

BROWARD COUNTY, FLORIDA

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN
(REVISED July 28, 2014)**

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

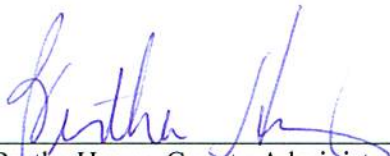
Broward County, under the direction of the County Administrator, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Broward County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Broward County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Broward County to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

The Director of the Office of Economic and Small Business Development has been delegated as the DBE Liaison Officer. In that capacity, the Director of the Office of Economic and Small Business Development 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 Broward County in its financial assistance agreements with the Department of Transportation.

Broward County, through its County Administration, has disseminated this policy statement to the Broward County Board of County Commissioners and all of the components of its organization. Copies of the program plan are available to the public upon request.



Bertha Henry, County Administrator

7/28/14
Date

SUBPART A – GENERAL REQUIREMENTS**Section 26.1 Objectives**

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

Section 26.3 Applicability

Broward County is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Broward County is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

Broward County will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

Broward County 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, Broward County 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: 26.11(b)**

We will report DBE participation to DOT as follows:

For Broward County's FAA-assisted contracts, we will submit annually DOT Form 4630, as modified for use by FAA recipients.

For Broward County's FTA-assisted contracts, we will report DBE participation on a semi-annual basis for all FTA-assisted contracts and on a quarterly basis for American Recovery and Reinvestment Act (ARRA)-assisted contracts, using DOT Form 4630. These reports will reflect DBE awards or commitments and payments actually made to DBEs on prime contracts and subcontracts awarded on DOT-assisted contracts through the use of race-conscious and race-neutral methods.

Bidders List: 26.11(c)

Broward County will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow

use of the bidders' list approach to calculating overall goals. The bidders' list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

- Including contract clauses requiring prime bidders to report the names/addresses, and other potentially relevant information, of all firms who quote to them on subcontracts;
- A Bidder's Opportunity List is attached to every solicitation funded with DOT-assistance. The purpose of the Bidder's Opportunity List is to obtain information (Federal Tax ID Number, Firm Name, Address, Year Firm Established, DBE/Non-DBE, Type of Work, Annual Gross Receipts, Ethnic Categories, and Gender), in order to develop and maintain a database of all prime vendors and subcontractors/subconsultants participating or attempting to participate in County sponsored DOT-assisted contracts;
- A recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information;
- A notice in all federally-assisted solicitations,
- If necessary, a widely disseminated request to firms quoting on subcontracts to report information directly to Broward County, through its Office of Economic and Small Business Development.

Section 26.13 Federal Financial Assistance Agreement

Broward County has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

General Assurance: 26.13(a)

Broward County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Broward County of its failure to carry out its approved program, the Department 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.

Contract Assurance: 26.13(b)

We will ensure that the following clause is placed in every DOT-assisted contract that Broward County signs with a contractor (and require that prime contractors include the same language in their subcontracts with DBE firms):

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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since Broward County has received a grant of more than \$250,000 for airport planning or development, and more than \$250,000 in FTA planning, capital, and/ or operating assistance in a federal fiscal year (exclusive of transit vehicle purchases), we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will submit updates representing significant changes in the program to DOT for approval, and upload this program to TEAM-Web's DBE reporting module.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Sandy-Michael McDonald, Director
Office of Economic and Small Business Development
115 S. Andrews Avenue, Room A-680
Fort Lauderdale, FL 33301

Office Phone: 954-357-5673
Email: SMMCDONALD@broward.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Broward County complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the County Administrator/CEO concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 1 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 22 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT.
2. Review third-party contracts and purchase requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.

4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements to include DBE goals (both race-neutral methods and contract-specific goal attainment) and identify ways to improve progress.
6. Analyze Broward County’s progress toward attainment.
7. Participates in pre-bid meetings.
8. Advise the CEO\County Commission on DBE matters and achievement.
9. Chair the Small Business Advisory Committee, which addresses DBE-related matters.
10. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plan and participate in DBE training seminars.
12. Certify DBEs according to the criteria set by DOT and act as liaison to the Uniform Certification Process (UCP) in Florida.
13. Provide outreach to DBEs and community organizations.
14. Maintain Broward County’s directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of Broward County 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. Using the double-digit NAICS code for Finance and Insurance, “52”, Broward County searched the Florida UCP online directory for financial institutions with DBE certifications. A search of all the certified DBEs eligible to work in the state of Florida, with finance-related NAICS codes from 52111 through 523999 revealed four DBE-certified firms.

