



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	\$0				
<b>No. ADDITIONAL FTE POSITIONS (Cumulative)</b>	0				

Is Item Included In Current Budget? Yes  No

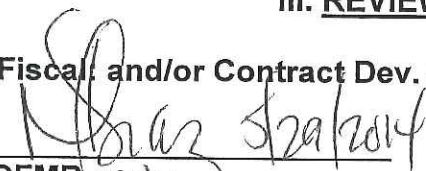
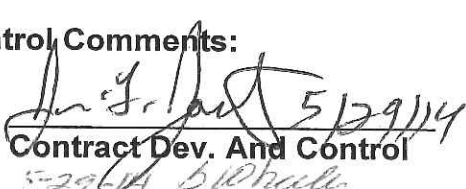
Budget Account No.: Fund  Dep't.  Unit   
 Object  Reporting Category

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_  
 John Murphy, Finance Manager

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

 5/29/14  
 OFMB 28509  
 5/29/14  
 Contract Dev. And Control  
 5-29-14 B. Whalen

**B. Legal Sufficiency:**

 5/29/14  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

### **Palm Tran – Disadvantaged Business Enterprise (DBE) Program Update**

The County, as a an entity receiving more than \$250,000 in **Federal Transit Administration (FTA)** funding, is required to adopt and implement a DBE Program for Palm Tran pursuant to 49 Code of Federal Regulation (CFR) Part 26. The County adopted the current DBE program on August 31, 1999 (R-99-1617). In 2013, the FTA published a Notice of Proposed Rulemaking which outlines DBE Program Implementation Modifications. Beyond a specific format change, the following items have been updated:

- The previous program had the formal policy in two sections: policy and objectives. The revised program incorporates the objectives as part of the policy statement.
- The previous program did not list the duties of the DBE Liaison Officer. These duties are now identified under section 26.25.
- The previous program states that Palm Tran will search for DBE Financial Institutions, the new program has a listing of them. The previous program mentioned the creation and maintenance of a DBE directory, the update shows the DBE directory is now managed by FDOT.
- New procedures for setting and counting DBE goals have been established in sections 26.45 thru 26.55.
- The program has been updated to reflect that Palm Beach County is now a non-certifying member of the Florida Unified Certification Program (UCP).
- Updated requirements for “maintenance of records” have been added to sections 26.47 and 26.109.
- “Outreach efforts” have been established as the responsibility of the DBE liaison under section 26.25.
- Section 26.39 now states that primary contracts not having DBE goals must provide subcontracting opportunities for small businesses.

**RESOLUTION NO. R -**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING A REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR PALM BEACH COUNTY'S PUBLIC TRANSIT SYSTEM, PALM TRAN; AUTHORIZING PALM TRAN'S EXECUTIVE DIRECTOR OR ASSISTANT EXECUTIVE DIRECTOR THROUGH THE COUNTY ADMINISTRATOR, ON BEHALF OF THE BOARD, TO EXECUTE THE DBE PROGRAM POLICY STATEMENT, TO TRANSMIT THE REVISED DBE PROGRAM TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) FOR APPROVAL, AND TO MAKE CERTAIN MINISTERIAL ADJUSTMENTS TO THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Palm Beach County ("County"), through Palm Tran, operates the public transit system; and

**WHEREAS**, the County has accepted financial assistance from the United States Department of Transportation for the development and improvement of the public transit system, and as a condition of receiving this assistance, the County has signed assurances that it will comply with 49 CFR Part 26; and

**WHEREAS**, the County is required to adopt a Disadvantaged Business Enterprise ("DBE") Program pursuant to 49 CFR § 26.21 (a)(2); and

**WHEREAS**, recent regulatory changes and modifications to departmental policies and procedures necessitate the adoption of a revised DBE Program.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**1. DBE Program.**

The Board of County Commissioners ("Board") hereby approves and adopts the revised DBE Program for the public transit system, Palm Tran, attached hereto as Attachment "1" ("DBE Program") and authorizes the County Administrator or his designee to execute the Policy Statement set forth in the DBE Program and to transmit the DBE Program to the Federal Transit Administration for approval. Palm Tran's Executive Director or Assistant Executive Director shall be considered a designee of the County Administrator for purposes of this resolution.

**2. Administration of DBE Program.**

Except as otherwise directed by the County Administrator, Palm Tran shall be responsible for the administration and implementation of the DBE Program on behalf of the County, which shall include submission of required reports and goals to the Federal Transit Administration. The County Administrator or his designee shall be authorized to make ministerial adjustments to the DBE Program from time to time to ensure compliance with 49 CFR Part 26; document changes in County or departmental procedures or policies; and to undertake other ministerial acts required or recommended by the Federal Transit Administration, the Unified Certification Program

for the State of Florida, or applicable federal regulations, policies, guidance documents, or orders. Any changes to the DBE Program shall be filed in the Minutes of the Clerk of the Board and be subject to approval by the Federal Transit Administration as provided in 49 CFR Part 26.

**3 Severability.**

If any section, paragraph, sentence clause or word of this Resolution is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Resolution.

**4 Effective Date**

This Resolution shall be effective upon adoption.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

Commissioner Priscilla A. Taylor, Mayor	_____
Commissioner Paulette Burdick, Vice Mayor	_____
Commissioner Hal R. Valeche	_____
Commissioner Shelley Vana	_____
Commissioner Steven L. Abrams	_____
Commissioner Mary Lou Berger	_____
Commissioner Jess R. Santamaria	_____

The Mayor thereupon declared the resolution duly passed and adopted this

\_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COMMISSIONERS  
Sharon R. Bock, Clerk and Comptroller

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Deputy Clerk



**Palm Tran**

3201 Electronics Way • West Palm Beach, FL 33407-4618  
Phone: (561) 841-4200 • Fax: (561) 841-4291



**Palm Beach County**  
**Board of County Commissioners**  
Priscilla A. Taylor, Mayor  
Paulette Burdick, Vice Mayor  
Hal R. Valeche  
Shelley Vana  
Steven L. Abrams  
Mary Lou Berger  
Jess R. Santamaria

**County Administrator**  
Robert Weisman

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**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**for PALM BEACH COUNTY'S**  
**PUBLIC TRANSIT SYSTEM - PALM TRAN**

Updated June, 2014

**PAGE on PFD Document**

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**DBE PROGRAM for PALM BEACH COUNTY'S  
PUBLIC TRANSIT SYSTEM - PALM TRAN**

**POLICY STATEMENT**

**Section 26.1, 26.23**

**Objectives/Policy Statement**

Palm Beach County, through Palm Tran, as the operator of Palm Beach County's public transit system, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), Code of Federal Regulation 49 CFR Part 26.

It is the policy of Palm Beach County and Palm Tran to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT - assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Palm Beach County in its financial assistance agreements with the Department of Transportation. Nothing contained in this DBE Program shall be construed: to limit or prevent the County from taking any action, performing any activity or function, or complying with any duty, obligation, requirement or rule described in 49 CFR Part 26; to create or impose duties and obligations which go beyond the requirements applicable to County as a recipient of DOT funds under 49 CFR Part 26; to create or vest in a DBE, subcontractor, contractor or firm, any right or benefit unless expressly provided for herein; to limit, reduce or extinguish the authority of the County to require a DBE, subcontractor, contractor or firm, to act in conformity with any requirement or rule applicable to the County or to a DBE, subcontractor, contractor or firm under 49 CFR Part 26, including any determination of the County related thereto, and regardless of whether the requirement or rule is specifically set forth herein.

The Palm Beach County Board of Commissioners has approved this policy statement for dissemination.

\_\_\_\_\_  
Executive Director, Palm Tran, Inc.

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

Palm Beach County is the recipient of federal transit funds authorized by Titles I, III, V, and VI of Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178 and the Moving Ahead for Progress in the 21st Century Act (MAP-21.)

### **Section 26.5 Definitions**

The Board of County Commissioners of Palm Beach County, through Palm Tran, adopts the definitions contained in Section 26.5 for this program. The terms used in this program are found in Attachment 1.

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

The Board of County Commissioners of Palm Beach County, through Palm Tran, will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Board of County Commissioners of Palm Beach County, through Palm Tran 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.

Palm Beach County requires any contractor doing business with the County to warrant and represent that its employees will be treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11(b)**

Palm Tran will report DBE participation in accordance with DOT requirements, using the Uniform Report of DBE Awards/Commitments and Payments form. The information in this report will be forwarded to FTA through FTA's electronic award and management system.

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

Palm Tran will create a bidders list, consisting of information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list in the calculation of overall goals. The bidders list will include the name, address, DBE or non-DBE status, and annual gross receipts of firms.

Methods to collect this information may include: Requiring bidders to include the information in their bid package; Collecting the information from respondents who supply quotes; and, Surveying certified DBE firms and vendors included in the bidders list.



### **Section 26.13 Assurances**

The Board of County Commissioners or Palm Tran, pursuant to authority delegated to it by the Board of County Commissioners, will sign on behalf of the Board of County Commissioners, assurances applicable to DOT-assisted contracts and their administration, including *Assurance 26.13(a) and Contract Assurance 26.13b*.

The following language will also appear in financial assistance with subrecipients.

#### Assurance: 26.13(a)

*Palm Tran shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Palm Tran 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: 26.13b

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

*The contractor and its subcontractors for this project shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of the work associated with this DOT assisted contract, to ensure nondiscrimination. 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 Palm Beach County deems appropriate. Each subcontract that the contractor enters into must include the assurance of non-discrimination set forth in this paragraph.*

*Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.*

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

When Palm Beach County receives a grant of \$250,000 or more in FTA planning capital and/or operating assistance in a federal fiscal year, Palm Tran will administer the DBE program until all funds from DOT financial assistance have been expended. Palm Tran will notify DOT of updates representing significant changes in the DBE program.

### **Section 26.23 Policy Statement**

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

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

Palm Tran has designated the following individual as its DBE Liaison Officer:

*Claudia Salazar, Grants Coordinator  
Palm Tran  
3201 Electronics Way  
West Palm Beach, FL 33407*

*(561) 841-4241  
csalazar@pbcgov.org*

In that capacity, the DBELO is responsible for implementing the DBE program and ensuring that Palm Tran complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Palm Tran Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate officials. The 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 to facilitate inclusion of DBE goals solicitations (both race-neutral methods and contract specific goals attainment) and identifies opportunities to improve DBE participation.
6. Analyzes Palm Beach County's progress toward attainment of goals and identifies opportunities to improve progress.
7. Ensures DBE program information is clearly communicated at pre-bid meetings.
8. Advises the Executive Director\governing body on DBE matters and achievement.
9. Provides DBEs with information useful for preparing bids and obtaining bonding and insurance.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the Board of County Commissioners of Palm Beach County, through Palm Tran, to review services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community; to make reasonable efforts to use these institutions; and, to encourage prime contractors on DOT-assisted contract to make use of these institutions.

Such reviews may include: The directory maintained by the Unified Certification Program (UCP) which lists all the DBE certified business in the State of Florida. The following NAICS categories will be used to check for new available financial institutions that may be a part of the DBE program.

52211 Commercial Banking  
52111 Monetary Authorities – Central Bank  
522120 Banks, savings  
522190 Private banks (i.e., unincorporated)  
52311 Investment Banking  
52399 All other Financial Investment Activities

524126 Bonding, fidelity or surety insurance, direct  
52599 Other Financial Vehicles  
551111 Office of Bank Holdings Companies

Additional reviews include DBE updates from the Florida Department of Transportation. The Florida Department of Transportation listed the following firms in their 2011 update of the DBE program:

**Continental National Bank of Miami**

Contact: Rolando Mollinedo, VP & Accounting Manager  
1801 Southwest First Street  
Miami, FL 33135  
Routing and Transit (ABA) Number: 066009456  
Phone: (305) 643-8254  
Fax: (305) 643-8258

**Great Eastern Bank of Florida**

Contact: Richard Berdy, EVP, COO & CFO  
4601 Northwest 72nd Avenue  
Miami, FL 33166  
Routing and Transit (ABA) Number: 067014071  
Phone: (305) 716-9000  
Fax: (305) 716-9721

**Interamerican Bank**

Contact: Augustin F. Velasco, CEO  
9190 Coral Way  
Miami, FL 33165  
Routing and Transit (ABA) Number: 267087769  
Phone: (305) 223-1434  
Fax: (305) 223-0865

**BankUnited**

Contact: Ricardo J. Garcia  
7970 NW 36 Street  
Mail Code: NB-039  
Doral, Fl. 33166  
Phone: (305) 592-6641  
Fax: (305) 698-4282

Updated information may also be made available on Palm Tran's website: [PalmTran.org](http://PalmTran.org)

**Section 26.29 (a) (b) (d) Prompt Payment Mechanisms**

The following clauses will be included in each DOT-assisted prime contract:

- **CONTRACTOR** agrees that throughout the term of this Agreement, the services as provided by the firms listed on **Exhibit 1 (Letter of Intent)** and **Exhibit 2 (Schedule of Participation)** shall remain at least at the percentage levels set forth therein.
- **CONTRACTOR** shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the COUNTY, for such subcontracted work or supplies. **CONTRACTOR** agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.

