

# Leesburg Executive Airport

## Disadvantaged Business Enterprise Program

FY2017 – FY2019

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

The **Leesburg Executive Airport** 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 **Leesburg Executive Airport** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the **Leesburg Executive Airport** has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the **Leesburg Executive Airport** to ensure that DBEs are 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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The **Airport Manager** has been delegated as the DBE Liaison Officer. In that capacity, the **Airport Manager** 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 **Leesburg Executive Airport** in its financial assistance agreements with the Department of Transportation.

**Leesburg Executive Airport** has disseminated this policy statement to the airport's sponsor, **The Town of Leesburg** and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts via all solicitations.

*Scott R Coffman*  
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**Scott Coffman, C.M.**  
**Airport Manager**

Date 2/21/2017

## **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**

The **Leesburg Executive Airport** is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

### **Section 26.5 - Definitions**

The **Leesburg Executive Airport** will adopt the definitions contained in Section 26.5 for this program.

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

The **Leesburg Executive 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 **Leesburg Executive 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: 26.11(b) - We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor's Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

### **Bidders List: 26.11(c)**

The **Leesburg Executive Airport** 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 bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways: The Town of Leesburg records a list of bidders when receiving bids for contracts.

**Section 26.13 Federal Financial Assistance Agreement**

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

**Assurance: 26.13(a)**

**Leesburg Executive 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 recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **Leesburg Executive Airport** of its failure to carry out its approved program, the Department may impose sanction 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: 26.13b**

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of 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.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

The **Leesburg Executive 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. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

### **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:

Scott Coffman, C.M.  
Airport Manager  
Leesburg Executive Airport  
1001 Sycolin Road SE  
Leesburg, VA 20175  
703-737-7125  
scoffman@leesburgva.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **Leesburg Executive Airport** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Town of Leesburg, Capital Projects Manager** concerning DBE program matters. An organization 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 assistance from **Town of Leesburg Capital Projects Department** staff 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 attainment and identifies ways to improve progress.
6. Analyzes **Leesburg Executive Airport's** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the **Town of Leesburg Capital Projects Manager** on DBE matters and achievement.
9. Participates in pre-bid meetings.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

It is the policy of the **Leesburg Executive 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 contract to make use of these institutions.

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

The **Leesburg Executive Airport** has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following method to comply with this requirement on contracts valued greater than \$100,000:

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.

**Leesburg Executive Airport** will consider 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 **Leesburg Executive Airport**. When **Leesburg Executive Airport** 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.

**Leesburg Executive Airport** will provide appropriate means to enforce the requirements of this section. These means include:

The **Leesburg Executive Airport** shall require a Payment Bond on contracts greater than \$100,000. Sub-contractors may file against this bond for payment. Furthermore the **Leesburg Executive Airport** may retain payments to the prime contractor until the requirements of this section have been met.

The **Leesburg Executive Airport** will include the following clause in each DOT-assisted prime contract and as required by the **Code of Virginia § 2.2-4354**:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **7** days from the receipt of each payment the prime contractor receives from **Leesburg Executive Airport**. The prime contractor agrees further to return retainage payments to each subcontractor within **7** days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the **Leesburg Executive Airport**. This clause applies to both DBE and non-DBE subcontractors."

#### Monitoring Payments to DBEs

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

We 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.

#### **Section 26.31 Directory**

The **Leesburg Executive Airport** uses the **State of Virginia Department of Transportation (VDOT) DBE Vendor List**, maintained by the State. The list includes 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 VDOT DBE Vendor List is available as follows:

Online at <http://egov1.virginia.gov/DBESearchSub.html> or interested persons can obtain access to the list at the airport office located at 1001 Sycolin Road SE, Leesburg, VA 20175. The Directory may be found in Attachment 2 to this program document.

#### **Section 26.33 Overconcentration**

**Leesburg Executive Airport** has not identified that overconcentration exists in the types of work that DBEs perform.

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

The **Leesburg Executive Airport** has not established a business development program.