To date, we have identified the following such institutions:

DBE-CERTIFIED FIRM	LOCATION	NAICS CODES	NAICS DESCRIPTION
Communitel, Inc.	Miami – Miami-Dade County, FL	52232	Financial Transactions Processing, Reserve, and Clearinghouse
Riverplace Analytics, LLC	Jacksonville - Duval County, FL	52311, 52312, 52313, 52314, 52391, 52392, 52393, 52399, 523991	Investment Banking and Securities Dealing; Securities Brokerage, Commodity Contracts Dealing; Commodity Contracts Brokerage; Miscellaneous Intermediation; Portfolio Management; Investment Advice; All Other Financial Investment Activities; Trust Fiduciary, and Custody Activities
Cornerstone Financial	Mount Pleasant – Charleston County, SC	52393	Investment Advice
SGS Services, Inc.	Miramar - Broward County, FL	52313	Commodity Contracts Dealing

Of the four businesses listed above, SGS Services, Inc. is currently operating a foreign currency exchange subconcession at the Fort Lauderdale-Hollywood International Airport (FLL), in

Broward County. We will re-evaluate the availability of these and other DBE financial institutions every two years. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

Broward County will include the following clause in each DOT-assisted prime contract:

For **construction contracts**, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from Broward County.

For **non-construction related contracts**, 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 Broward County.

Retainage: 26.29(b)

The prime contractor agrees further to return retainage payments, for construction contracts, to each subcontractor within 10 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 Broward County. This clause applies to both DBE and non-DBE subcontracts.

Retainage payments by prime contractors, for non-construction related contracts, must be returned 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 frames may occur only for good cause following written approval of Broward County. This clause applies to both DBE and non-DBE subcontracts.

For purposes of the retainage requirement, a subcontractor's work is "satisfactorily completed" when all the tasks called for in the subcontract have been accomplished and documented as required by Broward County.

Monitoring and Enforcement: 26.29(d)

If a contractor fails to comply with these requirements, the County may exercise any administrative remedies it has under the County's Procurement Code, administrative procedures adopted in compliance with 49 CFR Part 26, or any other right or remedy provided in the contract or under applicable law, with all such rights and remedies being cumulative. Additional information regarding monitoring and enforcement mechanisms utilized by Broward County in support of this clause is contained in attachment 4 to this plan.

Section 26.31 Directory

Broward County utilizes the Florida Unified Certification Program (UCP) directory, which identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory is revised on a continual basis, due to new certifications and changes to existing certifications. The Directory is available as follows:

State UCP Directory: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

Section 26.33 Overconcentration

Broward County utilizes data from its disparity study, which is conducted every five years by independent consultants, to examine the issue of overconcentration. The County has not identified that overconcentration exists in the types of work that DBEs perform. The County's 2010 Disparity Study suggests available and increasing capacity among DBE firms, but not overconcentration in the specialties most likely to be considered for subcontracting. Broward County will regularly examine overconcentration every five (5) years, in accordance with each future disparity study.

Section 26.35 Business Development/ Mentor Protégé Program

Broward County is currently in the process of developing a mentor protégé program, which encompasses both its local and federal programs. To the extent that the mentor protégé program relates to the federal DBE program, only independent business entities, which meet the DBE program certification requirements and which are certified prior to commencing the mentor protégé program will be eligible to participate. The program is anticipated to be operational in July of 2013. Once in place, the effectiveness of the program will be re-evaluated every 12 months.

Section 26.37 Monitoring and Enforcement Mechanisms

Broward County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. Broward County reviews contracting records for compliance with DBE requirements, and monitors worksites for compliance with DBE requirements. Efforts in support of this monitoring and enforcement mechanism are included in the administrative procedures that have been promulgated in support of the County's Small Business Development Programs. (See Attachment 4.)

