



**PENSACOLA**  
International Airport

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND PROGRAM

DBE POLICY AND PROGRAM FOR PROJECTS FUNDED BY  
UNITED STATES DEPARTMENT OF TRANSPORTATION

## POLICY STATEMENT

### **Section 26.1, 26.23 Objectives/Policy Statement**

The Pensacola International Airport (“Airport”), owned and operated by the City of Pensacola, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the 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 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 the Airport’s 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 marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Laura Amentler, Assistant Airport Director – Finance, has been delegated as the DBE Liaison Officer. In that capacity, Mrs. Amentler is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Airport in its financial assistance agreements with the Department of Transportation.

The Airport has disseminated this policy statement to the City of Pensacola. This statement has been distributed to DBE and non-DBE business communities that may perform work on Airport DOT-assisted contracts. The distribution was accomplished by advertised in the local newspaper and in a local minority-focused publication, copies of this statement are available from the City Purchasing Department, the Pensacola International Airport, and are distributed to all participants at every pre-bid meeting on DOT assisted projects.

  
\_\_\_\_\_  
Matthew F. Coughlin, Airport Director

February 8, 2024  
\_\_\_\_\_  
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 Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations.

African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.

To participate in the DBE program, a small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from the relevant state—generally through the state Uniform Certification Program (UCP).

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

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

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

DBE participation will be reported to Federal Aviation Administration (FAA) as follows:

The Airport will transmit to Federal Aviation Administration (FAA) 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 Airport will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

### Bidders List

The 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 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.

The Airport Bidders List will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms, as collected from the Bidders List Form in Attachment 3.

The Airport, as a member of the Florida UCP established pursuant to §26.81, will report to the Department of Transportation’s Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

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

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

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

The 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 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 Airport’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated

as a violation of this agreement. Upon notification to the 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 Airport will ensure that the following clause is included in each DOT-funded contract it signs with a contractor or 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 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 Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Airport is in compliance with it and Part 26. The Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. The 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:

Mrs. Laura Amentler  
Pensacola International Airport

2430 Airport Blvd., Suite 225  
Pensacola, Florida 32504  
(850) 436-5000  
Email: [lamentler@cityofpensacola.com](mailto:lamentler@cityofpensacola.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Airport Director 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 two (2) 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 the Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Airport Director on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Participates in DBE training seminars.
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 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.

The Airport has found no such institutions but will make efforts to identify institutions that will work with the DBE community with each DBE Program Update or every three (3) years, whichever occurs first.

## **Section 26.29      Prompt Payment Mechanisms**

The 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 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 Airport.

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

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. The 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.

To implement this measure, the 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 Airport uses the State of Florida DBE directory, maintained by the State. 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. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Florida revises the Directory annually. The Directory may be found at: <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx>

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

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

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

The Airport has not established a Business Development Program.



## **Section 26.37      Monitoring Responsibilities**

The 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 Airport's DBE Program.

The Airport actively monitors participation by maintaining a running tally of actual DBE attainments, including a means of comparing these attainments to commitments.

### Monitoring Payments to DBEs and Non-DBEs

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

The 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 Airport's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of FAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

### Prompt Payment Dispute Resolution

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

- Scheduled meetings between prime contractor and subcontractor, with the Engineer/Architect of Record and the Airport.

The Airport has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

A contract clause providing that 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 contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

Failure to comply with the prompt payment provision of the contract may result in the Airport taking sanctions under the contract, as listed below:

1. Withholding monthly progress payments;

2. Disqualifying the contractor from bidding on future contracts as non-responsible; and/or;
3. Other remedies the Airport deems appropriate.

#### Prompt Payment Complaints

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

1. Subcontract to first contact prime contractor
2. If 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.
3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible [operating administration] 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 Airport will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability to file a lien against the performance bond of the prime contractor.
- Issue a stop-work order until payments are released to subcontractors.

The Airport will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The Airport reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently, is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Engineer/Architect of Record for the Airport. Contracting records are reviewed by the DBELO and the Engineer/Architect of Record for the Airport. The Engineer/Architect of Record for the 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**

The City of Pensacola City approved ordinance 61-89 to adopt a Small Business Enterprise program to structure contracting requirements to facilitate and encourage competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract

requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The program is a race and gender neutral program that encourages economic growth for local small businesses by providing opportunities to compete for all or portions of Pensacola's contract awards. The SBE program endeavors to create greater access for SBEs to participate as primes as well as subcontractors on non-federally funded projects, contracts and purchases. Companies seeking certification will be referred to the City of Pensacola Purchasing Office. Companies seeking certification must be located within the counties of Escambia or Santa Rosa.