- CONTRACTOR agrees that nonpayment of a subcontractor or supplier shall be a material breach of this Agreement and that COUNTY may, at its option exercise any available remedies, including but not limited to, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier.
- CONTRACTOR shall certify to COUNTY, the amounts paid to each DBE involved in the project as either a joint venture partner or pursuant to a subcontract with the disadvantaged businesses. All such certifications shall be signed by both CONTRACTOR and DBEs. One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at contract award.
- CONTRACTOR agrees that failure to provide appropriate certification as to the payment of DBEs, in a form acceptable to COUNTY that disadvantaged business participation requirements of the agreement have been met, notwithstanding any other provisions of the agreement, shall be cause for COUNTY to withhold further payments under the agreement until such time as such certification is received and accepted by COUNTY, and shall not entitle CONTRACTOR to terminate the agreement, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated therewith.

A CONTRACTOR whose performance falls short of its original commitments shall be subject to the applicable compliance mechanisms.

Sanctions for Noncompliance with DBE Program Provisions. Failure of the CONTRACTOR to carry out DBE program provisions shall constitute a breach of the contract and may result in the exercise of the County's contractual remedies, including but not limited to remedies available under the Palm Beach County Code and this DBE program. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

- CONTRACTOR agrees that it cannot terminate a DBE subcontractor for convenience and then perform the work with its own forces or affiliates. If a situation arises that a DBE subcontractor needs to be replaced or removed from the project, CONTRACTOR must submit a written request to County's contract representative, (with a copy to Palm Tran's DBE Liaison) with a detailed explanation or justification for the submission of such request. Before transmitting to the County's contract representative its request to terminate, the contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to County's contract representative and Palm Tran's DBE Liaison prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the County and Palm Tran of why it objects to the proposed termination. If the request is due to a voluntary cessation of the DBE firm from the project, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of DBE subcontractors will only be approved on a case-by-case basis provided that reasons cited are properly justified. When a DBE subcontractor is terminated or fails to complete its work, CONTRACTOR must make good faith efforts to find another DBE subcontractor to substitute for the original DBE, and submit such documentation and the name of the new subcontractor to County for approval. Good faith efforts are detailed in subpart C of this program.

### **Section 26.31 Directory**

Palm Beach County is a non-certifying member of the Florida Unified Certification Program (UCP) established in 2005. FDOT serves as Manager for the UCP's electronic DBE Directory, which includes all DBE certifications made by Certifying Members.

The Directory lists the firm's name, address, telephone number, email address, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is updated daily by the Department and other Florida Unified Certification Program certifying members and is available on the internet at:

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx>

Certifying members are required to update the DBE Directory within three days of a certification decision. The Directory can be sorted by NAICS code, specialty code, work location and physical location, firm name, business description, or you can download the Directory electronically. Interested parties may contact the Equal Opportunity Office at 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747 to obtain a current copy of the DBE Directory.

### **Section 26.33 Overconcentration**

Palm Tran has not experienced DBE overconcentration for any commodity or service purchased. However, should DBE reports identify that overconcentration is occurring, Palm Tran will obtain approval from FTA for the determination of overconcentration and the measures devised to address it.

To determine if overconcentration exists in the types of work that DBEs perform, Palm Tran, as part of the Goal Setting process, considers both whether the DBE is performing a unique element of work exceeding their proportional share based on the availability of DBEs, and if DBEs' share of the work for that element exceeded 50% of the work available.

During the annual evaluation of DBE Goals Awards/Commitments, Palm Tran will review the actual awards for the past year to determine whether overconcentration is present. Palm Tran will conclude that overconcentration will occur when any of the following criteria is met:

#### **Criteria #1- DBE firms are obtaining a larger share of the market than their availability**

The percentage of the total amount of work awarded to the DBE firms in a year exceeds the percentage of the firms that the DBEs represent who perform that element of work.

#### **Criteria #2 - DBE firms are obtaining the majority of the market**

The percentage of the total amount of work DBE firms obtain for an element of work exceeds 50% of that type for a fiscal year.

Percentages are based on the dollar value of the element, not the number of units performed or supplied.

All determinations of overconcentration will require FTA concurrence and approval.

### **Section 26.33 Steps to Address Overconcentration**

If during the annual evaluation of DBE Goals Awards/Commitments, Palm Tran determines that Overconcentration is present in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, Palm Tran will devise appropriate measures to address this overconcentration.

These measures may include the use of incentives, technical assistance, business development programs, mentor programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which Palm Tran has determined that non-DBEs are unduly burdened. Palm Tran may also consider varying the use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts. Palm Tran will include in any solicitation affected by such overconcentration, language identifying the areas of expertise containing the overconcentration

and notifying bidders that any usage of DBE in the affected areas would not be counted toward DBE goal attainment.

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

Palm Beach County has not determined that overconcentration exists and consequently has not established a Business Development Program (BDP). The County has not been directed by an operating administration to establish a BDP to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. During the annual review of DBE participation, Palm Tran will continue to review the DBE Goals Awards/Commitments, and if overconcentration is present, Palm Tran will obtain approval from FTA for the determination of overconcentration and the measures devised to address it.

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

Palm Tran will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. Palm Tran will bring to the attention of the Department of Transportation any findings of 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 or action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. Compliance. Palm Tran will add the following contract clauses to all DOT - assisted contracts:
  - CONTRACTOR agrees to submit a monthly report to County's contract representative (with a copy to Palm Tran's DBE Liaison), on DBE participation, which should contain a record of payments made to its DBE subcontractors during the current reporting period. CONTRACTOR shall utilize the form attached as Exhibit 4- DBE Utilization Report. Reports should be submitted by the 10<sup>th</sup> day of each month.
  - CONTRACTOR agrees to submit a Final DBE Participation Report containing the total amount paid to its DBE subcontractors to County. This report must be submitted with the CONTRACTOR's request for final payment and release of retainage, if applicable. CONTRACTOR shall utilize the form attached as Exhibit 5 - Final DBE Utilization Report.
  - CONTRACTOR shall certify to COUNTY, the amounts paid to each DBE involved in the project as either a joint venture partner or pursuant to a subcontract with the disadvantaged businesses. All such certifications shall be signed by both CONTRACTOR and DBEs. One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at contract award.
  - CONTRACTOR agrees that failure to provide appropriate certification as to the payment of DBEs, in a form acceptable to COUNTY that disadvantaged business participation requirements of the agreement have been met, notwithstanding any other provisions of the agreement, shall be cause for COUNTY to withhold further payments under the agreement until such time as such certification is received and accepted by COUNTY, and shall not entitle CONTRACTOR to terminate the agreement, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated therewith.

A CONTRACTOR whose performance falls short of its original commitments shall be subject to the applicable compliance mechanisms.

Sanctions for Noncompliance with DBE Program Provisions. Failure of the CONTRACTOR to carry out DBE program provisions shall constitute a breach of the contract and may result in the

exercise of the County's contractual remedies, including but not limited to remedies available under the Palm Beach County Code and this DBE program. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

3. **Monitoring and Compliance After Contract Award:** The project manager will not approve a pay application if the contractor has not included with the pay application a DBE Utilization Report.

The contractor shall submit with each invoice a report of DBE expenditures. The report shall show each DBE, the amount of their subcontract, the amount earned to date, the amount earned for that respective invoice and the amount remaining to be earned. The report shall also have each DBE subcontractor certify the amounts earned and paid to date. The contractor's invoice may be withheld from payment until such time as the contractor submits the required report. The report shall be compared to the contractor's initial submission used for award of the contract. The contractor shall be required to demonstrate the use of and the level of use for each previously identified DBE subcontractor. Failure to demonstrate the use of identified DBE subcontractors may result in withholding of payment until the contractor is in compliance or termination for material breach of contract.

Palm Tran and the contractor may count toward the DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Palm Tran shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

The project manager will arrange on-site visits to check that DBEs are actually performing the work identified by the Contractor.

### **Section 26.39 Small Business Participation**

Palm Beach County created the Small Business Enterprise Program as an attempt on the part of the Board of County Commissioners to ensure that all businesses be afforded the opportunity for full participation in the free enterprise system while providing assistance and encouragement to Palm Beach County small businesses, which represent a significant portion of the local business community.

In support of its policy to ensure the full and equitable participation of Small Business Enterprises (SBEs) in the provision of goods, services and construction to Palm Beach County, the Palm Beach County Board of County Commissioners adopted an Ordinance codified in section 2-80.21 through 2-80-34 (Small Business Enterprise Program) of the Palm Beach County Code. The Board of County Commissioners implemented a Small Business Enterprise Program (SBE) on October 1, 2002.

Palm Beach County sets a separate goal for the SBE program, and the overall participation is counted separately from the DBE accomplishments. The annual SBE goal for County procurement of construction, professional services and commodities is currently a minimum of fifteen percent (15%), for those contracts without DOT participation (Contracts with NO DBE Goals). The annual goal is applied to the procurement of all goods, services or construction unless otherwise approved by the County Administrator.

The County Ordinance for the Small Business Enterprise Program can be found as Attachment 3. The ordinance describes how enterprises will be certified as SBEs and specifies goals, contract compliance requirements, prompt payment, the definitions of the businesses size to meet eligibility, and monitoring of the SBE program.

The OSBA office conducts different outreach activities to encourage small businesses to participate in Palm Beach County procurements. Their website offers information on eligibility, application requirements, recertification, upcoming events, etc. More information on this program can be found at: <http://www.pbcgov.com/osba/>

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

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

Palm Tran does not use quotas or set-asides in any way in the administration of the DBE Program. To ensure compliance with 49 CFR Part 26, Palm Tran encourages the use of DBEs on contracts with or without DBE goals.

### **Section 26.45 Overall Goal**

Palm Tran will submit its triennial overall DBE goal to FTA Region IV as required. Palm Tran is in Group B.

Palm Tran will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The process generally used by Palm Tran to establish the overall DBE goal is as follows:

Palm Tran calculates the amount of FTA funds that Palm Beach County will have available for the three (3) year period covered by the Overall DBE goal. This amount includes allocations from previous years, projections for allocations for three subsequent fiscal years and excludes funds that have already been assigned (contracts awarded) to ongoing projects and funds allocated for bus purchases.

Palm Tran identifies the projects that are carried out annually with FTA funds, and identifies upcoming projects as described in the Transportation Development Plan (TDP), and during the quarterly grants meeting requests from managers of other projects that will be carried through in the upcoming three years.

Palm Tran identifies the activities covered by all above mentioned projects, and identifies the NAICS codes that represent these activities. Palm Tran identifies how much of the available funds in the upcoming three years will be used for each NAICS category. With this data Palm Tran creates Table #1 "Funds Available by NAICS Category".

Palm Tran searches the UCP Directory and creates a list of all DBE companies certified under the identified NAICS codes. Palm Tran adds to this mailing list, all Certified DBEs in Palm Beach County, the Bidders list and a list of local business organizations. ("Goals Mailing List")

Palm Tran reviews census data and identifies business patterns under the NAICS codes identified as the activities to be funded by FTA funds in the three upcoming years. Using the list of Certified DBEs pulled from the UCP directory by NAICS Category, and the business patterns data, Palm Tran creates Table # 2 "Relative Availability of DBEs by NAICS Category". Table #2 provides a figure of the relative available DBEs that could participate in FTA assisted contracts.

Palm Tran will use a Weighted Average to develop a Base Figure, it will multiply the estimated percentage of total dollars expected to be expended within each NAICS category (**Table I**) by the Percentage of DBE firms and subcontractors in each NAICS category (**Table II**).



