

## POLICY STATEMENT

### **Section 26.1, 26.23**

### **Objectives/Policy Statement**

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

It is the policy of Clermont County Board of Commissioners to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Clermont County Board of Commissioners 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; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Kennedy Briggs has been delegated as the DBE Liaison Officer. In that capacity Ms. Briggs 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 Clermont County Board of Commissioners in its financial assistance agreements with the DOT.

Clermont County Board of Commissioners has distributed this statement to DBE and non-DBE business communities that perform work for Clermont County Board of Commissioners on DOT-assisted contracts, to its Board members and all components of the organization by posting it on Clermont County Board of Commissioners maintained websites and by reference in bid requests.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_ Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.3                    Applicability**

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

### **Section 26.5                    Definitions**

Clermont County Board of Commissioners adopts the definitions contained in Section 26.5 for this program.

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

Clermont County Board of Commissioners 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, Clermont County Board of Commissioners 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)

Clermont County Board of Commissioners will submit its accomplishments annually on the Uniform Report of DBE Commitments/Awards and Payments via the FAA Civil Rights Connect System.

#### Bidders List: 26.11(c)

Clermont County Board of Commissioners 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 the list is to provide data about the availability of DBE and non-DBE contractors and subcontractors which seek to work on Clermont County Board of Commissioners 's FAA-assisted contracts. The bidders list will include the name, address, DBE or non-DBE status, and annual gross receipts of firms. Clermont County Board of Commissioners will obtain gross receipts information by requesting firms to identify which range (e.g. less than \$1,000,000; \$1,000,001 - \$2,000,000, etc.) the firm's gross receipts falls into.

Clermont County Board of Commissioners will collect this information by reviewing and recording firms that:

- 1) submitted bids on previous projects and contracts;
- 2) attended pre-bid meetings in response to project solicitations;
- 3) were proposed and/or used as subcontractors on previous projects and contracts; and
- 4) expressed readiness, willingness, and ability through Clermont County Board of Commissioners outreach programs.

The form used to collect this information is included as Attachment 6 to this program.

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

Clermont County Board of Commissioners has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

### Assurance: 26.13(a)

Clermont County Board of Commissioners shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. Clermont County Board of Commissioners 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 sponsor's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, are 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 Clermont County Board of Commissioners 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: 26.1 3(b)

Clermont County Board of Commissioners 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**

Since Clermont County Board of Commissioners has received a grant of \$250,000 or more for airport planning or development, Clermont County Board of Commissioners will continue to carry out this program until all funds from DOT financial assistance have been expended. Clermont County Board of Commissioners will provide updates to DOT representing significant changes in the program.

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

Clermont County Board of Commissioners has designated the following individual as the DBE Liaison Officer:

Kennedy Briggs  
Grants Coordinator  
Clermont County Board of Commissioners Community & Economic Development  
101 E. Main Street, Batavia, OH 45103  
Batavia, Ohio 45103  
(513) 7327909  
Email: [kbriggs@clermontcountyohio.gov](mailto:kbriggs@clermontcountyohio.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Clermont County Board of Commissioners complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to Thomas J. Eigel, County Administrator, concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 5 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. 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).
6. Determines bidder/contractor compliance with good faith efforts.
7. Analyzes Clermont County Board of Commissioners 's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the CEO and governing body on DBE matters and achievement.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in Ohio.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

It is the policy of Clermont County Board of Commissioners 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 use these institutions.

Clermont County Board of Commissioners reviewed information taken from the Federal Reserve Website and the Federal Deposit Insurance Corporation (FDIC) website, <https://www.fdic.gov/regulations/resources/minority/mdi.html>, which showed that there are no such institutions located within the normal market area. Clermont County Board of Commissioners will periodically investigate whether new financial institutions owned and controlled by socially and economically disadvantaged individuals have been established in the community and shall make reasonable efforts to use these institutions and encourage prime contractors on DOT-assisted contract to use these institutions

#### **Section 26.29 Prompt Payment Mechanisms & Monitoring**

Clermont County Board of Commissioners 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. Per the General Provisions of Advisory Circular 150-5370-10G included in each FAA-assisted construction contract, Clermont County Board of Commissioners will 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 payment to the prime contractor.

From the total of the amount determined to be payable on a partial payment, 8 percent of such total amount may 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. Contractor must provide a certified invoice to the Resident Project Representative (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.

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.

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.

Further, Clermont County Board of Commissioners 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.