4. We will complete a written certification that we have reviewed contracting records and monitored work sites for compliance with DBE requirements.
5. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

A. Objective (49 CFR Part 26.39)

Pursuant to 49 C.F.R. Part 26.39, Broward County is including this element to structure contracting requirements to facilitate competition by small business concerns. Broward County 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 County will meet its objectives using a combination of the following methods and strategies:

1. Race Neutral Set asides:

The County may establish a small business, race-neutral, set-aside for prime contracts under a stated amount (*e.g.*, \$1 million). Broward County may establish a percentage of the total value of all federally-assisted prime contract and subcontract awards to be set aside for participation by small businesses on USDOT (U.S. Department of Transportation)-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 Broward County 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 as defined in this program is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review USDOT-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 determination will be made based on the estimated availability of small businesses able to provide the requisite scopes of work regardless of DBE status. 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 a USDOT-assisted contract, the project manager and DBELO will document why a small business set-aside is inappropriate and the factors which were considered in making that determination, including project scope and estimated availability of firms.

2. Contract Unbundling:

Broward County, where feasible, may “unbundle” projects or separate large contracts into smaller contracts that may be more suitable for small business participation. Broward County will conduct contract reviews on each USDOT-assisted contract to determine whether portions of the project may 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 that may be associated with unbundling. Broward County will assist prime contractors or prime consultants in identifying portions of work that may be unbundled and performed by small businesses. Broward County will document the factors used to determine whether or not an USDOT-assisted contract will be unbundled or bid separately.

3. Outreach and technical assistance:

Broward County will utilize a variety of methods to facilitate small business participation. Currently, we sponsor and participate in outreach and training opportunities for small businesses through various partnerships. Broward County staff participates in business outreach sessions conducted by local municipalities and non-profit agencies that are designed to introduce small and minority-owned businesses to government procurement processes and practices. Additionally, Broward County advertises contracting opportunities through various outlets, including: local newspapers, minority-based publications and trade publications, a weekly email-blast to its certified small business firms.

In each USDOT-assisted contract, the DBELO will document the method in which the small business element will be implemented (*e.g.*, set-aside, unbundling and/or outreach).

4. Other Methods:

As Broward County implements this element of its DBE plan, it is anticipated that other methods to facilitate competition by small business concerns may be developed and implemented.

B. Definitions

1. **Small Business:**

Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations (13 CFR Part 121). A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field, as determined by the DBELO. 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.

2. **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 average annual gross receipts, as defined by SBA regulations over the firm's previous three fiscal years is less than \$22.41 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 Florida Department of Transportation (FDOT) in accordance with 49 CFR 26, through the Florida UCP.

For the purposes of the small business element of Broward County's DBE Program, small businesses that 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 USDOT-assisted contracts.

C. Certification and Verification Procedures

Broward County will accept the following certifications for participation in the small business element of Broward County's DBE Program with applicable stipulations:

1. FDOT DBE Certification – DBE Certification by the FDOT, provided that the firm also meets the definition of a small business as provided herein. All DBE certification determinations are evidenced by a letter of DBE certification issued by FDOT or a UCP Member.
2. Broward County Small Business Enterprise (SBE) or County Business Enterprise (CBE) – Will require submittal of three years of business tax returns and page 2 of the FDOT DBE Certification application after contract award.
3. HUB Certification - Will require submittal of three years of business tax returns and page 2 of the FDOT DBE Certification application after contract award.
4. 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.
5. Project-based small business verification – A non-certified firm may claim small business status for this program upon documentation on a project basis of their meeting the SBA size standards for the firm's major area of specialty. The firm must provide three years of business tax returns for itself and any and all affiliate firms with the solicitation response. Status in this program does not accord certification as either a CBE or SBE under the local certification program; requirements of the local program are addressed in the applicable local ordinance(s).

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.

D. Implementation Schedule

Broward County will internally approve and implement the Small Business Participation element of the DBE Program no later than nine months following approval by the DOT Operating Administration (OA).

E. General Assurances

Broward County makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program, provided that they are also small businesses, as defined herein;
3. There are no geographic or local preferences or limitations imposed on USDOT-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
6. Steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**Section 26.43 Set-asides or Quotas**

Broward County does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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

In accordance with Section 26.45(f), Broward County will submit its overall DBE goal to the applicable DOT OA by August 1 at three-year intervals. Broward County may adjust its three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. Broward County will submit such an adjustment to the concerned OA for review and approval. Before establishing the overall goal, Broward County will consult with local business groups, including minority, women's and general contractor groups, community organizations, and other officials or organizations, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Broward County's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that Broward County and DOT will accept comments on the goals for 45 days from the date of the notice. The notice is issued in the South Florida Sun-Sentinel, The Miami Herald, and minority-focus newspapers. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1st of the initial year of the triennial goal period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

§ 26.47 Goal Setting and Accountability

Per 26.47(c), if the awards and commitments shown on Broward County's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that three-year period, Broward County must do the following in order to be regarded by the Department as implementing its 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 that Broward County has identified in its analysis and to enable the County to meet fully its goal for the new fiscal year.
- (3) As one of the 50 largest transit authorities, as determined by the FTA, Broward County must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed to the appropriate DOT OA for approval.

If Broward County is found not to have met this criteria stated above, in accordance with 49 CFR 26(c)(3)(ii), copies of the analysis and corrective actions must be retained for three years and made available to the OA upon request for review.

Section 26.49 Transit Vehicle Manufacturers (TVM) Goals

Broward County will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. .

In order to validate the TVM certification prior to award, Broward County will require its staff to submit evidence that staff has checked the following FTA website: www.fta.gov/dbe for a list of TVM's that have submitted their required DBE information to the FTA, and include the same in applicable procurement files. Also, TVMs must submit to Broward County a copy of their FTA approval letters along with the TVM certifications.

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 5 to this program, which includes the FY 2012 goal-setting methodologies for the Broward County Aviation Department and the Broward County Transit Division. This section of the program will be updated triennially when the goal calculation is updated.

Section 26.51(d-g) Meeting Overall Goals/Contract Goals

Broward County will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established over the period to which the overall goal applies; they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal 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.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

In accordance with 49 CFR 26.51(b), Broward County will utilize race-neutral measures to achieve participation, which include but are not limited to:

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 of this part;
2. Providing technical assistance and other services; and
3. 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).

Section 26.53 Good Faith Efforts ProceduresDemonstration 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 met the contract goal or document good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible: the Director of the Office of Economic & Small Business Development, as program director, and the DBELO.

We will ensure that all information is complete and accurately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

Broward County treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility.

In its solicitations for DOT-assisted contracts for which a contract goal has been established, Broward County will require the following:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders/offerors will be required to submit the following information to Broward County, 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;
 - (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;
 - (v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and
3. The bidder/offeror must present the information required by paragraph (b)(2) of this section—
 - (i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53(d))

If Broward County determines that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of 26.53, Broward County will, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration. The bidder/offeror must notify the County in writing of the intent to request administrative reconsideration within 10 business days of the initial determination. The determination of apparent successful bidder will be made by the DBELO, upon consultation with the Director of the Purchasing Division or designee. Such determination does not necessarily mean that the apparent successful vendor will receive the award, even if the firm is successful in the administrative reconsideration process; the determination does allow the administrative reconsideration process to proceed pending other selection process activities.

1. 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.

2. The Administrative Reconsideration Official will be designated by the County Administrator.

Bertha Henry
County Administrator
Broward County Government
115 S. Andrews Avenue, Room 409
Fort Lauderdale, FL 33301
Phone: (954) 357-7350
Email: bhenry@broward.org

3. The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
4. The bidder/offeror must have the opportunity to meet in person with the designated reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
5. Broward County 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.
6. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals (26.53(f))

Broward County requires that prime contractors not terminate or substitute a DBE subcontractor listed on a bid/contract with a DBE goal without good cause and prior written consent from the Broward County Office of Economic and Small Business Development (OESBD). Prior written consent will only be provided where there is “good cause” for termination of the DBE firm, as established by Section 25.53(f)(3) of the DBE regulations.

Prior to transmitting its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to the OESBD prior to consideration of the request to terminate or substitute. The DBE will then have five (5) days to respond and advise OESBD of why it objects to the proposed termination. The five-day period may be reduced if the matter is one of public necessity, e.g., safety. Prime contractors must make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

In those instances where “good cause” exists to terminate a DBE’s contract, Broward County will require the prime 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. We will require the prime contractor to notify the DBE Liaison

Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Details on what constitutes "good cause" is contained in 49 CFR Part 26.53(f).

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE 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, our 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.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of Broward County 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 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 ____ 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 9), 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 it submits to meet 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.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Broward County 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. Broward County is a certifying member within the State of Florida Unified Certification Program (UCP), and certifies those firms with primary business locations within Broward County, Florida, as eligible for the Disadvantaged Business Enterprise (DBE) Certification Program. To be certified as a DBE, a firm must meet all certification eligibility standards as set forth in subpart D of 49 CFR part 26. We will make our certification decisions based on the facts as a whole.

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

Sandy-Michael McDonald, Director, DBELO
Broward County Office of Economic and Small Business Development
115 S. Andrews Avenue, Room A680
Fort Lauderdale, FL 33301

Phone: 954-357-5673

Email: SMMCDONALD@broward.org

Our certification application forms and documentation requirements are found in Attachment 7 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Broward County is a member of the Unified Certification Program (UCP) administered by the Florida Department of Transportation. The UPC will meet all of the requirements of this section. The following is a description of the UCP: The UCP will provide “one-stop shopping” to applicants for DBE certification; applicants need apply only once for a DBE certification that will be honored by all UCP Members in Florida. The UCP maintains an electronic DBE Directory of all firms certified in Florida that is be available to the public on the Internet and in print.

State UCP Directory: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

Section 26.83 Procedures for Certification Decisions

A. Broward County will take the following steps in determining whether a DBE firm meets the applicable standards for certification:

- (1) Perform an on-site visit to the offices, and if applicable, job sites at which the firm is working at the time of the eligibility investigation in our jurisdiction or local area. Broward County will interview the principal officers of the firm and review their résumés and/or work histories. Broward County will rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- (2) If the firm is a corporation, analyze the ownership of stock in the firm;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including contracts received and work it has completed;
- (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

- (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA Memorandum of Understanding MOU.
- B. When another grant recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information Broward County has obtained about that firm (e.g., including application materials or the report of a site visit, if one was conducted), Broward County will promptly make the information available to the other recipient.
- C. Broward County will safeguard information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- D. Once Broward County has certified a DBE, it shall remain certified until and unless Broward County has removed its certification, through the procedures of section 26.87. Broward County does not require DBEs to reapply for certification. However, Broward County will conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of: changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section); a complaint; or other information concerning the firm's eligibility. If the DBELO has grounds to question the firm's eligibility, an unannounced on-site review may be directed.
- (i) DBE firms must inform Broward County or the Florida UCP, in writing, of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in their application forms.
- E. Every year on the anniversary date of their certification, DBE firms certified by, and primarily located in, Broward County must provide the Broward County Office of Economic and Small Business Development with an affidavit of continuing eligibility sworn to by the firm's owner(s) before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which they have notified the Office of Economic and Small Business Development under paragraph (i) of this section. The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the firm's size and gross receipts.
- F. Broward County will comply with the timeliness requirements of the certification process, as outlined in the 26.83(k-m).

Section § 26.85 Interstate certification

Broward County will follow the Florida UCP implementation of this part.

Section 26.86 Denials of Initial Requests for Certification

If Broward County denies a firm's application or decertifies it, the firm may not reapply until 12 months have passed from the date of our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we remove a DBE's certification, we will follow procedures consistent with Section 26.87. To ensure separation of functions in a de-certification, we have determined that the County Administrator, or designee, will serve as the decision-maker in de-certification proceedings.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT, within 90 days of Broward County's decision. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Policy & Program Development Division
400 7th Street SW – Room 5414
Washington, DC 20590

Phone: (202) 366-4754

TTY: (202) 366-9696

Fax: (202) 366-5575

Applicants are directed to refer to 49 CFR 26.89 regarding certification appeals. Pending the Department's decision in the matter, Broward County's rendered decision remains in effect. The Department does not stay the effect of the Broward County decision while it is considering an appeal. We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous), under 49 CFR 26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT**Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Broward County follows Chapter 119 of the Florida State Statutes with regard to Public Records Requests.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We 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 Broward County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We perform interim audits of contract payments to DBEs. The audit reviews 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.

ATTACHMENTS

1. Organizational Chart (including DBELO, staff assigned to the DBE program, and the County Administrator)
2. UCP Directory for the State of Florida
<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>
3. Monitoring and Enforcement Mechanisms
4. Uniform Procedures for the Administration of the Disadvantaged Business Enterprise Program – certification and compliance procedures
5. Annual Overall Goal-Setting Methodologies for FY 2011 - Aviation Department (FAA), Transportation Department (FTA)
6. Compliance Forms – Monthly Utilization Report; Final Monthly Utilization Report; DBE Letter of Intent; Federal Small Business Program Letter of Intent; DBE Good Faith Effort Form
7. DBE Certification Application Form (UCP)
8. DBE Site visit form.
9. Title 49 Code of Federal Regulations, Part 26
10. Broward County 2010 Disparity Study Executive Summary and link to full online resource (full report - <http://www.broward.org/econdev/Pages/DisparityStudy.aspx>).