The City defines a Small Business as an independently owned and operated business who employs 50 or less full time employees (1-15 = Tier 1 SBE, 16-50 = Tier 2 SBE), possess a net worth of not more than 1 million dollars, and business located in Escambia or Santa Rosa County.

#### Certification Process

- Vendor completes an application (located at [www.cityofpensacola.com/purchasing](http://www.cityofpensacola.com/purchasing)) and provides requested documentation.
- Application is reviewed by City Staff.
- Eligible vendors are certified and added to Small Business Enterprise Directory and assigned their appropriate business category(ies).

These three programs are not utilized when prohibited by the Florida Department of Transportation (FDOT) or other governmental agencies.

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

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

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

#### **Section 26.45 Overall Goals**

The 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 Airport will submit its Overall Three-year DBE Goal to the FAA 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 below:

[DBE and ACDBE Reporting Requirements Schedule Final.pdf \(faa.gov\)](#)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the 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 Airport will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine a base figure for the relative availability of DBEs in the market area. The Airport will use Census Bureau Data as a method to determine the base figure. The 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.

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 and information about barriers to entry to past competitiveness of DBEs on contracts. The 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.

In establishing the overall goal, the Airport will provide for consultation and publication. This includes consultation with the UWF Small Business Development Center, the Gulf Coast Minority Chamber of Commerce and their membership, the Greater Pensacola Chamber of Commerce and their membership, the City of Pensacola’s Purchasing Department and their registered vendors and the general public. The consultation will include a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the 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 Airport engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

The DBE Program will be posted on the Airport’s official internet web site.

In addition to the consultation described above, the public will be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the Airport’s Administrative Offices. This notice will provide that the Airport and the FAA will accept comments on the goals for 30 days from the date of the notice. **The public comment period will not extend the August 1<sup>st</sup> deadline.**

If the proposed goal changes following review by the FAA, the revised goal will be re-advertised and posted on the official internet web site.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the Airport’s responses.

The Airport will begin using the overall goal on October 1 of the relevant period unless other instructions from the FAA have been received.

### Project Goals

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

### Prior Operating Administration Concurrence

The Airport understands that prior to FAA concurrence with the overall goal is not required. However, if the FAA review suggests an adjustment, 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 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 Airport fails to administer its DBE program in good faith.

The Airport will maintain an approved DBE Program and overall DBE goal. The Airport will administer the program in good faith.

If the awards and commitments shown on the Airport'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 fiscal year, we will:

- (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; and
- (3) The 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 FAA upon request.

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

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

The 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 may 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 technical assistance and other services;
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);
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment to this program.

The 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 meet the overall goal.

The Airport 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).

The Airport will express our contract goals as a percentage of the total amount of a DOT assisted contract.

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

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

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

The DBELO, or designee, is responsible for ensuring that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before commitment to the performance of the contract by the bidder/offeree.

The Airport treats bidder/offerees' compliance with good faith efforts' requirements as a matter of responsiveness – all bidders submit DBE information at the time of bid.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeree:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders/offerees will be required to submit the following information to the Airport, at the time of bid:
  - The names and addresses of DBE firms that will participate in the contract;
  - 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;
  - The dollar amount of the participation of each DBE firm participating;
  - Written documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - 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;
  - 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/offeree 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 seven (7) days of being informed by the 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:

City of Pensacola  
Attn: Purchasing Manager  
222 West Main Street  
Pensacola, FL 32502  
(850) 435-1832  
[purchasing@cityofpensacola.com](mailto:purchasing@cityofpensacola.com)

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 the 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 the 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 Airport has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the 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 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 the 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 the 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 the 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.

If the contractor fails or refuses to comply in the time specified, the 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 Airport may issue a termination for default proceeding.

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 the 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 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 the 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 Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

### **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 Airport is a non-certifying member of the Florida Unified Certification Program (FUCP). FUCP 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.