Prime Contractors shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that includes, without limitation, the requirements described as follows:

1. If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Request, the Contractor shall pay within 10 days after receipt of payment from the County:
  - a. To a Subcontractor other than a Material Supplier, an amount equal to the percent of completion allowed by the Contracting Authority for the Subcontractor's Work.
  - b. To a Material Supplier, an amount equal to all or that portion of the Contractor Payment Request that represents the materials furnished by the Material Supplier.
2. The Contractor may reduce the amount paid to a Subcontractor at a rate equal to the percentage retained from the Contractor and may withhold amounts necessary to (1) resolve disputed liens or claims involving the Work of the Subcontractor or (2) account for the failure of the Subcontractor to perform its obligations under its agreement with the Contractor.

3. Labor Payments

- a. Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is 50 percent complete.
- b. After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

4. Material Payments.

- a. The Contractor shall pay the Subcontractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project.
- b. The Contractor shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Subcontract, for materials delivered to the Site, or other offsite storage location approved by the A/E, provided the Subcontractor provides the information required by Sections 9.6.2.1 and 9.6.2.2 with its request for payment.

**Prompt Payment Complaints, Dispute Resolution, and Enforcement Actions for Noncompliance of Participants**

Clermont County Board of Commissioners will provide appropriate means to enforce the requirements of §26.29. Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

For prompt payment complaints, subcontractors (including lower-tier subcontractors) and suppliers are required to submit complaints in writing. The complaint should identify specifics regarding the subcontract language, items of work in question, and the subcontractor's or supplier's attempts to obtain payment from the prime contractor and to resolve the issues. Subcontractor/supplier should also provide any supportive documentation they may have to support their complaint (subcontractor or supplier agreements, invoices, subcontract or supplier agreement revisions (change orders), canceled checks, identification of billing errors, etc.). Clermont County Board of Commissioners reserves the right to require any documentation deemed as necessary to review and investigate the complaint.

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

1. Verification that the work in question has been approved by Clermont County Board of Commissioners.
  - a. If the work or materials in question have not been approved, the prime contractor and subcontractor will be notified that no prompt payment issue exists. (No further action necessary related to prompt payment.)
  - b. If the work was approved, a determination will be made whether payment was made by Clermont County Board of Commissioners. If payment was not made, Clermont County Board of Commissioners will make payment to the prime contractor and notify the parties involved of the resolution. (No further action necessary related to prompt payment.)
2. If Clermont County Board of Commissioners paid for the work or materials, a determination will be made if a dispute exists by referring to prompt payment certifications and other supporting information. Supporting information to aid in the determination of a dispute or resolution of a dispute may include subcontractor or supplier agreements, invoices, subcontract or supplier agreement revisions (change orders), cancelled checks, identification of billing errors, etc.

- a. If a dispute is determined to exist, Clermont County Board of Commissioners will advise the subcontractor that they may file against the payment bond surety. The subcontractor's letter of complaint will be forwarded to the prime contractor with a letter advising them of their responsibility to work with the subcontractor to resolve the dispute. Copies of the letter to the prime contractor will be provided to both the subcontractor and the payment bond surety. (No further action necessary related to prompt payment.)
- b. In addition, Clermont County Board of Commissioners will advise subcontractors of their ability to make a lien claim. If all requirements are met, Clermont County Board of Commissioners will create an escrow account and withhold the claimed amount from payments owed to the contractor (including any retainage) until such time as the parties come to an agreement or a court issues instruction on release of payment (note that the contractor can post an escrow bond on the money held to release the payment while a court action is pending).
- c. If it is determined that a dispute does not exist, the subcontractor's letter of complaint will be forwarded to the prime contractor with a copy to the payment bond surety. Payment or justification for non-payment will be requested and a deadline for response will be set.
  - i. If the prime contractor makes payment or provides documentation that substantiates the dispute, the response will be forwarded to the subcontractor, and they will be advised that payment was made, or a dispute exists. A copy of the subcontractor notice will be sent to the payment bond surety. In instances of a dispute, all parties will be advised that it is the responsibility of the parties involved to resolve the issue. (No further action necessary related to prompt payment.)
  - ii. If the prime contractor has not made payment and does not provide justification of a dispute within the timeframe specified, the appropriate administrative action will be initiated. Possible administrative actions include: suspension of work, withholding all or a portion of an estimate, withholding project acceptance, default for breach of contract, or other actions deemed appropriate.

Second tier subcontractor complaints should be forwarded to and addressed by the prime contractor, with a copy of the prime contractor's notice sent to the payment bond surety.

The following information will be provided to subcontractors:

1. Per ORC Chapter 153, if the Prime Contractor fails to comply with the prompt payment requirements set forth herein, the Contractor shall pay to the applicable Subcontractor 18 percent interest, compounded annually, on any unpaid amount beginning on the 11th day after receipt of payment from the County
2. In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.
3. If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.
4. Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

If filing a prompt payment complaint with the Clermont County Board of Commissioners does not result in timely and meaningful action by Clermont County Board of Commissioners to resolve prompt payment disputes, affected subcontractor may contact the Federal Aviation Administration (FAA). The FAA will investigate the complaint of noncompliance by program participants.

