

# DEPARTMENT OF TRANSPORTATION

## DBE PROGRAM – 49 CFR PART 26

### MARION COUNTY AIRPORT DUNNELLON, FLORIDA



## DBE PROGRAM FOR FFY 2024, 2025, 2026

### *ATTACHMENTS*

<a href="#">Attachment 1</a>	Regulations: Link to 49 CFR Part 26
<a href="#">Attachment 2</a>	Organizational Chart
<a href="#">Attachment 3</a>	Bidder's List Collection Form
<a href="#">Attachment 4</a>	Link to Florida DBE Directory
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## POLICY STATEMENT

### Section 26.1, 26.23 Objectives/Policy Statement

**Marion County Airport**, an operating unit of Marion County, a political subdivision of the State of Florida, as owner of **Marion County Airport**, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. **Marion County Airport** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, **Marion County Airport** has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the **Marion County Airport** to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also **Marion County Airport** policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-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 DOT 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; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

**Mike Grawe, Airport Manager** has been designated as the DBE Liaison Officer in compliance with Part 26 and is responsible for implementing all aspects of the DBE program.

The **Marion County Airport** has disseminated this policy statement to the **Marion County Airport** and all of the components of our airport organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **Marion County Airport** DOT-assisted contracts. The distribution was accomplished by posting on the airport's website and including as part of bid packages and contract documents.

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Michelle Stone, Chairman

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Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are elaborated in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The **Marion County Airport** will use terms in this program that have their meanings defined in Part 26, §26.5.

### **Section 26.7 Non-discrimination Requirements**

The **Marion County Airport** 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 its DBE program, the **Marion County Airport** 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.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT**

The **Marion County Airport** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

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

The **Marion County Airport** will transmit to the Federal Aviation Administration annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The **Marion County Airport** will similarly report the required information about participating DBE firms. All reporting will be done through the Federal Aviation Administration official reporting system, or another format acceptable to the Federal Aviation Administration as instructed thereby.

#### **Bidders List**

The **Marion County Airport** will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors

who seek to work on **Marion County Airport** DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s): The **Marion County Airport** will collect this information during the process of selling plans and specifications to prospective bidders via a manual process of requesting data from contractors and subcontractors purchasing these bid sets. Additionally, more detailed information is obtained at the time of bid through completion of required documentation in the bid package. See [Attachment 3](#).

#### Records retention and reporting:

The **Marion County Airport** will maintain records documenting a firm's compliance with the requirements of this part. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

#### **Section 26.13 Federal Financial Assistance Agreement**

The **Marion County Airport** has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the **Marion County Airport** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The **Marion County Airport** 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 **Marion County Airport** 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 **Marion County Airport** 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 **Marion County Airport** 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.*).

Contract Assurance: The **Marion County Airport** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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 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, 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.

## ADMINISTRATIVE REQUIREMENTS

### **Section 26.21 DBE Program Updates**

The **Marion County Airport** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The **Marion County Airport** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **Marion County Airport** is in compliance with it and Part 26. The **Marion County Airport** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **Marion County Airport** 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 DOT approval.

### **Section 26.23 Policy Statement**

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

### **Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for **Marion County Airport**:

<b>Name:</b>	<b>Mike Grawe</b>
<b>Title:</b>	<b>Airport Manager</b>
<b>Address:</b>	<b>Marion County Airport</b> <b>14968 SW 110<sup>th</sup> Street</b> <b>Dunnellon, FL 34432</b>
<b>Telephone:</b>	<b>(352) 465-8545</b>
<b>E-mail:</b>	<a href="mailto:mike.grawe@marionfl.org">mike.grawe@marionfl.org</a>

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **Marion County Airport** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the County Commissioners concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in [Attachment 2](#) to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes **Marion County Airport** progress toward attainment and identifies ways to improve progress.

7. Participates in pre-bid meetings.
8. Advises the Board of County Commissioners on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

#### **Section 26.27 DBE Financial Institutions**

It is the policy of the **Marion County Airport** to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Currently, the Florida Unified Certification Program does not have any certified DBE financial institutions. In addition, at this time, there are no minority-owned banks in the northeastern region of Florida. (Source: U.S. Treasury Department Minority Bank Deposit Program <https://www.fiscal.treasury.gov/mbdp/participants.html>). We will investigate this annually.