#### **Section 26.37 Monitoring and Enforcement Mechanisms**

The **Leesburg Executive Airport** 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 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 1 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by consultant construction administration service providers.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

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

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

The **Leesburg Executive Airport's** small business element is incorporated as Attachment 9 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

## SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

### Section 26.43 Set-asides or Quotas

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

### Section 26.45 Overall Goals

The **Leesburg Executive Airport** will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the **Leesburg Executive Airport** will submit its Overall three-year DBE Goal to FAA by August 1st as required by the established schedule below:

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	Eastern	August 1, 2016 (2017/2018/2019)	August 1, 2019 (2020/2021/2022)

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

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use The Virginia DBE Directory as a method to determine our base figure. The second step is to adjust 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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the **Leesburg Executive Airport** will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Leesburg Executive Airport's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the Leesburg Executive Airport's goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the **Leesburg Executive Airport** will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site. If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the **Leesburg Executive Airport** and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1<sup>st</sup> deadline.**

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting 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.

#### Section 26.45 (e) - Project Goals

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

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.

#### Section 26.45(f) - Prior Operating Administration Concurrent

The **Leesburg Executive Airport** understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. 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 4 to this program.

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

The **Leesburg Executive Airport** will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the **Leesburg Executive Airport** awards and commitments shown on our 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 do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) [Recipient] 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 FAA upon request.

#### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

(a) The **Leesburg Executive Airport** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

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

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

### **Section 26.51(d-g) Contract Goals**

The **Leesburg Executive Airport** will use contract goals to meet any portion of the overall goal that **Leesburg Executive Airport** does not project being able to meet using race-neutral means. Contract goals are established so that, 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 total amount of a DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

### **Demonstration of good faith efforts (26.53(a) & (c))**

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

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

We will ensure that all information is complete and accurate and adequately 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))**

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

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

### **Administrative reconsideration (26.53(d))**

Within **5** days of being informed by **Leesburg Executive Airport** that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official: **Director of Capital Projects, 25 West Market Street, Leesburg VA, phone 703-777-2420**. 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Good Faith Efforts when a DBE is replace on a contract (26.53(f))**

#### Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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.

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but 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 with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our 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) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us 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 we have 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 us its 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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.

The **Leesburg Executive 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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

### **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 the **Leesburg Executive Airport** 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 1), 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. We will not count the participation of a DBE subcontract 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.

If the 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, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

## **SUBPART D - CERTIFICATION STANDARDS**

### **Section 26.61 - 26.73 Certification Process**

The **Leesburg Executive Airport** will use the **Virginia Department of Transportation Unified Certification Program** as 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. 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 the Virginia Department of Minority Business Enterprise at 804-786-6585.

Links to the Virginia Department of Minority Business Enterprise certification application forms and documentation requirements are found in Attachment 7 to this program.

## **SUBPART E - CERTIFICATION PROCEDURES**

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

**The State of Virginia** does have a Unified Certification Program, detailed in Attachment 2.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

## **Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation**

We will safeguard from disclose 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, we 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 will 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.

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

The **Leesburg Executive 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. If we violate this prohibition, we are in noncompliance with this part.

## **ATTACHMENTS**

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculation
- Attachment 5 Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 6 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 7 Certification Application Forms; Procedures for Removal of DBE's Eligibility;
- Attachment 8 Regulations: 49 CFR Part 26
- Attachment 9 Small Business Element

**Attachment 1**

**Organizational Chart**

Leesburg Town Council

Town Manager

Airport Manager  
(DBE Liaison)

Director of  
Capital Projects

## **Attachment 2**

### **DBE Directory**

A printed copy of The Virginia Department of Transportation DBE Directory is available at the Leesburg Executive Airport office at 1001 Sycolin Road SE, Leesburg VA, 20175. The VDOT DBE Directory is also available online at: <http://egov1.virginia.gov/DBESearchSub.html>

## **Attachment 3**

### **Monitoring and Enforcement Mechanisms**

The **Town of Leesburg** 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;

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

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

## Attachment 4

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

1. **Leesburg Executive Airport's** overall goal for FY 2017 – FY 2019 is the following: **5.9%** of the Federal Financial assistance we will expend in DOT-assisted contracts.
2. **\$405,000** is the dollar amount of DOT-assisted contracts that **Leesburg Executive Airport** expects to award during FFY2014-2016. This means that **Leesburg Executive Airport** has set a goal of expending **\$23,895** with DBEs during this fiscal year/project.