Contact: Office of Civil Rights (ACR-1) Federal Aviation Administration External Programs Team  
ACR-4 800 Independence Ave SW Room 1030 Washington, DC 20591 Phone: (202) 913-7502.

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.

### **Section 26.31 Directory**

The Ohio Department of Transportation's Office Business and Economic Opportunity maintains the State's directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

This directory is available online at <https://www.transportation.ohio.gov/working/data-tools/resources/dbedirectory>. Clermont County Board of Commissioners also maintains links on the Clermont County Board of Commissioners website at <https://clermontcountyohio.gov/clermont-county-airport/> to the Office for Civil Rights & Small Business Development website and the directory.

### **Section 26.33 Overconcentration**

Clermont County Board of Commissioners has not identified that overconcentration exists in the types of work that DBEs perform.

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

Clermont County Board of Commissioners has not established a business development program.

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

Clermont County Board of Commissioners will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 by all program participants, including prompt payment, and describes and sets forth these mechanisms in Clermont County Board of Commissioners' s DBE Program.

1. Clermont County Board of Commissioners will bring to the attention of the FAA any false, fraudulent, or dishonest conduct in connection with the program, so that FAA 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. Clermont County Board of Commissioners will consider similar action under its own legal authorities, including responsibility determinations in future contracts. **Attachment 3** lists the regulation, provisions, and contract remedies available to Clermont County Board of Commissioners in the event of non-compliance with the DBE regulation by a participant in Clermont County Board of Commissioners' s procurement activities.
3. Clermont County Board of Commissioners will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by on-site verification of DBE provided labor and by keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Clermont County Board of Commissioners will implement a monitoring and enforcement mechanism that will include written certification that Clermont County Board of Commissioners has reviewed contracting records and monitored work sites for this purpose. This will be accomplished by: a) verification through jobsite interviews with subcontractor employees; b) certifications, signed by both the prime contractor and DBE subcontractor(s), submitted with payment requests specifying the work



performed by the DBE subcontractor(s) and certifying it was actually performed by the DBE subcontractor(s); and, c) comparing certifications with payment line items and commitments submitted with the prime contractor's bid.

4. Clermont County Board of Commissioners 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 FAA, Clermont County Board of Commissioners will show both commitments and attainments, as required by the DOT uniform reporting form.

#### Monitoring Payments to DBEs and Non-DBEs

Clermont County Board of Commissioners will provide appropriate means to enforce the requirements of this section. These means may include:

1. Requiring and reviewing certification and/or lien waivers from subcontractors that the subcontractor has been paid before releasing further payment to the prime contractor;
2. Inserting a contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed;
3. Termination of contract for breach of the prompt payment provisions if left uncured for 15 days or more;
4. Responsibility determinations in future bids/contracts; and,
5. Seeking suspension and debarment of the prime contractor from future Clermont County Board of Commissioners bids/contracts for a specified period of time.

Clermont County Board of Commissioners 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 Clermont County Board of Commissioners, FAA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Clermont County Board of Commissioners performs 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 26.39 Fostering Small Business Participation**

Clermont County Board of Commissioners has created a small business element to structure contracting requirements to facilitate competition by small business concerns, taking 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.

Clermont County Board of Commissioners 's small business element is incorporated as Attachment 7 to this DBE Program and Clermont County Board of Commissioners will actively implement the program elements to foster small business participation.

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

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

Clermont County Board of Commissioners does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 1 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) Clermont County Board of Commissioners will submit its overall 3-year goal to DOT on August 1 of the year in which the goal is due, as required by the schedule established by the FAA. Before establishing the overall 3-year goal, Clermont County Board of Commissioners will consult with professional organizations, regional minority business groups, and other groups as Clermont County Board of Commissioners may deem appropriate to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Clermont County Board of Commissioners 's efforts to establish a level playing field for the participation of DBEs.

Clermont County Board of Commissioners will also publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Clermont County Board of Commissioners 's administrative offices and informing the public that Clermont County Board of Commissioners will accept comments on the goals. The notice will be published on the Clermont County Board of Commissioners website:

<https://clermontcountyohio.gov/legal-notices/>. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Clermont County Board of Commissioners 's overall goal submission to DOT will include a summary of information and comments received during this public participation process.

Clermont County Board of Commissioners will begin using the overall goal on October 1 of each year, unless instructed by DOT otherwise. If a goal is established on a project basis, Clermont County Board of Commissioners will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

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

Clermont County Board of Commissioners 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 Clermont County Board of Commissioners fails to administer its DBE program in good faith.

Clermont County Board of Commissioners understands compliance with this part includes, an approved DBE Program and overall DBE goal must be maintained, and this DBE Program must be administered in good faith.

