

**Huntsville-Madison County  
Airport Authority**

**Huntsville, Alabama**

**AIRPORT CONCESSIONS  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) PROGRAM**

**Revised February 2018**

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## POLICY STATEMENT

The Huntsville-Madison County Airport Authority (HMCAA) is committed to a program for the participation of Airport Concession Disadvantaged Business Enterprises (ACDBEs) in concession-related contracting opportunities in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations Part 23 (49 CFR Part 23). The HMCAA has received federal financial assistance from the DOT and, as a condition of receiving this assistance, the HMCAA has signed an assurance that it will comply with 49 CFR Part 23.

It is the policy objective of the HMCAA to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to receive and participate in concession contracts. The HMCAA also adheres to the following policies and procedures:

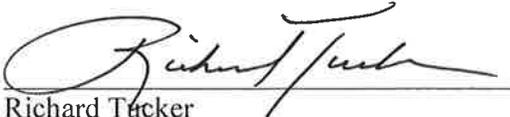
1. To ensure nondiscrimination in the award and administration of opportunities for concessions;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
5. To help remove barriers to the participation by ACDBEs in opportunities for concessions; and
6. To provide appropriate flexibility at our airport in establishing and providing opportunities for ACDBEs.

Randy Taylor, Director of Finance and Administration, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Mr. Taylor is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the HMCAA in its financial assistance agreements with the DOT.

This policy statement will be disseminated to the HMCAA Board of Directors and all departments of the HMCAA, as well as to ACDBE and non-ACDBE businesses that perform work on concession-related contracts for the HMCAA, through its website.

Date: February 28, 2018

**HUNTSVILLE MADISON-COUNTY  
AIRPORT AUTHORITY**

  
Richard Tacker  
Executive Director

### **Section 23.1 Objectives**

The objectives are found in the policy statement of this Program and have been formulated in compliance with the requirements of 49 CFR Part 23 “Participation of Disadvantaged Business Enterprise in Airport Concessions.” The section numbers of this ACDBE Program correspond to the applicable section of 49 CFR Part 23.

### **Section 23.3 Definition of Terms**

The terms used in this Program have the meanings defined in 49 CFR Part 23.3 and 49 CFR Part 26.5 (collectively the “Regulations”) where applicable.

### **Section 23.5 Applicability**

The HMCAA, a recipient of federal financial assistance from the Federal Aviation Administration (“FAA”) of the United States Department of Transportation, is required to implement an ACDBE Program in accordance with the Regulations, which are incorporated herein by reference. The Program applies to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively “Concession Related Contracts”). In the event of conflicts or inconsistencies between the Regulations and this Program, the Regulations shall prevail.

### **Section 23.9 Nondiscrimination Requirements**

The HMCAA will not 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 concession agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE Program, the HMCAA 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 ACDBE Program with respect to individuals of a particular race, color, sex, or national origin.

The HMCAA acknowledges that these representations are also in accordance with obligations contained in its Civil Rights, DBE, and ACDBE Airport grant assurances.

Pursuant to 49 CFR Part 23.9, the HCMAA will include the following assurances in all concession agreements and management contracts:

1. This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and to cause those businesses to similarly include the statements in further agreements.

### **Section 23.11 Compliance and Enforcement**

The HMCAA is subject to the provisions of 49 CFR Part 26 (§§26.101 and 26.105 through 26.107). The HMCAA will comply with this Part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Compliance by the HMCAA with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Compliance reviews: The FAA may review the HMCAA's compliance with this part at any time, including but not limited to, review of paperwork, on-site reviews, and review of the monitoring and enforcement mechanisms of the HMCAA, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based upon complaints received. Any person who knows of a violation of this part by the HMCAA may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the HMCAA's ACDBE Program:

1. For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.
2. For a firm that uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, in order to meet ACDBE goals or other DBE program requirements, the DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.
3. In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude the DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.

4. The DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
5. The DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the HMCAA's ACDBE Program or otherwise violates applicable federal statutes.

### **Section 23.21 ACDBE Program and Goal Updates**

Because the HMCAA is a small hub primary airport receiving FAA financial assistance, it is required to have an ACDBE program. As a condition of eligibility for federal funding, the HMCAA has adopted and implemented an ACDBE Program and will submit ACDBE goals to the FAA every three years. The HMCAA will commence using its triennial ACDBE goals upon submission of the goals to the FAA, unless and until the FAA and/or the Regulations require a modification of said goals.