#### **Section 26.29 Prompt Payment Mechanisms**

The **Marion County Airport** requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the **Marion County Airport** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the **Marion County Airport**.

The **Marion County Airport** 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, **Marion County Airport** has selected the following method to comply with this requirement:

The **Marion County Airport** may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

To implement this measure, the **Marion County Airport** includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

- a. From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise

instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

- 1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.
  - 2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Section 26.31 Directory**

The **Marion County Airport** is a non-certifying member of the Florida Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

### **Section 26.33 Over-concentration**

The **Marion County Airport** has not identified that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

The **Marion County Airport** has not established a business development program, however, the **State of Florida** DBE Program provides certified DBE companies with substantial benefits, including being listed in the FDOT and DBE Supportive Services Directories which are distributed among prime contractors and consultants. Certified Florida DBEs receive information regarding upcoming FDOT projects and have access to the Florida DBE Supportive Services program <https://www.fdotdbesupportservices.com/>.



## Section 26.37 Monitoring Responsibilities

The **Marion County Airport** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in **Marion County Airport** DBE program.

The **Marion County Airport** actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

### Monitoring Payments to DBEs and Non-DBEs

The **Marion County Airport** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. We will bring to the attention of the Department of Transportation 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 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. [Attachment 7](#) lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (*i.e.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by onsite inspection and reporting by the resident project representative and review of contractor submitted documentation of payments made to DBE subcontractors.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (*e.g.*, payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

The **Marion County Airport** requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **Marion County Airport** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized

representative of **Marion County Airport** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The **Marion County Airport** proactively reviews contract payments to subcontractors including DBEs monthly and with each application for payment. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **Marion County Airport** by the prime contractor.

#### Prompt Payment Dispute Resolution

The **Marion County Airport** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

Upon either parties written request to the DBELO for mediation, the parties shall participate voluntary mediation by selecting a mutually agreed upon mediator that is certified by the Florida Supreme Court within 10 days of request. Within 30 days of the request, the mediation shall be completed, with or without legal counsel, pursuant to Florida law.

The **Marion County Airport** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage *[examples of mechanisms include the following]*:

1. Alternative dispute resolution (ADR)
  - If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the subcontractor should contact the DBELO to initiate complaint.
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
  - The **Marion County Airport** has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to the prime contractor. Retainage will be held from prime contractors and we will provide for prompt and regular incremental acceptances of portions of the prime contract, and will pay retainage to prime contractors based on these acceptances. We have established a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after our payment to the prime contractor.

### Prompt Payment Complaints

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

- If the affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **Marion County Airport** to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### Enforcement Actions for Noncompliance of Participants

The **Marion County Airport** will provide appropriate means to enforce the requirements of §26.29. These means include:

- Notify the contractor for resolution.
- If not promptly resolved, provide the subcontractor with copy of bond for them to notify the bonding agency.
- Retainage is not released until all lien waivers are received from subs.

The **Marion County Airport** will actively implement the enforcement actions detailed above. Addition monitoring and enforcement mechanisms can be found in [Attachment 7](#).

### Monitoring Contracts and Work Sites

The **Marion County Airport** reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by DBELO or designee. Contracting records are reviewed by DBELO or designee. The **Marion County Airport** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation**

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

The small business element is incorporated as [Attachment 10](#) to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the Marion County Airport to be considered by DOT as implementing this DBE program in good faith.**

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The **Marion County Airport** does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The **Marion County Airport** will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the **Marion County Airport** will submit its Overall Three-year DBE Goal to the Federal Aviation Administration by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of the Federal Aviation Administration.

[https://www.faa.gov/sites/faa.gov/files/about/office\\_org/headquarters\\_offices/acr/DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Schedule\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_ACDBE_Reporting_Requirements_Schedule_Final.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the **Marion County Airport** does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the **Marion County Airport** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The **Marion County Airport** will use the State of Florida's DBE Directory information and the Census Bureau Data as a method to determine the base figure. The **Marion County Airport** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The **Marion County Airport** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the **Marion County Airport** will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information

concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the **Marion County Airport** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the **Marion County Airport** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the **Marion County Airport** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the **Marion County Airport** will publish a notice announcing the proposed overall goal before submission to the Federal Aviation Administration on August 1st. The notice will be posted on the **Marion County Airport** official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the Federal Aviation Administration, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the **Marion County Airport**. This notice will provide that the **Marion County Airport** and Federal Aviation Administration will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1<sup>st</sup> deadline.**

The Overall Three-Year DBE Goal submission to the Federal Aviation Administration will include a summary of information and comments received, if any, during this public participation process and the **Marion County Airport** responses.

