

**U.S. Department of Transportation Federal Aviation Administration**  
**CERTIFYING AGENCY COMPLIANCE REVIEW REPORT**  
**Broward County**

## JURISDICTION AND AUTHORITIES

The Federal Aviation Administration (FAA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (DOT) to conduct civil rights compliance reviews. Reviews are undertaken to ensure compliance of applicants, recipients, and sub-recipients with 49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and 49 CFR, Part 23 Participation by Disadvantaged Business Enterprises in Airport Concessions, referenced in this report as Part 26 and Part 23, respectively. Also, specific sections of the programs are referenced using the nomenclature (23.xx) and (26.xx) in this document.

Part 26 requirements apply to recipients of DOT funds under certain programs including airport funds under 49 U.S.C. 47101 et seq. The program is narrowly tailored under the law. It is designed to allow firms that meet certain eligibility standards to compete fairly, to remove barriers to DBE firms seeking to participate in DOT-funded programs, to assist in developing firms that can compete in the marketplace outside of the DBE program, and to provide flexibility to recipients of federal funds in creating opportunities for DBE firms.

Part 23 requirements apply to airports that had received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code. The requirements under this part apply to those airports classified as primary airports by the National Plan of Integrated Airport Systems (NPIAS). Part 23 is mandated by 49 U.S.C. 47107(e) and addresses the airport concessions disadvantaged business enterprises (ACDBEs) at airports receiving funds under the Airport Improvement Program (AIP). The requirements of this part became effective April 21, 2005 and have revised several times.

## OBJECTIVES

The purposes of Part 26 and Part 23 as stated in the regulations are:

- To ensure nondiscrimination in the award and administration of airport concessions and DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs.
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in airport concessions and DOT-assisted contracts.

- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

## REVIEW PROCESS

The review process began a random selection of 50 certification files. This review focused on the following types of certification files processed:

- 10 DBE Certification Files
- 10 ACDBE Certification Files
- 10 Interstate Certification Files (Mix of DBE and ACDBE)
- 2 Denials
- 2 De-certifications

Interviews were also held with certifying staff and actual procedures are compared to those documented by the certify entity.

Review Conducted By FAA Staff: Gene Roth and Nancy Cibic

Site Visit Date(s): May 1, 2014

Certifying Agency Staff : Sandy Michael Mcdonald, Chris Atkinson, Freddy Castillo, Lorraine Gasset

## DESCRIPTION OF THE CERTIFYING AGENCY

Subpart E – Certification Procedures of 49 CFR Part 26.81 requires DOT recipients to participate in a state Unified Certification Program (UCP) that shall provide “one-stop shopping” to applicants for DBE certification. The Broward County Office of Economic and Small Business Development is a certifying partner with the Florida UCP. As a certifying agency, it is responsible for approximately 250 certification files in total and recently merged Palm Beach International Airport’s certification files with its own.

## FINDINGS PART I - PROCESS REVIEW

REQUIREMENT	REGULATION REFERENCE	FINDINGS / CORRECTIVE ACTION	CORRECTIVE ACTION / DUE DAT
1. Uniform Application	<p>26.83(c)(7)                      (7)Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.                      (i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.</p>	<p>The certifying agency uses the application form without change or revision.</p>	<p>N/A</p>
2. Processing of Applications	<p>49 CFR 26.83 (k)                      (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.</p>	<p>A random check of processing times was conducted. While two applications took longer than the 90 day time frame, documentation contained within the certification files indicated that the applicant firms were asked to provide additional information that delayed the processing time while the agency waited for the documents to be turned in.</p>	<p>N/A</p>

<p>3. Annual Updates</p>	<p>49 CFR 26.83  (j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).</p>	<p>The certifying agency uses standard forms used by all certifying entities within the State of Florida. The Affidavit For Continuing Eligibility requests considerably more information than the regulations allow. The certifying agency and State UCP should modify its annual affidavit to only ask for the information required by the regulations. The certifying agency and State UCP may on a case-by-case basis determine if additional information is necessary from the certified firm or owner(s). Two files reviewed contained no annual affidavits for 2012 but did have the 2013 affidavits, and one file reviewed did not have a notarized affidavit. The certifying agency does uses terminology on its website calling the annual update a certification renewal which is not the correct terminology.</p>	<p>8/1/14</p>
<p>4. Certification Reviews</p>	<p>49 CFR 26.83  (h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances...</p>	<p>The agency staff indicated that it conducts certification reviews every three years. A review of the certification files indicated that that the agency does follow this procedure although it was undocumented.</p>	<p>N/A</p>

5. Confidentiality	<p>49 CFR 26.83 (g)  (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law</p>	<p>The agency staff explained the process it follows to be in compliance with 49 CFR 26.83(g). Only one certification file was identified that indicated that a request had been made for information contained within the file. There was a signed and notarized release from the firm’s owner authorizing the release of information. This process should be documented.</p>	N/A
6. Site Visit	<p>49 CFR 26.83 (c)(1)  (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;</p>	<p>A standard form for the onsite review is used by the certifying agency which appears to be a standard form used by the Florida UCP. The forms that were reviewed were completed in their entirety.</p>	N/A
7. Denials	<p>49 CFR 26.86  (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.</p>	<p>The denials reviewed contained detailed information on why the firm was denied certification and also offered the appropriate appeal process.</p>	N/A
8. Certification Removal	<p>49 CFR 26.87  If a UCP (certifying agency) determines that there is reasonable cause to believe that a currently certified firm is ineligible, certifying agency review the record to determine whether there is reasonable cause to remove the firm’s eligibility. Agency must provide written notice to the firm it proposes ineligible, setting forth the reasons for the proposed determination and follow specific process.</p>	<p>Files reviewed followed proper procedures according to 49 CFR 26.87.</p>	N/A

<p>9. Interstate Certification</p>	<p>49 CFR 26.85</p> <p>(a) This section applies with respect to any firm that is currently certified in its home state.</p> <p>(b) When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.</p> <p>(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.</p> <p>(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.</p> <p>(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.</p>	<p>Files reviewed followed proper procedures according to 49 CFR 26.85(c). The firm’s certification in its home state is confirmed annual.</p>	<p>N/A</p>
<p>10. Misc.</p>	<p>No written UCP Procedures</p>	<p>The certifying agency should develop written standard operating procedures for its full certification process.</p>	<p>8/1/14</p>