When the HMCAA makes significant changes to its ACDBE Program, the HMCAA will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

Policy statement: The HMCAA is committed to operating its ACDBE Program in a nondiscriminatory manner and in accordance with its Policy Statement.

ACDBE Liaison Officer (ACDBELO): The HMCAA has designated the following individual as its ACDBELO: **Randy Taylor, Director of Finance and Administration, Huntsville Madison County Airport Authority, Huntsville International Airport, 1000 Glenn Hearn Blvd., Box 20008, Huntsville, AL 35824, Phone 256.258.1950, Fax 256.258.1850, email: DBE@hsvairport.org.** Mr. Taylor has direct and independent access to the Deputy Director of the HMCAA, Luther H. Roberts, Jr., concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is attached as Exhibit "A" to this Program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE Program, in coordination with other appropriate officials, and ensuring that the HMCAA complies with all provisions of 49 CFR Part 23. Duties and responsibilities of the DBELO include the following:

1. Certifying ACDBEs according to the criteria set by the DOT and acting as liaison to the Uniform Certification Program in Alabama.
2. Gathering and reporting ACDBE-related statistical data and other information required by the FAA or the DOT.

3. Working with the HMCAA staff to set overall ACDBE goals.
4. Identifying contracts and procurements so that ACDBE goals can be included in solicitations.
5. Informing concessionaires of their obligations under the ACDBE Program.
6. Advising the executive staff on DBE matters.

The ACDBELO has a support staff to assist in implementing the HMCAA's ACDBE Program. The ACDBELO has access to ACDBE directories and trade journals and to concession-related data and results of the HMCAA. The ACDBELO also has access to project managers and officers of the HMCAA as well as financial resources of the HMCAA. All of these resources are instrumental in the ACDBELO's ability to fulfill the duties and responsibilities of the position.

The HMCAA assists in the maintenance of the Alabama UCP ACDBE Directory which identifies all firms eligible to participate as ACDBEs in the state of Alabama. The Directory lists the name, address, and phone number of the firm, the date of most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The Directory is available to concessionaires and the public on the Alabama Department of Transportation – Alabama Unified Certification Program website. A link to this website is provided on the HMCAA website.

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

The HMCAA will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities:

1. The HMCAA will set goals consistent with 49 CFR Part 23.
2. The HMCAA will seek participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.
3. The HMCAA will maximize the use of race-neutral measures to obtain ACDBE participation to meet its overall goals.
4. If the HMCAA projects that race-neutral measures, standing alone, are not sufficient to meet its overall goal, it will use race-conscious measures as described in 49 CFR Part 23 and as outlined in Exhibits "C" and "D" of this Program.
5. The HMCAA will require businesses which are subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals (to the maximum extent practicable) through direct ownership arrangements with ACDBEs.

### **Section 23.27 Reporting**

The HMCAA will retain information concerning the implementation of its ACDBE Program, ACDBE certification, and the award and performance of concession agreements to enable the FAA to determine compliance with 49 CFR Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

The HMCAA will submit to the FAA Regional Civil Rights Office an annual ACDBE participation report on the form in Appendix A of 49 CFR Part 23. In reports of ACDBE participation to FAA, the HMCAA will show both commitments and attainments, as required by the DOT reporting form.

### **Section 23.29 Monitoring and Enforcement Procedures**

The HMCAA has implemented monitoring and enforcement mechanisms to ensure that concession participation committed to ACDBEs by concessionaires is actually performed by the ACDBE to which the opportunity was committed and that the dollar amounts claimed to have been paid to ACDBEs by a concessionaire have in fact been paid to such ACDBE.

These monitoring and enforcement mechanisms shall be implemented at the solicitation and contracting phase of concession opportunities and at the time of annual review of ACDBE accomplishments. During the solicitation and contracting phases of concession opportunities, concessionaires will be advised of their obligation to obtain ACDBE participation, including meeting any specific contract goals. In addition, throughout the year and/or at the time of filing its accomplishment report, the HMCAA may require documentation from concessionaires evidencing ACDBE participation to show that the ACDBE actually provided goods and services or that the ACDBE revenues were actually paid to the ACDBE (or good faith efforts from the concessionaire to achieve the same) and/or the HMCAA may follow up with the ACDBEs to verify payments were received by them. In those instances where a concessionaire has failed to meet its contract specific goal and/or has otherwise failed to obtain ACDBE participation, the HMCAA will endeavor to work with that concessionaire, including assistance in establishing a definite plan, which may incorporate race-conscious measures to be taken, designed to assist the concessionaire in accomplishing its goal and furthering ACDBE participation. The HMCAA will provide a written certification that it has reviewed records of its concessionaires and/or otherwise performed on-site monitoring for purposes of complying with Part 23.29.

The HMCAA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the ACDBE Program, so that the DOT can take the steps provided in 49 CFR Parts 26.105 and 26.107, including initiation of suspension or disbarment proceedings. The HMCAA will also consider action under its own legal authorities, including responsibility determinations in future contracts. Exhibit "D" to this Program lists the regulations, provisions and contract remedies available to the HMCAA in the event of non-compliance with the DBE Regulations by a participant in the Program. Section 23.11 sets forth the Compliance and Enforcement provisions of this Program.

### **Section 23.31 Certification and Eligibility**

The HMCAA will use the procedures and standards of 49 CFR Part 26 (except as provided in 49 CFR Part 23.31) which is incorporated herein by reference, for certification of ACDBEs to participate in the concessions program. To be certified as an ACDBE, a firm must meet all certification eligibility standards.

The HMCAA ACDBELO participates in the State of Alabama Unified Certification Program (UCP) to certify ACDBEs and to promote participation in the ACDBE Program.

The certification application form and documentation requirements are found in Appendix F to 49 CFR Part 26. A personal net worth statement, to be included with the application, is required to be signed by the applicant, before a notary public, stating that he or she is socially and economically disadvantaged pursuant to 49 C.F.R. 26.67(a) and is set forth in Appendix G to 49 CFR Part 26. The DBE Uniform Certification Application and the Personal Net Worth Statement are available on the Alabama Department of Transportation – Unified Certification Program website.

The HMCAA will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed the limits set forth in 49 CFR Part 23.33.

The personal net worth standard used in determining eligibility of ACDBE owners is set forth in 49 CFR Part 23.35. In calculating personal net worth, the following exclusions apply: (i) the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification (ii) the individual's equity in his or her primary place of residence; and (iii) other assets that the individual can document as necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm, to a maximum of \$3 million. The effectiveness of paragraph (iii) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. Any person who exceeds these standards is not a socially and economically disadvantaged individual, even if the person is a member of a group that is otherwise presumed to be disadvantaged.

The HMCAA will use the certification standards of 49 CFR Part 23 to determine the eligibility as an ACDBE of firms which provide goods and services to concessionaires.

The HMCAA will presume that a firm which is certified as a DBE under 49 CFR Part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, the HCMAA will ensure that the disadvantaged owners of a DBE certified under 49 CFR Part 26 are able to control the firm with respect to its activity in the airport concessions program. The HMCAA is not obligated to certify a 49 CFR Part 26 DBE as an ACDBE if the firm does not perform work relevant to the HMCAA's concessions program. The HMCAA recognizes that the provisions of 49 CFR Part 26.83(c)(2)-(6) do not apply to certifications for purposes of 49 CFR Part 23. The HMCAA will obtain resumes or work histories of the principal owner(s) of the firm, personally interview those individuals, analyze ownership of stock (if a corporation), analyze bonding and financial capacity, determine work history of the firm, compile a list of the licenses of the firm and its key personnel,

and obtain a statement from the firm of the types of concessions it prefers to operate or other types of contracts it prefers to perform.

In instances where the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeds the size standard or the owner exceeds the personal net worth standard, yet the firm remains an eligible ACDBE in all other respects, the concessionaire's participation may continue to be counted toward ACDBE goals during the remainder of the current concession agreement. The concessionaire's participation will not be counted toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification.

All currently certified ACDBE firms are obligated to submit a signed, notarized affidavit of "no change" which affirms that the owner continues to be socially and economically disadvantaged, pursuant to 49 CFR Part 26.83(j). ACDBE owners should use the No Change Affidavit available on the Alabama Department of Transportation- Alabama Unified Certification Program website. The owner must affirm that they meet all regulatory requirements of 49 CFR Part 26 and comply with the annual submission requirements thereunder.

The HMCAA will also require a written affidavit from ACDBEs of any change in their circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria under 49 CFR Part 26.83(i) or of any material changes in the information provided with the firm's application for certification.

The HMCAA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the HMCAA will not release to a third party (other than the DOT) personal financial information submitted in response to the requirement for a statement of personal net worth except with the written consent of the submitter.

### **Section 23.41 Basic Overall Goal Requirement**

The HMCAA will establish two separate overall ACDBE goals: one for car rentals and one for concessions other than car rentals. The overall goals will cover a three year period and the HMCAA will review the goals annually to ensure the goals continue to fit the HMCAA's circumstances. The HMCAA will report any significant overall goal adjustments to the FAA. The HMCAA's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

### **Section 23.43 Consultation in Goal Setting**

The HMCAA uses public meetings to consult with minority and women business groups, community organizations, and other officials and/or groups, as well as existing concessionaires, to determine the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the HMCAA's efforts/success in establishing a level playing field for participation by ACDBEs. In its submission of its overall goals, the HMCAA will identify the groups with which it has consulted and will provide a summary of the information obtained from the consultation.

## **Section 23.45 Overall Goals**

The HMCAA will set an overall goal for ACDBE participation every three years which will be submitted by October 1 of the applicable year. If a new concession opportunity arises at a time that falls between the normal submission date for its overall goals and the estimated average annual gross revenues of the new opportunity are anticipated to be \$200,000 or greater, the HMCAA will submit an appropriate adjustment to its overall goal to the FAA for approval no later than 90 days before executing the new concession agreement.

The HMCAA will establish overall goals in accordance with the two-step process as specified in 49 CFR Part 23.51. A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data relied upon can be found in Exhibit “B” to this Program. A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data relied upon is found in Exhibit “C” to this Program.

### **Projection of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found within the goal methodology in Exhibits “B” and “C” to this Program. This section of the Program will be utilized annually when the goal calculation is reviewed under 49 CFR Part 23.41(c).

### **Concession Specific Goals**

The HMCAA will use concession specific goals to meet any portion of the overall goal that the HMCAA does not project being able to meet using race-neutral means. Concession specific 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.

The HMCAA may establish concession specific goals on those concessions that have direct ownership arrangements, subleases, or subcontracting possibilities. The HMCAA will require businesses subject to ACDBE goals at the airport to make good faith efforts to explore all options available to meet goals including, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (Part 23.25(f)). The HMCAA will encourage all concessionaires to exercise good faith efforts to obtain ACDBE participation through the purchase of goods and services from certified ACDBEs.

The HMCAA may not establish a concession specific goal on every concession. The concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs).

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the HMCAA will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (Part 23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the HMCAA will calculate the goal by dividing the estimated dollar value of such purchases and/or

leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (Part 23.25(e)(1)(ii))

### **Good Faith Efforts on Concession Specific Goals**

To be eligible for award of a concession that has a concession specific goal, competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures set forth in 49 CFR Part 26.51 and 26.53, regarding contract goals, apply to the HMCAA's concession specific goals. Only the performance of a commercially useful function and the value of the work actually performed by the ACDBE will be counted towards the contract goal.

The HMCAA treats concessionaires' compliance with good faith effort requirements as a matter of responsibility. The HMCAA DBELO will determine whether a concessionaire who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible, in accordance with 49 CFR Part 23.25 and 49 CFR Part 26.53, which are incorporated herein.

Each solicitation, for which a concession specific goal has been established, will require the potential concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each participating ACDBE firm/supplier;
4. Written and signed documentation of commitment to use an ACDBE whose participation is utilized to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

### **Administrative Reconsideration**

Within fifteen (15) days of being informed by the HMCAA that it is not responsible because it has not documented sufficient good faith efforts to meet an ACDBE goal, a concessionaire may request administrative reconsideration. Concessionaires should make a request for reconsideration in writing to the HMCAA Deputy Director, Luther H. Roberts, Jr., Huntsville Madison-County Airport Authority, The Huntsville International Airport, 1000 Glenn Hearn Blvd., Post Office Box 20008, Huntsville, Alabama 35824, Telephone 256.772.9395, Fax 256.772.0305. The reconsideration official will not have played any role in the original determination that the concessionaire did not make or document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation supporting its position that it has met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with the reconsideration official. The HMCAA will send the concessionaire a written decision on reconsideration,

explaining the basis for its finding that the concessionaire did or did not meet the goal and/or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Good Faith Efforts when an ACDBE is replaced on a concession**

The HMCAA will require the concessionaire to obtain prior approval of the HMCAA for the termination and/or substitution of an ACDBE. In such event, the HMCAA will require a concessionaire to make good faith efforts to replace an ACDBE, that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract, with another certified ACDBE. The HMCAA requires all concessionaires to immediately notify the ACDBELO of any ACDBE's inability or unwillingness to perform and shall provide the ACDBELO with reasonable documentation.

The concessionaire shall provide the HMCAA with copies of new or amended subcontracts with substituted ACDBEs or documentation of good faith efforts to find a replacement. If the concessionaire fails or refuses to comply in the time specified, the ACDBELO may issue a termination for default proceeding.

### **Section 23.53 Counting ACDBE Participation for Car Rental Goals**

The HMCAA will follow the requirements of 49 CFR 23.53 in counting ACDBE participation toward ACDBE car rental goals.

### **Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

The HMCAA will follow the requirements of 49 CFR 23.55 in counting ACDBE participation toward ACDBE non-car rental goals.

### **Section 23.57 Failure to Meet Overall Goals**

Should the HMCAA determine, upon completing its awards and commitments report, that it has not accomplished its overall goal for the applicable year, the HMCAA commits to taking the following steps:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year; and
2. Establish specific steps and milestones designed to correct the problems which the HMCAA identifies in its analysis as hindering its effort to meet its overall goal; and
3. Retain its analysis and corrective actions in the records of the HMCAA for three (3) years and make the same available to the FAA upon request for review.

### **Section 23.61 Quotas or Set-Asides**

The HMCAA will not use quotas or set-asides as a means of obtaining ACDBE participation.

### **Section 23.71 Existing Agreements**

The HMCAA will assess the potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. The method set forth in 49 CFR Part 23 will be utilized to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

### **Section 23.75 Long-Term Exclusive Agreements**

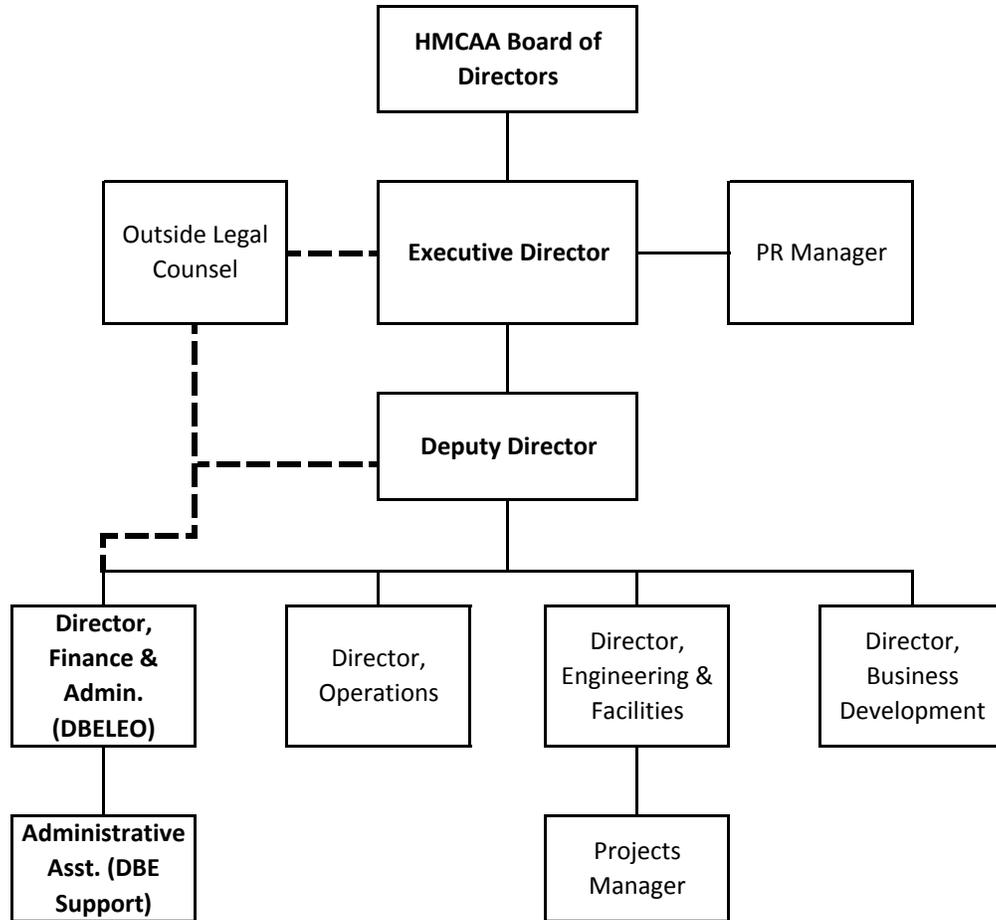
The HMCAA will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. A “long-term” agreement is an agreement having a term of longer than five (5) years. An “exclusive” agreement is one in which an entire category/area of a particular business opportunity is limited to a single non-ACDBE business entity.

### **Section 23.79 Geographic Preferences**

The HMCAA will not use a “local geographic preference,” *i.e.*, any requirement that gives an ACDBE located in one place an advantage over ACDBEs from other places, in obtaining business as or with a concession at Huntsville International Airport.

**EXHIBIT "A"**

**Huntsville-Madison County Airport Authority  
Organization Chart (limited)**



## EXHIBIT "B"

### Overall Goal Calculation for Concessions Other than Car Rental Concessions

**Source: 49 CFR §§ 23.43, 23.45, 23.51**

The HMCAA's overall goal for concessions other than car rental companies will be calculated as a percentage of the total gross receipts for concessions at Huntsville International Airport. The following are not included in the total gross receipts for concessions:

- (a) the gross receipts of car rental operations;
- (b) the dollar amount of a management contract or subcontract with a non-ACDBE;
- (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains; and
- (d) any portion of a firm's estimated gross receipts that will not be generated by a concession.

The concession opportunities anticipated during a goal period are analyzed, together with estimated gross revenue receipts. If a new concession opportunity arises prior to the end of a goal period and the estimated average annual gross revenues of that new opportunity are anticipated to be \$200,000 or greater, the HMCAA will submit an appropriate adjustment to the overall goal. The revised goal will be submitted to the FAA for approval not later than 90 days before execution of the new concession agreement.

The HMCAA will establish overall goals in accordance with the two-step process as specified in 49 CFR Part 23. The first step is to determine the relative availability of ACDBEs in the market area, i.e. the "base figure," in addition to the anticipated total gross receipts for the concession activity. The second step involves examining all relevant evidence reasonably available in the HMCAA's jurisdiction to determine if an adjustment to the Step One "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation that the HMCAA would expect in the absence of discrimination. Evidence may include, but is not limited to, past participation by ACDBEs; a disparity study; evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in the ability to get required financing, bonding, insurance); or data on employment, self-employment, education, training and union apprenticeship.

The HMCAA has determined that its market area for non car rental concessions is the entire state of Alabama. Historically, this is the geographical area in which the substantial majority of firms which seek to do concession business with the airport are located and the geographical area in which the firms receiving a substantial majority of concession related revenue are located. Notwithstanding, the HMCAA is committing to increasing its outreach efforts in an effort to identify interested concessionaires and ACDBEs in other areas to better determine and define the relevant geographical areas from which those interested in participating in concessions at the

airport are located. Accordingly, the HMCAA will amend its geographic market as needed to account for any and all interest in other and surrounding geographical markets.

### **Methodology used to Calculate Overall Goal**

Goods and Services:

Efforts to achieve the ACDBE goal can be made by and through purchases from certified ACDBEs of goods and services used in concession business conducted at the airport. The HMCAA and airport concessionaires will also make good faith efforts to explore all options available to achieve ACDBE revenue through direct ownership arrangements, including joint ventures and franchises. ACDBE gross receipts shall be included in the numerator and total gross receipts shall be included in the denominator to determine the percentage of ACDBE participation.

Management Contract or Subcontract:

The ACDBE goal can also be met through utilization of management contracts and/or subcontracts with an ACDBE for business operations. The HCMAA and airport concessionaires shall include the dollar amount of a management contract or subcontract with an ACDBE in the total participation by ACDBEs in airport concessions; however, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertain will not be included in the total gross receipts of the denominator when determining the percentage of ACDBE participation.

### **Step 1: 23.51(c)**

#### **Part A:**

The base figure for the relative availability of ACDBEs is calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, Willing and Able Non-Car Rental ACDBEs in the Market Area}}{\text{All Ready, Willing and Able Non-Car Rental Concessions in the Market Area}}$$

The data source or demonstrable evidence used to derive the numerator is the Alabama Unified Certification Program ACDBE Directory.

The data source or demonstrable evidence used to derive the denominator is the United States Census Bureau County Business Patterns (*i.e.*, SIC or NAICS codes).

The numerator divided by the denominator produces the base figure for the overall goal for non car rental concessions in percentage form.

## **Part B:**

The HMCAA further factors ACDBE availability based upon the relevant areas of work in which ACDBEs would have an opportunity to perform, i.e., the actual percentage(s) of the anticipated concession revenue and concession expenditures for goods and services for the coming year, in order to determine the total base figure for ACDBE availability, which is expressed in percentage form.

### **Step 2: Part 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, evidence is examined to determine any necessary adjustments to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation that would be expected in the absence of discrimination, the base figure is adjusted to arrive at the overall goal for non-car rental concessions. The HMCAA uses historical data to calculate adjustments to the base figure in order to determine the overall goal. More specifically, the HMCAA analyzes historical data of actual ACDBE participation in concessions. This data is gathered from the HMCAA's Report of ACDBE Accomplishments. The current capacity of ACDBEs to perform work in the HMCAA concessions program is evaluated by measuring the volume of work that ACDBEs have performed in the past, together with projections regarding the ability of ACDBEs to perform work in the upcoming three (3) year period. In addition, the HMCAA will review disparity studies relevant to this Program to adjust its overall goal.

### **Breakout of Estimated Race-Neutral and Race-Conscious Participation**

The HMCAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The HMCAA uses the following race-neutral measures to increase ACDBE participation: locating, identifying and encouraging ACDBEs who may be interested in participating as concessionaires; notifying ACDBEs when concession opportunities arise; and, whenever possible, structuring concession activities to encourage and facilitate ACDBE participation. Where possible, the HMCAA will negotiate with potential concessionaires to obtain ACDBE participation through direct ownership arrangements and/or related measures in the operation of the concession.

If the HMCAA projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, race-conscious measures will be used to meet the overall goal, including the establishment of an overall ACDBE goal for concessions and setting separate ACDBE goals for certain concession opportunities.

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if concession-specific goals are used, the estimated breakout of race-neutral and race-conscious participation will be adjusted as needed to reflect actual ACDBE participation. Race-neutral and race-conscious participation will be reported separately.

For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry an ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider the firm's ACDBE status in making the award.

Separate data will be maintained on ACDBE achievements in those contracts with and without concession specific goals, respectively.

### **Consultation with Stakeholders**

Prior to submitting its goal to the FAA, the HMCAA will consult with stakeholders, which may include but not be limited to, minority and women business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses to perform at the airport, the effects of discrimination on opportunities for ACDBEs, and the HMCAA's efforts to increase participation by ACDBEs.

## EXHIBIT "C"

### Overall Goal Calculation for Car Rental Concessions

**Source: 49 CFR §§ 23.43, 23.45, 23.51**

The HMCAA's overall goal for car rental concessions will be calculated as a percentage of the total gross receipts for car rental operations at Huntsville International Airport.

The concession opportunities anticipated during a goal period are analyzed, together with estimated gross revenue receipts. If a new car rental concession opportunity arises prior to the end of a goal period and the estimated average annual gross revenues of that new opportunity are anticipated to be \$200,000 or greater, the HMCAA will submit an appropriate adjustment to the overall goal. The revised goal will be submitted to the FAA for approval no later than 90 days before execution of the new concession agreement.

The HMCAA will establish overall goals in accordance with the two-step process as specified in 49 CFR Part 23. The first step is to determine the relative availability of ACDBEs in the market area, i.e. the "base figure," in addition to determining the anticipated gross receipts for the concession activity. The second step involves examining all relevant evidence reasonably available in the HMCAA's jurisdiction to determine if an adjustment to the Step One "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation that the HMCAA would expect in the absence of discrimination. Evidence may include, but is not limited to, past participation by ACDBEs; a disparity study; evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in the ability to get required financing, bonding, insurance); or data on employment, self-employment, education, training and union apprenticeship.

The HMCAA has determined that its market area for car rental concessions is the state of Alabama. Historically, this is the geographical area in which the substantial majority of firms which seek to do car rental concession business with the airport are located and the geographical area in which the firms receiving a substantial majority of car rental concession related revenue are located. Notwithstanding, the HMCAA is committing to increasing its outreach efforts in an effort to identify interested concessionaires and ACDBEs in other areas to better determine and define the relevant geographical areas from which those interested in participating in concessions at the airport are located. Accordingly, the HMCAA will amend its geographic market as needed to account for any and all interest in other and surrounding geographical markets.

#### Methodology used to Calculate Overall Goal

Goods and Services:

Efforts to achieve the ACDBE percentage goal can be made by and through purchases from certified ACDBEs of goods and services used in concession business conducted at the airport.

ACDBE gross receipts shall be included in the numerator and total gross receipts shall be included in the denominator to determine the percentage of ACDBE participation.

**Step 1: 23.51(c)**

**Part A:**

The base figure is determined for the relative availability of car rental ACDBEs. The base figure is calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, Willing and Able Car Rental ACDBEs in the Market Area}}{\text{All Ready, Willing and Able Car Rental Concession in the Market Area}}$$

The data source or demonstrable evidence used to derive the numerator is the current Alabama Unified Certification Program ACDBE Directory.

The data source or demonstrable evidence used to derive the denominator is the United States Census Bureau County Business Patterns (*i.e.*, SIC or NAICS codes).

The numerator divided by the denominator produces the base figure for the overall goal for car rental concessions in percentage form.

**Part B:**

The HMCAA further factors ACDBE availability based upon the relevant areas of work in which ACDBEs would have an opportunity to perform, *i.e.*, the actual percentage(s) of the anticipated concession revenue and concession expenditures for goods and services for the coming year, in order to determine the total base figure for ACDBE availability, which is expressed in percentage form.

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, evidence is examined to determine any necessary adjustment to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation that would be expected in the absence of discrimination, the base figure is adjusted to arrive at the overall goal for car rental concessions. The HMCAA uses historical data to calculate adjustments to the base figure in order to determine the overall goal. More specifically, the HMCAA analyzes historical data of actual ACDBE participation in car rental concessions. This data is gathered from the HMCAA's Report of ACDBE Accomplishments. The current capacity of ACDBEs to perform work in the HMCAA car rental concession program is evaluated by measuring the volume of work that ACDBEs have performed in the past, together with projections regarding the ability of ACDBEs to perform work in the upcoming three (3) year period. In addition, the HMCAA will review disparity studies relevant to this Program to adjust its overall goal.

## **Breakout of Estimated Race-Neutral and Race-Conscious Participation**

The HMCAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The HMCAA uses the following race-neutral measures to increase ACDBE participation: locating, identifying and encouraging ACDBEs who may be interested in participating as car rental companies, or as providers of goods or services to car rental companies; notifying ACDBEs when car rental concession opportunities arise; and, whenever possible, structuring car rental concession activities to encourage and facilitate ACDBE participation.

If the HMCAA projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, race-conscious measures will be used to meet the overall goal, including the establishment of an overall ACDBE goal for car rental concessions and setting separate ACDBE goals for certain car rental concession opportunities.

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if concession-specific goals are used, the estimated breakout of race-neutral and race-conscious participation will be adjusted as needed to reflect actual ACDBE participation. Race-neutral and race-conscious participation will be reported separately.

For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry an ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider the firm's ACDBE status in making the award.

Separate data will be maintained on ACDBE achievements in those contracts with and without concession specific goals, respectively.

## **Consultation with Stakeholders**

Prior to submitting its goal to the FAA, the HMCAA will consult with stakeholders, which may include but not be limited to, minority and women business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses to perform at the airport, the effects of discrimination on opportunities for ACDBEs, and the HMCAA's efforts to increase participation by ACDBEs.

## **Exhibit “D”**

### **Compliance Mechanisms**

The HMCAA may use any of the following regulations, provisions and contract remedies to ensure compliance by non-ACDBE contractors and/or subcontractors with 49 C.F.R. ' 23:

- I. Department of Transportation Regulation, 49 C.F.R. Part 23, *Participation by Disadvantaged Business Enterprises in Airport Concessions*, Sections 23.1 *et seq.*
- II. Breach of Contract Remedies, *Alabama Common Law*
  - (a) Cancellation of Contract
  - (b) Specific Performance
- III. Fraud Remedies, *Alabama Code ' 6-5-100 et seq.*
  - (a) Cancellation of Contract
- IV. Responsibility Determinations in Contracts
- V. Termination and Disbarment Proceedings