The **Marion County Airport** will begin using the overall goal on October 1 of the relevant period, unless other instructions from the Federal Aviation Administration have been received.

#### Project Goals

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

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

### Prior Operating Administration Concurrence

The **Marion County Airport** understands that prior Federal Aviation Administration concurrence with the overall goal is not required. However, if the Federal Aviation Administration review suggests that the overall goal has not been correctly calculated or that the method employed by the **Marion County Airport** for calculating goals is inadequate, Federal Aviation Administration may, after consulting with the **Marion County Airport**, adjust the overall goal or require that the goal be adjusted by the **Marion County Airport**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in [Attachment 5](#) to this program.

### **Section 26.47 Failure to meet overall goals**

The **Marion County Airport** cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the **Marion County Airport** fails to administer its DBE program in good faith.

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

The **Marion County Airport** 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 Department 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;
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. The **Marion County Airport** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to the Federal Aviation Administration upon request.

### **Section 26.51 Means Recipients Use to Meet Overall Goals**

#### Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **Marion County Airport** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any

time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in [Attachment 5](#) to this program.

The **Marion County Airport** will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.



## Contract Goals

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

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

Contract goals will be expressed as a percentage of the Federal share of DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals**

#### Demonstration of good faith efforts (pre-award)

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

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

The **Marion County Airport** 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 DOT-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 it submits to meet 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.

- vi. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, 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.

#### Administrative reconsideration

Within 10 days of being informed by the **Marion County Airport** that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

<b>Name:</b>	<b>Jim Couillard</b>
<b>Title:</b>	<b>Director, Marion County Parks &amp; Recreation</b>
<b>Address:</b>	<b>111 SE 25<sup>th</sup> Avenue Ocala, FL 34471</b>
<b>Telephone:</b>	<b>(352) 671-8560</b>
<b>E-mail:</b>	<a href="mailto:jim.couillard@marionfl.org">jim.couillard@marionfl.org</a>

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

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

#### Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of **Marion County Airport**. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if **Marion County Airport** agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The **Marion County Airport** determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the **Marion County Airport** written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that the **Marion County Airport** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to **Marion County Airport** a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **Marion County Airport**, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise **Marion County Airport** and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of **Marion County Airport** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The **Marion County Airport** 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If **Marion County Airport** requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The **Marion County Airport** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of **Marion County Airport** may 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.

***[Note: The provisions of the foregoing section apply only when a contract goal is established.]***

#### **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 currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The **Marion County Airport** is a non-certifying member of the Florida Unified Certification Program (UCP). Florida UCP will use the certification standards of Subpart D 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. Certifying Florida UCP members make all certification decisions based on the facts as a whole.

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

**Equal Opportunity Office  
DBE & Small Business Development Programs  
605 Suwannee St. MS 65  
Tallahassee, FL 32399  
(850) 414-4747**

The Uniform Certification Application form and documentation requirements are found in [Attachment 8](#) to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

The **Marion County Airport** is the member of a Unified Certification Program (UCP) administered by Florida Department of Transportation. The UCP will meet all of the requirements of this section. A copy of the signed Florida UCP Agreement can be found in [Attachment 9](#).

Florida DOT (FDOT) is committed to engaging small disadvantaged, minority and women-owned business enterprises as defined herein in all contracts to the maximum feasible extent, and will continue working to ensure the maximum feasible opportunity for these businesses to participate in contracts financed in whole or in part with federal funds.

As a recipient of federal USDOT funding, FDOT is required to develop and administer the DBE Program. FDOT administers the DBE Program and certifies all DBEs in Florida in compliance with federal regulations under 49 CFR Part 26. This Program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a “level playing field”, and foster equal opportunity in USDOT-assisted contracts; improve the flexibility and efficiency of the DBE Program; and reduce burdens on small businesses.

DBE Certification does not mean the Contractor has the ability to work in the State of Florida - it is up to the Contractor to verify eligibility.

**DBE Information found at** <http://www.fdot.gov/equalopportunity/dbecertification.shtm>.

- If you have any questions regarding DBE Certification, please contact FDOT Certification Help at [DBECert.Help@dot.state.fl.us](mailto:DBECert.Help@dot.state.fl.us)
- Florida Unified Certification Program (UCP) Disadvantaged Business Enterprise (DBE) Directory: <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>
- DBE Supportive Services Providers: <http://www.fdot.gov/equalopportunity/serviceproviders.shtm>
- To apply for certification, you may contact your local certifying entity or:  
Equal Opportunity Office  
DBE & Small Business Development Programs  
605 Suwannee St. MS 65  
Tallahassee, FL 32399  
(850) 414-4747

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to Marion County Airport**

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

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties. Subject to the provisions of the Florida Public Records Law.

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

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

## **ATTACHMENTS**

<a href="#"><u>Attachment 1</u></a>	Regulations: 49 CFR Part 26 or website link
<a href="#"><u>Attachment 2</u></a>	Organizational Chart
<a href="#"><u>Attachment 3</u></a>	Bidder's List Collection Form
<a href="#"><u>Attachment 4</u></a>	DBE Directory or link to DBE Directory
<a href="#"><u>Attachment 5</u></a>	Overall Goal Calculations
<a href="#"><u>Attachment 6</u></a>	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
<a href="#"><u>Attachment 7</u></a>	DBE Monitoring and Enforcement Mechanisms
<a href="#"><u>Attachment 8</u></a>	DBE Certification Application Form
<a href="#"><u>Attachment 9</u></a>	State's UCP Agreement
<a href="#"><u>Attachment 10</u></a>	Small Business Element Program



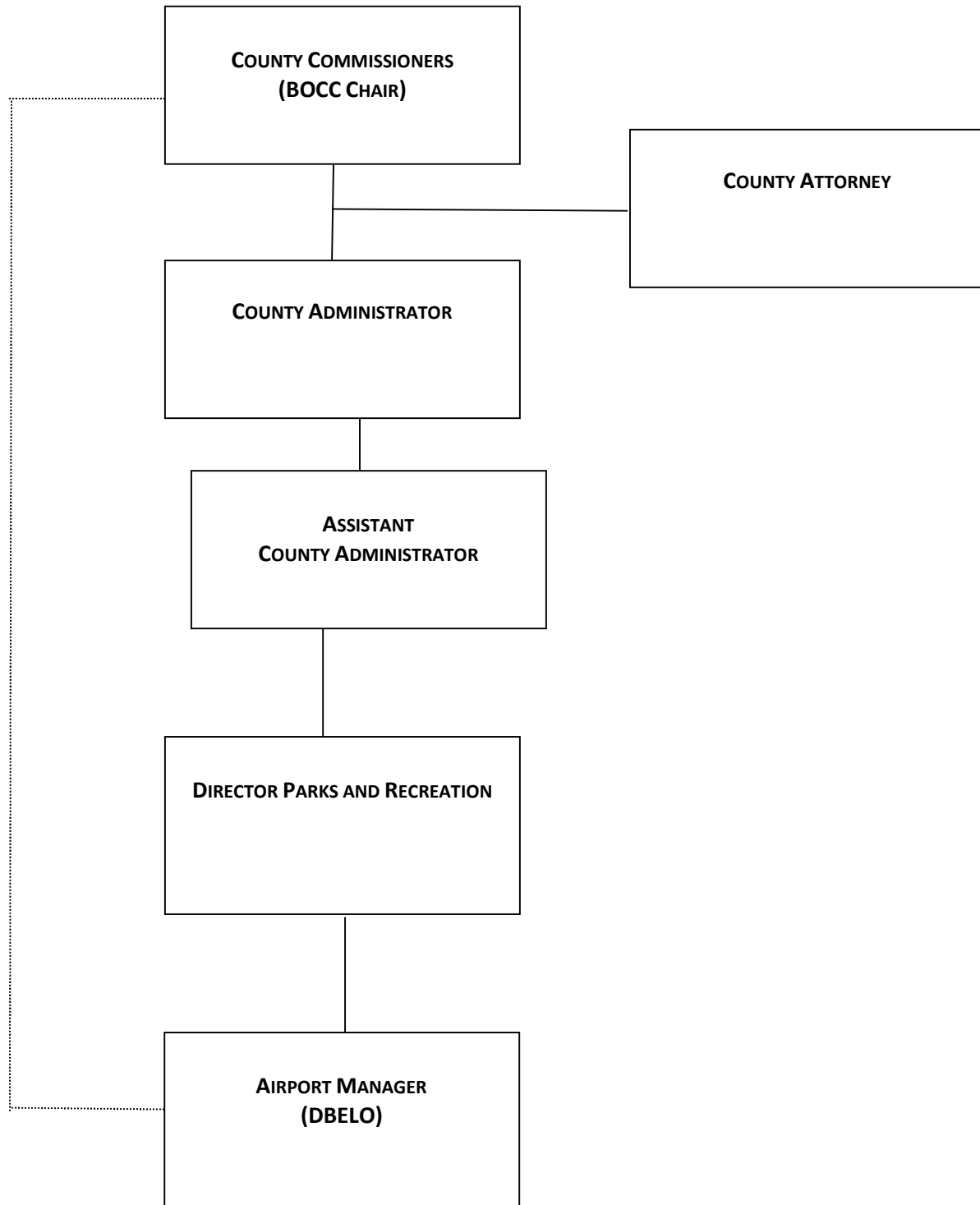
## **ATTACHMENT 1**

Regulations: 49 CFR Part 26, or link to website

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

## ATTACHMENT 2

### Organizational Chart



### ATTACHMENT 3

#### Bidder's List Collection Form

***[Reminder: the information below must be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires recipients to collect information from all bidders and subcontractors, including unsuccessful ones.]***

#### PLAN HOLDERS LIST

PROJECT TITLE:

BID DUE DATE:

PLACE:

PLAN FEE:

PRE-BID MEETING DATE:

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

## **ATTACHMENT 4**

### **State of Florida Searchable DBE Directory**

The State of Florida Department of Transportation DBE Directory is available online at the following website:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx>

## **ATTACHMENT 5**

Submitted separately to the FAA.

## ATTACHMENT 6

### Demonstration of Good Faith Efforts

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) STATEMENT**

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 Sponsor to practice nondiscrimination 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 proposals. Award of this contract will be conditioned upon satisfying the DBE requirements of this contract. These requirements apply to all bidders, including those who qualify as a DBE. A DBE contract goal of **1.57 percent** has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

1. The names and addresses of Disadvantaged Business Enterprise (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 listed under (1);
4. Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
5. If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

## Demonstration of Good Faith Efforts - Forms 1 & 2

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

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

☐ Bidder/offeror has met the DBE contract goal

The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.

☐ Bidder/offeror has not met the DBE contract goal

The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

*\*Percentage is to be used only in negotiated procurements, including design-build contracts*

*\*\*For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

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

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

\_\_\_\_\_  
Signature of DBE's Authorized Representative

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

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

**Submit this page for each DBE subcontractor.**



Bidder: \_\_\_\_\_

**DISADVANTAGED BUSINESS ENTERPRISE DATA**

(must be completed and submitted within five days after Bid opening and prior to contract award)

**Contractor's Required Submission.** Each prospective Contractor shall complete and include, in his Bid, the following proposed DBE subcontract work. Prior to award of the Contract under this solicitation, the prospective Contractor shall confirm efforts made, to the best of the Contractor's ability, to obtain DBE subcontract participation in this Contract and shall submit the following information concerning proposed and final DBE participation in the Contract.

DBEs		
DBE Subcontractors <u>Names/Addresses/Identity*</u>	<u>Subcontract Work Item</u>	Dollar Value of <u>Subcontract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

DBEs		
<u>DBE Suppliers</u> <u>Names/Addresses/Identity*</u>	<u>Subcontract Work Item</u>	Dollar Value of <u>Subcontract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

DBEs		
DBE Manufacturers <u>Names/Addresses/Identity*</u>	<u>Subcontract Work Item</u>	Dollar Value of <u>Subcontract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Dollar Value of Subcontract Work	_____
Total Dollar Value of Bid	_____
Total DBE percent	_____

Bidder: \_\_\_\_\_

**LIST OF PROPOSED NON-DBE SUBCONTRACTORS**

(must be completed and submitted within five days after Bid opening and prior to contract award)

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**LIST OF PROPOSED NON-DBE SUPPLIERS**

(must be completed and submitted within five days after Bid opening and prior to contract award)

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**LIST OF PROPOSED NON-DBE MANUFACTURERS**

(must be completed and submitted within five days after Bid opening and prior to contract award)

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Responsible for: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Bidder: \_\_\_\_\_

**DISADVANTAGED BUSINESS UNAVAILABILITY CERTIFICATION**

(Must be completed and submitted within five days after Bid opening and prior to contract award for each unavailable DBE contacted. Use copies of this page if necessary.)

