

DISADVANTAGE BUSINESS ENTERPRISES PROGRAM

49 CFR Part 26



Luis Muñoz Marín International Airport (SJU)
Carolina, Puerto Rico

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

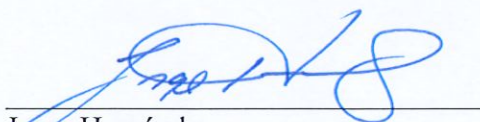
Aerostar Airport Holdings, LLC., (“Aerostar”), owner of Luis Muñoz Marín International Airport (“LMMIA”), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Aerostar has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Aerostar has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as “Part 26”).

It is the policy of Aerostar to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Aerostar policy to engage in the following actions on a continuing basis:

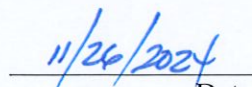
1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in DOT assisted contracts.
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities.
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Mrs. Shara Mathew-López has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded with the same priority as compliance with all other legal obligations incurred by Aerostar in its financial assistance agreements with the Department of Transportation.

Aerostar has disseminated this policy statement to the Executive Management Team, and all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Aerostar DOT-assisted contracts. The distribution was accomplished by posting on www.aeropuertosju.com.



Jorge Hernández
President & CEO



Date

Subpart A - General Requirements

Section 26.1 - Objectives

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

Section 26.3 - Applicability

Aerostar is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 - Definitions

PRHTA – Puerto Rico Highway and Transit Authority

PRPA – Puerto Rico Port Authority

Aerostar will adopt the definitions contained in Part 26, §26.5.

Section 26.7 - Non-discrimination Requirements

Aerostar 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 based on race, color, sex, or national origin.

In administering its DBE program, Aerostar 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)

Aerostar will provide data about its DBE Program to the Department as directed by DOT operating administration. DBE participation will be reported to DOT/FAA as follows:

Aerostar will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. Aerostar will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List: 26.11(c)

Aerostar will create and maintain a list of bidders. The purpose of this list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Aerostar’s DOT-assisted contracts, for use in helping to set our overall goals.

The list of bidders will include the name, address, DBE and non- DBE status, age of firm, race and gender information for the firm's majority owner and NAICS code applicable to each scope of work the firm sought to perform in its bid. All the categories are listed below in 26.11(d), but to be consistent please list in section 26.11(c) as well or remove this section 26.11(c) since it's stated below in section 26.11(d).

This information will be collected in the following ways:

Aerostar will maintain records of all bidders which include names, addresses, DBE and non-DBE status, age, annual gross receipts of the firm, race and gender information for the firm's majority owner and NAICS code applicable to each scope of work the firm sought to perform in its bid. Aerostar will use a contract clause requiring prime bidders to report the names, addresses, and possibly other information of all firms who quote to them on subcontracts. The Puerto Rico Ports Authority maintains records of all DBE firms which include annual gross receipts.

Records Retention and Reporting: 26.11(d)

Aerostar will collect bidders list information as described in §26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of §26.1 are being achieved.

Aerostar will obtain the following bidders list information about all the DBE and non-DBE who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- 1) Firm name
- 2) Firm Address including Zip Code
- 3) Firm's status as a DBE or non-DBE
- 4) Race and gender information for the firm's majority owner
- 5) NAICS code applicable to each scope of work the firm sought to perform in its bid
- 6) Age of the firm
- 7) Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million, \$3-6 million, \$6-10 million, etc.) rather than requesting an exact figure from the firm.

Aerostar will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

Aerostar will enter this data into the Departments designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a “design-build” contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to §26.53(e), Aerostar will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Aerostar will maintain records documenting a firm’s compliance with the requirement of this part. At a minimum, Aerostar will keep a complete application package for each certified firm and all affidavits of no change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Aerostar financial assistance agreement. Other certificates or compliance-related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 – Assurances Recipients and Contractors Must Make

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

Assurance: 26.13(a)

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

Aerostar shall not discriminate based on 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. Aerostar 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 Aerostar DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. The 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 Aerostar 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.).

Contract Assurance: 26.13(b)

Aerostar will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub-recipient, or subcontractor shall not discriminate based on 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 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

Aerostar 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.

Aerostar is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Aerostar follows it and Part 26. Aerostar will continue to carry out this program until all funds from DOT financial assistance have been expended. Aerostar does not have to submit regular updates of the DBE program document if it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 - Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer:

Shara Mathew López
DBE/ACDBE Liaison Officer
Terminal D, First Level
Luis Muñoz Marín International Airport
Carolina, PR 00979 (787) 289-7240 ext. 2911
shara.mathew@aerostarairports.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Aerostar complies with all provisions of 49 CFR Part 26. DBELO has direct, independent access to the Chief Executive Officer concerning DBE Program matters. An organization chart displaying DBELO's position in the organization is included in Attachment 2 to this program.

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 and monitors results
6. Analyzes Aerostar's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings/proposal meetings.
8. Advises the CEO and Board of Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.
10. Plans and participates in DBE training seminars.
11. Determine contractor compliance with good faith efforts.
12. Acts as liaison with the PRPA Unified Certification Program
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Provide assistance to the contractors and consultants relative to the DBE Program
15. Monitor activities related to the DBE program.
16. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 - DBE Financial Institutions

It is the policy of Aerostar to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Aerostar has not identified financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. Aerostar will annually investigate financial institutions.

Section 26.29 - Prompt Payment Mechanisms

Aerostar requires that all subcontractors performing work on DOT assisted contract should be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR §26.29, Aerostar established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from Aerostar.

Aerostar ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, Aerostar has selected the following method to comply with this requirement:

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 15 days after payment to the prime contractor.

To implement this measure, Aerostar includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the Resident Project Representative (RPR), of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-70, Payment for Materials on Hand. No partial payment will be made when the amount due to the Contractor from the last estimate amounts to less than five hundred dollars.

- a. From the total of the amount determined to be payable on partial payment, 10% percent of such total amount will be deducted and retained by Aerostar for protection of Aerostar's interests. Unless otherwise instructed by Aerostar, the amount retained by Aerostar will be in effect until the final payment is made except as follows:*
 - 1) The contractor may request release of retainage on work that has been partially accepted by Aerostar in accordance with Section 50-14. Contractors must provide a certified invoice to the RPR that supports the value of retainage held by Aerostar for partially accepted work.*
 - 2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraphs 90-08.*
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 15 days after the Contractor has received a partial payment. Contractor must provide Aerostar evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 15 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 Aerostar. When Aerostar has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.*
- c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at Aerostar'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 remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.*

For every airport construction project funded under Federal grant assistance programs, Aerostar includes the applicable cause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will include verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to “30 days” will be revised accordingly.

Prompt Payment Monitoring for DBEs and non-DBEs

Aerostar clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor’s failure to comply with prompt payment and retainage requirements is not sufficient monitoring and oversight mechanism. Therefore, Aerostar undertakes proactive monitoring and oversight of prime contractors’ compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following methods(s):

Aerostar undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. Aerostar 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. Aerostar will consider similar action under our local legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to Aerostar in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. Aerostar will implement a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award or subsequently (as the result of modification to the contract) is performed by the DBEs to which the work was committed.
4. Aerostar will implement a monitoring and enforcement mechanism that will include written certification that Aerostar has reviewed contracting records and monitored work sites for this purpose. Aerostar monitoring and enforcement mechanisms are included in Attachment 7.