**Table I** Identifies the corresponding NAICS Codes, type of industry (Work Item), estimated dollar (Amount) and Percentage most likely to be associated with proposed Palm Tran projects/contracts to be awarded in a three (3) year period.

NAICS CODE	CATEGORY	FUNDS AVAILABLE	PERCENTAGE OF TOTAL
561621	Security Systems	\$576,107	3.7%
441110	New Car Dealers	\$657,418	4.2%

**Table II** Represents the total number of registered DBE firms (corresponding to the NAICS codes) and all available firms located in Palm Beach County's Normal Market Area. The number of firms are extracted from the North American Industry Classification System (NAICS), Florida Department of Transportation Equal Opportunity Office DBE Directory, and the Census Bureau's County Business Pattern data base.

NAICS CODE	CATEGORY	NUMBER OF DBEs	NUMBER OF ALL FIRMS	RELATIVE AVAILABILITY
561621	Security Systems	11	55	20%
441110	New Car Dealers	0	84	0%

Palm Tran will prepare the Goal Methodology document using Table I and Table II and will include a Table III which shows how the base figure is developed using the Weighted Average. The document will include the DBE Policy Statement and will request input about the best media outlets that Palm Tran can use to better disseminate the announcement of the DBE Methodology, and continued communication of the availability of FTA funded contracts. The document will also request input on how to better establish a level playing field for the participation of DBEs in the identified projects. This document will be mailed to all the entities listed on the Goals Mailing List, and it will request their input by a specific date, in order to consider their input prior to publication of the methodology.

Thereafter Palm Tran will publish a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the administrative office for 30 days following the date of the notice, and informing the public that Palm Tran and FTA will accept comments on the goal for 45 days from the date of the notice.

Palm Tran will publish the notice in local papers. The notice will provide a link to Palm Tran's Website where the notice and the methodology will be available, the notice will include the address where comments can be mailed, a telephone number where anyone can leave a voice comment, and an e-mail address where comments can be submitted during the comment period. Other publications will be added as suggested by the consultation with those on the Goals Mailing List.

Palm Tran's overall goal submission to FTA will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and Palm Tran's responses; and proof of publication of the goal in media outlets listed above.

Palm Tran will begin using the overall goal on October 1 of the specified year, unless it has received other instructions from FTA. Palm Tran's goal will remain effective for the duration of the three-year period established and approved by FTA.

**Section 26.47 Goal Setting and Accountability**

If the awards and commitments shown on Palm Tran's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, Palm Tran will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Document in detail the analysis, and the steps established to implement a corrective action plan, and maintain information/records regarding the analysis and efforts made.

#### **Section 26.49 Transit Vehicle Manufacturers Goals**

Palm Tran will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Palm Tran may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the Transit Vehicle Manufacture complying with this element of the program.

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

Palm Tran will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

Palm Tran uses the following race-neutral means to increase DBE participation:

Palm Tran estimates that in meeting the overall goal, it needs to select those projects that have a larger percentage of relative DBE participation based on Table III of the methodology to establish a race conscious goal. Palm Tran will include the DBE language in all certifications and representation for all other contracts, and while the language specifies the DBE policy and goals, it does not require a goal for the contract. Palm Tran will use historical data to determine the percentage of race neutral and race conscious contracts awarded in the previous three years in order to establish the breakdown of participation.

Palm Tran's DBE program will be narrowly tailored to ensure DBEs have an equal opportunity to receive and participate in DOT-assisted contracts. If Palm Tran uses contract goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not have a DBE goal; DBE participation on a prime contract exceeding a contract goal; and, DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award. Palm Tran will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

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

Palm Tran will use contract goals to meet any portion of the overall goal not projected to be met using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Palm Tran will establish contract goals only on those FTA-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every contract, and the 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.) Palm Tran estimates that, in meeting the overall goal, it needs to select those projects that have a larger percentage of relative DBE participation based on Table III of the methodology to establish a race conscious goal for those particular projects.

Palm Tran will express its contract goals as a percentage of the total amount of the FTA assisted contract.

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

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The 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.

Palm Tran will ensure that all information is complete and accurate and adequately documents the bidder's/offeror's good faith efforts before it commits to the performance of the contract by the bidder/offeror.

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

Palm Tran treats bidder's/offeror's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

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

Within 7 days of being informed by Palm Tran that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following reconsideration official: Palm Tran, Executive Director or designee, 3201 Electronics Way, West Palm Beach, FL 3307; (561) 841-4227. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or written 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 Palm Tran's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Palm Tran will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or

make adequate good faith efforts to do so. The result of the reconsideration process is final and not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

Palm Tran will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Palm Tran will require the prime contractor to notify the DBE Liaison Officer in writing of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Before transmitting to Palm Tran its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to Palm Tran prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise Palm Tran why it objects to the proposed termination.

In this situation, Palm Tran will require the prime contractor to obtain Palm Tran's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Remedies (see 26.53(f)(3)).

Palm Tran includes the following language in FTA assisted contracts:

- **Sanctions for Noncompliance with DBE Program Provisions.** Failure of the CONTRACTOR to carry out DBE program provisions shall constitute a breach of the contract and may result in the exercise of the County's contractual remedies, including but not limited to remedies available under the Palm Beach County Code and this DBE program. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.
  
- CONTRACTOR agrees that it cannot terminate a DBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a DBE subcontractor needs to be replaced or removed from the team, CONTRACTOR must submit a written request to County's contract representative, (with a copy to Palm Tran's DBE Liaison) with detailed explanation or justification for the submission of such request. **Before transmitting to the County's contract representative its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to County's contract representative and Palm Tran's DBE Liaison prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the County and Palm Tran of why it objects to the proposed termination.** If the request is due to a voluntary cessation of the DBE firm from the team, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of DBE subcontractors will only be approved on a case-by-case basis provided that reasons cited are properly justified. When a DBE subcontractor is terminated or fails to complete its work, CONTRACTOR must make good faith efforts to find another DBE subcontractor to substitute for the original DBE, and submit such documentation and the name of the new subcontractor to County for approval. Good faith efforts are detailed here in.

Sample Bid Specification:

DBE BID/RFP Certifications and Representation language are found in Attachment 4.

**Section 26.55 Counting DBE Participation**

Palm Tran will include DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## **SUBPART D & E- CERTIFICATION STANDARDS**

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

Palm Beach County is a non-certifying member of the Florida **Unified Certification Program (UCP)**.

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

Palm Beach County is a member of the Unified Certification Program (UCP) administered by the Florida Department of Transportation (FDOT) Equal Opportunity Office. The UCP meets all of the requirements of this section. Palm Tran will use and count for DBE credit only those DBE firms certified by the Florida UCP.

The DBE Certification Program is a Federal Program designed for business owners deemed "socially and economically disadvantaged."

Firms engaging in or intending to engage in **road, highway or bridge planning**, design, construction or maintenance related to goods and services should submit their DBE application to FDOT, regardless of their location in Florida.

Ms. Vicki Smith  
Certification Mgr.  
Equal Opportunity Office  
605 Suwannee St. MS 65  
Tallahassee, FL 32399  
(850) 414-4747  
[victoria.smith@dot.state.fl.us](mailto:victoria.smith@dot.state.fl.us)

Firms engaging in or intending to engage primarily in **transit related** goods and services should submit their application to the FTA Certifying Member located closest to their primary place of business. Two of these South Florida members are:

Broward County Office of Economic and Small Business Development  
115 S. Andrews Ave., Room A-680  
Fort Lauderdale, FL 33301  
Attention: Certification Section  
[http://www.broward.org/ECONDEV/SMALLBUSINESS/Pages/dbe\\_program.aspx](http://www.broward.org/ECONDEV/SMALLBUSINESS/Pages/dbe_program.aspx)

Sustainability, Planning and Economic Enhancement Department  
Small Business Development Division Certification Unit  
111NW 1<sup>st</sup> Street, Suite 1900  
Miami, FL 33127  
<http://www.miamidade.gov/business/business-certification-programs-DBE.asp>

## OTHER FLORIDA UCP CERTIFYING MEMBERS LISTING

<b>Agency</b>	<b>Contact</b>	<b>E-Mail</b>
City of Tallahassee	Ben Harris	<a href="mailto:Ben.Harris@talgov.com">Ben.Harris@talgov.com</a>
Greater Orlando Aviation Authority	Michelle Tatom	<a href="mailto:mtatom@goaa.org">mtatom@goaa.org</a>
Hillsborough County Aviation Authority	Cheryl Hawkins	<a href="mailto:chawkins@tampaairport.com">chawkins@tampaairport.com</a>
Jacksonville Transportation Authority	Ken Middleton	<a href="mailto:kmiddleton@jtafla.com">kmiddleton@jtafla.com</a>
Key West International & Florida Keys Marathon Airport	Monty Gettys	<a href="mailto:Monty.Gettys@mcgi-us.com">Monty.Gettys@mcgi-us.com</a>
Lee County Port Authority	Julio Rodriguez	<a href="mailto:jarodriguez@flylcpa.com">jarodriguez@flylcpa.com</a>
Volusia County -- FTA	Julio Holness	<a href="mailto:Jubet@bellsouth.net">Jubet@bellsouth.net</a>

### Reciprocity with Other UCPs

It is understood that:

- (a) The UCP, through its Executive Committee, may enter into written reciprocity agreements at any time with UCPs of other states subject to approval of USDOT.
- (b) Such reciprocity agreement(s) must outline the specific responsibilities of each participating UCP.
- (c) The UCP, and its Members, may accept a DBE certification decision, made by another UCP or state DOT, on a case-by-case basis.
- (d) The UCP, and its Members, shall share information concerning Florida DBE firms or applicants with other UCPs and state DOTs upon written request.

### Section 26.83-26.91 Procedures for Certification Decisions

#### Appeals/Third Party Complaints

DBE Certification appeals and third party complaints may only be filed with the Certifying Member whose action is being appealed or complained about and shall be handled in accordance with 49 CFR Part 26, Sections 26.85, 26.87, and 26.89.

A firm that either has had its eligibility removed or has been denied certification must wait 12 months before reapplying for certification. In either action, however, a firm may appeal the decision to the U.S. DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
1200 New Jersey Ave. SE  
Washington, DC 20590

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

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

Consistent with Federal, State, and local law, Palm Beach County and Palm Tran will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information. Notwithstanding any contrary provisions of Federal, State, or local law, Palm Beach County and Palm Tran may not release confidential business information, submitted by a DBE applicant, to a third party (other than to the U.S. DOT in a certification appeal proceeding) without the consent of the applicant.

#### **Monitoring Payments to DBEs**

Palm Tran will require prime contractors to maintain records and documents of payments to DBEs for five years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Palm Tran, Palm Beach County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

**DBE PROGRAM for PALM BEACH COUNTY'S  
PUBLIC TRANSIT SYSTEM - PALM TRAN**

**TERMS/DEFINITIONS as per 49 CFR §26.5**

The terms used in this program are defined in 49 CFR Part 26.5. The reader is referred to this section of the Federal regulations for detailed information about their meanings.

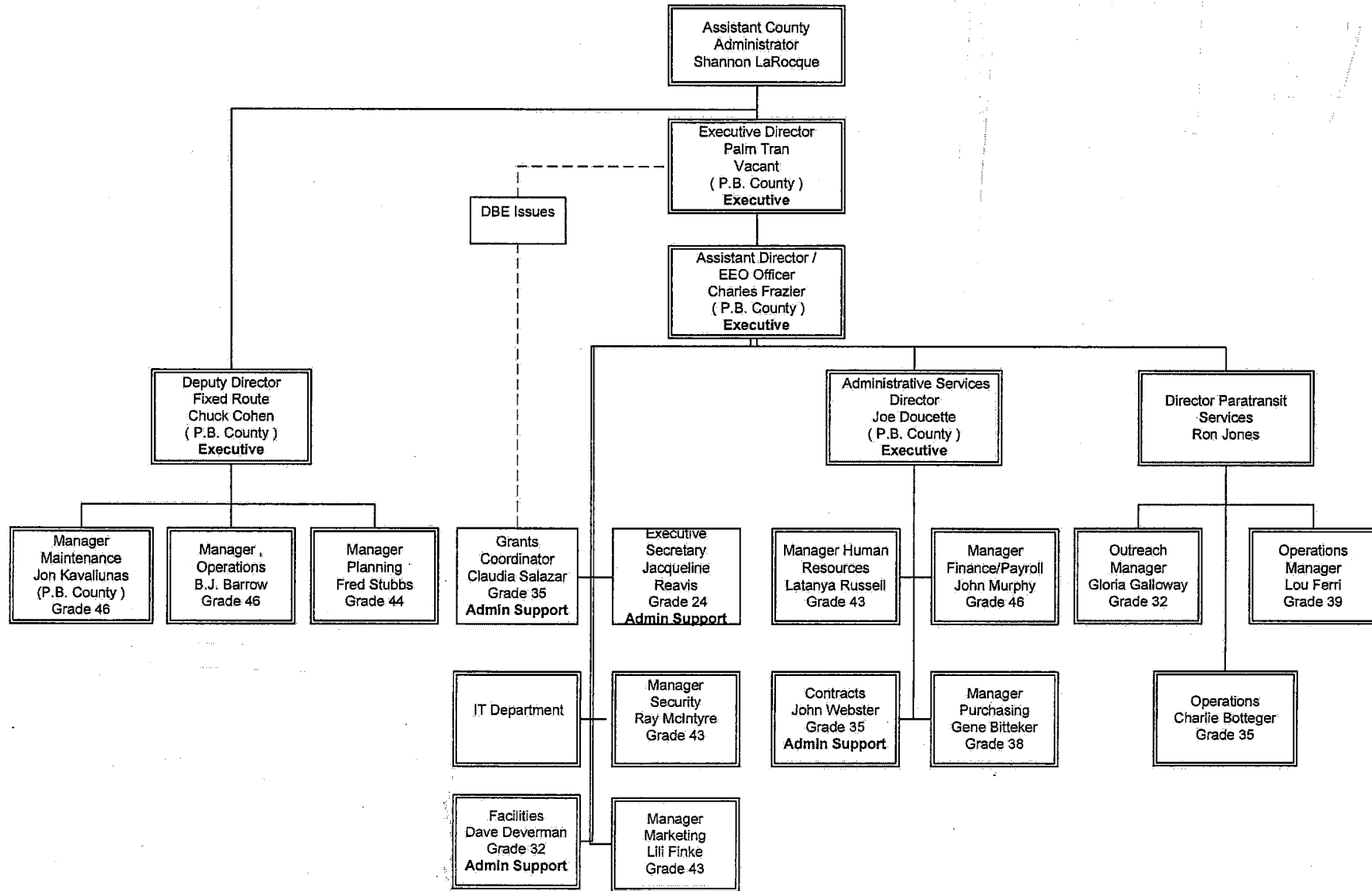
The Code of Federal Regulation (CFR), Title 49 Part 26 (**10-1-12 Edition**)

This document can be accessed at:

**<http://www.gpo.gov/fdsys/pkg/CFR-2012-title49-vol1/pdf/CFR-2012-title49-vol1-part26.pdf>**



**Palm Tran  
Executive  
Organizational Chart  
FY2015 Budget Complement V5**



PALM BEACH COUNTY CODE  
Chapter 2 - ADMINISTRATION  
ARTICLE III. - FINANCIAL AFFAIRS  
DIVISION 2. - PURCHASES  
Part C. - Small Business Enterprise Program

**Part C. - Small Business Enterprise Program**

Sec. 2-80.21. - Definitions.

Sec. 2-80.22. - Scope.

Sec. 2-80.23. - Goals.

Sec. 2-80.24. - Contract compliance requirements.

Sec. 2-80.25. - Ranking of responsive bidders.

Sec. 2-80.26. - Suspension/debarment.

Sec. 2-80.27. - Prompt payment.

Sec. 2-80.28. - Procurement procedures.

Sec. 2-80.29. - Professional services.

Sec. 2-80.30. - Small business certification.

Sec. 2-80.31. - M/WBE certification.

Sec. 2-80.32. - Small business assistance advisory committee.

Sec. 2-80.33. - Monitoring of minority/women business enterprise participation.

Sec. 2-80.34. - Phase in of small business program and phase out of m/wbe program.

Secs. 2-80.35—2-80.40. - Reserved.

**Sec. 2-80.21. - Definitions.**

*Acting as a conduit* means, in part, not acting as a regular dealer by making sales of material, goods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to only government agencies, in the usual course of business. Brokers, manufacturer's representatives, sales representatives and non-stocking distributors are considered as conduits that do not perform a commercially useful business function.

*Affiliation* means that the entity applying for SBE certification controls, has the power to control, or is controlled by another entity or entities, or an identity of interest exists between the entity applying for SBE certification and another entity or entities. In determining whether an affiliation exists, it is necessary to consider factors including, but not limited to, common ownership, common management, common use of facilities, equipment, and employees, contractual obligations and family interest in the business. Affiliated entities must be considered together in terms of gross receipts in determining whether a business entity meets SBE eligibility criteria.

*Board* means the board of county commissioners of Palm Beach County, Florida.

*Business category* means construction; professional services procured pursuant to the Competitive Consultant Negotiations Act (CCNA); other professional services, and commodities. For purposes of SBE eligibility criteria, a business entity shall be considered for eligibility in the business category in which it performs the largest portion of its work.

*Certification* means the process by which the office of small business assistance determines a business meets the criteria for a small, minority or woman business enterprise.

*Certified small business enterprise (SBE)* means a business which has been certified by the office of small business assistance (SBA).

*Code* means the Palm Beach County Code.

PALM BEACH COUNTY CODE  
Chapter 2 - ADMINISTRATION  
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Part C. - Small Business Enterprise Program

*Commercially useful business function* means adding value to the goods and services supplied under a contract.

*Committee* means the small business advisory committee.

*County* means Palm Beach County.

*Days* means business days, unless specified otherwise.

*Domiciled* in the county means the business holds a valid Palm Beach County business tax receipt and has a permanent place of business in the county. In order to establish a permanent place of business in the county, the business must:

- (1) Demonstrate business activity during the preceding twelve (12) months at the county location, and sufficient full-time employees in the county to perform the contracted work;
- (2) The county business tax receipt bears the county address, and the county location is in an area zoned for the conduct of such business;
- (3) The county location must be verifiable through documentation such as lease agreement, utility bills, client invoices, payroll records or other appropriate documentation; and
- (4) The county location must be identifiable through signage, telephone book listing, or other appropriate means. On-site visits may be conducted prior to and during the certification term to determine continued adherence to the domicile requirements and other requirements of the code. Additional backup documentation may be requested on a case-by-case basis. A county telephone number or post office box in the county shall not be sufficient to establish domicile in Palm Beach County.

*Front* shall mean a business which purports to be a small business but which is actually owned and/or controlled in a manner which does not comply with the county's requirements of certification.

*Goals* means annual small business goals expressed as percentages of total dollar volume for participation of small businesses in the county's procurement of goods, services and construction.

*Gross receipts* means the total annual sales for the applicant as stated on its federal income tax return, or for a new business that has not yet filed a federal income tax return, on its audited financial statements before deductions for returned items, allowances and discounts.

*Home business* means a small business that operates from the business owner's home. Home businesses usually have a very small number of employees that are often members of the business owner's family. A home business is not affiliated with, nor a subsidiary of another company located outside of the home. Home businesses meeting this definition are eligible for certification as a small business, provided they meet all other certification criteria. Home offices of an employee working for a company located in another county do not establish domicile in Palm Beach County.

*Joint venture* means an association of two (2) or more persons or businesses registered with the State of Florida to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

PALM BEACH COUNTY CODE  
Chapter 2 - ADMINISTRATION  
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Part C. - Small Business Enterprise Program

*Minority person* means an individual who is a citizen or lawful permanent resident of the United States who is:

- (1) A "black American," a person having origins in any of the black racial groups of Africa.
- (2) A "Hispanic American," a person of Spanish or Portuguese culture with origins in Mexico, Central or South America, or the Caribbean, regardless of race.
- (3) An "Asian American," a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
- (4) A "Native American," a person who is a member of, or is eligible to be a member of, a federally recognized Indian tribe. A "federally recognized Indian tribe" means an Indian tribe, band, nation, rancheria, pueblo, colony or other organized group or community, including any Alaska native village, which was recognized by the secretary of the interior on October 1, 1985, as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians, and any tribe that has a pending application for federal recognition on October 1, 1985, as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians, and any tribe that has a pending application for federal recognition on October 1, 1985.

*M/WBE* means a minority-owned business enterprise or a women-owned business enterprise or a combination minority and women-owned business enterprise. A M/WBE is any small business concern which is organized to engage in commercial transactions, which is domiciled in Palm Beach County, and which is at least fifty-one (51) percent owned by minority persons and/or women who are members of an insular group that is of a particular racial, ethnic or national origin makeup or gender, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an under-representation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons.

*Manufacturer* means a firm or business entity that produces an item from raw materials or who substantially alters the form of a product in order to make it suitable for a particular use.

*Owned*, for the purpose of determining whether a business is a minority or women business enterprise, shall mean that the minorities or women, as the context requires, shall possess an ownership interest of at least fifty-one (51) percent.

*Prime contractor* means any person who has a contract with the county to provide specific construction services, sales, supplies, materials, professional services, labor and/or equipment.

*Professional services* means any narrow discipline wherein a known practitioner has through education and experience developed expert advisory and programming skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory study, or programming activity where the director of purchasing determines that the level of skills and/or creativity of the potential or known practitioner(s) warrants a competitive proposal or submittal process.

*Project goal* means SBE goals expressed as percentages of total dollar volume for participation of small businesses, on individual county contracts.

PALM BEACH COUNTY CODE  
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*SBE* means small business enterprise certified by Palm Beach County.

*Sheltered market program* means a program under which certain contracting opportunities are made available only to certified SBEs.

*Small business* means a business domiciled in Palm Beach County and certified by the county which is an independently owned and operated for profit business concern organized to engage in commercial transactions and whose adjusted gross margin does not exceed the following:

- (1) For a provider of construction the annual gross receipts may not exceed nine million dollars (\$9,000,000.00) (averaged over the previous three (3) years, or if in business, less than three (3) years, averaged during duration of business).
- (2) For a supplier of commodities the annual gross receipts may not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) years, or if in business, less than three (3) years, averaged during duration of business).
- (3) For a supplier of professional services procured pursuant to the CCNA statute the annual gross receipts may not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) years or if in business less than three (3) years, averaged during duration of business).
- (4) For a supplier of other professional services, the annual gross receipts may not exceed four million dollars (\$4,000,000.00) (averaged over the previous three (3) years, or if in business less than three (3) years, averaged during the duration of the business.)

A small business must be owned and controlled by an individual who is a citizen or a lawful permanent resident of the United States.

*Small and minority/women business directory* means a compilation of certified small businesses and M/WBEs which is maintained electronically by the office of small business assistance and made available to contractor(s) or vendor(s) for use in identifying subcontractors, material suppliers, etc.

*Subsidiary* means a company whose controlling interest is owned by another company. A subsidiary cannot be considered an independent business.

All terms not specifically defined herein, but defined in the county's purchasing ordinance, chapter 2, article III, division 2, part A of the County Code, as may be amended, shall carry the definition therein described.

(Ord. No. 02-064, § 1, 9-10-02; Ord. No. 04-071, § 1, 12-21-04; Ord. No. 05-048, §§ 1, 2, 11-15-05; Ord. No. 08-014, § 1, 5-20-08; Ord. No. 2009-024, § 1, 8-18-09)

**Sec. 2-80.22. - Scope.**

This part shall apply to the solicitation of all goods, services and construction by the county which are governed by the county purchasing ordinance (sections 2-51—2-57 of the County Code, as may be amended). Whenever possible, the county shall utilize a solicitation process which encourages SBE participation even on those items which are exempted from the requirements of the purchasing ordinance. (Ord. No. 02-064, § 2, 9-10-02)

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**Sec. 2-80.23. - Goals.**

(a) *Annual goals:* The annual SBE goal for county procurement of construction, professional services and commodities shall be a minimum of fifteen (15) percent. The annual goal shall be applied to each individual county procurement of goods, services or construction unless otherwise approved by the county administrator.

(b) *Evaluation of goal attainment:* The goal shall be applied to the full monetary value of the contract and be reflected in the full monetary portion spent on subcontracts for supplies, consulting or construction services to be awarded to those SBEs meeting contract specifications.

In case of a certified SBE submitting a bid as a prime contractor, the SBE will be credited with meeting the percentage of the goal that the SBE will be performing with its own forces plus the percentage of subcontracts awarded to certified SBEs.

A joint venture consisting of a small business and non-small business functioning together as a prime contractor will be credited with small business participation on the basis of the percentage of participation in the work, risk and profit by the small business.

Bidders will receive credit for goal attainment only for subcontractors who are certified and licensed, if required, in the specific area of expertise for which credit is sought at the time of bid opening.

Bidders utilizing SBE suppliers will receive credit for goal attainment at sixty (60) percent of the contract for supplies.

(c) In the event annual goals are not achieved, the county may implement programs, including, but not limited to a sheltered market program for contracts under two hundred fifty thousand dollars (\$250,000.00), to achieve goal attainment. Any programs, other than sheltered markets, must be approved by the board prior to implementation.

(Ord. No. 02-064, § 3, 9-10-02; Ord. No. 08-014, § II, 5-20-08)

**Sec. 2-80.24. - Contract compliance requirements.**

The office of small business assistance will establish procedures for monitoring and evaluating program performance and compliance, subject to the county administrator's approval. In addition to the remedies of suspension or debarment as provided in section 2-80.26 of the Code, any contractor or firm that falsely represents to the county, pursuant to a county contract, that it is an SBE, or that it will utilize the services or commodities of an SBE and subsequently does not do so without the prior written approval of the county, may be in breach of contract. Upon determination that a breach of contract has occurred, the county shall have all available remedies for breach of contract. In addition, all amounts paid to the contractor or firm under the contract intended for expenditure with SBEs will be forfeited and recoverable by the county. The county, at its sole discretion, may waive the breach and available remedies; however any such waiver shall not constitute a waiver of rights for breach of any provision of the contract.

(Ord. No. 02-064, § 4, 9-10-02; Ord. No. 08-014, § III, 5-20-08)

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**Sec. 2-80.25. - Ranking of responsive bidders.**

When evaluating competitive bids/quotes of up to one million dollars (\$1,000,000.00) in which the apparent low bidder is determined to be nonresponsive to SBE requirements, the contract shall be awarded to the low bidder responsive to SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven (7) percent participation, as long as the bid does not exceed the low bid amount by ten (10) percent.

In cases where the low bid exceeds one million dollars (\$1,000,000.00), the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven (7) percent participation, provided that such bid does not exceed the low bid otherwise responsive to the bid requirements by more than one hundred thousand dollars (\$100,000.00) plus three (3) percent of the total bid in excess of one million dollars (\$1,000,000.00).

This section applies only when price is the determining factor.

(Ord. No. 02-064, § 5, 9-10-02; Ord. No. 08-014, § IV, 5-20-08)

**Sec. 2-80.26. - Suspension/debarment.**

The county reserves the right to suspend or debar any vendor who has previously failed to perform properly and who has done so by commission or omission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty. Such acts include, but are not limited to:

- (1) The violation of any applicable law, regulation or contract provision relating to the performance of obligations incurred pursuant to an agreement with a recipient under a county contract.
- (2) Making or procuring to make any false statement or use of deceit.
- (3) Making false representations as a small business for purposes of qualifying for certification as such a business under a program that is designed to assist SBEs in the receipt of contracts with the county for the provision of goods or services.
- (4) Representing a SBE as performing a commercially useful function when such business is merely acting as a conduit in order to participate in the county's SBE program or receive a preference or benefit under the SBE program.
- (5) Repeatedly failing to meet SBE goals when submitting bids when there is documented availability of SBEs as shown by other bidders on the same projects meeting the stated goals.
- (6) Failing to comply with the SBE requirements of an awarded contract. The director of the office of small business assistance may refer a business or firm to the director of purchasing for consideration of suspension or debarment. The procedures for suspension or debarment are provided for in the purchasing ordinance.

(Ord. No. 02-064, § 6, 9-10-02; Ord. No. 05-048, § 3, 11-15-05; Ord. No. 08-014, § V, 5-20-08)

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**Sec. 2-80.27. - Prompt payment.**

Pursuant to the provisions of F.S. § 218.735(6), as may be amended, when a prime contractor receives payment from the county for labor, services or materials furnished by subcontractors or suppliers hired by the prime contractor, the prime contractor shall remit payment due to those subcontractors and suppliers within ten (10) days after the prime contractor's receipt of payment. When a subcontractor receives payment from a prime contractor for labor, services or materials furnished by sub-subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those sub-subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment from the prime contractor.

Every contract let by the county for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the prime contractor prior to receipt of any further progress payments. During the contract and upon completion of the contract, the County may request documentation to certify payment to subcontractors, subconsultants or suppliers. Nothing herein shall prohibit a prime contractor or subcontractor from disputing, pursuant to the terms of a relevant contract, all or any portion of a payment alleged to be due to another party. In the event of such dispute, the prime contractor or subcontractor may withhold the disputed portion of any such payment if the prime contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The prime contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section. All payments not made within the time periods herein specified shall bear interest at the rate of one (1) percent per month, or the rate specified by the contract, whichever is greater.

This provision in no way creates any contractual relationship between any subcontractor, subconsultant or supplier and the county or any liability on the county for the prime contractor's failure to make timely payment to the subcontractor, subconsultant or supplier.

(Ord. No. 02-064, § 7, 9-10-02; Ord. No. 08-014, § VI, 5-20-08)

**Sec. 2-80.28. - Procurement procedures.**

The purchasing department shall establish specific purchasing procedures to increase SBE participation, including, but not limited to, purchases under the mandatory bid or proposal amount set forth in the purchasing code and purchases made by decentralized purchase orders (DPOs) under one thousand dollars (\$1,000.00). The purchasing procedures shall include a provision that every effort will be made by buyers to contact all registered certified SBE within a particular commodity area for purchases under the mandatory bid or proposal amount set forth in the purchasing code. The purchasing procedures shall also include a process so as to allow as many vendors as possible to compete in providing goods and services to Palm Beach County. The purchasing procedures shall also include a provision requiring awards of purchases under the mandatory bid or proposal amount set forth in the purchasing code to be made to the lowest responsive, responsible bidder unless a certified small business is within ten (10) percent of the lowest non-small business bid, in which case the award shall be made to the certified small business bidder submitting the lowest responsive, responsible bid.



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For purchases of goods and services over the mandatory bid or proposal amount set forth in the purchasing code goals will be established pursuant to the provisions of section 2-80.23. This section shall not apply to procurement of construction.

(Ord. No. 02-064, § 8, 9-10-02; Ord. No. 05-048, § 4, 11-15-05; Ord. No. 08-014, § VII, 5-20-08)

**Sec. 2-80.29. - Professional services.**

The county will provide contracting opportunities for SBEs and M/WBEs in the area of professional services pursuant to F.S. § 287.055, as amended, known as the "Consultant's Competitive Negotiation Act." The county will impose small business requirements on the solicitation of all other professional services not covered by the Consultant's Competitive Negotiation Act.

A summary of small business program procedures will be included in each solicitation. A point system will be utilized to determine the recipient of the contract award.

Businesses submitting proposals to provide professional services to the county will be eligible to receive points, not to exceed ten (10) percent of the total number of possible points awarded, for SBE participation. The distribution of points shall be stated in the request for proposal or otherwise made available to proposers or potential proposers upon request. Maximum points shall be awarded when the proposer is a certified SBE.

The provisions within this section pertaining to professional services are not intended to be used to the exclusion of other provisions of this part in the procurement of professional services.

(Ord. No. 02-064, § 9, 9-10-02)

**Sec. 2-80.30. - Small business certification.**

(a) *Eligibility standards.* An eligible small business is a for-profit business concern whose gross receipts are within the standards as defined in section 2-80.21 above and who has been in business for at least one (1) year or whose owner has a certificate of small business competency issued by the Small Business Development Center, Palm Beach Resource Center, Palm Beach Community College or other office of Small Business Assistance approved course. An eligible small business for this program shall be an independent business. Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as a small business. In determining whether a potential small business is an independent business, the county shall consider all relevant factors, including but not limited to, the date the business was established, the adequacy of its resources for the type of work specified, relationships with affiliates and subsidiaries, and the degree to which financial, equipment leasing and other relationships with other businesses vary from established industry practices. An eligible small business for this program must perform a commercially useful business function. If there has been a recent change in ownership of the business, a review of whether the acquisition of the business was done pursuant to an arm's length transaction will also be considered in determining independence of the business.

(b) *Commercially useful business function.* A small business is considered to perform a commercially useful business function when it is responsible for execution of a distinct element of work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work

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performed. Businesses who merely act as a conduit do not perform a commercially useful business function and will not be eligible for certification as a SBE. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to whether the business adds a value to the product or service provided; whether the business has a distributorship agreement with the manufacturer of goods supplied; whether the business takes possession of the product or service provided; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.

(c) *Application procedures.* All applicants wishing to be considered as certified businesses for the benefits of this program must apply for small business certification by completing the application and affidavit which can be obtained through the office of small business assistance and pay the applicable fee for certification, modification of certification or recertification. Applicants must submit the documentation listed below as appropriate to their business and all of its affiliates. The office of small business assistance may request any other documentation necessary to determine eligibility. Documents not in English must be accompanied by a certified translation. In instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence.

(1) *Corporations:*

- a. List of the corporation's current full-time and part-time employees by length of service;
- b. Proof of business location and operation in Palm Beach County;
- c. Articles of incorporation, including date approved by the state, and any subsequent amendments;
- d. By-laws;
- e. Prior three (3) years' financial statement prepared by an independent CPA or accountant;
- f. Prior three (3) years' federal corporate tax returns, including all schedules, as signed and filed;
- g. Copies of last three (3) months' corporate payroll;
- h. Any necessary licenses to perform the work for which certification is sought;
- i. Palm Beach County business tax receipt;
- j. A list of all affiliates.

(2) *Partnerships:*

- a. List of the partnership's current full-time and part-time employees by length of service;
- b. Proof of business location and operation in Palm Beach County;

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- c. Partnership agreement;
- d. Prior three (3) years' financial statements prepared by an independent CPA or accountant;
- e. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;
- f. Any other necessary license to perform the work for which certification is sought;
- g. Copies of last three (3) months' corporate payroll;
- h. Palm Beach County business tax receipt;
- i. A list of all affiliates.

(3) *Sole proprietors:*

- a. Any other necessary license to perform the work for which certification is sought;
- b. Verification of fictitious name registration;
- c. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;
- d. List of current full-time and part-time employees by length of service;
- e. Proof of business location and operation in Palm Beach County.
- f. Palm Beach County business tax receipt;
- g. A list of all affiliates.

(d) *Application review procedures.* Once an applicant has submitted the application and all supporting documentation, certification review will be completed within ninety (90) days and the following procedures will apply:

(1) The small business certification application and all supporting documents will be logged in as appropriate. The application will be reviewed for completeness and accuracy. The office of small business assistance will inform the applicant of any missing documentation. Any applicant failing to submit the requested documentation within thirty (30) days of the notice shall be deemed to have abandoned its application.

(2) References will be called and information verified by third parties, when appropriate. The office of small business assistance will review the goods or services provided by the applicant to determine the appropriate National Institute of Government Procurement (NIGP) classification codes. Businesses will only be certified in the areas where they provide a commercially useful business function. In those instances when the NIGP codes are broader than the goods or services provided by the applicant, the office of small business assistance will appropriately limit the certification to those goods or services for which the application performs a commercially useful business function.

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(3) When deemed appropriate by the office of small business assistance, a personal interview or site visit will be scheduled with the principal(s) to discuss the documentation submitted and determine if the applicant meets the established criteria.

(4) Applicants approved for certification will be notified immediately by mail.

(e) *Denial of certification.* Applicants denied certification shall be notified by certified mail and informed of their right to appeal the denial. An applicant denied certification may not reapply for certification for one (1) year from the denial of the certification.

(f) *Appeal of certification denial.* Any firm that believes it has been wrongly denied certification as a small business may file an appeal in writing, signed and dated, with the office of small business assistance. The appeal shall be filed no later than fifteen (15) days from the date of receipt of notice of denial of certification. The request for appeal shall state the specific reasons why the firm believes the denial of certification is erroneous.

(g) *Hearing on appeal of certification denial.* If an appeal is filed, an administrative review will be conducted by the director of the office of small business assistance. The review will be conducted within forty-five (45) days of the filing of the request for appeal. The director of the office of small business assistance shall take one of the following actions on the request for appeal:

(1) Uphold the appeal. If a determination is made that certification was denied, contrary to the provisions of the code, the director may uphold the appeal. If the appeal is upheld, a certification certificate shall be issued.

(2) Deny the appeal. If the appeal is denied, the applicant has the right to request the appeal be referred to a special master in accordance with subsection 2-80.30(i) below.

(3) Refer the appeal directly to a special master with no determination made by the director of the office of small business, in accordance with subsection 2-80.30(j) below.

(h) *Recertification.* Certified SBEs are required to submit an affidavit of their continued eligibility as a SBE every three (3) years along with an application for recertification. The office of small business assistance may conduct site visits or review documents to ensure continued compliance as a small business. If there has been a change in operation, ownership, control, activities, domicile or gross receipts, the SBE must notify the office of small business assistance within thirty (30) days of the change. Supporting documentation may be required for continued certification. A company that fails to submit its application for recertification and affidavit of continued eligibility or fails to submit documentation requested by the office of small business assistance or allow a site visit, will no longer be deemed certified for purposes of participation in the small business program.

The criteria for recertification shall be the same as for certification. An applicant may request an appeal of denial of recertification within fifteen (15) days of receipt of notice of denial. The hearing shall be conducted in the manner describe in section 2-80.30(g). An applicant denied recertification may not reapply for certification for one (1) year from the denial of recertification.

(i) *Decertification.* If during the period of certification, the county has reason to believe that the SBE received certification improperly, or that there has been a substantial change in circumstances in the operation, ownership, control, activities, domicile, or gross receipts that continued certification would be

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contrary to the county's small business policy, then the office of small business assistance may conduct an investigation of the allegations.

The office of small business assistance may decertify the SBE if the investigation indicates that:

- (1) The small business cannot be contacted at the last known address in Palm Beach County;
- (2) The small business is no longer in business;
- (3) The small business is no longer licensed to do the type of business for which it was certified;
- (4) The small business obtained its original certification and/or recertification through false representation or deceit;
- (5) The small business has been disbarred or suspended as a vendor by the county purchasing department. At the expiration of any suspension, the firm may reapply for certification;
- (6) Site visits have revealed no business being conducted at the county location; or
- (7) The small business does not meet the current eligibility standards for certification as a small business. Certification under a previous ordinance does not guarantee that the small business continues to be eligible for their entire certification period.
- (8) The small business does not perform a commercially useful business function.
- (9) The small business refuses to allow an on-site inspection.
- (10) The small business has failed to notify the office of small business of any change in the ownership, location, structure or any other aspect of the small business which would affect its small business certification.

The office of small business assistance shall notify the small business by certified mail that it has been decertified. The small business may request an appeal hearing of the decertification within fifteen (15) days of receipt of the notice. The resolution of the appeal shall be conducted in the manner described in subsection 2-80.30(g). Nothing in this section shall prevent the office of small business assistance from commencing an investigation regarding the legitimacy of a small business certification. A business decertified pursuant to this section may not re-apply for certification for one (1) year from the date of decertification.

(j) *Hearing before a special master.*

- (1) Upon receipt of a denial of appeal for certification, recertification, or decertification, an applicant may request a hearing before a special master. The request for a hearing shall be in writing to the director of the office of small business assistance, and shall be made within five (5) business days of issuance of the director of the office of small business' determination. The request for a hearing shall be accompanied by an appeal bond of one thousand dollars (\$1,000.00) which shall be remitted in the form of a money order, a certified check, a cashier's check or a bank check payable to the county.

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(2) At no time shall the applicant or any other person contact a special master regarding any issue pertaining to, or involving the appeal. Contact between the county and the special master shall be limited to scheduling and other administrative issues; including the provision and copying of public records pertinent to the appeal.

(3) The office of small business assistance shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the appeals process, and the conduct governing appeal hearings. Such rules shall provide that the special master may not consider any evidence which was not available at the time of the application or recommendation for decertification or recommendation for denial of certification or recertification. Such rules shall also provide that the special master shall render a written decision within ten (10) working days of the hearing.

(4) Special masters shall have the jurisdiction and authority to hear and decide appeals. The special master shall make a recommendation as to whether the appeal should be upheld as denied.

a. If the special master upholds the appeal, the special master shall recommend the director of the office of small business assistance issue a certification certificate. In these instances, the office of small business assistance shall return the appeal bond to the applicant.

b. If the special master denies the appeal, the special master shall recommend that certification be withheld. In these instances, the applicant's bond shall be forfeited.

c. The director of the office of small business assistance may accept the special master's recommendation or, if the director of the office of small business assistance determines the special master's recommendation is not in the county's best interest, the original recommendation of the office may be referred to the board for approval. At that time, the board may accept or reject the recommendation of the special master.

d. If a special master is unable to provide a fair hearing for any reason, the special master shall not accept the appeal and shall immediately notify the director of the office of small business assistance. The director of the office of small business assistance shall reassign the appeal to a special master who does not have a conflict.

(Ord. No. 02-064, § 10, 9-10-02; Ord. No. 04-071, §§ 2, 3, 12-21-04; Ord. No. 05-048, § 5, 11-15-05; Ord. No. 08-014, §§ VIII—XVII, 5-20-08; Ord. No. 2009-024, §§ II—VII, 8-18-09)

**Sec. 2-80.31. - M/WBE certification.**

(a) *Eligibility standards:* Although preferences to certified M/WBEs will not be extended under this part, unless otherwise provided by law, businesses eligible for certification as a M/WBE are encouraged to maintain their certification in order to assist in the tracking of M/WBE availability and awards of contracts to M/WBEs. This information is vital to determining whether race and gender neutral programs assist M/WBE firms or whether race and gender preferences are necessary in order to address any continued discrimination in the market.

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An eligible MBE or WBE is a small for profit business concern domiciled in the county which is both owned and controlled by minorities or by women and whose gross receipts are within the standards as defined in section 2-80.21 above. Further, the business must meet all other criteria of a small business as provided above. This means that minorities and/or women must own at least fifty-one (51) percent of the business and that the management and daily business operations are controlled by the minorities and/or women who own it. An eligible M/WBE for this program shall be an independent business. The ownership and control by minorities and/or women shall be real, substantial and continuing, and shall continue beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and/or women owners shall enjoy the customary incident of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance rather than form or arrangements. Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. In determining whether a potential M/WBE is an independent business, the county shall consider all relevant factors, including but not limited to the date the business was established, the adequacy of its resources for the type of work specified, relationships with affiliates and subsidiaries, and the degree to which financial, equipment leasing and other relationships with nonminority firms vary from established industry practices. If there has been a recent change in ownership of the business, a review of whether the acquisition of the business was done pursuant to an arm's length transaction will also be considered in determining independence of the business. An eligible M/WBE must perform a commercially useful business function.

(1) *Ownership:* In determining ownership of the business, the contribution of capital or expertise by the minority and/or women owners to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include, but are not limited to, a promise to contribute capital, a note payable to the firm or its owners who are not minorities or women, or the mere participation as an employee, rather than as a manager/owner.

(2) *Control:* The minority and/or woman owner(s) must have operational and managerial control of the business.

a. The primary consideration determining operational control and the extent to which the minority person and/or woman actually operates the business will rest upon the peculiarities of the industry of which the business is a part. Accordingly, in order to clarify the level of operational involvement of the minority person or woman in the business to be deemed as an M/WBE, the following examples are put forth and are not to be all-inclusive.

1. The minority person and/or woman should have some experience in the industry for which certification is sought.
2. The minority person and/or woman should be able to demonstrate that basic decisions pertaining to the daily operation of the business are independently made.
3. The minority person and/or woman should have some technical competence in the industry for which certification is sought. The minority person and/or woman should have a working knowledge of the technical requirements of the business needed to operate in the industry.

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b. Managerial control means that the minority and/or woman has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of the business. For a minority and/or woman to demonstrate the extent of his/her control, the following examples are put forth and are not intended to be all-inclusive:

1. Corporate bylaws or partnership agreements or other agreements should be free of restrictive language which dilutes the minority's or women's control, thus preventing him/her from making those decisions which affect the destiny of the business.
2. The minority person and/or woman should be able to clearly show, through production of documents, the areas of control such as, but not limited to:
  - i. Authority and responsibility to sign payroll checks and letters of credit.
  - ii. Authority for negotiations and signature responsibility for insurance and/or bonds.
  - iii. Authority for negotiations and/or signature services.

If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not to be considered an M/WBE within the meaning of this program. Where the actual management of the firm is contracted out to individuals other than the owner, those persons will be considered as controlling the business.

(3) *Commercially useful business function.* A M/WBE is considered to perform a commercially useful business function when it is responsible for execution of a distinct element of work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work performed. Businesses who merely act as a conduit do not perform a commercially useful business function and will not be eligible for certification as a M/WBE. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to, whether the business adds a value to the product or service provided; whether the business takes possession of the product or service provided; whether the business has a distributorship agreement with the manufacturer of goods supplied; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.

(b) *Application procedures:* All applicants wishing to be considered as certified businesses must apply for M/WBE certification by completing an M/WBE disclosure affidavit which can be obtained through the office of small business assistance. Applicants must submit the documentation listed below, as appropriate to their business and all of its affiliates. The office of small business assistance may request any other documentation necessary to determine eligibility. Documents not in English must be accompanied by a certified translation. In instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence.



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(1) *Corporations.*

- a. List of the corporation's current full-time and part-time employees by length of service;
- b. Articles of incorporation, including date approved by the state, and any subsequent amendments;
- c. By-laws;
- d. Prior three (3) years' financial statement prepared by an independent CPA or accountant;
- e. Prior three (3) years' federal corporate tax returns, including all schedules, as signed and filed;
- f. Resumes of principals and management personnel of business showing education, training and employment with dates;
- g. Stock transfer agreement(s);
- h. Any necessary licenses to perform the work for which certification is sought;
- i. Copies of last three (3) months' corporate payroll;
- j. Stock ledger;
- k. Copies of the corporation's distribution of profits for the previous year;
- l. Copies of third party agreements such as rental and lease agreements, management agreements, or purchase agreements;
- m. Copies of stock certificates issued;
- n. Proof of stock purchase;
- o. Palm Beach County business tax receipt.
- p. List of all affiliates.

(2) *Partnerships.*

- a. List of the partnership's current full-time and part-time employees by length of service;
- b. Partnership agreements;
- c. Prior three (3) years' financial statements prepared by an independent CPA or accountant;
- d. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;

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- e. Resumes of all partners and management personnel showing education, training and employment with dates;
- f. Any necessary licenses to perform the work for which certification is sought;
- g. Buy-out rights agreement;
- h. Profit-sharing agreement;
- i. Copies of last three (3) months' corporate payroll;
- j. Proof of capital invested;
- k. Copies of the partnership's distribution of profits for the previous year;
- l. Copies of third party agreements such as rental and lease agreements, management agreements or purchase agreements;
- m. Palm Beach County business tax receipt.
- n. List of all affiliates.

(3) *Sole proprietors.*

- a. Any necessary licenses to perform the work for which certification is sought;
- b. Verification to do business under an assumed name;
- c. Owner and management personnel resumes;
- d. Prior two (2) years' federal tax returns, including all schedules as signed and filed;
- e. List of current full-time and part-time employees by length of service;
- f. Palm Beach County business tax receipt.
- g. List of all affiliates.

(c) *Application review and appeal procedures:* The procedures for application review, recertification, decertification and appeals provided in section 2-80.30(d)—(j) shall apply equally for M/WBE certification.

(Ord. No. 02-064, § 11, 9-10-02; Ord. No. 05-048, § 6, 11-15-05; Ord. No. 08-014, § XVIII, 5-20-08; Ord. No. 2009-024, § VIII, 8-18-09)

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**Sec. 2-80.32. - Small business assistance advisory committee.**

There is hereby created and established an advisory committee to be known as the small business assistance (SBA) advisory committee.

- (1) *Membership:* The SBA advisory committee shall consist of the following members:
- a. One (1) black business owner certified as a small business by the county;
  - b. One (1) Hispanic business owner certified as a small business by the county;
  - c. One (1) women business owner certified as a small business by the county;
  - d. One (1) white male business owner certified as a small business by the county;
  - e. One (1) business owner domiciled in the county;
  - f. One (1) representative of the Palm Beach County Resource Center;
  - g. One (1) representative of the Hispanic Chamber of Commerce of Palm Beach County;
  - h. One (1) representative of the National Association of Women in Construction;
  - i. One (1) representative of a women's business organization;
  - j. One (1) minority contractor;
  - k. One (1) representative of the Associated General Contractors Association;
  - l. One (1) representative of the Small Business Development Center;
  - m. One (1) representative of the Business Loan Fund of the Palm Beaches;
  - n. One (1) representative of a black chamber of commerce.

Members shall be appointed at large by the board of county commissioners and shall serve for staggered terms of three (3) years. Initially five (5) members shall be appointed for a term of three (3) years, four (4) members shall be appointed for a term of two (2) years, and four (4) members shall be appointed for a term of one (1) year. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation and may be removed without cause by the board of county commissioners at any time. Travel reimbursement is limited to expenses incurred only for travel outside the county necessary to fulfill board member responsibilities when sufficient funds are budgeted and available, and upon prior approval of the board of county commissioners.

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(2) *Duties and functions.* The committee shall have the following duties and functions:

- a. Review and evaluate the effectiveness of small business programs within county government;
- b. Monitor and evaluate the effectiveness of the county's small business policies and procedures, resolutions and ordinances, including their implementation by the various county departments;
- c. Study and evaluate the necessity for further county regulations and procedures regarding small business participation;
- d. Receive and, where necessary, analyze information concerning the presence of discrimination in the bidding and contracting process and recommend to the board of county commissioners further steps to alleviate such discrimination;
- e. Prepare, adopt and present an annual report to the board of county commissioners;
- f. Research and review other jurisdictions' small business programs;
- g. Act as a conduit between the county and the community, industry; organizations, trade associations, chambers of commerce and small and minority/women businesses;
- h. Plan and participate in education and training for small businesses; and
- i. Research and recommend to the board of county commissioners race- and gender-neutral mechanisms which will assist small businesses.
- j. Monitor and report on level of minority/women business enterprise participation.
- k. Monitor legislative initiatives and other issues and activities which impact small and M/WBE businesses and advise the board of county commissioners concerning same.

(3) *Meetings and organizations.* The committee shall meet on a regular basis. A majority of members appointed shall constitute a quorum. In the presence of a quorum, committee business shall be conducted by a vote of a majority present. The meetings shall be governed by the Robert's Rules of Order. Reasonable public notice of all committee meetings shall be provided, and all such meetings shall be open to the public at all times.

(4) *Assistance to the committee.* The committee may request information from any department or agency of the county, local, regional, state, or federal government for information or advice in the performance of its work.

(5) *Chair and vice-chair.* A chair and vice-chair shall be elected by a majority of the committee and shall serve for a term of one (1) year. The duties of the chair shall be to:

- a. Call committee meetings and set the agenda for the same;
- b. Preside at committee meetings;

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- c. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees with specific tasks;
- d. Perform other functions as the committee may assign by rule or order.

The vice-chair shall perform the duties of the chair in the chair's absence, and such other duties as the chair may assign.

If a vacancy occurs in the office of the chair, the vice-chair shall become the chair for the unexpired term. If a vacancy occurs in the office of the vice-chair, the committee will elect another member to fill the unexpired term of the vice-chair.

(6) *Advisory only.* The actions, decisions and recommendations of the committee shall not be final or binding on the board of county commissioners but shall be advisory only.

(7) *Attendance.* Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than two-thirds (2/3) of the meetings scheduled during a calendar year. Participation for less than three-fourths (¾) of a meeting shall constitute lack of attendance. Members removed under this section shall not continue to serve until a new appointment is made and removal shall create a vacancy.

(8) *Conflict of interest.* Committee members shall be governed by the applicable provisions of the Palm Beach County Ethics Resolution R-94-693, as may be amended.

(Ord. No. 02-064, § 12, 9-10-02; Ord. No. 04-071, § 4, 12-21-04; Ord. No. 08-014, § XIX, 5-20-08)

**Sec. 2-80.33. - Monitoring of minority/women business enterprise participation.**

The small business program is hereby created after the successful operation of a M/WBE program for over a decade. To ensure that the county does not become a passive participant in discrimination against businesses owned by minorities and women, the office of small business assistance will prepare an annual report on the level of M/WBE participation in county contracting and procurement. The board of county commissioners shall consider the reports on M/WBE participation and determine what measures, if any, are necessary to address any change in M/WBE participation, if any. Tracking of participation by M/WBEs will take into consideration businesses who maintain certification, firms certified at the time of the sunset of the M/WBE Program and other reliable means of identification of M/WBEs.

(Ord. No. 02-064, § 14, 9-10-02)

**Sec. 2-80.34. - Phase in of small business program and phase out of m/wbe program.**

From October 1, 2002 through March 31, 2003, the small business program and M/WBE program, as described in sections 2-71 through 2-80.13, of the County Code, will operate concurrently. The intent of this concurrent operation is to allow for a smooth transition from one program to the other. During this transition period, the board of county commissioners specifically delegates to the county administrator the ability to determine which aspect(s) of each program will apply to each individual procurement of goods, services and construction and further delegates to the county administrator the authority to

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determine the schedule for phase in and phase out of the various program components. In determining such schedule, the county administrator shall consider the readiness of program documents, the number of certified firms and such other factors as may be appropriate.

(Ord. No. 02-064, § 15, 9-10-02)

**Secs. 2-80.35—2-80.40. - Reserved.**

**Editor's note**— Ord. No. 08-009, § XX, adopted May 20, 2008, amended the Code by repealing former § 2-80.35 in its entirety. Former § 2-80.35 pertained to referral for suspension or debarment, and derived from Ord. No. 05-048, adopted November 15, 2005.

**FEDERAL CERTIFICATIONS AND REPRESENTATIONS****9. Disadvantaged Business Enterprise (DBE).**

Palm Tran, as the operator of Palm Beach County's public transit system, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The Code of Federal Regulation 49 CFR Part 26 defines a DBE as a for-profit small business concern that is subject to the following requirements:

1. 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 **AND**
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

In order to overcome the effects of discrimination and its past influence on DBEs, in compliance with DOT mandates, PALM TRAN establishes an annual overall goal for DBE participation. Attainment of this goal may be achieved through Race Neutral or Race Conscious means. *Race Neutral* means are aimed at achieving the participation of small businesses in Palm Beach County contracts without respect to the gender or race of the owner. A Race Neutral program is one that, while benefiting DBEs, is not solely focused on DBE firms. When the use of Race Neutral means do not substantially contribute towards the overall agency goal for DBE participation, PALM TRAN also utilizes Race Conscious means as a method of achieving a "level playing field" for DBEs seeking to participate in federal-aid transportation contracting. *Race Conscious* means are aimed at achieving the desired level of participation among certified DBE firms.

a. This contract or Palm Tran purchase/work order is being funded, in whole or in part with the Department of Transportation (DOT) financial assistance. Accordingly, it is the policy of Palm Beach County, to

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

b. This contract or purchase/work order is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs and Palm Beach County Resolution No. 99-1617 setting forth Palm Beach County's Disadvantaged Business Enterprise Program.

c. The contractor and its subcontractors for this project shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of the work associated with this DOT assisted contract, to ensure nondiscrimination. 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 Palm Beach County deems appropriate. Each subcontract that the contractor enters into must include the assurance of non-discrimination set forth in this paragraph.

Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.



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**d. DBE Participation Goals:**

If a DBE participation goal has been established for this contract, the level of DBE participation proposed will be a factor in determining the award. Although all bidders must meet the required bid procedures specified by Palm Tran, contracts will only be awarded to the bidder who meets either of the following criteria:

Achieves the DBE participation goal as specified below

OR

Submits documentation detailing the Good Faith Efforts made in researching potential DBE subcontractors.

If a DBE participation goal has not been established for this project, Palm Tran encourages the Prime Contractor to make every attempt to secure a level of DBE participation that contributes toward the achievement of Palm Tran's overall DBE goal.

- ( ) **DBE Goal Established For This Contract:** The bidder shall make a Good Faith Effort to subcontract at least \_\_\_\_\_ % of the dollar value of the total amount of this contract to certified DBE Subcontractors (Race Conscious).

OR

- ( ) **No DBE Goal Established For This Contract:** Palm Tran encourages the bidder to make every attempt to obtain participation of certified DBEs and other Small Business Enterprises (SBE) in the completion of this contract (Race Neutral). The SBE and/or DBE non-mandatory goal for this project is 15%.

The overall goal setting provisions of 49 CFR Part 26 require that the County, as a recipient of federal funds, set overall goals based on demonstrable evidence of the relative availability of ready, willing and able DBEs in the areas from which contractors are obtained. In this regard, the County has established DBE participation goals and said goals have been established based primarily on the availability of certified DBE firms that are ready, willing, and able to participate in the project. To be considered responsive, each Bidder must correctly submit with the bid a completed Schedule of DBE Participation Form, executed Letters of Intent, and the DBE Unavailability Report with good faith documentation when applicable with the bid. Palm Beach County will review all forms to determine their responsiveness:

1. Letter of Intent to Utilize DBE Subcontractors - Exhibit 1. TO BE SUBMITTED WITH BID
2. Schedule of DBE Participation - Exhibit 2. TO BE SUBMITTED WITH BID
3. DBE Unavailability Report, TO BE SUBMITTED WITH BID only required if goals were not met - Exhibit 3.
4. DBE Utilization Report - Exhibit 4. TO BE SUBMITTED WITH PAY APPLICATIONS
5. Final DBE Utilization Report - Exhibit 5. TO BE SUBMITTED WITH FINAL PAY APPLICATION

These forms are included herein as Exhibits 1, 2, 3, 4, and 5.

For the purposes of goal achievement, the County requires the successful Bidder to use firms certified as DBEs in accordance with Federal guidelines. The State of Florida Department of Transportation (FDOT) maintains a directory of certified DBE firms which is available to bidders.

The directory mentioned above is available for use by VENDORS online at <http://www.dot.state.fl.us/equalopportunityoffice/>, click on DBE Directory on the right side of the page. Detailed directions on how to access the site, search for DBEs and Download the Directory are included herein as Attachment 1.

**Schedule of DBE Participation:**

BIDDER must list the proposed subcontractors in the Schedule of DBE Participation form indicating the type of work to be performed and a projection of subcontract amount or percentage of fees to be awarded, if selected.





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**Letter of Intent:**

A Letter of Intent must be executed by the BIDDER and countersigned by all DBE subcontractors listed in the Schedule of DBE Participation form. The information contained in the Letter of Intent and the Schedule of DBE Participation with regard to the proposed level of DBE participation should be the same as to content. Each DBE subcontractor listed on the Schedule of DBE Participation must be certified as DBE prior to bid opening in order to be eligible for award.

For further information, contact Palm Tran's DBE Liaison at (561) 841-4241.

**DBE Unavailability Report – Good Faith Efforts:**

BIDDER that submits a DBE Unavailability Report, (Exhibit 3 - SAMPLE), must be able to demonstrate through proper documentation its reasonable good-faith efforts to meet the goal, if BIDDER wishes to remain eligible for award. Reasonable efforts as determined by 49 CFR Part 26 – Appendix A to Part 26 – Guidance Concerning Good Faith Efforts, to meet the DBE Participation goals may include, but are not limited to:

- Attendance at any scheduled pre-bid meeting concerning DBE participation.
- Timely advertisement in general circulation media, trade association publications, and minority-focus media concerning subcontracting opportunities.
- Timely notification of minority business or contractor groups and associations of solicitation for specific sub-bids.
- Proof of written solicitations to DBE firms, allowing an adequate amount of time for response and inquiry from interested parties.
- Efforts to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.
- Records of providing interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract.
- Records of discussions with interested DBEs about the required capabilities of the project and performing a thorough investigation of the DBEs qualifications to determine inherent competencies.
- Efforts to provide DBEs that need assistance in obtaining bonding or insurance required by the BIDDER or COUNTY.
- A report submitted by the BIDDER to County, prior to award explaining the Bidder's efforts to obtain DBE participation. The report shall include the following:
  - A detailed statement of the timely efforts made to negotiate with DBEs including, at a minimum, the names, addresses and telephone numbers of DBEs who were invited to bid or otherwise contacted.
  - A description of the information provided to DBE regarding the plans and specifications for portions of the work to be performed; and a detailed statement of the reasons why additional agreements with DBE, if needed to meet the stated goal, were not reached.
  - A detailed statement of the efforts made to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.
  - A list of each DBE that bid on a Subcontract but declared "unqualified" by the BIDDER, a detailed statement of the reasons for the Bidder's conclusion.
  - Any additional information on methods used to reach DBEs and the result.