#### Methodology used to Calculate Overall Goal

##### Step 1: 26.45(c)

##### Determination of the Market Area

The total number of vendors used as the denominator in the DBE goal calculation is derived from a physical count of all available and eligible vendors within Leesburg's five county geographic region. Using Leesburg Executive Airport as the reference point, the Market Area includes the Virginia counties of Loudoun, Fairfax, Fauquier, and Prince William County. Independent cities located within those counties are included. Frederick County in Maryland is considered as part of the Market Area as well since Leesburg is adjacent to the Maryland border.

Information concerning the businesses established within the Market Area was derived through searches of several online business directories including the Virginia Department of Transportation Qualified Vendors List. Information concerning DBE businesses in the Market Area was taken from the DBE Vendors Directory for the Virginia Department of Minority Business Enterprise, DBE Directory for the State of Maryland, and cross-checked with local business directories (including online directories) to confirm that those companies were located in the Market Area.

##### Determination of Relevant NAICS Codes

The Leesburg Executive Airport Capital Improvement Plan anticipates one federally-assisted project exceeding \$250,000 to be competed in FY2017-FY2019. The Taxiway Lighting Rehabilitation project scope of work was reviewed and the following NAICS Codes were determined relevant:

NCAIS	Classification
541330	Engineering Services
238210	Electrical Contractors and Other Wiring Installation Contractors

Within the Market Area the following businesses and DBE businesses were identified as performing work in the Relevant NAICS codes:

NAICS Code	County	Classification	Total Businesses*	Total DBE Businesses**
238210	Loudoun, VA	Electrical Contractors	89	2
238210	Fairfax, VA	Electrical Contractors	182	14
238210	Fauquier, VA	Electrical Contractors	30	1
238210	Prince William, VA	Electrical Contractors	73	7
238210	Frederick, MD	Electrical Contractors	80	2
TOTAL			454	26

\*From US Census 2014 County Business Patterns data

\*\*From Virginia DOT DBE Directory of Certified Vendors and the MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms.

NAICS Code	County	Classification	Total Businesses*	Total DBE Businesses**
541330	Loudoun, VA	Engineering Services	179	10
541330	Fairfax, VA	Engineering Services	560	45
541330	Fauquier, VA	Engineering Services	23	0
541330	Prince William, VA	Engineering Services	93	12
541330	Frederick, MD	Engineering Services	66	3
TOTAL			921	70

\*From US Census 2014 County Business Patterns data

\*\*From Virginia DOT DBE Directory of Certified Vendors and the MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms.

Project	NAICS Codes	DBE Firms	All Firms	% of DBE Firms Available	Ratio of estimated total expended	Weighted Total Availability
Taxiway Lighting Rehabilitation	238210	26	454	5.7%	.88	5.0%
Taxiway Lighting Rehabilitation	541330	70	921	7.6%	.12	0.9%
					<b>DBE BASE FIGURE</b>	<b>5.9%</b>

The data source used to derive the DBE Firms was: **Virginia DOT DBE Directory of Certified Vendors and the MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms.**

The data source used to derive the denominator was: **US Census 2014 County Business Patterns data.**

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was **5.9%**.

**Step 2: 26.45(d)**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal. The Town of Leesburg has not conducted a disparity study. Analysis of recent projects found a local road project with federal funding met a goal of 13.2%. The Airport Perimeter Fence Project AIP 3-51-0027-38-2014 completed in 2016 exceeded the goal of 12% DBE participation with a final participation of 12.91%. With this evidence, the base figure is not further adjusted.

### **Consultation and Public Participation**

Before establishing the overall goal, the **Leesburg Executive Airport** consulted with Town of Leesburg Procurement Office and Town of Leesburg Capital Projects Division without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **Leesburg Executive Airport's** efforts to establish a level playing field for the participation of DBEs. Both Town of Leesburg offices reviewed this plan and its goals setting methodology and had no comments.

We publish our goal information on the Town of Leesburg website: [www.leesburgva.gov](http://www.leesburgva.gov).

We received comments from these individuals or organizations: Town of Leesburg Capital Projects division concurred with the goals methodology and did not have further DBE data to contribute from recent contract awards.

## Attachment 5

### Section 26.51: Breakout of Estimated

#### Race-Neutral & Race Conscious Participation

The **Leesburg Executive Airport** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Airport will use a combination of the following race-neutral means to increase DBE participation:

*The **Leesburg Executive Airport** advertises formal bid opportunities through the State of Virginia eVA procurement portal. The eVA portal has established a SWaM program that promotes the participation of small women and minority owned businesses in public procurement through various outreach methods.*

*The **Leesburg Executive Airport** will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation; and other small business participation (for example, unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces)*

The Leesburg Executive Airport estimates that in meeting its overall goal 5.9%, it will obtain **0.9%** from RN participation and **5.0%** through RC measures. The reason for this breakout is that the project from the previous year show that the amount by which the past DBE goal was over-achieved was 0.9% (Project AIP 3-51-0027-38-2014). Therefore it is projected that 0.9% of the adjusted goal will be achieved using race-neutral means. The remainder of the goal (5.0%) is projected to be achieved using race-conscious measures.

**Attachment 6**

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

**UTILIZATION STATEMENT**

**Disadvantage Business Enterprise**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.
  
- The bidder/offeror, while unable to meet the DBE goal of \_\_\_\_%, hereby commits to a minimum of \_\_\_\_% DBE utilization on this contract and also a submits documentation, as an attachment demonstrating good faith efforts.

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

\_\_\_\_\_  
Bidder/offeror's Firm Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

DBE Utilization Summary

<u>Percentage</u>	<u>Contract Amount</u>	<u>DBE Amount</u>	<u>Contract</u>
DBE Prime Contractor	\$ _____ x 1.00=	\$ _____	_____ %
DBE Subcontractor	\$ _____ x 1.00=	\$ _____	_____ %
<b>Total Amount DBE</b>		\$ _____	_____ %
DBE Goal		\$ _____	_____ %

\*If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

**FORM 2: LETTER OF INTENT**

**LETTER OF INTENT**  
**Disadvantage Business Enterprise**  
*(This page shall be submitted for each DBE firm)*

**Bidder/Offer** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE firm:** DBE Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person** Name: \_\_\_\_\_ Phone: (\_\_\_\_\_) \_\_\_\_\_

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
*Each DBE Firm shall submit evidence (such as photocopy) of their certification status.*

**Classification:**  Prime Contractor  Subcontractor

<b>Work item(s) to be performed by DBE</b>	<b>Description of Work Item</b>	<b>Quantity</b>	<b>Total</b>

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated participation is as follows:

DBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %

**AFFIRMATION:**

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

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

\*In the event 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.

## **Attachment 7**

### **Certification Application Forms**

The **Leesburg Executive Airport** utilizes the **Virginia Unified Certification Program** to certify DBE firms. Firms may apply for certification at the following website:

<http://egov1.virginia.gov/dbecert.html>

### **Procedures for Removal of DBE's Eligibility**

The **Leesburg Executive Airport** utilizes the **Virginia Unified Certification Program** to verify DBE firms are certified. Information for DBE firm's annual reporting requirements to maintain eligibility and process for removal of eligibility can be found certification at the following

website: <http://egov1.virginia.gov/dbecert.html>

## **Attachment 8**

### **Regulations: 49 CFR Part 26**

Printed copies of the Regulations governing the Leesburg Executive Airport DBE Program are available at the Leesburg Executive Airport or can be found at the following website:

[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

## **ATTACHMENT 9**

### **Small Business Element**

#### **1. Town of Leesburg Procurement Policy on Small Businesses**

The Town will undertake every reasonable effort to increase the opportunity for participation in the procurement process by small, minority -, women- and service disabled veteran- owned firms. All employees with purchasing responsibility are expected to notify and give every reasonable consideration to using qualified small business suppliers for their procurement needs. Whenever the Town engages in a solicitation or request for quotes that exceed \$ 30,000, it will post the notice on either the Town's or eVA's web site, or both.

Additionally, the Town of Leesburg Procurement Office will:

1. Participate in training seminars for the purpose of informing small, minority-, women- and service disabled veteran- owned bidders of the procurement opportunities and procedures.
2. Participate to the maximum extent possible in all local and regional vendor or procurement fairs for small, minority -, women- and service disabled veteran –owned businesses.
3. Cooperate with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.