Aerostar requires prime contractors to maintain records and documents of payment to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Aerostar’s financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by an authorized representative of Aerostar or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- Aerostar proactively reviews contract payments to subcontractors, including DBE on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE

subcontractors is equivalent to the amounts reported to Aerostar by the prime contractor.

Prompt Payment Dispute Resolution

Aerostar will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by §26.29.

The prime contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than fifteen (15) calendars from the receipt of each payment the prime contractor receives from Aerostar. Prime contractors return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed.

Aerostar will host a meeting for prime contractors and subcontractors to present evidence from an interested party to settle the relevant dispute. Aerostar will review evidence from both sides and issue a determination.

Aerostar has established, as part of its DBE Program, the following mechanism(s) to ensure prompt payment and return of retaining:

Aerostar will include, in each DOT-assisted contract, a 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.

Prompt Payment (§ 26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from Aerostar. The prime contractor agrees further to return retainable payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-mentioned time frame may occur only for good cause following written approval of Aerostar. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment Complaints

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

- The subcontractor shall first seek resolution of any payment discrepancies from the prime contractor using the terms of the contract agreement between the prime and the subcontractor.
- If the subcontractor is unsuccessful, then it should seek a resolution from Aerostar DBELO. The subcontractor must be prepared to cite the terms of the contractual agreement they believe have not been met. The DBELO will consult with the project engineer (PE) or the resident project representative (RPR) to verify and confirm that the work was satisfactorily performed by the subcontractor, if applicable.

- If the subcontractor is unsuccessful in gaining timely and meaningful action or resolution from the Aerostar DBELO within ten (10) days, the subcontractor shall contact the Federal Aviation Administration.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

Aerostar will provide appropriate means to enforce the requirements of §26.29. These means may include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
- Withholding progress payments.
- Disqualifying the contractor from bidding on future contracts.
- Other remedies Aerostar deems appropriate.

Aerostar will actively implement the enforcement actions detailed above.

Section 26.31- Directory

Aerostar is a certifying member of the Puerto Rico Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the list for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm have been certified to perform as a DBE and/or ACDBE.
- The types of work DBE and/or ACDBE are eligible to perform are listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to §26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public search and/or filter for DBE by:

1. Physical location
2. NAICS code(s)
3. Work descriptions
4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 – Over-concentration

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

Section 26.35- Business Development and Mentor-Protégé Programs

Aerostar has not established a Business Development Program, or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 - Monitoring Responsibilities

Aerostar implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms in Aerostar's DBE program.

Aerostar actively monitors attainment toward overall goals by maintaining a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. This mechanism to maintain a running tally of overall goal attainment will be used to inform Aerostar of the decision to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Aerostar actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meeting the contract goal pursuant to §26.532(g).

1. Aerostar will implement a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award or subsequently (as the result of modification to the contract) is performed by the DBEs to which the work was committed.
2. Aerostar will implement a monitoring and enforcement mechanism that will include written certification that Aerostar has reviewed contracting records and monitored work sites for this purpose. Aerostar monitoring and enforcement mechanisms are included in Attachment 7.

3. Aerostar will implement a mechanism that will provide for a running tally of actual DBE attainments such as payment made to DBE firms, including a means of comparison of these attainments to commitments, for work committed to them at the time of contract award and the prompt payment requirement is met.

Monitoring Contracts and Work Sites

Aerostar reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of §26.55. Work site monitoring for counting commercially useful function review is performed by DBELO. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by DBELO. Aerostar will require prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. Aerostar will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 – Fostering small business participation.

Aerostar 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.

Aerostar small business element is incorporated as Attachment 10 to this DBE Program. The program's elements will be actively implemented to foster small business participation. Aerostar acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

Subpart C - Goals, Good Faith Efforts, And Counting

Section 26.43 - Set-asides or Quotas

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

Section 26.45 - Overall Goals

Aerostar will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), Aerostar will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the Federal Aviation Administration.

https://www.faa.gov/sites/aa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_AC_DB_E_Reportin_g_Requirements_Schedule_Final.pdf

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

Step 1. The first step is to determine the base figure for the relative availability of DBEs in the market area. Aerostar will use the DBE Directory information and the Census Bureau Data as a method to determine the base figure. Aerostar understands that the exclusive use of a list of prequalified contractors or plan holders, or a list of bidders that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

In establishing the overall goal each year, Aerostar will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Aerostar efforts to establish a level playing field for the participation of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation Aerostar would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry past competitiveness of DBEs on contracts. Aerostar will examine all the evidence available in its jurisdiction to determine what adjustments, if any, are needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected 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 Aerostar's market.

In establishing the overall goal, Aerostar will provide consultation and publication. This includes consultation with minorities, 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 efforts by Aerostar 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 goal setting process, and it will occur before Aerostar is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which Aerostar engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, Aerostar will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Aerostar's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

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

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

Project Goals

If permitted or required by the FAA, an overall goal may be expressed 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 FAA. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Project Goals

If permitted or required by the FAA, an overall goal may be expressed 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 it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participations 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 the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

Aerostar understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by Aerostar for calculating goals is inadequate, FAA may, after consulting with Aerostar, adjust the overall goal or require that the goal be adjusted by Aerostar. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the FAA will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

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

Section 26.47 Failure to meet overall goals.

Aerostar 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 Aerostar fails to administer its DBE program in good faith.

Aerostar understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

Aerostar understands that 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.
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.
3. Aerostar 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. Aerostar will retain a copy of analysis and corrective actions in records for a minimum of three (3) years and will make it available to the FAA upon request.

Section 26.51- Means Recipients Use to Meet Overall Goal

Breakout of Estimates Race-Neutral & Race-Conscious Participation

Aerostar 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.
- (2) Helping 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, improving 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 the 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.

Aerostar will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given

year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

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

Demonstration of Good Faith Efforts (Pre-Award)

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 made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO 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.

Aerostar ensures that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

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

1. The award of the contract will be conditioned on meeting the requirements of these sections.
2. All bidders or offerors will be required to submit the following information to Aerostar, at the time provided in paragraph three (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 and percentage of participation of each DBE and Non-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 and Non-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 (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and Non-DBE subcontractor quote submitted to the bidder when a non-

DBE subcontractor was selected over DBE for work on the contract. The following are examples of Good Faith Efforts:

- a. Fax logs / emails and copies of documents sent.
- b. Copies of written correspondence to DBE firms (include names, addresses, and other identifying information)
- c. Phone logs with responses (phone contacts, alone, are insufficient.)
- d. List and copies of letters sent by mail, hand-delivered, or emailed.
- e. Copies of advertisements in local newspapers.
- f. Copies of all bids received in response to Bidder contacting other Firms.

3. The bidder/offeror will be required to present the information stipulated in paragraph two (2) of this section under sealed bid procedures, as a matter of responsiveness.

Further detailed information regarding the DBE Compliance Plan can be found in Attachment 6. Bidders/proposers must notify DBEs of subcontracting/sub consulting opportunities at least five business days before submission of the bid/proposal.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by Aerostar. This paragraph (b)(3)(ii) does not apply to design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor Aerostar will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, Aerostar will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which Aerostar solicits proposals to design and build a project with minimal project details at time of letting, Aerostar may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-built contract is awarded, Aerostar will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Aerostar and the design-builder

may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjust the proposed schedule, if the design-builder continues to use good faith efforts to meet the goal.