**Certification**

**ALL PROSPECTIVE DBEs MUST BE CERTIFIED BY THE FLORIDA UNIFORM CERTIFICATION PROGRAM (UCP) AT THE TIME OF SUBMITTAL OF THE BID.** If a Subcontractor is not certified by the aforementioned entities at the time of submission, the Prime Contractor cannot report the non-certified business' participation, nor include that company's dollar value of work towards any established DBE goals. Information on how to apply for DBE certification may be obtained from PALM TRAN's DBE Liaison at [csalazar@pbcgov.org](mailto:csalazar@pbcgov.org). As a non-certifying



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member of the Unified Certification Program (UCP) within the state of Florida, where FDOT is the host agency, PALM TRAN will accept DBEs certified by FDOT and will accept DBE certification decisions made other Florida UCP Certifying members.

e. CONTRACTOR agrees that throughout the term of this Agreement, the services as provided by the firms listed on Exhibit 1 (Letter of Intent) and Exhibit 2 (Schedule of Participation) shall remain at least at the percentage levels set forth therein.

f. CONTRACTOR shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the COUNTY, for such subcontracted work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.

g. CONTRACTOR agrees that nonpayment of a subcontractor or supplier shall be a material breach of this Agreement and that COUNTY may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier.

h. CONTRACTOR agrees to submit a monthly report to County's contract representative (with a copy to Palm Tran's DBE Liaison), on DBE participation, which should contain a record of payments made to its DBE subcontractors during the current reporting period. CONTRACTOR shall utilize the form attached as Exhibit 4- DBE Utilization Report. Reports should be submitted by the 10<sup>th</sup> day of each month.

i. CONTRACTOR agrees to submit a Final DBE Participation Report containing the total amount paid to its DBE subcontractors to County. This report must be submitted with the CONTRACTOR's request for final payment and release of retainage, if applicable. CONTRACTOR shall utilize the form attached as Exhibit 5 - Final DBE Utilization Report.

j. CONTRACTOR shall certify to COUNTY, the amounts paid to each DBE involved in the project as either a joint venture partner or pursuant to a subcontract with the disadvantaged businesses. All such certifications shall be signed by both CONTRACTOR and DBEs. One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at contract award.

k. CONTRACTOR agrees that failure to provide appropriate certification as to the payment of DBEs, in a form acceptable to COUNTY that disadvantaged business participation requirements of the agreement have been met, notwithstanding any other provisions of the agreement, shall be cause for COUNTY to withhold further payments under the agreement until such time as such certification is received and accepted by COUNTY, and shall not entitle CONTRACTOR to terminate the agreement, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated therewith.

A CONTRACTOR whose performance falls short of its original commitments shall be subject to the applicable compliance mechanisms.

Sanctions for Noncompliance with DBE Program Provisions. Failure of the CONTRACTOR to carry out DBE program provisions shall constitute a breach of the contract and may result in the exercise of the County's contractual remedies, including but not limited to remedies available under the Palm Beach County Code and this DBE program. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

l. CONTRACTOR agrees that it cannot terminate a DBE subcontractor for convenience and then perform the work with its own forces or affiliates. If a situation arises that a DBE subcontractor needs to be replaced or removed from the project, CONTRACTOR must submit a written request to County's contract representative, (with a copy to Palm Tran's DBE Liaison) with a detailed explanation or justification for the submission of such request. Before transmitting to the



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County's contract representative its request to terminate, the contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to County's contract representative and Palm Tran's DBE Liaison prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the County and Palm Tran of why it objects to the proposed termination. If the request is due to a voluntary cessation of the DBE firm from the project, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of DBE subcontractors will only be approved on a case-by-case basis provided that reasons cited are properly justified. When a DBE subcontractor is terminated or fails to complete its work, CONTRACTOR must make good faith efforts to find another DBE subcontractor to substitute for the original DBE, and submit such documentation and the name of the new subcontractor to County for approval. Good faith efforts are detailed in section d.

m. DBE - Contract Compliance Monitoring

a. Compliance monitoring is conducted to determine if CONTRACTOR and/or subcontractors are complying with the requirements of the DBE Program. Failure of the CONTRACTOR to comply with this provision may result in the COUNTY imposing penalties or sanctions pursuant to the provisions of the DBE regulations at 49 CFR Part 26.

b. Contract compliance will encompass monitoring for contract dollar achievement and DBE contractor utilization. Palm Beach County and Palm Tran staff each shall have the authority to audit and monitor all contracts and contract related documents pertaining to activities under this contract. The requirements of the DBE Program are applicable to the contractor, its general contractors, third party contractors, and subcontractors and suppliers.

c. Contractor shall be responsible for ensuring that proper documentation with regard to its utilization and payment of DBE subcontractors is maintained at all times and provided to COUNTY as required in section 9 d.



FEDERAL CERTIFICATIONS AND REPRESENTATIONS

EXHIBIT 1

LETTER OF INTENT

To Utilize a Disadvantaged Business Enterprise (DBE) Subcontractor/Subconsultant

From: \_\_\_\_\_  
(Name of Proposer/Bidder)

To: Palm Beach County, Selection Committee

Project Description: \_\_\_\_\_

In response to Palm Beach County's RLI/Bid No. \_\_\_\_\_, the undersigned hereby agree to utilize as a subcontractor the firm listed below, if awarded the contract. The undersigned further certify that the firm has been contacted and properly apprised of the projected work assignment(s) upon execution of the contract with Palm Beach County.

Name of Firm: \_\_\_\_\_  
(Proposed DBE Subcontractor/Subconsultant)

Expiration of DBE Certification: \_\_\_\_\_ (Attach copy of DBE certification)

Projected Work Assignment: Enter description of work assignment \_\_\_\_\_

Projected Percentage of Prime's Contract Fees to be Awarded: (Dollar Amount or Percentage %) \_\_\_\_\_

\_\_\_\_\_  
(Signature of Owner or Authorized Rep.) (Date)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
(Notary's Signature) (Notary Seal)

(ACKNOWLEDGEMENT BY THE PROPOSED DBE FIRM)

The undersigned intends to perform work in connection with the above Contract as (check one) \_\_\_\_\_ an individual \_\_\_\_\_ a partnership \_\_\_\_\_ a corporation \_\_\_\_\_ a joint venture. The undersigned agrees with the prime contractor's/consultant's proposal and further certifies that all information provided herein is true and correct.

\_\_\_\_\_  
(Signature of Owner or Authorized Rep.) (Date)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
(Notary's Signature) (Notary Seal)



### SCHEDULE OF DBE PARTICIPATION

### EXHIBIT 2

(To be submitted with an executed Letter of Intent from each DBE firm listed in this form)

<b>BID/RLI #:</b>	<b>DATE FORM SUBMITTED:</b>
<b>PROJECT NAME:</b>	<b>PROJECT START DATE:</b>
<b>PRIME CONTRACTOR:</b>	<b>ADDRESS:</b>
<b>CONTACT PERSON:</b>	<b>TELEPHONE #:</b>

DBE Subcontractor	Expiration of Certification	DBE Contact	Phone	Type of Work To Be Performed	\$	Estimated Sub-Contract Amount
					\$	
					\$	
					\$	
					\$	
					\$	
					\$	
					\$	
<b>Total Estimated Dollar (\$) DBE Participation</b>					\$	
<b>DBE Subcontractor Participation Percentage (Total estimated amount allocated to DBEs divided by Total Contract Amount)</b>					%	

The listing of a DBE shall constitute a representation by the bidder/responder to Palm Beach County that such DBE has been contacted and properly apprised of the upcoming County project. Bidders/Responders are advised that the information contained herein is subject to verification by Palm Beach County's contract representative, with the concurrence of Palm Tran's DBE Liaison, and that submission of said information is an assertion of its accuracy, per the requirements of the DBE Program.

**I certify that the above information is true to the best of my knowledge:**

<i>Signature</i>	<i>Title</i>	<i>Date</i>
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**THIS DOCUMENT MUST BE PROVIDED WITH THE SUBMITTAL AND SIGNED BY THE PERSON SIGNING THE SUBMITTAL**



**FEDERAL CERTIFICATIONS AND REPRESENTATIONS**

**SAMPLE - DBE Unavailability Report**

**EXHIBIT 3**

RLI/BID NO. \_\_\_\_\_

<b>(NAME OF PRIME CONTRACTOR)</b>	<b>(ADDRESS)</b>	<b>(TELEPHONE NO.)</b>
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The undersigned representative of the prime contractor, personally appeared before the undersigned officer, authorized to administer oaths who, after being duly sworn, states that the undersigned has contacted the DBEs listed below and that said DBEs are unavailable to perform or to submit a bid which was not the low acceptable bid set forth, and that the following information regarding DBE subcontractors is true and correct to the best of his/her knowledge:

1. The following DBE contractors were invited to bid subcontract work, but were not available to work.  
(Provide copy of the invitation, dates, List of DBEs, address, and responses.)
2. The following DBE contractors were invited to bid subcontract work, but did not respond to the invitation. (Provide copy of the invitation, dates, List of DBEs, address)
3. The following DBE contractors submitted bids which were not the low acceptable bids.  
(Provide copy of the responses and your analysis as to why the bids were not acceptable).

If you did not get any responses to your solicitation of DBE contractors, please detail your efforts to recruit eligible firms, i.e., advertising, personal calls, mailing lists, etc. Information provided will be verified. Attach all supporting documents such as newspaper ads, phone lists, mailing lists, etc.

Your report should include information as detailed under Section 9 d. of the Bid Document:  
**DBE Unavailability Report – Good Faith Efforts**

The report should be signed by the same person signing the Bid submittal.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_



### DBE UTILIZATION REPORT

### EXHIBIT 4

Report No. \_\_\_\_\_

CONTRACT #:	CONTRACT AMOUNT: \$	DATE FORM SUBMITTED:	
PROJECT DESCRIPTION:	PROJECT COMPLETION DATE:		
PRIME CONTRACTOR:	PERIOD ENDING:		
CONTACT PERSON:	TELEPHONE #:	FAX #	

#### SUBCONTRACTING INFORMATION

*TO BE SUBMITTED MONTHLY TO COUNTY'S CONTRACT REPRESENTATIVE AND PALM TRAN'S DBE LIAISON (csalazar@pbcgov.org)*

DBE Subcontractor	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amount Paid This Period	Amount Paid To Date	Gender		Ethnic Category					
						M	F	B	H	A	NA	W	

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge.

Signature	Title	Date
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**Note: The information provided herein is subject to verification by Palm Tran's DBE Liaison.**



# FINAL DBE UTILIZATION REPORT

EXHIBIT 5

(To be submitted with the final invoice)

CONTRACT #:		CONTRACT AMOUNT:		DATE FORM SUBMITTED:			
PROJECT DESCRIPTION:				PROJECT COMPLETION DATE:			
PRIME CONTRACTOR:				PERIOD ENDING:			
CONTACT PERSON:				TELEPHONE #: ( )		FAX # ( )	

## SUBCONTRACTING INFORMATION

All payments made to DBE subcontractors must be reported on this form.

DBE Subcontractor	Description of Work	Original Amount (Agreed to Price)	Final Subcontract Amount	Total Amt Paid	Gender		Ethnic Category					
					M	F	B	H	A	NA	W	
<b>TOTALS:</b>												

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature	Title	Date
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**Note: The information provided herein is subject to verification by Palm Tran's DBE Liaison**





FEDERAL CERTIFICATIONS AND REPRESENTATIONS

**EXHIBIT 6**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and has submitted Exhibit # 3 demonstrating good faith efforts.

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

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

\_\_\_\_\_  
Print Name

**DBE PROGRAM for PALM BEACH COUNTY'S  
PUBLIC TRANSIT SYSTEM - PALM TRAN**

**DBE Regulation**

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Consistent with its commitment to meet FTA regulatory requirements, Palm Tran has prepared this program in accordance with:

The Code of Federal Regulation, Title 49 Part 26 (**10-1-13 Edition**)

This document can be accessed at:

<http://www.gpo.gov/fdsys/pkg/CFR-2013-title49-vol1/pdf/CFR-2013-title49-vol1-part26.pdf>