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

FDOT Equal Opportunity Office (850) 414-4745  
DBECert.Help@dot.state.fl.us

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

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

### **Section 26.101 Compliance Procedures Applicable to Pensacola International Airport**

The Airport understands that if it fails to comply with any requirement of this part, the 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**

The Airport will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

The 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 Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

### **ATTACHMENTS**

Attachment 1	Regulations: 49 CFR Part 26; Link to website
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory; Link to website
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form
Attachment 9	State's UCP Agreement

## **ATTACHMENT 1**

Regulations: 49 CFR Part 26; Link to Website

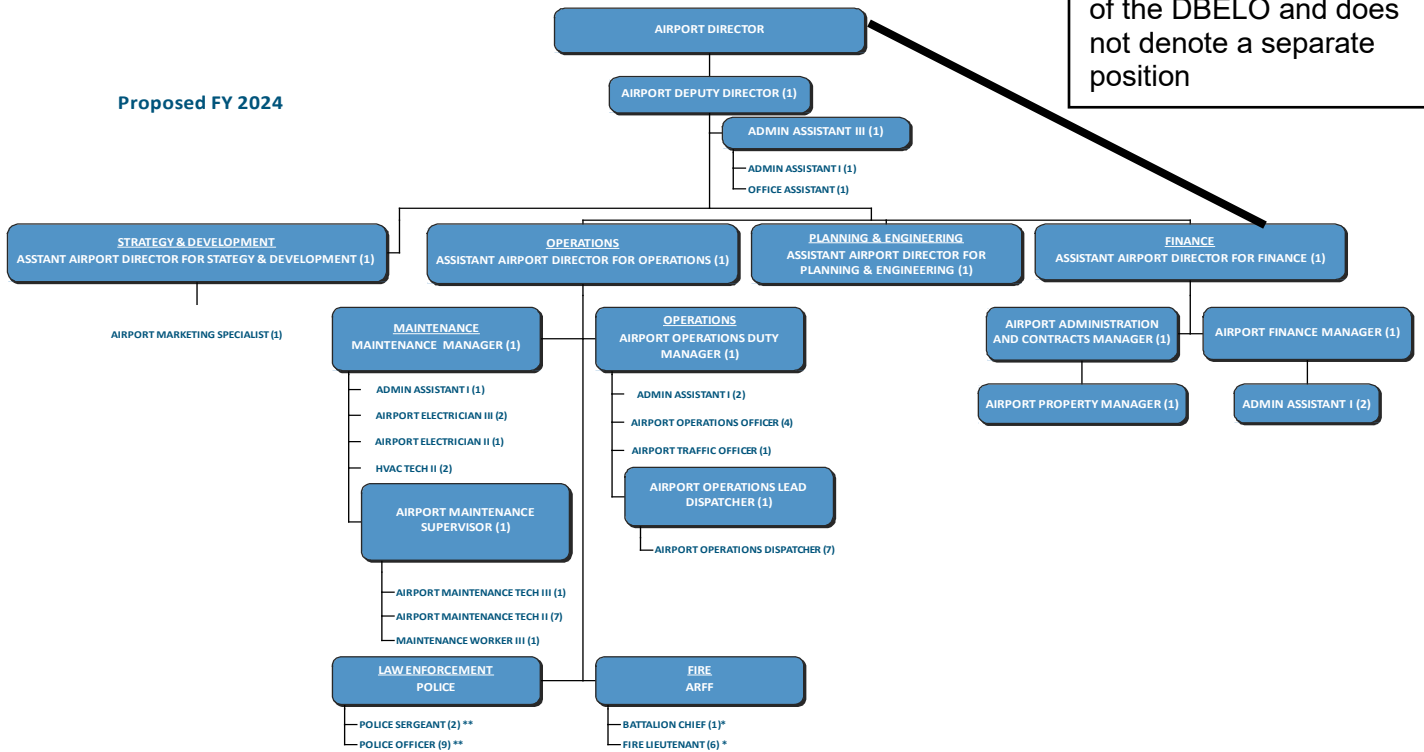
<https://ecfr.io/Title-49/Part-26>

## ATTACHMENT 2

### Organizational Chart

DBELO – Chart reflects the reporting function line of the DBELO and does not denote a separate position

Proposed FY 2024



TOTAL POSITIONS: 66  
 \* Seven positions are funded by Airport Department, however, chain of command and supervision retained by Fire Department.  
 \*\* Eleven positions are funded by Airport Department, however, chain of command and supervision retained by Police Department

## ATTACHMENT 3

## Bidder's List Collection Form

The Pensacola International Airport (PNS) is required per 49 CFR 26. 11 (c) to create and maintain a comprehensive Bidders List. The Bidders List Form will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency's annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific project. Please provide the following mandatory data:

### Part A: Business Data

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

Business Address:

\_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip

County Business is located in: \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ 6. Fax: ( ) \_\_\_\_\_

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

Is this business certified as a Disadvantaged Business Enterprise? Yes No

Business Annual Gross Receipts:

Less than \$500,000 \$500,000 to \$1,000,000 \$1,000,000 to \$2,000,000 \$2,000,000 to \$5,000,000

Over \$5,000,000 Age of Business: \_\_\_\_\_ Years \_\_\_\_\_ Months

### Part B: Project and Work Description

RFP # \_\_\_\_\_

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

Provide brief description of scope of work, services, and/or materials to be performed/furnished:

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

Will you subcontract any of your work? Yes\* No

(\* If "Yes," the subcontractor(s) must complete an individual Bidders List Form also.)

### Part C: Signature

The undersigned declares that the information set forth on this page is current, complete, and accurate.

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

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**ATTACHMENT 4**

Florida DOT DBE Directory; Link to Website

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

**ATTACHMENT 5**



## Overall DBE Three-Year Goal Methodology

Previously submitted to the FAA

**ATTACHMENT 6**

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

[Forms 1 and 2 should be provided as part of the solicitation documents.]

**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.

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

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

**FORM 2: LETTER OF INTENT**

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

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

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

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

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

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

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

-----  
-----  
-----  
-----

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

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By \_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Title)

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

[Submit this page for each DBE subcontractor.]

## ATTACHMENT 7

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

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

- Breach of contract action, pursuant to the terms of the contract;
- Similar actions pursuant to Florida revised Statutes;
- Responsiveness/Responsibility determinations in future bids/contracts;
- Violation of the Procurement Regulations of the City of Pensacola ; and
- Violation of the Rules and Regulations of the Pensacola International Airport.

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

- Suspension or debarment proceedings pursuant to 49 CFR Part 26;
- Enforcement action pursuant to 49 CFR Part 31; and
- Prosecution pursuant to 18 USC 1001.

The Airport will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including but not limited to, the following:

#### **Pre-Bid/Proposal Conference**

The ACDBELO, or designee, shall attend a pre-bid/proposal conference to make a presentation explaining the following:

- The goal for the specification solicitation.
- The requirements related to achieving the goal.
- The criteria for evaluating a bidder/proposer's Good Faith Efforts.
- DBE Certification requirements.
- The requirement for Letters of Intent with Subcontractors.
- Qualifications for counting DBE participation towards the DBE goal.

#### **Contract Provisions**

The Airport will insert the following provisions into agreements/contracts:

- This agreement/contract is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 26. The contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreements covered by 49 CFR Part 26.
- The contractor agrees to include the above statement in any subsequent agreement or contract covered by 49 CFR Part 26, that enters and case those businesses to similarly include the statements in further agreements.

### Good Cause to Terminate an DBE Firm

49 CFR 26.53 of the Federal Regulations has provided that good cause for “terminating” an DBE firm includes the following reasons:

- The listed DBE subcontractor fails or refuses to execute a written contract.
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
- The listed DBE contractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law.
- You have determined that the listed DBE subcontractor is not a responsible contractor.
- Other documented good cause that you determine compels the termination of the DBE subcontractor.
- Before transmitting to the 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 the 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 the 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 the 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 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 the 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 Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

**ATTACHMENT 8**

**DBE Certification Application Form Website Link**

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

**ATTACHMENT 9**

**State's UCP Agreement**

**STATE OF FLORIDA**  
**UNIFIED CERTIFICATION PROGRAM (UCP) AGREEMENT**  
**SIGNATURE AND DECLARATION OF STATUS**

*In witness whereof, the UCP Members execute this Agreement, prepared on February 8, 2024 by authorized signatures and attached resolutions if appropriate.*

Pensacola International Airport

**Signatory Entity (Printed)**

Matthew F. Coughlin

Airport Director

**Name and Title (Printed)**

  
\_\_\_\_\_

**Signature**

**Attest:**

Ken Ibold, Airport Deputy Director

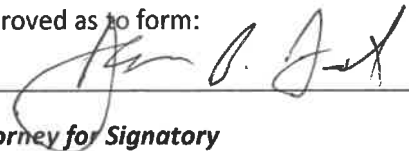
**Name and Title**

  
\_\_\_\_\_

**Signature**

This 8th day of February, 2024

Approved as to form:

  
\_\_\_\_\_

**Attorney for Signatory**

Certifying Member Status

Non-Certifying Member Status