Aerostar will apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Aerostar will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within 5 days of being informed by Aerostar that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Zulema E. Martínez Álvarez
P.O. Box 38085
San Juan, P.R. 00937-1085
787-289-7240
zulema.martinez@aerostarairports.com

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met, or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts Procedural Requirements (Post-Solicitation/award)

Aerostar will include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that Aerostar deems appropriate if the prime contractor fails to comply with the requirements of this section.

Aerostar will require the awarded contractor to make available upon request a copy of all DBE subcontracts available upon request. 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.

Aerostar will require that a prime contractor not terminate a DBE, or any portion of its work listed in response §26.56(b)(2) (or an approved DBE firm per §26.56(g)) without the prior

written consent unless Aerostar causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Aerostar will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains Aerostar written consent as provided in §26.53(f); and
- (2) Unless Aerostar consent is provided under §26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Aerostar may provide such written consent only if it agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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. For purposes of §26.53(f)(3), 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. Aerostar has determined that the listed DBE subcontractor is not a responsible contractor.
7. The listed DBE subcontractor voluntarily withdraws from the project and provides Aerostar with 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; and
10. Other documented good cause that Aerostar determines compels the termination of the DBE subcontractor.

Before transmitting to Aerostar, a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Aerostar, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise Aerostar and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g. safety), a response period shorter than five (5) days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of our substitutions for DBE firms put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in §26.53(f), or its work committed to a DBE is reduced due to overestimations made prior to the award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If Aerostar requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days of necessary at the request of the contractor. Aerostar should provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 - Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of Subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

For FAA-funded projects only, firms that exceed the business size standard in §26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS codes(s) in which they are certified.

Subpart D - Certification Standards

Section 26.61 - 26.73 - Certification Process

Aerostar is an official member of the Puerto Rico Unified Certification Program (PRUCP) and is responsible only for the Airport DBEs new certifications and review of existing firms doing business at the Luis Muñoz Marín International Airport (LMMIA). Under no circumstances shall Aerostar evaluate and/or certify other airports or agency's DBEs, unless the firm requesting certification intends to do business at or for LMMIA as well.

Aerostar 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. Aerostar makes all certification decisions based on the facts.

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

Shara Mathew López
DBE/ACDBE Liaison Officer
PO Box 38085, San Juan, PR 00937-1085
Fax (787) 289-7241
shara.mathew@aerostarairports.com

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

Subpart E - Certification Procedures

Section 26.81 - Unified Certification Programs

Aerostar is a member of the Puerto Rico Unified Certification Program (UCP) administered by the Puerto Rico Highway & Transportation Authority (PRHTA). The UPC will meet all the certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.83 Procedures for Certification Decisions

Aerostar will take all required steps outlined in §26.83 in determining whether a DBE firm meets the standards of subpart D of Part 26. In the case of a denial of certification, Aerostar will take an entry in DOCR's Online Portal within five (5) days of the denial. Aerostar will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

Once a firm has been certified as a DBE, it remains certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except in §26.67(b)(1).

Aerostar will not require a DBE to reapply for certification, renew its certification, or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted at a reasonable time and/or at a regular interval of two or more years. The certification review may, at Aerostar discretion, include a new onsite review (OSR). Aerostar may also make an unannounced visit to the DBEs offices and/or job site. Aerostar may also rely on another certifier's report of its OSR of the DBE.

Notices of Change and Annual Declarations of Eligibility

The UCP also requires all DBE owners to submit every year, on the anniversary of the date they were certified in their Jurisdiction of Original Certification (JOC), a new Declaration of Eligibility (DOE) along with documentation verifying the gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the UCP will generally consider the following documents to be "safe harbors," if they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. The UCP will treat non-compliance, whether full or partial, as a §26.109(c) failure to cooperate.

The UCP also requires all DBEs to provide written notice of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with DBE's applications for certification. DBEs must provide the UCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice.

Section 26.85 Interstate Certification

Aerostar complies with certification procedures requirements of Subpart E of Part 26 in all matters related to interstate certification. Any procedures included here are highlights only. Detailed interstate certification procedures are enumerated in the full Puerto Rico Unified Certification Program (UCP) administered by the Puerto Rico Highway and Transportation Authority (PRHTA) UCP agreement.

When a DBE certified in any UCP applies to Aerostar for certification, Aerostar will accept the DBE's certification from its jurisdiction of original certification (JOC). To obtain interstate certification, the DBE must provide:

- (1) A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)

- (2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
- (3) A new DOE.

Within ten (10) business days of receiving the documents required above, Aerostar will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this section and Aerostar confirms the DBE's certification, Aerostar will certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

Aerostar will require DBEs to provide an annual DOE with documentation of gross receipts, under [§ 26.83\(j\)](#) on the anniversary of date of the DBE's original certification by its JOC.

If Aerostar has reasonable cause to remove a DBE's certification, in whole or in part (i.e., NAICS code removal), Aerostar will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain Aerostar reasons for believing the DBE's certification should be removed.

If Aerostar receives such a notification from another UCP, within 30 days of receiving the notice Aerostar will email the UCP contemplating decertification a concurrence or non-concurrence with the proposed action. Aerostar responses may provide written arguments and evidence and may propose additional reasons to remove certification. Aerostar understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If Aerostar finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. Aerostar will email a copy of its decision to the other jurisdictions within 3 business days.

Section 26.86 Decision Letters

When Aerostar denies a firm's request for certification or decertifies the firm, Aerostar will provide the firm with a notice of decision (NOD) explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. Aerostar will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. If a currently certified DBE firm is a decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date of decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. Aerostar will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Decertification

Aerostar complies with all decertification procedures requirements of Subpart E of Part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Puerto Rico Unified Certification Program (UCP) administered by the Puerto Rico Highway and Transportation Authority UCP Agreement.

Aerostar first step in any decertification proceeding will be to email a notice of intent (NOI) to the DBE. NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both. The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, Aerostar will issue a notice of decision (NOD) decertifying the DBE. In this case, there is no NOI or opportunity for hearing or writing response.

The hearing is an informal proceeding with rules set by the hearing officer. Aerostar has established an administrative “firewall” to ensure that Zulema E. Martínez Álvarez will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm’s eligibility, and is not subject, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

Aerostar will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of §26.87(g). Aerostar will send the NOD to the Puerto Rico Highway and Transportation Authority (PRHTA) so will make an entry in DOCR’s Online Portal within 5 days of the action, entering the name of the firm, names(s) of the firm’s owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until Aerostar issues a NOD. Once a firm is decertified, Aerostar will take appropriate actions related to contract and overall goals and DBE participation described in §26.87(j).

Section 26.88 Summary Suspension of Certification.

Aerostar will follow procedures consistent with §26.88 regarding the suspension of a DBE’s certification.

Aerostar will mandatorily and immediately suspend DBE’s certification when Aerostar has clear and credible evidence of DBE’s or its SEDO’s involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

Aerostar may elect to suspend a DBE’s certification when Aerostar has clear and credible evidence that the DBE’s continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that [§ 26.83\(j\)](#) requires.