Clermont County Board of Commissioners understands if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year; and,
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.

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

The breakout of estimated race-neutral and race-conscious participation can be found as part of the overall goal in Attachment 1 to this program. This section of the program will be updated every three years when the goal calculation is updated.

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

Clermont County Board of Commissioners will use contract goals to meet any portion of the overall goal Clermont County Board of Commissioners does not expect 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.

Clermont County Board of Commissioners will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It is not necessary to 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.)

Clermont County Board of Commissioners will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

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

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

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

Clermont County Board of Commissioners' s DBELO, Kennedy Briggs 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. Award of the contract will be conditioned on meeting the requirements of this section.

Clermont County Board of Commissioners will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before committing to the performance of the contract by the bidder/offeror.

#### Information to be submitted (26.53(b))

Clermont County Board of Commissioners treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Each solicitation for which a contract goal is established will include the following provisions stating the specific contract goal will be included in the solicitation and contract documents:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of Clermont County Board of Commissioners 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 49 CFR Part 26 Appendix A, 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's/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 (6) if the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) days of being informed by Clermont County Board of Commissioners that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following reconsideration official:

Mary Rains,  
Director, Office of Management & Budget  
Clermont County Board of Commissioners  
101 E. Main Street  
Batavia, OH 45103  
513.732.7988  
[mrains@clermontcountyohio.gov](mailto:mrains@clermontcountyohio.gov)

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 it met the goal or made adequate good faith efforts to do. Clermont County Board of Commissioners 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 DOT.

Good Faith Efforts procedural requirements (post-solicitation) (26.53(f))

The awarded contractor must 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 are 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 Clermont County Board of Commissioners 's DBE Liaison Officer. 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. Clermont County Board of Commissioners 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, to the extent needed to meet the contract goal. Clermont County Board of Commissioners requires the prime contractor to notify the DBE Liaison officer immediately of the DBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, Clermont County Board of Commissioners will require the prime contractor to obtain Clermont County Board of Commissioners 's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. Written consent will be provided only if Clermont County Board of Commissioners 's DBE Liaison Officer agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate or substitute 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. Clermont County Board of Commissioners determines that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides Clermont County Board of Commissioners 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 Clermont County Board of Commissioners 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 a request to terminate and/or substitute a DBE subcontractor to Clermont County Board of Commissioners , the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Clermont County Board of Commissioners 's DBE Liaison Officer, 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 5 days to respond to the prime contractor's notice and advise Clermont County Board of Commissioners 's DBE Liaison Officer 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 5 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 must utilize the specific DBEs listed in the contractor's solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of Clermont County Board of Commissioners 's DBE Liaison Officer as provided in 49 CFR Part 26, §26.53(f). Unless this consent is provided, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Clermont County Board of Commissioners 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 must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated or substituted, to the extent needed to meet the contract goal that was established for the procurement. The contractor must document its good faith efforts. If Clermont County Board of Commissioners requests documentation from the contractor under this provision, the contractor must submit the documentation within 7 days, which may be extended at Clermont County Board of Commissioners 's sole discretion for an additional 7 days if necessary at the request of the contractor. Clermont County Board of Commissioners will provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the Clermont County Board of Commissioners department responsible for the project will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, Clermont County Board of Commissioners may issue a termination for default proceeding.

#### **Section 26.55 Counting DBE Participation**

Clermont County Board of Commissioners will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## **SUBPART D – CERTIFICATION STANDARDS**

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

Clermont County Board of Commissioners is a non-certifying member of the Ohio Unified Certification Program (OUCP). OUCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying OUCP members make all certification decisions based on the facts as a whole.

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

Ohio Unified Certification Program  
1980 West Broad Street  
Columbus, Ohio 43223  
614-466-2878  
DOT.SDBE@dot.ohio.gov  
<https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp#page=1>

Certification application forms and documentation requirements are found at the following links:

The OUCP Uniform Certification Application is available at the following website:  
<https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp/ucp-application>

Interstate Certification Forms are also available at:  
<https://www.dot.state.oh.us/Divisions/ODI/CRC/SOPDocuments/Exhibit-Interstate-Certification.pdf>

## **SUBPART E – CERTIFICATION PROCEDURES**

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

Clermont County Board of Commissioners is a member of the Ohio Unified Certification Program (OUCP) administered by the Ohio Department of Transportation.

All certification procedures will be handled through the ODOT pursuant to the Revised Agreement Governing The Ohio Certification Program For The Disadvantaged Business Enterprise Program between Clermont County Board of Commissioners and the Ohio Department of Transportation.

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone: (202) 366-4754  
Fax: (202) 366-5575

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

### **Section 26.109 Information, Confidentiality, Cooperation**

Clermont County Board of Commissioners will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law including, but not limited to, the Ohio Public Records Act (ORC Chapter 149.43 et seq.).

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



**ATTACHMENTS**

Attachment 1	Overall Goal Calculation and Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 2	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Regulations: 49 CFR Part 26
Attachment 5	Organizational Chart
Attachment 6	Bidder's List Collection Form
Attachment 7	Small Business Element

**Attachment 1**

**Section 26.45: Overall Goal Calculation**

**CLERMONT COUNTY BOARD OF COMMISSIONERS  
OVERALL DISADVANTAGED BUSINESS  
ENTERPRISE GOAL  
FISCAL YEARS 2023-2025**

**INTRODUCTION**

Clermont County Board of Commissioners, owner of Clermont County Board of Commissioners Airport (I69), located in Batavia, Ohio, derived the overall Disadvantaged Business Enterprise (DBE) Program Goal in a method consistent with the requirements of 49 CFR Section 26.45.

The Chief Executive Officer in Clermont County Board of Commissioners is:

Thomas J. Eigel  
County Administrator  
101 East Main St.  
Batavia Ohio 45103  
513-732-7305  
[teigel@clermontcountyohio.gov](mailto:teigel@clermontcountyohio.gov)

**PROCEDURES FOR SETTING ANNUAL OVERALL GOAL**

Clermont County Board of Commissioners reviewed the type, nature, and number of Airport Improvement Program (AIP) and Bipartisan Infrastructure Law - Airport Infrastructure Grant (AIG) funded projects which are planned for federal fiscal years (FY) 2023-2025. Clermont County Board of Commissioners then evaluated the number of purchase contracts, the number of DBE contractors known to Clermont County Board of Commissioners based on the ready, willing, and able DBE's Certified to do work in the NMA, and the individual contracting opportunities contained within each project.

Per Section 49 CFR Part 26.45(f)(1), Clermont County Board of Commissioners submits its overall goal for three-year intervals to the Federal Aviation Administration Office of Civil Rights. In establishing the goal for fiscal years 2023-2025, Clermont County Board of Commissioners staff reviewed county census patterns for the NAICS codes which are expected to compete for projects planned for FY 2023-2025. Clermont County Board of Commissioners staff also reviewed DBE goals of other recipients within the region and hosted a stakeholder consultation meeting with DBE firms and organizations which may have information relevant to DBEs. Clermont County Board of Commissioners staff performed these evaluations in order to obtain information concerning the availability of disadvantaged businesses to participate in Clermont County Board of Commissioners projects, the effects of past discrimination on opportunities for DBEs to participate in Clermont County Board of Commissioners projects, and to evaluate Clermont County Board of Commissioners' efforts to establish a level playing field for DBE participation in Clermont County Board of Commissioners projects.

Clermont County Board of Commissioners will publish the overall goal, and any updates, for FY 2023-2025 on the Clermont County Board of Commissioners website at <https://clermontcountyohio.gov/clermont-county-airport/>.

### CONTRACT GOAL

The following AIP and AIG eligible contracts are expected to be let during the federal fiscal years 2023, 2024, and 2025.

<b>Federal Fiscal Year</b>	<b>Project Description</b>	<b>Estimated Federal Participation (\$)</b>
FY-2023	Master Plan	\$590,000
	Total:	\$590,000

## **MARKET AREA**

Pursuant to 49 Part 26.45, the overall goals are based upon the availability of ready, willing, and able DBE firms in the Normal Market Area (NMA). Clermont County Board of Commissioners identified its NMA by identifying the area in which the substantial majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located and the area in which the Airport spends most of its contracting dollars. The market area includes counties surrounding the Airport as follows: Clermont, Brown, Clinton, Warren, Hamilton, Butler, Montgomery, Highland, Boone, Kenton, Campbell, and Dearborn.

### **Step 1: 49 CFR 26.45(c)**

To determine the percentage of DBEs, both prime and subcontractors, that are ready, willing, and able to compete for contract work at Clermont County Board of Commissioners Airport, the following steps were taken to calculate the Step 1 base goal:

1. Clermont County Board of Commissioners identified the proposed projects for fiscal years 2023-2025 likely to receive FAA funding assistance.
2. Clermont County Board of Commissioners identified the types of work to be completed on each project and estimated the percentage of dollars expected to be performed under each NAICS Code as compared to the total contract price.
3. The types of work identified were classified under the appropriate NAICS Code.
4. The total number of contracting firms in the identified NMA classified under each identified NAICS code was calculated using the information available on the U.S. Census Bureau's 2020 County Business Patterns report.
5. The number of DBE firms in the NMA classified under each identified NAICS code was calculated relying on the information contained in the certification lists published and maintained by the Ohio Unified Certification Program.
6. The list of certified DBE firms was reviewed to ensure that each firm was ready, willing and able to perform the type of work included in the FY2023-2025 identified projects. If a DBE firm was excluded, then both the number of DBE firms and the total number of firms included under that NAICS code were reduced accordingly.
7. The number of DBE firms in each NAICS code was divided by the total of all firms in that NAICS code. This quotient was then weighted by multiplying by the percentage of contract dollars estimated to be expended on the work in that NAICS code.
8. The weighted totals were then added to arrive at the base goal for each fiscal year. Fiscal year goals for FY 2023-2025 were then added and divided by three to arrive at the overall Step 1 base goal of 0.44%.

**FY2023\* Calculations:**

NAICS	Type of Work	DBE Firms	All Firms	% of Total 2023 Contracts	Weighting: ((DBE/All firms) x %) x 100
541330	Engineering Services	10	917	79.0%	0.86
541620	Environmental Consulting Services	2	110	1.5%	0.03
541820	Public Relations Agencies	2	31	2.5%	0.16
541360	Surveying	0	0	17.0%	-
		14	<b>1,058</b>	<b>Base Goal:</b>	<b>1.32</b>

**3-year (FY2023-25) Base Goal: %**

$$1.32\% \text{ (FY2023)} + 0\% \text{ (FY2024)} + 0\% \text{ (FY2025)} = 1.32 / 3 \text{ years} = \mathbf{0.44\%}$$

\* No Contracts are anticipated to be undertaken with Federal Funds in FY 2024 and FY2025

**Step 2: 49 CFR 26.45(d)**

We are not able to adjust the Base Figure Based on past participation under the Title 49 CFR Part 26. There is not enough historical data on DBE participation available to reference to make an adjustment to the Step 1 base figure. Therefore, Clermont County Board of Commissioners is adopting the Step 1 base figure as the overall goal for this three-year goal period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

**PUBLIC NOTICE**

Clermont County Board of Commissioners will publish the overall goal on Clermont County Board of Commissioners' website at <https://clermontcountyohio.gov/legal-notices/> .

**BREAKOUT OF ESTIMATED RACE/GENDER NEUTRAL  
and RACE/GENDER CONSCIOUS PARTICIPATION**

Clermont County Board of Commissioners will meet the maximum feasible portion of its overall goal by using race/gender neutral means of facilitating DBE participation. Clermont County Board of Commissioners uses the following race/gender neutral means to increase DBE participation:

1. Advertise bids in minority publications and websites;
2. Advertise and post bids on Clermont County Board of Commissioners' website;
3. Directly notify women and minority groups, contractors, and suppliers of bid opportunities;
4. Network with local minority groups and chambers of commerce; and,
5. Direct contractors to the certified DBE lists in Ohio.

Clermont County Board of Commissioners estimates that in meeting the established overall goal of .044%, it will obtain 0.00% from RN participation and 0.44% through RC measures.

There are no studies or historical data that would help predict if the contracts will be awarded based on race or lowest bid. In order to ensure that Clermont County Board of Commissioners 's DBE program will be narrowly tailored to overcome the effects of past discrimination, Clermont County Board of Commissioners will adjust the estimated breakout of race/gender neutral, and race/gender conscious participation as needed to reflect actual DBE participation and Clermont County Board of Commissioners will track and report race/gender neutral and race/gender conscious participation separately. For reporting purposes, race/gender neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

## **Public Participation**

### **Consultation:**

Clermont County Board of Commissioners consulted with stakeholders before submitting the overall goal to the FAA. Stakeholders included but are not limited to: minority and women's business groups; community organizations; trade associations; small, minority, and women owned firms; and, other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the sponsors efforts to increase participation of DBEs.

Clermont County Board of Commissioners hosted a DBE Goal Setting Stakeholder Consultation Meeting virtually, via Zoom, on January 5, 2023 at 10:00 a.m.

Invitations were sent via email to the following stakeholders:

1. Minority Business Accelerator – Cincinnati Regional Chamber of Commerce
2. Tri-State Minority Supplier Development Council (TSMSSDC)
3. Ohio Minority Business Assistance Center
4. Greater Cincinnati Northern Kentucky African American Chamber-Commerce
5. Southwest Ohio Regional Transit Authority (SORTA) – FTA Recipient
6. Ohio Department of Transportation
7. City of Cincinnati
8. Hispanic Chamber Cincinnati USA, OH
9. Ohio River Valley Women's Business Council
10. Urban League of Greater Cincinnati
11. Indian American Chamber of Commerce – Greater Cincinnati and Northern Kentucky
12. Japan America Society of Greater Cincinnati
13. Greater Cincinnati Chinese Chamber of Commerce
14. The Associated General Contractors of America (AGC of America)
15. European American Chamber of Commerce
16. Airport Minority Advisory Council (AMAC)
17. American Subcontractors Association, Inc.
18. American Subcontractors Association of Ohio
19. Greater Cincinnati World Affairs Council
20. Construction Estimating Institute (CEI) DBE Support Services
21. Metro - Southwest Ohio Transit
22. Allied Construction Industries of Cincinnati
23. Builders Exchange of Dayton
24. Cincinnati Builders Exchange
25. Cincinnati Minority Business Assistance Center
26. Women's Business Enterprise Council Ohio River Valley (WBEC ORV)

The attendees provided no feedback on the goal during the consultation meeting. No additional comments were submitted via mail or email. After reviewing the comments, Clermont County Board of Commissioners determined that no further changes or adjustments to the goal are warranted.



**Attachment 2**

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

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

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

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

\_\_\_\_\_ The bidder (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

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

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

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

**FORM 2: LETTER OF INTENT**

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

Bidder's address: \_\_\_\_\_

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

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

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

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

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

Description of work to be performed by DBE firm:

.....  
.....  
.....  
.....

The bidder intends to utilize the above-named DBE firm for the work described above. The estimated amount of work is valued at \$ \_\_\_\_\_.

**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)

**If the above-named bidder is not determined to be the successful bidder, this Letter of Intent and Affirmation is null and void.**

(Submit this page for each DBE subcontractor.)

**Attachment 3**  
**Monitoring and Enforcement Mechanisms**

Clermont County Board of Commissioners has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Similar actions pursuant to Ohio Revised Code;
3. Responsibility determinations in future bids/contracts; and
4. Violation of the Rules and Regulations of the Clermont County Board of Commissioners.

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

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

Clermont County Board of Commissioners will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including, but not limited to the following:

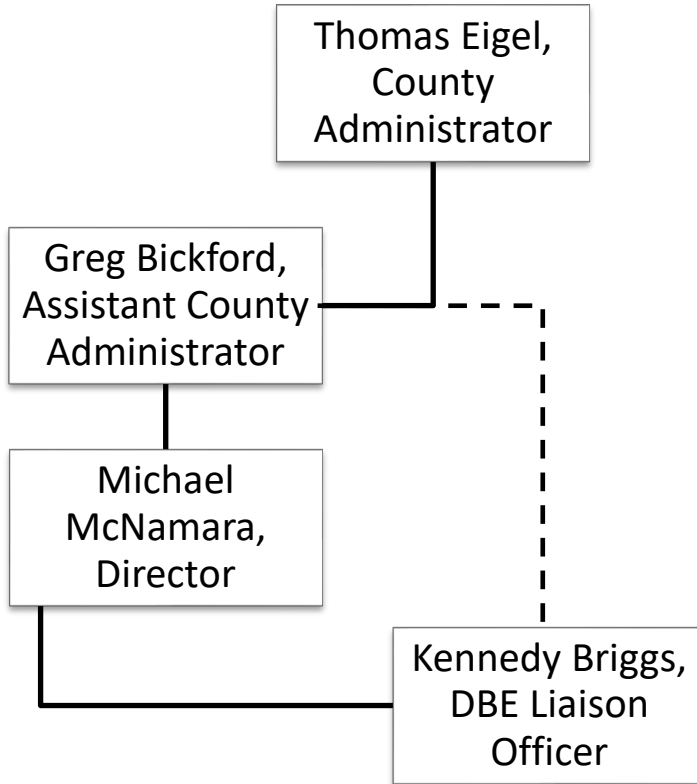
1. All FAA-assisted contracts between Clermont County Board of Commissioners and a contractor will contain an appropriate provision to the effect that failure by the contractor to comply with Clermont County Board of Commissioners 's DBE Program constitutes a breach of contract, exposing the contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until the contractor complies with all requirements of this program. Clermont County Board of Commissioners may impose liquidated damages, contract suspension, or even contract termination in accordance with Ohio law.
2. All documentation submitted with bidder/offeror's submittal, as well as additional data provided by the successful bidder/offeror, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission must have prior written approval of Clermont County Board of Commissioners 's DBE Liaison Officer.
3. If a DBE firm not certified by the Ohio Department of Transportation is proposed by a potential contractor as a part of its DBE plan efforts, review and certification procedures consistent with 49 CFR Part 26 must be conducted prior to award of any contract.
4. Clermont County Board of Commissioners reserves the right to reject any or all bids or re-advertise for bids. A submittal will not be considered responsive unless the bidder/offeror complies with Title 49 CFR Part 26 and Clermont County Board of Commissioners 's DBE Program.
5. Clermont County Board of Commissioners will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.
6. Clermont County Board of Commissioners will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
7. Clermont County Board of Commissioners also will consider similar action under its own legal authority, including responsibility determinations in future contracts. In addition, the Sponsor will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.

**Attachment 4**

**Regulations: 49 CFR Part 26**

49 CFR Part 26 is available at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

Attachment 5  
Organizational Chart



**Attachment 6**

**Bidders' List Collection Form**

<b>Subcontractor Name</b>	<b>Subcontractor Address</b>	<b>Certified DBE (Y or N)</b>	<b>Years in this Business</b>	<b>GRS*</b>	<b>Estimated Subcontract Dollar Amount</b>	<b>Work to be Performed</b>

\*GRS - Annual Gross Receipts  
Enter "1" for less than \$1 million  
Enter "2" for more than \$1 million, less than \$5 million  
Enter "3" for more than \$5 million, less than \$10 million  
Enter "4" for more than \$10 million, less than \$15 million  
Enter "5" for more than \$15 million

## Attachment 7

### Small Business Element

In accordance with 49 CFR Part 26, Clermont County Board of Commissioners 's Small Business Enterprise (SBE) element of its DBE Program is intended to facilitate competition by, and expand opportunities for, all small businesses regardless of race, gender, or geographic location. Clermont County Board of Commissioners is committed to taking reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or as subcontractors. DBE Program goals should be met through a mixture of race conscious and race neutral methods and, by definition, DBE firms are small businesses. Therefore, when Clermont County Board of Commissioners is unable or does not expect to meet its goals through race neutral measures Clermont County Board of Commissioners will use the following methods to meet the SBE objectives:

1. SBE Project/Contract Goals: Where feasible, Clermont County Board of Commissioners will identify and establish an SBE goal that is a percentage of the total value of an FAA-assisted procurement. Bids submitted for FAA-assisted procurements that include an SBE goal must meet or exceed the SBE goal percentage as a matter of responsiveness. This requires that Clermont County Board of Commissioners and its prime contractors/consultants include a portion of the value of each identified contract for participation by small businesses. Clermont County Board of Commissioners will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the goal percentage. The final determination will be made by the DBELO and based upon the estimated availability of small businesses that are able to provide the requisite scope(s) of work. These goals are in conjunction with the DBE contract goals which may be required pursuant to applicable law or policy. In the event that an SBE goal is not established on an FAA-assisted contract, Clermont County Board of Commissioners will document why an SBE goal was not established.
2. Unbundling: Clermont County Board of Commissioners, where feasible, may unbundle projects or separate large contracts into smaller contracts which may be more suitable for small business participation. Clermont County Board of Commissioners will review FAA-assisted procurements to determine whether portions could be unbundled or bid separately. This determination will be made by the DBELO and based upon the estimated availability of small businesses that are able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, Clermont County Board of Commissioners will encourage its prime contractors/consultants to unbundle contracts to facilitate participation by small businesses. Clermont County Board of Commissioners will assist prime contractors/consultants in identifying portions of work which may be unbundled and performed by small businesses. Clermont County Board of Commissioners will document the factors used to determine whether or not an FAA-assisted contract will be unbundled or bid separately.
3. Outreach and technical assistance: Clermont County Board of Commissioners will continue to conduct and participate in outreach and training opportunities for small businesses through various partnerships. Additionally, Clermont County Board of Commissioners advertises opportunities through its website and various media, including, but not limited to, local newspapers, minority-based organizations, trade publications, direct e-mail, and local chambers of commerce.

SBEs which are awarded contracts under this program and are also owned and controlled by socially and economically disadvantaged individuals will be encouraged to seek DBE certification in order to be counted towards race-neutral DBE participation. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

#### **Certification and Verification Procedures**

Clermont County Board of Commissioners will accept the following certifications for participation as an SBE under this program:

1. Ohio Department of Transportation (ODOT) SBE certification
2. ODOT DBE certification
3. Small Business Administration (SBA) small business certification as evidenced in the System for Award Management (SAM) database.

Clermont County Board of Commissioners will consider small business certifications from other government agencies. If, in Clermont County Board of Commissioners' sole discretion, the certification procedures of the proffered agency is consistent with the objectives of this small business element, Clermont County Board of Commissioners and its prime contractors/consultants may count participation of SBEs certified by the proffered agency.

Clermont County Board of Commissioners will verify eligibility by checking the directories and/or databases maintained by the certifying agencies noted above. The SBE's eligibility must be current as of the date of the bid opening to be counted as participation.

### **Assurances**

As part of the small business element of its DBE Program, Clermont County Board of Commissioners makes the following assurances:

1. The DBE Program small business element is not prohibited by Ohio law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element;
3. There are no geographic or local preferences or limitations imposed on any FAA-assisted procurement;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program and reasonable efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
5. Aggressive steps will be taken to encourage those DBE-eligible minority and women owned firms participating in the small business element to become certified; and,
6. The program is open to small businesses regardless of their location.