBE consultant that the results were not applicable to the situation in the market area. Disparity studies identified for southern Florida during the internet search that have been completed in the last five years are listed below.

- 1) Solid Waste Authority of Palm Beach County, 2016
- 2) City of West Palm Beach, 2015
- 3) Miami-Dade County School Board, 2015

Socioeconomic Conditions

The U.S. Census Bureau Quick Facts sheets for the State of Florida, Collier County, and Lee County were reviewed to determine if there were any significant differences in the State totals and the totals for each county. **Table A3-4** contains statistics that were straight forward to compare. Collier and Lee Counties exceed the per capita income of the State and have a slightly lower civilian labor force percentage. However, the number of minority-owned firms is significantly lower in Collier and Lee Counties when compared to the overall State number. This lower number indicates the potential for lower participation by minority owned firms in government contracts. However, the State number could be influenced by high concentrations of minorities and minority-owned firms in the State's highly populated urban areas. There is sufficient cause to determine a logical and equitable adjustment to the Base Figure, but the socioeconomic factors do not provide a clear method for statistically addressing the lower percentage of minority owned firms in the market area.

Table A3-4. Comparison of Selected Sociodemographic Factors

Location	Per Capita Income (2017 dollars)	Percent of Population in Civilian Labor Force (2013-2017)	Percent Minority-Owned Firms (2012)
State of Florida	\$28,774	58.4%	44.1%
Collier County	\$41,239	53.0%	26.9%
Lee County	\$30,233	52.7%	27.9%

Source: U.S. Census Bureau Quick Facts

Historical DBE Participation

Socioeconomic factors did identify a potential under representation of minority-owned firms in Collier and Lee Counties, however the data did not provide a clear statistical correlation that was not clouded by possible extenuating circumstances. Some adjustment in the Base Figure was appropriate, but it was one that could be clearly linked to the situation in Collier and Lee Counties. In past DBE Programs, a review of DBE participation in past contracts suggested that it might be a better indicator of future DBE participation in Authority projects.

Table A3-5 contains a summary of DBE participation in past projects at airports operated by the Authority and provides a statistical basis for determining an adjustment to the Base Figure. A median value of 4.2% was determined as the historical DBE participation level. The median value was used since there were significantly higher outliers in the data set.

Table A3-5. Historical DBE Participation (AIP Projects)

Year	Project Number	Project Description	DBE Participation
2010	33127	MKY Taxiway Construction	3.8%
2011	33227	IMM RW 9-27 Rehab - Design	3.0%
2011	33228	MKY RW 17-35 & Apron Rehab - Design	3.1%
2013	33295	X01 South Taxiway Construction	4.4%
2012	33300	IMM RW 9-27 Rehab - Construction	4.5%
2012	33300	IMM RW 9-27 Rehab - Construction	3.2%
2012	33301	MKY RW 17-35 & Apron Rehab - Construction	5.8%
2012	33301	MKY RW 17-35 & Apron Rehab - Construction	10.5%
2018	33484	MKY Apron Design	15.5%
2017	33485	IMM TW B Rehab - Design	4.2%
2017	33485	IMM TW B Rehab - Construction	2.2%
MEDIAN VALUE			4.2%

Source: Collier County Airport Authority

Determination of DBE Goal

In summary, the Base Figure of 3.4% calculated in Step 1 was based on the number of DBE firms in Collier and Lee Counties in specified NAICS Codes when compared to the number of all firms in Collier and Lee Counties in those same codes. DBE firms represented 3.4% of all those firms. However, a review of socioeconomic information for Collier and Lee Counties indicated a significantly lower percentage of minority-owned firms in those counties when compared to the percentage for the State of Florida. The socioeconomic data did not provide a clear, unambiguous way to statistically determine why there was a difference and how best to account for it. A review of participation in past Authority projects was conducted and revealed a median DBE participation percentage of 4.2%. The median value was selected because of the two large outliers in the data set.

The Base Figure of 3.4% represents a true statistical comparison, however the 4.2% value from the historical DBE participation in Authority projects presents a compelling reason to adjust the Base Figure. Given the

significantly lower number of minority-owned firms in Collier and Lee Counties when compared to the State as a whole, it appears that the 4.2% value is a better representation of DBE activity and thus provides a realistic and equitable overall DBE goal.

Based on the previous calculations and data presented, the Collier County Airport Authority annual DBE Goal for Federal FY 2019-2021 is **4.2%**. **Table A3-6** lists the anticipated funding and goal amounts for the FY 2019 to FY 2021 triennial period.

Table A3-6. Proposed Annual Funding Goals – FY 2019 to FY 2021

Federal Fiscal Year	Estimated Project Cost	Estimated AIP Grant Amount	Estimated DBE Amount
2019	\$415,000	\$373,500	\$15,687
2020	\$4,025,000	\$3,622,500	\$152,145
2021	\$150,000	\$135,000	\$5,670
Totals	\$4,590,000	\$4,131,000	\$173,502

Source: Collier County Airport Authority, Atkins

Attachment 4: Breakout of Estimated Race-Neutral Participation

The Collier County Airport Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Authority will use one or more of the following race-neutral means to increase DBE participation:

- a) Encourage prime contractors to subcontract portions of work they might otherwise perform with their own forces;
- b) Reference the Florida UCP DBE directory for prospective contractors desiring DBE contact information;
- c) Encourage DBE attendance at pre-bid/pre-proposal meetings; and,
- d) Provide assistance to DBEs during solicitation or bid period for any project, and assist with any explanation of documents, including language barriers, that may exist.

The Authority estimates that, in meeting the overall goal of **4.2%**, **3.4%** will be obtained from race-neutral participation and **0.8%** through race-conscious measures.

In order to ensure that the DBE Program will be narrowly tailored to overcome the effects of discrimination, 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.

- 1) DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures
- 2) DBE participation through a subcontract on a prime contract that does not carry DBE goal
- 3) DBE participation on a prime contract exceeding a contract goal
- 4) DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The Authority will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

**Attachment 5: Consultation with
Organizations
Representing DBE
Interests**

DRAFT

DRAFT

**Attachment 6: Exhibits for
Demonstration of Good
Faith Efforts**

DRAFT

**EXHIBIT I - SUPPLEMENTAL TERMS AND CONDITIONS
FEDERAL AVIATION ADMINISTRATION CONTRACT ASSURANCES**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
FORM 1**

_____ The bidder is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder (if unable to meet the applicable DBE goal of 5.6% for Marco Island) is committed to a minimum of _____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's firm: _____

State Registration No. _____

By: _____
(Signature)

Title: _____

**EXHIBIT I - SUPPLEMENTAL TERMS AND CONDITIONS
FEDERAL AVIATION ADMINISTRATION CONTRACT ASSURANCES**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
LETTER OF INTENT
FORM 2
(Submit this page for each DBE subcontractor.)**

Name of bidder's firm: _____

Address: _____

City: _____ State: ____ Zip: _

Name of DBE firm: _____

Address: _____

City: _____ State: ____ Zip: _

Telephone: _____

Description of work to be performed by DBE firm:

The bidder is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____ (Signature) (Title)

If the bidder does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

**EXHIBIT I - SUPPLEMENTAL TERMS AND CONDITIONS
FEDERAL AVIATION ADMINISTRATION CONTRACT ASSURANCES**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION (M/WBE)
GOOD FAITH EFFORTS
FORM 3**

Prior to an award, all bidders/proposers will be required to document a "Good Faith Effort" to secure disadvantaged, minority/women-owned and/or businesses as subcontractors/sub-consultants/suppliers. In the case of some construction projects, this documentation may be submitted after award of the contract, for those subcontract areas occurring later in the construction process.

Fulfillment of the "good faith effort" can be accomplished by:

1. Attendance of pre-bid/pre-proposal conference, as scheduled by the County.
2. Efforts to follow-up initial solicitation of interest by contacting disadvantaged/minority/women-owned firms to determine with certainty whether these firms are interested.
3. Efforts made to select portions of the work proposed to be performed by disadvantaged/minority/women-owned firms in order to increase the likelihood of achieving participation (including, where appropriate, breakdown of subcontracts into economically feasible units to facilitate participation).
4. Documenting each disadvantaged/minority/woman-owned firm contacted the conclusion or decision regarding inclusion and reasons for the conclusions.
5. Efforts to assist the disadvantaged/minority/women-owned firms contacted that needed assistance in obtaining bonding, lines of credit or insurance.
6. Efforts that demonstrate that the contractor effectively used the services of available community organizations, contractor's groups, local, state and federal agencies, small businesses, disadvantaged/minority/women business assistance offices and other organizations that provide assistance and placement of disadvantaged/minority/woman-owned businesses.

Company Name: _____

Printed Name: _____

Title: _____

Signed: _____

Date: _____

**EXHIBIT I - SUPPLEMENTAL TERMS AND CONDITIONS
FEDERAL AVIATION ADMINISTRATION CONTRACT ASSURANCES**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION (M/WBE)
OPPORTUNITY LIST
FORM 4**

Prime Contractor/Consultant	
Address / Phone Number	
Procurement Number	

Disadvantaged businesses and minority vendors, as defined in the Federal Code of Federal Regulations or Florida State Statutes must have the opportunity to participate on contracts with federal and/or state grant assistance.

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

FIRM INFORMATION		FIRM TYPE	ANNUAL GROSS RECEIPTS
FEDERAL TAX ID #		DBE (Disadvantaged)	LESS THAN \$1 MILLION
FIRM NAME		MBE (Minority)	BETWEEN \$1 - \$5 MILLION
PHONE		WBE (Women)	BETWEEN \$5 - \$10 MILLION
STREET ADDRESS		NON-DBE	BETWEEN \$10 - \$15 MILLION
CITY, STATE, ZIP			MORE THAN \$15 MILLION
YEAR FIRM EST.			

Attachment 7: Procedures for Removal of DBE's Eligibility

(a) Ineligibility complaints

- (1) Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Collier County Airport Authority (Authority) is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. 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. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
- (2) The Authority will review records concerning the firm, any material provided by the firm and the complainant, and other available information. The Authority may request additional information from the firm or conduct any other investigation that is deemed necessary.
- (3) If the Authority determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, the Authority will provide written notice to the firm that the Authority proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Authority determines that such reasonable cause does not exist, the Authority will notify the complainant, the firm, and the Florida DOT Equal Opportunity Office in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) Recipient-initiated proceedings

If, based on notification by the firm of a change in its circumstances or other information that comes to the Authority's attention and the Authority determines that there is reasonable cause to believe that a currently certified firm is ineligible, the Authority must provide written notice to the firm and the Florida DOT Equal Opportunity Office that proposes to find the firm ineligible, 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.

(c) Florida DOT directive to initiate proceeding

- (1) If the Florida DOT Equal Opportunity Office determines that information in the certification records, or other information available to the Florida DOT Equal Opportunity Office, provides reasonable cause to believe that a certified firm does not meet the eligibility criteria of this Part, the Florida DOT Equal Opportunity Office may initiate a proceeding to remove the firm's certification.
- (2) The Florida DOT Equal Opportunity Office must provide the Authority and the firm a notice setting forth the reasons for the proceeding including any relevant documentation or other information.
- (3) The Authority will immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) Hearing

When the Authority notifies a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, the Authority will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

- (1) In such a proceeding, the Authority bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

- (2) The Authority will maintain a complete record of the hearing by any means acceptable under Florida State law for the retention of a verbatim record of an administrative hearing. If there is an appeal to Florida DOT under §26.89, the Authority must provide a transcript of the hearing to Florida DOT and, on request, to the firm. The Authority will retain the original record of the hearing. The Authority may charge the firm only for the cost of copying the record.
- (3) The firm may elect to present information and arguments in writing without going to a hearing. In such a situation, the Authority bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as a firm would during a hearing.

(e) Separation of function

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

- (1) The method of implementing this requirement must be made part of the Collier County Airport Authority DBE Program.
- (2) The decision maker must be an individual who is knowledgeable about the certification requirements of the Florida DOT DBE Program.

(f) Grounds for decision

The Authority may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available at the time the firm was certified;
- (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
- (4) A change in the certification standards or requirements of the Florida DOT DBE Program since the firm received certification;
- (5) The decision to certify the firm was clearly erroneous;
- (6) The firm has failed to cooperate (see §26.109(c));
- (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 for conduct related to the DBE Program. The notice required by paragraph (g) of this section 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 paragraph (d) of this section.

(g) Notice of decision

Following the 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 must inform the firm of the consequences of the decision and of the availability of an appeal to the Florida DOT Equal Opportunity Office under §26.89. The Authority will send copies of the notice to the complainant in an ineligibility complaint or the Florida DOT Equal Opportunity Office that had directed the Authority to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, the Authority will not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) Status of firm during proceeding

- (1) A firm remains an eligible DBE during the proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) Effects of removal of eligibility

When a firm's eligibility is removed, the Authority will take the following action.

- (1) When a prime contractor has made a commitment to using the ineligible firm, or the Authority has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. The Authority will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- (2) If a prime contractor has executed a subcontract with the firm before notification to 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 a prime contract has been let to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice was issued of its ineligibility shall not count toward the overall goal but may count toward the contract goal.
- (3) *Exception: If the DBE's ineligibility is caused solely by its 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.*

(k) Availability of appeal

When an administratively final removal of a firm's eligibility is made under this section, the firm may appeal the removal to the Florida DOT Equal Opportunity Office under §26.89.