Aerostar will notify the firm, by email, of its summary suspension notice (SSN) on a business

day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which Aerostar relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why Aerostar should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments in lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, Aerostar will follow procedures required under §26.88(d)(2)-(6).

Section 26.89 Appeals to the Department

Applicants and decertified firms may appeal adverse NODs to the Department. An ineligibility complainant or applicable Operating Administration (the latter by the terms of §26.87(c)) may appeal to the Department if Aerostar does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

Appellants must email appeals as directed in Aerostar NOD within 45 days of the date of NOD. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions Aerostar misapplied.

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contract (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

Section 26.91 Actions Following DOT Certification Appeal Decisions

If Aerostar is a certifier to which a DOT determination under §26.89 is applicable, we will take any and all required actions(s) pursuant to §26.91.

Subpart F - Compliance and Enforcement

Section 26.101 – Compliance Procedures Applicable

Aerostar understands that if it fails to comply with any requirement of this part, Aerostar may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the FAA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Aerostar understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103- Enforcement Actions need to be included with the following:

Compliance reviews. The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105- Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA Financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of §26.103(b) and these sections apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such a certification does not prevent the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR Part 31](#). The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the

Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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

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).

Aerostar, 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. Aerostar understands that it is in noncompliance with Part 26 if it violates this prohibition.

Attachments

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Efforts Plan – Forms
- Attachment 7 DBE Monitoring & Enforcement Mechanisms
- Attachment 8 Link to DBE Certification Application Form and Personal Net Worth Statement
- Attachment 9 Puerto Rico's UCP Agreement
- Attachment 10 Small Business Element Program
- Attachment 11 Regular Dealer-Distributor Form

Attachment 1

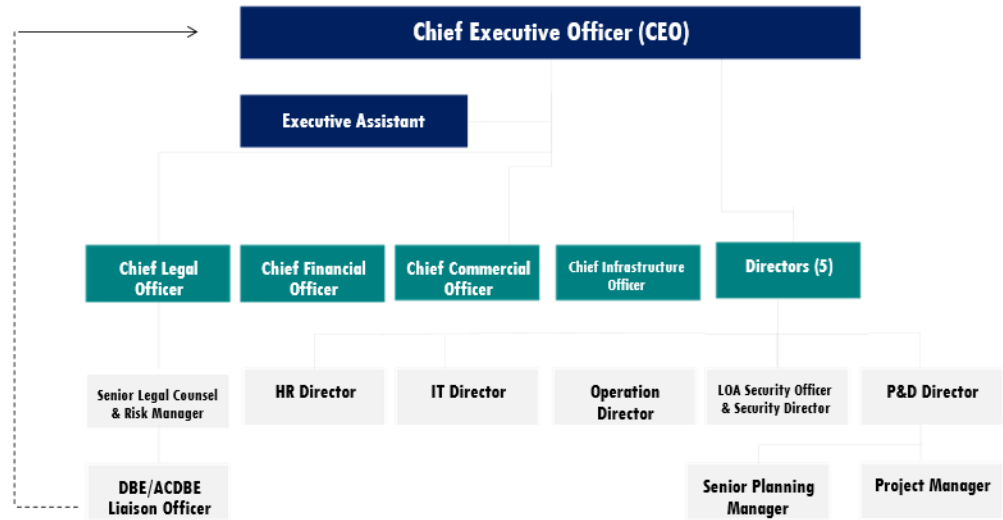
REGULATIONS 49 CFR PART 26 (website link)

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

Attachment 2

ORGANIZATIONAL CHART

OFFICERS & DIRECTORS



*The DBE/ACDBE Liaison Officer has direct and independent access to AeroStar's Chief Executive Officer.

Attachment 3

BIDDERS PROFILE & BIDDER'S LIST COLLECCTION FORM



Bidder's Profile Information



BIDDER'S PROFILE INFORMATION

Firm Name: _____

Postal Address: _____

Zip Code: _____

Firm Phone Number: _____

Email address: _____

Age of Firm: _____ NAICS Code by Project: _____

Type of Work the firm does: _____

Race/Ethnicity: _____

Firm Status: DBE ☐ non-DBE ☐

Firm Age	Annual Gross Receipts
<input type="checkbox"/> Less than 1 year	<input type="checkbox"/> Less than \$500K
<input type="checkbox"/> 1-3 years	<input type="checkbox"/> \$500K - \$ 1 Million
<input type="checkbox"/> 4-7 years	<input type="checkbox"/> \$1-2 Million
<input type="checkbox"/> 8-10 years	<input type="checkbox"/> \$2-5 Million
<input type="checkbox"/> More than 10 years	<input type="checkbox"/> Greater than \$5 Million

*The information provided herein will be used to create and maintain a bidders list as required by 49 CFR 26.11. The purpose of such list is to provide Aerostar Airport Holdings, LLC as accurate data as possible about the universe of DBEs and non-DBEs contractors and subcontractors who seek to work on Federally-assisted contracts for use in helping Aerostar to set DBEs overall goals.

Bidders List Collection Form

[illegible]

Attachment 4

DBE DIRECTORY (website link)

<https://act.dtop.pr.gov/wp-content/uploads/2024/11/DBE-Business-Directory-Updated-November-2024.pdf>

Attachment 5

OVERALL GOAL CALCULATIONS

“Submitted to FAA every three years”.

Attachment 6

DEMONSTRATION OF GOOD FAITH EFFORTS OR GOOD FAITH EFFORTS PLAN

Form 1: Bidders DBE Compliance Plan

Form 2: Bidders Letter of Intent

DBE Goal Compliance Plan (Form 1)

The bidder shall submit a ***DBE Goal Compliance Plan*** indicating how the Participation goal is to be achieved. If the bidder is unable to achieve the DBE goal, it must submit documented Good Faith Efforts as set forth in Section E.

All bidders, including those who are Puerto Rico certified as DBEs or joint ventures and who plan to count themselves to fulfill the DBE requirement shall submit the ***DBE Goal Compliance Plan*** prior to the time specified in the solicitation documents. The ***DBE Goal Compliance Plan*** consists of Sections I-VI, the *Log of Contacts for Soliciting Subcontract Participation*, and all appropriate documentation to demonstrate good faith efforts.

By listing Puerto Rico certified DBE firms on the ***Compliance Plan***, the bidder indicates that both firms agree to the price and scope of work. In the event the bidder is awarded the contract, the bidder agrees to contract with these businesses for the scope and price disclosed. Unit price subcontracts are acceptable if appropriate to the type of work being performed.

The ***Compliance Plan*** shall list all firms that will participate in the contract, including prime contractors, joint ventures, subcontractors of all levels, manufacturers, suppliers, and distributors. Use Section IV for certified DBE subcontractors who will be performing all work themselves. Section V for non-certified subcontractors who will be performing all the work themselves. The ***Compliance Plan*** should be signed and dated by an authorized representative of the bidder.

IF A DBE COMPLIANCE PLAN IS NOT SUBMITTED PRIOR TO THE DEADLINE SPECIFIED IN THE SOLICITATION DOCUMENTS, THE BID WILL NOT BE ACCEPTED FOR CONSIDERATION.