I, \_\_\_\_\_, \_\_\_\_\_  
(name of officer) (title)

of \_\_\_\_\_ certify that on  
(name of company)

\_\_\_\_\_ I contacted the following disadvantaged contractor to obtain  
(date)  
a bid for the following work to be performed:

Disadvantaged Contractor	Type of Work	Forms of Bid Sought (unit prices, etc.)
--------------------------	--------------	--

_____	_____	_____
_____	_____	_____

To the best of my knowledge and belief, said disadvantaged contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_

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

\* \* \* \* \*

I, \_\_\_\_\_, \_\_\_\_\_  
(name) (title)

of \_\_\_\_\_ was offered an opportunity to bid  
(DBE company name)

on the above-identified work on \_\_\_\_\_ by \_\_\_\_\_  
(date) (name)

of \_\_\_\_\_.  
(company name)

The above statement is a true and accurate account of why I did not submit a bid on the project.

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

Title: \_\_\_\_\_

## ATTACHMENT 7

### **DBE Monitoring and Enforcement Mechanisms**

Each Contractor will be required to submit documentation of DBE participation as the work progresses. A monthly compliance report/DBE participation affidavit and EEO/DBE monthly activities report will be required to be submitted monthly with the Contractor's Application for Payment or by the last day of the month if the Contractor is not submitting an Application for Payment. Trade Contractor's Application for Payment will not be processed if any of the DBE monthly report is delinquent.

The **Marion County Airport** has a breach of contract action, pursuant to the terms of the contract, option available to enforce the DBE requirements contained in its contracts. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, 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
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 8**  
DBE Certification Application Form

For forms required to initiate the DBE Certification process, visit the State of Florida website:

<https://www.fdot.gov/equalopportunity/dbecertification.shtm>

**ATTACHMENT 9**  
State's UCP Agreement

## **ATTACHMENT 10**

### Small Business Element

#### **1. Objective/Strategies**

Recognizing that the DBE Program goals should be met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses, the **Marion County Airport** will implement a small business element into its DBE policy in accordance with applicable law. The **Marion County Airport** is including this element to facilitate competition by and expand opportunities for small businesses. The **Marion County Airport** is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. The **Marion County Airport** will meet its objectives using a combination of the following methods and strategies:

a. Set asides:

Where feasible, the **Marion County Airport** will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the **Marion County Airport** and its prime contractors/consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.

b. Unbundling:

The **Marion County Airport**, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The **Marion County Airport** will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the **Marion County Airport** will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

#### **2. Definition**

a. Small Business:

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over



a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

b. Disadvantaged Business Enterprise:

A for-profit small business (as defined by the Small Business Administration) —

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE by the State Department of Transportation (FDOT) in accordance with 49 CFR 26.

For the purposes of the small business element of the **Marion County Airport's** DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

### 3. Verification

**Marion County Airport** will accept the following certifications for participation in the small business element of their DBE Program with applicable stipulations:

- a. State DOT DBE Certification – DBE Certification by the State DOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the State DOT.
- b. State DOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the State DOT DBE Certification application after contract award.
- c. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

### 4. Monitoring/Record Keeping

- a. Each Contractor will be required to submit documentation of DBE participation as the work progresses. A monthly compliance report/DBE participation affidavit and EEO/DBE monthly activities report will be required to be submitted monthly with the Contractor's Application for Payment or by the last day of the month if the Contractor is not submitting an Application for Payment. Trade Contractor's Application for Payment will not be processed if any of the DBE

monthly report is delinquent.

- b. The **Marion County Airport** 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 City or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

## 5. Assurance

The **Marion County Airport** makes the following assurances:

- a. The program is authorized under Florida state law;
- b. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- c. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- d. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- e. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).