Aerostar may request written clarification of items listed on the *Compliance Plan*, provided that such clarification does not include an opportunity to augment listed DBE participation or good faith efforts. Changes to the *Compliance Plan* are permitted only after the award of the bid and only with prior written approval of the DBE Liaison Officer.

The ***DBE Compliance Plan*** is to include the names of all firms that are participating in the contract, (including prime contractors, joint ventures, subcontractors, manufactures, suppliers, distributors); the address of each firm, the work for which they will be responsible including the scope (labor only, material only, both), and the agreed price for such work. **This form should be signed and dated by the bidder.**

In addition, all bidders will be required to submit the following information with their bid proposal.

- 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 documentation of the bidder commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
- 5) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

Good Faith Efforts

In those instances where the bidder is unable to meet the DBE goal for those DOT-assisted contracts, the bidder must demonstrate and provide documentation supporting “good faith efforts”. The bidder must demonstrate the satisfaction of Aerostar. Genuine efforts have been made to meet the established DBE goal. In making this determination, Aerostar will consider, at a minimum, the bidder’s effort to do the following:

Write notices to every DBE on the Puerto Rico Unified Certification Program DBE List for the project for those specific scopes of work identified by the bidder for subcontracting opportunities not less than five (5) business days prior to bid closing date. Such notices shall include information on the plans, specifications, scope of work and bidding procedures, including the deadline for submission of quotes.

The bidder must determine with certainty if the DBEs are interested in taking appropriate steps to follow up initial solicitations.

1. Efforts made to define additional elements of the work proposed to be performed by DBEs to increase the likelihood of achieving the DBE Goal.
2. For those DBEs responding affirmatively in writing to the notice required by paragraph (1) above,
 - a. Negotiating in good faith with interested DBEs; reasons why agreements were not reached, including written explanations for rejection of proposals.
 - b. If additional elements of work have been identified by the bidder as available for subcontracting, the bidder shall contact Aerostar to ascertain the availability of DBE subcontractors in those areas.
3. Seeking the assistance of Aerostar DBE Liaison Officer in contacting DBEs.

Evaluation of Good Faith Efforts

The good faith efforts of a bidder will be evaluated by Aerostar to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions which Aerostar may consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of effort may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

4. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to

the solicitation. The bidder must determine with certainty if the DBEs are interested in taking appropriate steps to follow up initial solicitations.

5. Selecting portions of the work to be performed by DBEs to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking down contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own strength.
6. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
7. Negotiating in good faith with interested DBEs:
 - It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - A bidder using good business judgment would consider several factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself enough reason for a bidder's failure to meet the contract DBE goal, if such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
8. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
9. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
10. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
11. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

12. In determining whether a bidder has made good faith efforts, Aerostar may consider the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, Aerostar may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, Aerostar may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
13. In cases of dispute over the evaluation of Good Faith Efforts, the decision in determining whether Good Faith Efforts have been made rests with Aerostar. The Aerostar DBE Liaison Officer may determine that the efforts of the Bidder substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and Aerostar.

Letters of Intent (LOI)

The successful bidder shall submit a signed LOI from each DBE included in the DBE Compliance Plan. The LOI must be in the format shown on the sample included herein and must be completed in all its parts. A LOI is required for all levels of subcontracting. The LOI must be submitted within five (5) business days after receipt of a written notification from Aerostar awarding the bid.

Form 1**DBE COMPLIANCE PLAN**

All sections (I - VI) must be completed and submitted

SECTION I	PROJECT IDENTIFICATION AND GOALS
------------------	---

Project Name	
Solicitation Number	

Aerostar has determined that the goal for this project is:

Project Goal	Percent
DBE Projected	

SECTION II	PRIME COMPANY INFORMATION
Name of Company	
Address	
City, State Zip Code	
Phone	
Fax	
Name of Contact Person	
Is prime company a certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> DBE <input type="checkbox"/> DBE Joint Venture <input type="checkbox"/>

THE COMPLIANCE PLAN MUST BE SUBMITTED PRIOR TO THE DATE AND TIME SPECIFIED IN THE SOLICITATION

I certify that the information included in this DBE Compliance Plan is true and complete to the best of my knowledge and belief. I further understand and agree that this DBE Compliance Plan shall become part of my contract with Aerostar.

Name of Authorized Representative	Title of Authorized Representative
Signature	Date

RESERVE FOR AEROSTAR USE	
By the requirements of 49 CFR Part 26, I have review this compliance plan and found that the bidder or proposer:	
HAS <input type="checkbox"/> or HAS NOT <input type="checkbox"/>	
DBE/ACDBE Liaison Officer	Date

SECTION III	COMPLIANCE PLAN SUMMARY
--------------------	--------------------------------

Note:

- * Fill in all the blanks
- * For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- * Compliance plans not complying with these requirements shall be rejected as non-responsive to the solicitation

Is the stated DBE goal of the solicitation met?

Yes ☐ No ☐

If **NO**, attach documentation of Good Faith Efforts as required by 49 CFR Part 26

Total Project Amount: \$ _____

Subcontracting Information

Goals: Proposed Participation		
	Dollar	Percentage
DBE		
non-DBE		

Bidder's Information

Disclose bidder's own participation of the total project, less any amount sub-contracted:

Amount \$ _____ Percentage _____

RESERVE FOR AEROSTAR USE	
Verified DBE Goal:	DBE _____

SECTION IV DUPLICATE AS NEEDED	DISCLOSURE OF DBE PARTICIPATION
	LIST ALL KNOWN DBE CERTIFIED SUBCONTRACTOR/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.

Note:

- * Fill in all the blanks
- * For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- * Compliance plans not complying with these requirements shall be rejected as non-responsive to the solicitation

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

SECTION IV DUPLICATE AS NEEDED	DISCLOSURE OF DBE PARTICIPATION
	LIST ALL KNOWN DBE CERTIFIED SUBCONTRACTOR/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.

Note:

- * Fill in all the blanks
- * For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- * Compliance plans not complying with these requirements shall be rejected as non-responsive to the solicitation

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
Certified in Puerto Rico	DBE <input type="checkbox"/>	Ethnicity & Gender:
Vendor NAICS		
Contact Person	Phone Number	
Amount of Subcontract	\$	%
List commodity codes & description of services		

SECTION VI**DBE COMPLIANCE PLAN CHECK LIST**

The DBE Compliance Plan must be completed and submitted by the time specified in the solicitation documents. If the DBE goal was not achieved, good faith efforts documentation must be submitted with the DBE Compliance Plan. All questions in Section VI **MUST** be completed and submitted with the Compliance Plan if goals or sub-goals are not met.

1. Were written notices sent to DBEs on the availability list for scopes of work within at least 5 business days of bid due date?

Yes ☐ No ☐

2. Is documentation of the written notices to potential DBE subcontractors attached, if the goal was not met?

Yes ☐ No ☐

3. Are the Logs of Contacts and other documentation of efforts made to meet the DBE goal attached?

Yes ☐ No ☐

4. Were additional elements of work identified to achieve the DBE goal?

Yes ☐ No ☐

5. Is there written documentation of efforts to reach agreements with the DBE who responded affirmatively to the bidder's written notice?

Yes ☐ No ☐

6. Are all bids received in response to written notices included with the documentation?

Yes ☐ No ☐

7. Was Aerostar contacted for assistance or any Minority or Women organization:

Yes ☐ No ☐

If yes, complete the following:

Organization: _____

Contact Person: _____

Date of Contact: _____

LOG OF CONTACTS FOR SOLICITING DBE SUBCONTRACTOR PARTICIPATION

(Documentation of contacts must be submitted with bid/proposal if the DBE goal(s) was not achieved.)

(Duplication of this form or the format of this form is acceptable for documentation of contacts.)

Please use the below form, or the format of this form, to document all conversations and contacts regarding the solicitation of prospective subcontractors/subconsultants/suppliers, including responses to phone calls, letters, faxes and advertisements.

THE FOLLOWING FIRMS WERE NOTIFIED OF SUBCONTRACTING/SUBCONSULTING/SUPPLIER OPPORTUNITIES:

Project Name _____

NAME OF DBE	DATE WRITTEN NOTICE WAS SENT AND METHOD (LETTER, FAX, EMAIL)	SCOPE OF WORK/SERVICE SOLICITED	DID DBE SUBMIT WRITTEN RESPONSE? (YES/NO)	IF DBE RESPONDED, REASON AGREEMENT WAS NOT REACHED

Bidder/Respondent: _____ Page _____ of _____

RED FLAG INDICATORS OF DBE FRAUD



Disadvantaged Business Enterprise (DBE) Fraud

Under this scheme, a contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of minority- or women-owned businesses.

**Recognize and Report Fraud in
Federally Funded Programs,
Contracts, and Grants**

(800) 424-9071

*U.S. Department of Transportation
Office of Inspector General*

Selected "Red Flag" Indicators of Disadvantaged Business Enterprise (DBE) Fraud

- ✓ DBE owner lacking background, expertise, or equipment to perform subcontract work
- ✓ Employees shuttling back and forth between prime contractor and DBE-owned business payrolls
- ✓ Business names on equipment and vehicles covered with paint or magnetic signs
- ✓ Orders and payment for necessary supplies made by individuals not employed by DBE-owned business
- ✓ Prime contractor facilitated purchase of DBE-owned business
- ✓ DBE owner never present at job site
- ✓ Prime contractor always uses the same DBE
- ✓ Financial agreements between prime and DBE contractors
- ✓ Joint bank accounts (Prime/DBE)
- ✓ Absence of written contracts

Contact OIG using any of the following methods:

Online complaint form: www.oig.dot.gov/dot-oig-hotline-complaint-form

Telephone: (800) 424-9071

Fax: (704) 556-0732

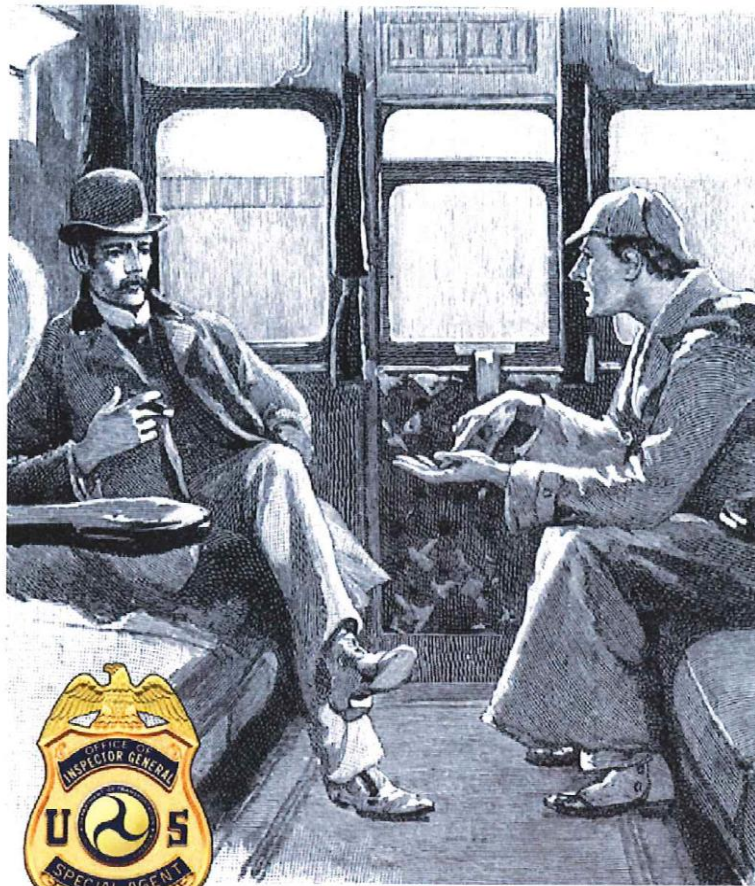
E-mail: hotline@oig.dot.gov

Mail: USDOT Inspector General
1200 New Jersey Ave. S.E., Room W73-104A
Washington, DC 20590

Note: The OIG Hotline is obligated to expeditiously forward all safety-related complaints to USDOT's safety regulatory agencies for action, as appropriate.



U.S. Department of Transportation
Office of Inspector General



"It's elementary my dear Watson..."

Fraud is deliberate deception to secure an unfair gain.

**Recognize and Report Fraud in
Federally Funded Programs,
Contracts, and Grants**

(800) 424-9071

*U.S. Department of Transportation
Office of Inspector General*

Reporting Concerns About Fraud, Waste, Abuse, and Other Irregularities

OIG maintains a hotline to report allegations of fraud, waste, abuse, and other irregularities in USDOT programs or operations. Allegations may be reported by USDOT employees, contractors, or the public. The OIG Hotline is available 24 hours a day, 7 days a week. Issues that should be reported include the following:

- ✓ Contract, procurement, and grant fraud
- ✓ Environment, health, and safety violations
- ✓ Computer crimes
- ✓ Product substitution, including suspected unapproved and counterfeit aircraft parts
- ✓ Bribery, kickbacks, and gratuities
- ✓ False statements and false claims
- ✓ Conflicts of interest and ethics violations
- ✓ Travel fraud, theft, and/or abuse of Government property
- ✓ Other violations of Federal laws and regulations

Contact OIG using any of the following methods:

Online complaint form: www.oig.dot.gov/dot-oig-hotline-complaint-form

Telephone: (800) 424-9071

Fax: (704) 556-0732

E-mail: hotline@oig.dot.gov

Mail: USDOT Inspector General
1200 New Jersey Ave. S.E., Room W73-104A
Washington, DC 20590

Note: The OIG Hotline is obligated to expeditiously forward all safety-related complaints to USDOT's safety regulatory agencies for action, as appropriate.



U.S. Department of Transportation
Office of Inspector General

Form 2

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
LETTER OF INTENT
BETWEEN PRIME CONTRACTOR & DBE SUBCONTRACTOR/SUPPLIER**

Name of Prime Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: (____) _____ Fax (____) _____

Proposed contract Amount \$ _____

Project Number: _____

Project Name: _____

Type of Agreement: _____

(Lump Sum/Unit Price/Commodity)

Period of Performance: _____

Name of DBE Subcontractor/Supplier: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: (____) _____ Fax (____) _____

Proposed contract Amount \$ _____

Description of Work	NAICS	Dollar Amount/%*	Dealer/Manufacturer**

*Percentage is to be used only in negotiated procurements, including design-build contracts.

**For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Prime Contractor

DBE Subcontractor

Attachment 7

Administrative Enforcement Mechanisms

Aerostar 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. Breach of contract action, pursuant to applicable Puerto Rico law.
3. Other applicable state and federal laws.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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
3. Prosecution pursuant to 18 USC 1001.

Attachment 8

DBE Certification Application Form and Personal Net Worth Statement:

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




Attachment 9



Puerto Rico UCP Agreement

PUERTO RICO UNIFIED CERTIFICATION PROGRAM AGREEMENT

This Unified Certification Program Agreement is entered by and between Puerto Rico Highway and Transportation Authority ("PRHTA"), represented by its Executive Director, Carmen A. Villar Prados; the Metropolitan Bus Authority, ("MBA"), represented by its President and General Manager, Héctor I. Santos Santos and Miguel A. Torres Diaz, P.E. Secretary of Public Works; the Puerto Rico Ports Authority, ("PRPA"), represented by its Executive Director Ms. Ingrid Colberg Rodríguez; the Municipalities included in Attachment B, represented by its main Official authorized to enter into agreements and by AEROSTAR Airport Holdings, LLC, ("AEROSTAR"), represented by its President and Chief Executive Officer, Mr. Agustín E. Arellano Rodríguez.

PRHTA, PRPA, MBA and AEROSTAR shall be referred to collectively as the Certifying "Parties". Any term not defined herein shall have the meaning ascribed in the DBE program regulations



 WHEREAS: The PRHTA, PRPA and MBA established a Unified Certification Program pursuant to and in accordance with certain Uniform Certification Program Agreement dated December 3rd, 2003, (the "Agreement") amended on August 12, 2005, to include as party of the Fourth Part Municipalities that would agree to abide by the terms of the Agreement, particularly by its Sixth Clause which stated that PRHTA will serve as certifying agent for the Municipalities. The Municipalities are made part of this agreement as per Attachment B, once they sign the letter acknowledging the existence of this Agreement and their adherence to its terms and the corresponding 49 CFR Parts 23 & 26 where applicable.


 WHEREAS: The Certifying Parties and the Municipalities are recipients of FTA, FHWA and/or FAA funds.


WHEREAS: On February 27, 2013, **AEROSTAR** became the operator of the Luis Muñoz Marín International Airport, (the "**Airport**"), pursuant to certain Lease Agreement entered by and between **PRPA** and **AEROSTAR**.



WHEREAS: On June 17, 2014, the FAA ordered the **PRHTA**, **PRPA** and **MBA** to include **AEROSTAR** in the Puerto Rico Unified Certification Program, ("**PRUCP**"). The Certifying Parties signed a Supplementary Agreement (**Supplementary Agreement**) on July 1, 2014, stating that **AEROSTAR** would be included as part of the **PRUCP** and the Parties would amend the original Agreement, determining how DBE and ACDBE certifications will be conducted in Puerto Rico.



WHEREAS: In order to avoid confusion, a revised Agreement is entered,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties and DOT recipients identified in Attachment B, intending to be legally bound, hereby agree to the following:

TERMS AND CONDITIONS

 **FIRST:** The **PRUCP** shall make all certification decisions on behalf of all DOT recipients in Puerto Rico with respect to participation in the DOT DBE Program. Certification decisions by the **PRUCP** shall be binding on all DOT recipients within Puerto Rico.


 **SECOND:** The **PRHTA**, as lead Agency and point of contact for the **PRUCP** with the USDOT shall maintain the unified DBE Directory required by 49 C.F.R. 26.31 and 26.81 for the **PRUCP**, while the other parties shall submit the information necessary to make updates, revisions, additions and/or corrections.

THIRD: Only firms certified as eligible DBEs by the parties to this agreement or by other states or territories of the US pursuant to written reciprocity agreements or interstate certification provisions in compliance with 49 CFR, Parts 23 and 26 shall participate in the program as DBEs. The PRUCP is not required to process an application for certification from a firm having its principal place of business outside the Commonwealth if it is not certified by the UCP in the state in which it maintains its principal place of business.

FOURTH: Each party shall follow all certification procedures and standards of 49 C.F.R. Parts 23 and 26 and certify qualified DBE applicants that meet the eligibility criteria set forth at 49 C.F.R. Parts 23 and 26, including the following:






- The USDOT Uniform Certification Application (Attachment 1) will be used as required by 49 CFR Parts 23 and 26 criteria.
- On-site visits (Attachment 2) are required as part of the certification process. The On-site visits report will be shared with other recipients upon request.
- The DBE, must provide to the PRUCP, every year on the anniversary of the date of the certification, an affidavit sworn to by the firm's owners affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 C.F.R. Parts 23 and 26 or any material changes in the information provided in its application form. The affidavit shall specifically affirm that the firm continues to meet the overall gross receipts cap of 49 C.F.R. Parts 23 and 26, documenting this affirmation with supporting documentation of the firm's size and gross receipts.

The DBE affidavit also has to affirm that the firm continues to meet SBA business size criteria.

- On-site reports for certified firms will be shared upon request from other UCPs pursuant to interstate certification requirements found in 49 CFR §26.85. All other certification information shall be shared or considered confidential in a manner consistent with 49 CFR §§26.67, 26.83 (g) and 26.109.

FIFTH: Communication among the Parties will include, but not limited to, telephone conversations, conferences and meetings; Correspondence among the Parties shall include, but not be limited to, electronic transmittals of data and information.






SIXTH: The Puerto Rico Municipalities are direct recipients of Federal funds that need to comply with the requirements of the 49 CFR Part 26. The PRHTA will be the certifying entity for the municipalities.





 **SEVENTH:** An On-site Visit Review (Attachment 2); Uniform Certification Letter (Attachment 3); Notification of Annual No-Change Affidavit Request (Attachment 4); and No-change Affidavit (Attachment 5) will be used by all the Parties of this PRUCP in accordance with applicable regulatory requirements. The Uniform Certification Letter will include the letterhead of the party making the certification decision.

EIGHTH: During the review of the documents submitted by applicants, any of the parties to the PRUCP will assign its coordinator to perform, as required by 49 CFR, Part 26, the on-site visit review of the applicant's principal place of business. It will take place

where the individual(s) who control and manage the firm's day to day operations spend most working hours and where management's business record are kept. Each Party must advise the applicant within 30 days of the receipt of the application if it is complete and suitable for evaluation, and, if not, what additional information or action is required. Decisions by the PRUCP on certification applications must be made within 90-days of receiving a complete application. Once a final eligibility determination is made, a Uniform Certification Letter (Attachment 3) will be sent to the applicant, signed by the head of the Department (i.e. PRHTA and PRPA Executive Director, MBA President and General Mgr. and AEROSTAR DBE/ACDBE Liaison Officer) and mailed by certified mail, return receipt requested.

NINTH: The head of each certifying party must identify a Liaison Officer and provide a written notification to all other parties of the Liaison Officer's name and contact information.





 **TENTH:** Each certifying party shall appoint a person or unit other than the DBE Liaison Officer, hereinafter referred to as the "Reviewer", who is knowledgeable about the certification requirements but did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility. In the event that the PRUCP or the USDOT determines that there is reasonable cause to believe a certified firm is ineligible for the Program, the Reviewer must conduct an informal hearing if requested and/or analyze all the information available and provided by the DBE. For the purposes of this agreement, the Reviewer assigned by each certifying Party shall be the Office of Legal Counsel of the entity who is reviewing the eligibility decision. If the Reviewer finds

that a firm is still eligible, he/she shall notify the Liaison Officer that the eligibility criteria have been met, so that it may notify the firm.

ELEVENTH: If the Reviewer of the respective Office of the Legal Counsel agrees with the non-eligibility determination, it shall notify the Liaison Officer, who will in turn notify the Executive Director of each Authority so he/she may inform the firm of the final determination. If the Reviewer of AEROSTAR agrees with the non-eligibility determination, it shall so notify.

Said determination of denial of an application or de-certification of firm shall be made in writing, listing the reasons and evidence cited for such determination. The written notice of the decision and the reasons for it shall include the specific reference to the evidence in the record that supports each reason for the decision and the consequences of the decision and of the availability of an appeal to the US Department of Transportation. The firm may follow Appeals Procedure stated in Attachment A. An applicant denied certification may reapply one year after the date of the denial letter. All correspondence shall be sent via certified mail, return receipt requested.

TWELFTH: The PRUCP 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 certification, or sooner if appropriate in light of changed circumstances. To review their status as a DBE, annually the firms will submit the completed No-Change Affidavit (Attachment 5) with the required information regarding size and gross receipts to the PRUCP entity (PRHTA/PRPA/MBA/AEROSTAR) where certification was requested, stating the ability to

meet size, disadvantage status, ownership or control requirement, on the anniversary date of said certification. The DBE must inform to the UCP in writing of any change in circumstances affecting the ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application form, except for changes about which the DBE submitted a separate notarized Notice of Change.

THIRTEENTH: The certifying parties share a unified DBE Directory under this agreement. Once a firm is certified in the Commonwealth of Puerto Rico as a DBE, it will become part of the Directory that will be available in print on an annual basis to the general public containing information required in 49 CFR sections 26.31 and 26.81. It will also be available electronically through the internet, managed and owned by the PRHTA. The parties under this agreement will submit to the PRHTA the necessary information to keep the Directory updated. The Directory will be shared and made available through the web with the municipalities, other jurisdictions and the general public.

FOURTEENTH: The PRHTA must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the PRUCP Directory controlled by women, socially and economically disadvantaged individuals (other than women) and individual who are women and are otherwise socially and economically disadvantaged individuals.

FIFTEENTH: This agreement will take effect on the date of approval by the USDOT Secretary as specified on 49 CFR, Part 26.81 and will remain in effect as 49 CFR, Part 26


requires. It may be amended in writing and at any time by mutual agreement between the Parties, subject to USDOT approval of significant changes. The Attachments are an integral part of this Agreement as follows:

Attachments:


A. Puerto Rico Unified Certification Program

1. Uniform Certification Application
2. On-site visit review
3. Uniform Certification letter
4. Notification of Annual No-Change Affidavit Request
5. No-change Affidavit

B. PRUCP – Municipalities signing letters



SIXTEENTH: If any provision of this Agreement is held to be contrary to the provisions of 49 CFR Part 23 and 26, the provisions of 49 CFR Part 23 and 26 will always prevail. Moreover, if any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never comprised a part hereof. This Agreement supersedes the December 3rd 2003 Agreement and its amendment.




SEVENTEENTH: The undersigned parties hereby accept the terms of this Agreement and are hereby committed to administering the Disadvantaged Business Enterprise Program and PRUCP in compliance with 49 CFR Parts 23 and 26 as amended.

FOR THE PUERTO RICO HIGHWAY AUTHORITY (PRHTA)



Carmen A. Villar Prados
Executive Director

FOR THE PUERTO RICO PORTS AUTHORITY (PRPA)



Ingrid Colberg Rodríguez, Executive Director

FOR THE METROPOLITAN BUS AUTHORITY (MBA)




Héctor I. Santos Santos,
President and General Manager



Miguel Torres Díaz, P.E.
Secretary DTPW

FOR AEROSTAR AIRPORT HOLDINGS, LLC (AEROSTAR)



Agustín Arellano, President and Chief Executive Officer

FOR THE MUNICIPALITIES;

The representatives of such as per list included in Attachment B

Attachment 10

SMALL BUSINESS ELEMENT PROGRAM

Small Business Element Program

A. Objective

Aerostar seeks to implement a small business element into its current DBE Program in accordance with 49 CFR Part 26.39, to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation. The objective is to facilitate competition and expand opportunities for small businesses. Aerostar will meet its objective using a combination of the following methods and strategies:

- **Set aside**- Where feasible, Aerostar may establish a percentage of the total value of all prime contracts and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that Aerostar and its prime contractors set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and the Liaison Officer will review FAA-assisted purchases and contracts to assess the small business opportunities, considering the size and scope of each purchase or contract to establish the set-aside percentage. This determination will be made based on the estimated availability of small businesses able to provide the requisite scopes of work regardless of DBE status.
- **Unbundling**- Aerostar, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. Aerostar will conduct contract reviews on each FAA-assisted contract to determine whether portion of the project could be “unbundled “or bid separately. This determination will be made based on the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, Aerostar will encourage its prime contractors to unbundle contracts to facilitate participation by small businesses. Aerostar will assist prime contractors in identifying portions of work which may be unbundled and performed by small businesses known to be available.

B. Definition

1. **Small business**- As defined in Section 3 of the Small Business Act and the Small Business Administration (“SBA”) regulation 13 CFR Part 121. A small business should be independently owned and operated, organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve (12) months or on sales volume average over a five (5) year period.

2. **Disadvantaged Business Enterprise (DBE)** – A for-profit small business (as defined by the SBA)-

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals.
- Whose socially and economically disadvantaged owner do not exceed the personal net worth (“PNW”) described in 49 CFR Part 26. The current PNW cap is \$2.047 million.
- Those whose average annual gross receipts, as defined by SBA regulations over the firm’s previous fiscal year, is less than \$30.40 million.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE in accordance with 49 CFR Part 26.

C. Verification

Aerostar will accept the following certifications for participation in the small business element of the Luis Muñoz Marín International Airport’s DBE Program with applicable stipulations:

1. **DBE Certification**- DBE certification by the Puerto Rico Unified Certification Program which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26.
2. **SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124)**- It will require submitting three (3) years of business tax returns after contract award.

D. Monitoring/Record Keeping

- Aerostar will require all bidders to submit information on subcontractors that will participate in the Agreement.
- The information required is as follows:
 - Name and address of each subcontractor
 - Description of the work to be performed by each named firm
 - Contract value of the work of the subcontract.
- Aerostar may conduct reviews with contractors’ employees, to determine and ensure that firms are completing work items to the extent indicated in the Prime Contractor’s bid.

E. Assurances

Aerostar Airport Holdings, LLC., makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by law.

2. Certified DBE that meets the size criteria established under the DBE program are presumptively eligible to participate in the small business element of the DBE Program.
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their locations.
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program.
5. Reasonable efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
6. Aggressive steps will be taken to encourage those minority and women firms participating on the small business element of the DBE Program that are eligible for DBE certification to become certified.

Attachment 11

REGULAR DEALER-DISTRIBUTOR FORM

DBE Regular Dealer/Distributor Affirmation Form



U.S. Department of
Transportation

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? ☐ YES² ☐ NO³

- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative: