

**Huntsville-Madison County
Airport Authority**

Huntsville, Alabama

**DISADVANTAGED BUSINESS
ENTERPRISE (DBE) PROGRAM**

Revised February 2018

TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page #</u>
	Policy Statement	3
100	Definition of Terms	4
200	Non-discrimination	4
300	DBE Program Updates	4
400	DBE Liaison Officer	4
500	Assurances	5
600	Required Contract Clauses.....	5
700	DBE Financial Institutions.....	6
800	Directory	6
900	Overconcentration.....	7
1000	Monitoring and Enforcement Mechanisms.....	7
1100	Overall Goals	7
1200	Contract Goals	9
1300	Good Faith Efforts	10
1400	Counting DBE Participation	11
1500	Certification Process	12
1600	Unified Certification Program	12
1700	Decertification and Certification Appeals	12
1800	Re-certification	13
1900	Notices of Change.....	13
2000	Personal Net Worth.....	13
2100	Information Collection and Reporting.....	14
2200	Fostering of Small Business Participation	14

EXHIBITS

- A -HMCAA Organization Chart
- B -Monitoring and Enforcement Mechanisms

HUNTSVILLE-MADISON COUNTY AIRPORT AUTHORITY
Disadvantaged Business Enterprise (DBE) Program
POLICY STATEMENT

The Huntsville-Madison County Airport Authority (HMCAA) has revised its Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26, as amended. The HMCAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the HMCAA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy objective of the HMCAA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the HMCAA's 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 by DBEs in DOT-assisted contracts; and
6. To promote the use of DBEs in DOT-assisted contracts and procurement activities conducted by the HMCAA.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

This policy statement will be disseminated to the HMCAA Board of Directors, all departments of the HMCAA, and to DBE and non-DBE businesses that perform work on DOT-assisted contracts for the HMCAA through the HMCAA website. The HMCAA will also publish this policy statement in each DOT-assisted project specification and in bid documents provided to DBE and non-DBE businesses.

Date: February 28, 2018

HUNTSVILLE MADISON-COUNTY
AIRPORT AUTHORITY



Richard Tucker
Executive Director

Section 100. Definition of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5. The entire DBE Final Rule (49 CFR Part 26), as amended, is set forth at Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26).

Section 200. Nondiscrimination.

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 contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE 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 DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 300. DBE Program Updates

The HMCAA will continue to carry out this program until all funds from DOT financial assistance have been expended. The HMCAA will provide the DOT any DBE Program updates representing significant changes in the program.

Section 400. DBE Liaison Officer (DBELO)

The HMCAA has designated the following individual as its DBE Liaison Officer (DBELO):. Randy Taylor, Director of Finance and Administration, Huntsville Madison-County Airport Authority, Huntsville International Airport, 1000 Glenn Hearn Blvd., Box 20008, Huntsville, AL 35824, Telephone 256.258.1950, Fax 256.258.1850, email:DBE@hsvairport.org. Randy Taylor is responsible for implementing the DBE program and ensuring that the HMCAA complies with all provisions of 49 CFR Part 26. Mr. Taylor has direct, independent access to the Deputy Director of the HMCAA, Luther H. Roberts, Jr., concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is attached as Exhibit A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the HMCAA in its financial assistance agreements with the Department of Transportation. Duties and responsibilities of the DBELO include the following:

1. Certifying DBEs in accordance with the criteria set by the DOT and acting as liaison to the Unified Certification Program in Alabama.
2. Gathering and reporting DBE-related statistical data required by the DOT, including but not limited to reporting DBE participation to the DOT by the annual submission of DOT Form 4630.
3. Working with the HMCAA staff to set overall DBE goals.
4. Communicating bid notices and requests for proposals to DBEs.

5. Participating in project pre-bid meetings to promote DBE participation.
6. Advising the executive staff on DBE matters.
7. Working with the project manager to determine contractor compliance with good faith efforts.
8. Planning and participating in DBE training seminars.
9. Analyzing the HMCAA's progress toward attainment of its DBE goal and identifying ways to improve its progress to achieve its goal of DBE participation.

The DBELO has a support staff to assist in implementing the HMCAA's DBE program. The DBELO has access to DBE directories and trade journals and to DOT-funded project data and results of the HMCAA. The DBELO 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 DBELO's ability to fulfill the duties and responsibilities of the position.

Section 500. Assurances

The HMCAA agrees to the following assurance in each financial assistance contract executed by the HMCAA with the DOT and to the administration thereof:

The HMCAA 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 HMCAA 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 HMCAA's DBE Program, as required by 49 CFR Part 26 and as approved by the 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 the HMCAA of any failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Section 600. Required Contract Clauses

The HMCAA will include the following clauses in each DOT-assisted contract specification:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but it not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and (4) disqualifying the contractor from future bidding as non-responsible.

B. Prompt Payment

The prime contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract pursuant to the payment terms set forth in its applicable subcontract agreement with the subcontractor. In the event no payment terms are established, the prime contractor agrees to pay each subcontractor no later than seven (7) days from the receipt of each payment the prime contractor receives from the HMCAA by mailing via first class mail or delivering the amount received for the subcontractor's work and materials to the subcontractor. Unless different retainer payment terms are set forth in a subcontract with the subcontractor, the prime contractor agrees further to return retainer payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Notwithstanding, in all events, payment must be made by the Contractor to the subcontractor within 30 days of receipt of payment from the Owner. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the HMCAA. This clause applies to both DBE and non-DBE subcontractors. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner. Failure to comply with the prompt payment requirements under this program may result in the non-reimbursement of the prime contractor for work performed by the subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for work they have performed.

The HMCAA will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the HMCAA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Section 700. DBE Financial Institutions

The HMCAA has not identified any financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. The HMCAA will continue to investigate the full extent of services offered by any such financial institutions and will make reasonable efforts to use any institutions later identified. The HMCAA will further encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Section 800. Directory

The HMCAA assists in the maintenance of the Alabama UCP DBE Directory which identifies all firms certified as DBEs in the state of Alabama. The directory lists the firm's name, address, and phone number, and the types of work the firm performs, described in terms of the most specific NAICS Codes. The Directory is available to contractors 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 900. Overconcentration.

The HMCAA has not identified that overconcentration of DBEs exists in any areas of work that DBEs perform under this program.

Section 1000. Monitoring and Enforcement Mechanisms

The HMCAA has implemented monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award, or subsequently, are actually performed by the DBEs to which the work was committed and that the actual amounts paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

These monitoring and enforcement mechanisms shall be implemented at the pre-bid, bid proposal, and contracting phase by ensuring good faith efforts are employed by general contractors and that contractors are using the DBEs to which they have committed. These mechanisms shall also be utilized during the construction phase through onsite monitoring of performance of work by DBEs and evaluation of pay requests and disbursements by general contractors. Finally, the mechanisms shall be a part of the reporting process to ensure that the dollars committed to DBEs by general contractors and the actual amounts paid to DBEs meet the commitments presented by general contractors at contract bid and execution. A written certification that the HMCAA has reviewed contracting records and monitored work sites will be provided by the HMCAA pursuant to 49 CFR Part 26 for every contract involving DBE participation.

The HMCAA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the DBE program, so that the DOT can take the steps provided in 49 CFR 26.105 and 26.107, including initiation of suspension or disbarment proceedings. The HMCAA will also consider action under its own legal authorities and contract instruments, including responsibility determinations in future contracts. Exhibit B 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 1100. Overall Goals

The HMCAA will set an overall goal for DBE participation on DOT-assisted contracts for a three (3) year period and submit this goal to the DOT by August 1 preceding the three year period. The HMCAA will begin using its overall goal on October 1 of the first year of the three (3) year period, unless it has received other instructions from the DOT, or, if the goal is established on a project basis, it shall be used for the first solicitation on a DOT-assisted contract for the project. The three (3) year overall goal applies to each individual year. The HMCAA will submit annual awards and accomplishment reports for each individual year. During the three (3) year period, the goal may be adjusted to reflect changed circumstances. Any adjusted goal shall be submitted for approval by the DOT.

Step One

The overall goal will be based upon the relative availability of ready, willing, and able DBEs in the relevant geographical market for each applicable area of work. The base figure for the relative availability of DBEs will be calculated as follows:

$$\text{Base Figure} = \frac{\text{Ready, Willing and Able DBEs}}{\text{All Firms Ready, Willing and Able}} = \text{Available DBEs for Each Area of Work}$$

To determine the number of ready, willing and able DBEs and the total number of firms for Step One, the HMCAA reviews the Alabama UCP DBE Directory and the United States Census Bureau County Business Patterns to count DBEs and firms which are located in the relevant geographical market for HMCAA projects and which perform services in each anticipated area of work for upcoming projects.

The relevant geographical market will include those areas where the substantial majority of funds are spent by the HMCAA and where the substantial majority of contractors and subcontractors who quote and/or perform HMCAA projects are located. The numerator and denominator are based upon the same relevant geographical market.

Step Two

The base figure (relative availability of DBEs for each area of work) is adjusted by the HMCAA through use of historical data. More specifically, the HMCAA analyzes historical data of actual DBE participation in the relevant areas of work during previous years. The HMCAA may also use previous project goals, available statistical data, disparity studies, public comments, other recipient goals, and information available from the Alabama Department of Transportation, the United States Census Bureau, and local minority/small business directories regarding disadvantaged businesses to adjust its overall goals. The HMCAA will not use quotas in the administration of this DBE program.

Public Participation

The HMCAA uses public meetings to consult with minority, women and contractor groups, community organizations, and other officials and/or businesses, to determine the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the HMCAA's efforts/success in establishing a level playing field for participation by DBEs. Public participation is likewise solicited for review of the HMCAA's annual overall DBE goal. Notice of the goal is published on the HMCAA's website and in local newspapers and publications providing that the goal and its methodology are available from the HMCAA for a thirty (30) day period and that public comments will be accepted for a forty-five (45) day period. The HMCAA will review all responses and comments received and determine whether adjustments to the overall goal are needed. The HMCAA hereby commits in writing that it will provide the DOT with an amended DBE goal should the responses from public comment justify a change. In any event, the HMCAA will provide the DOT with a summary of any comments received during this public comment period.

Race-Neutral versus Race Conscious Means

The HMCAA will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. The HMCAA implements the following race neutral means to increase DBE participation: unbundling various jobs on the projects to allow for subcontractor participation, awarding contracts to DBE prime contractors as the lowest bidder, awarding subcontracts to the lowest bidder, holding public meetings to discuss upcoming fiscal year projects and areas of work, arranging times and solicitations for presenting bids on subcontract jobs, and providing the DBE Directory to prime contractors. If necessary, the HMCAA uses race conscious means to increase DBE participation. Its race conscious means include the calculation of an overall DBE goal for DOT-funded projects and the establishment of separate DBE contract/project goals to be bid by prime contractors.

In order to ensure that the HMCAA's DBE program will be narrowly tailored to overcome the effects of discrimination, if the HMCAA uses contract goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and the HMCAA 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 carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award. The HMCAA will maintain data separately on DBE achievements on those contracts with and without contract goals, respectively.

Section 1200. Contract Goals

The HMCAA will use contract goals to meet any portion of the overall goal that the HMCAA does not project being able to meet using race-neutral means. Contract goals are established so that during the period to which the overall goal applies the contract goals will serve to cumulatively meet any portion of the overall goal that will not foreseeably be met through the use of race-neutral means.

The HMCAA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The HMCAA may not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., the type and location of work, the availability of DBEs to perform the particular type of work).

The HMCAA will express its contract goals as a percentage of the Federal-eligible share of a DOT-assisted contract. Only the DBE's performance of a commercially useful function and the value of the work actually performed by the DBE will be counted towards the contract DBE goal.

Section 1300. Good Faith Efforts

A. Information to be submitted.

The HMCAA treats bidders/offerors' compliance with good faith effort requirements as a matter of responsibility (i.e., the contract goal and designation of DBEs must be submitted before the HMCAA commits itself to the performance of the contract by the bidder/offeror).

Each solicitation for which a contract DBE goal has been established will require the bidders/offerors to submit the following information before HMCAA committing to the performance of the contract:

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;
4. Written and signed documentation of the prime contractor's 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 in the type and amount of work as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

B. Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts to achieve the contract goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.53(a).

The HMCAA DBELO will determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. The HMCAA will review all bidder/offeror's information of good faith efforts for completeness and accuracy and to ensure it adequately documents the bidder/offer's good faith efforts before its commitment to the performance of the contract by the bidder/offeror.

C. 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 a contract goal, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the HMCAA Deputy Director, 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. This reconsideration official will not have played any role in the initial determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The HMCAA 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. Per 49 CFR 26.53(d)(5), the result of the reconsideration process is not administratively appealable to the Department of Transportation.

D. Good Cause when a DBE is replaced on a contract

A prime contractor may not terminate a DBE to which it has committed without the prior written consent of the HMCAA providing its reasons for concurring with the prime contractor's request to terminate. The HMCAA will provide its consent only if the prime contractor has good cause to terminate the DBE firm. Such good cause includes the failure of the DBE to execute a written contract; the failure or refusal of the DBE to perform work in a manner consistent with normal industry standards; the failure or refusal of the DBE to meet the contractor's reasonable nondiscriminatory bond requirements; the bankruptcy, insolvency or credit unworthiness of the DBE; the suspension or disbarment of the DBE; the death or disability of the DBE owner; the voluntary withdrawal by the DBE; the DBE is not a responsible contractor; or related reasons. Prior to transmitting to the HMCAA its request to terminate and/or substitute a DBE subcontractor, a prime contractor must give notice in writing to the DBE with a copy to the HMCAA of its intent to request to terminate or substitute the DBE and the reason for the request. The DBE shall be provided five (5) days to respond to the prime contractor and advise the HMCAA and the contractor of the reasons its objects to such termination. This provision applies to post-award terminations as well as pre-award deletions or substitutions of DBEs put forward in negotiated procurements.

Should the HMCAA consent to the termination of a DBE, the HMCAA will require the prime contractor to make good faith efforts to replace the DBE that is terminated with another certified DBE to perform at least the same amount of work under the contract as the terminated DBE, to the extent needed to meet the contract goal. Furthermore, the HMCAA will require the prime contractor to obtain prior approval for any substitute subcontractors and provide copies of new or amended subcontracts or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the HMCAA contracting officer will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the contractor continues to refuse/fail to comply, the contracting officer may issue a termination for default proceeding.

Section 1400. Counting DBE Participation

The HMCAA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The HMCAA will count only the value of work actually performed by the DBE, while performing a commercially useful function, toward the DBE goal. In addition, DBE participation will only be included after the amount being counted has actually been paid to the DBE.

Section 1500. Certification Process

The HMCAA will use the certification standards of Subpart D of 49 C.F.R. Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. An applicant will be advised within thirty (30) days of its application submittal whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. The certification application form and documentation requirements utilized by the HMCAA are found in Appendix F to 49 CFR Part 26. Included in Appendix G to 49 CFR Part 26 is the personal net worth statement required to be signed by the applicant, before a notary public, stating that he or she is indeed socially and economically disadvantaged pursuant to 49 C.F.R. 26.67. The DBE Uniform Certification Application and the Personal Net Worth Statement are available on the Alabama Department of Transportation - Alabama Unified Certification Program website.

If an applicant withdraws its application before the HMCAA issues a decision, the applicant may resubmit its application at any time; however, the application will be placed to the “end of the line” behind other applications that have been submitted since the firm’s previous application was withdrawn.

For information about the certification process or to apply for certification, firms should contact the HMCAA DBELO: Randy Taylor, Director of Finance and Administration, Huntsville-Madison County Airport Authority, 1000 Glenn Hearn Blvd., P.O. Box 20008, Huntsville, AL 35824, Telephone 256.258.1950, Fax 256.258.1850, email: DBE@hsvairport.org.

Section 1600. Unified Certification Program

The State of Alabama Unified Certification Program (the “Alabama UCP”) was approved by the U.S. Department of Transportation on August 10, 2010. The HMCAA is a Responsible Certifying Member of the Alabama UCP. The purpose of the Alabama UCP is to provide “one stop shopping” to applicants seeking DBE certification in the State of Alabama. All obligations of the HMCAA with respect to certification and non-discrimination will be carried out through the Alabama UCP.

Section 1700. Decertification and Certification Appeals

In the event the HMCAA proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR Part 26.87. A firm receiving notification that there is a reasonable cause to remove its eligibility will be given the opportunity for an informal hearing to provide information and arguments concerning why it should remain certified. The Alabama UCP Hearing Board will consider the appeal. The Hearing Board will ensure that no personnel who took part in the action leading up to the decision to remove the firm’s certification are part of the Hearing Board. Following the Hearing Board’s decision, the Alabama UCP will provide a written notice of the decision and reasons therefore, including references to evidence in the record that supports each reason for the decision. The firm will also be notified of its right to appeal to the U.S. Department of Transportation under 49 CFR Part 26.89. The firm may not reapply until twelve (12) months have passed from the decertifying action.

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

United States Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division
1200 New Jersey Ave. S.E. W78-340
Washington, DC 20590
Telephone: (202) 366.4754

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

Section 1800. Re-certifications

For firms that the Alabama UCP has certified and found eligible under 49 CFR Part 26, such DBE firm will remain certified unless or until its certification is removed. The Alabama UCP may conduct a certification review of a certified DBE, including a new onsite review, five (5) years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances.

Section 1900. Notices of Change

The HMCAA will require all DBEs to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control criteria under 49 CFR Part 26 or of any material changes in the information provided with the firm's application for certification. If a firm's Owner knows or should know that he or she, or the firm, fails to meet an eligibility requirement under 49 CFR Part 26 (e.g., personal net worth), the obligation to submit a notice of change applies. Annually, DBEs must submit a "no change" affidavit meeting the requirements of 49 CFR Part 26.83(j). DBE 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 C.F.R. Part 26 and comply with the annual submission requirements thereunder.

Section 2000. Personal Net Worth

The HMCAA will require all disadvantaged Owners of DBE applicants (at time of application) to submit a statement of personal net worth as provided in Appendix G to 49 CFR Part 26 ("Statement of Personal Net Worth"). Personal net worth shall be that amount as defined by the DOT from time to time in Part 26.67(a)(2)(i).

Section 2100. Information Collection and Reporting

A. Bidders List

The HMCAA will maintain a bidders list containing information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age of firm, annual gross receipts, and contact numbers of all DOT-assisted contract bidders. The HMCAA may collect this information from its previous contract bids, through prime bidders who report the names and addresses of firms who quote to them on subcontracts, recipient surveys, and notice to firms quoting on subcontracts to report information directly to the HMCAA, in addition to any other available means. The purpose of this list is to assist in calculating overall goals.

B. Reporting to DOT

The HMCAA will report DBE participation to the DOT annually for FAA funds and semiannually for FTA funds. These reports will reflect contracts awarded as well as payments actually made to DBEs on completed DOT-assisted contracts.

If the HMCAA fails to achieve its three (3) year goal in any individual year, in order to be regarded by the DOT as implementing its DBE program in good faith, the HMCAA shall analyze in detail the reasons for the difference between the overall goal and the HMCAA awards and commitments in that fiscal year; establish specific steps and milestones to correct the problems that the HMCAA has identified in its analysis to enable the HMCAA to fully meet its goal for the new fiscal year; and retain any analysis and corrective action in the HMCAA records for three (3) years as required by 49 CFR Part 26.47. HMCAA commits to fully implementing the corrective actions to which it has identified in its analysis.

C. Confidentiality

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 2200. Fostering of Small Business Participation

The HMCAA commits to facilitating participation on its DOT funded projects by small business entities (SBEs). As a means to facilitate this participation, the HMCAA commits to taking all reasonable steps to eliminate obstacles to the participation by small businesses, including unbundling contract requirements that may preclude participation in procurements by small businesses as a prime contractor or subcontractor, establishing set asides on certain projects where small business participation is available, and participating in outreach and technical assistance opportunities to promote, train, and encourage involvement by SBEs in DOT projects.

Because DBE goals should be met through a mixture of race conscious and race neutral methods and, by definition DBE firms are small businesses, the HMCAA is implementing its small business element into its current DBE Program in accordance with applicable law. The HMCAA hopes to facilitate competition by and expand opportunities for small businesses.

Small businesses must meet the same size guidelines utilized for DBEs Certified DBEs that meet the size criteria under the DBE Program are presumptively eligible to participate in the small business element of this program. Notwithstanding, a small business is not defined by the race or gender of its owner. A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field.

Strategies to be implemented by the HMCAA include:

1. **Set asides:** Where feasible, the HMCAA will establish race-neutral small business set-asides for prime contracts under a stated amount - this may be established as a percentage of the total value of the DOT funded project set aside for participation by small businesses. This “set aside” is a reserved portion of the contract that is exclusively for participation by small businesses. The determination will be made based upon the small business opportunities existing and the estimated availability of small businesses able to provide the requisite scope of work, giving consideration to the overall size and scope of the project to establish such a set aside percentage.
2. **Unbundling:** The HMCAA may, where practical, “unbundle” projects or separate large projects into smaller contracts which may be more suitable for small business participation. The HMCAA will conduct reviews to determine whether portions of a project could be “unbundled” or bid separate. The HMCAA may require bidders to identify elements of a contract or subcontract that are of a size that small businesses can reasonably perform. On prime contracts not having DBE contract goals, the HMCAA may require prime contractors to provide subcontracting opportunities of a size that small businesses can reasonably perform (rather than self-performing all the work involved). In making such decisions, the HMCAA will consider any economic or administrative burdens which may be associated with unbundling.
3. **Outreach and technical assistance:** The HMCAA will identify outreach and technical assistance opportunities to promote, train, and encourage involvement by SBEs in DOT projects. This may include internal programs established by the HMCAA and/or participation in community-established programs created to foster small business development. The HMCAA will also identify and promote opportunities for contractors to provide small business development through mentoring and protégé type programs. In addition, the HMCAA will consider alternative acquisition strategies and structuring procurements to facilitate the ability of joint ventures consisting of small businesses to compete for and perform prime contracts.

The HMCAA will endeavor to meet a portion of the HMCAA’s overall DBE goal through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses can reasonably perform. There are no limits on the number of contracts that may be awarded to firms participating in the DBE program. The HMCAA will make

reasonable efforts to avoid creating barriers to the use of new, emerging and untried businesses. Finally, aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE program that are eligible for DBE certification to become certified.

EXHIBIT "A"

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

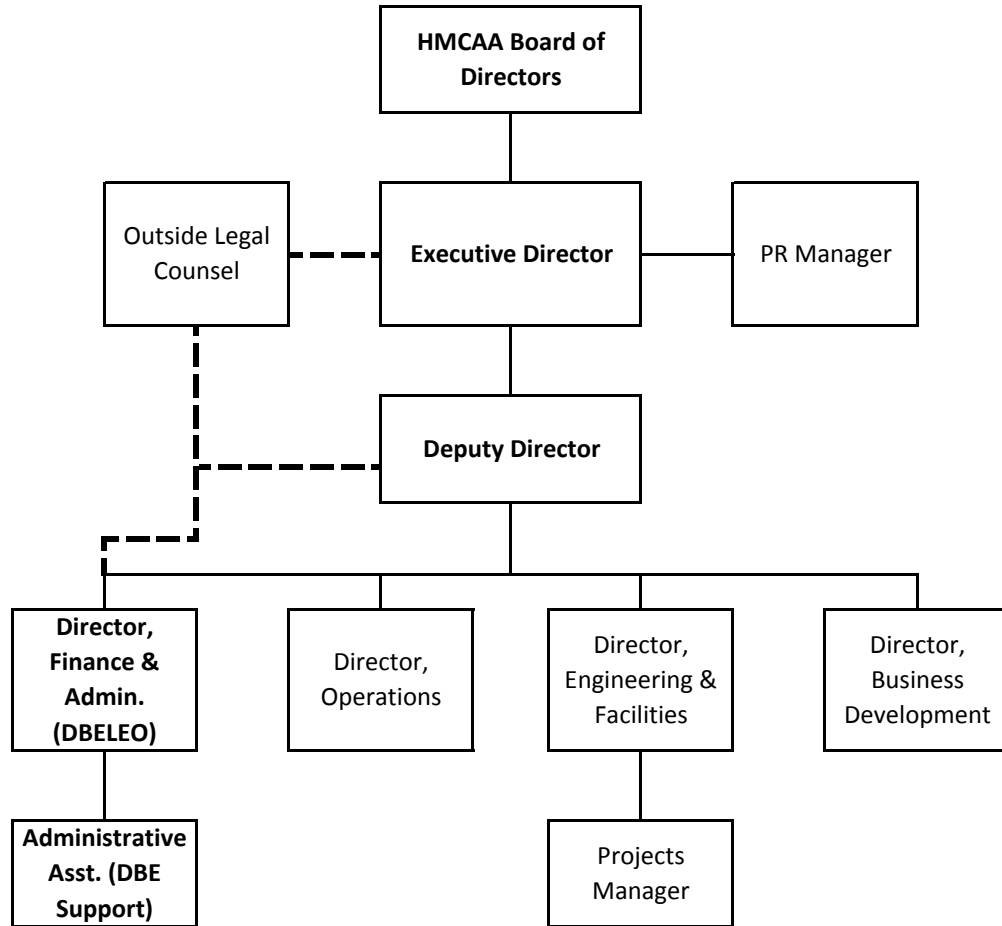


EXHIBIT "B"

MONITORING AND ENFORCEMENT MECHANISMS

The HMCAA may use any of the following regulations, provisions and contract remedies to ensure compliance by non-DBE contractors and/or subcontractors with 49 C.F.R. §26:

- I. Department of Transportation Regulation, *49 C.F.R. Part 26*, as amended, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, *Section 26.101 et seq.*
 - (a) Establishing Individual Contract DBE Goals for Contractor Accomplishment
 - (b) Requirement of Showing Good Faith Efforts at Contract Bid and/or Award if DBE Goals are Not Met
 - (c) Requirement of Replacing DBEs on Contracts where DBE is Terminated
 - (d) Onsite Documented Monitoring of Actual Performance of Work by DBEs to which Contractor has Committed
 - (e) Evaluation of Pay Requests from Contractors
 - (f) Review of Disbursements by Contractors
 - (g) Preparation of Written Certification by HMCAA that Contracting Records Have Been Reviewed and Work Sites Monitored
 - (h) Maintain tally of Actual Payments to DBE Firms for Work committed to such DBE at the Time of Contract Award
 - (i) Annual Preparation of Written Reports of DBE Commitments and Actual DBE Attainments

- II. Breach of Contract Remedies, *Alabama Common Law*
 - (a) Cancellation of Contract
 - (b) Specific Performance

- III. Fraud Remedies
 - (a) Program Fraud and Civil Remedies, *49 CFR Part 31*
 - (b) *Alabama Code §6-5-100 et seq* -- Cancellation of Contract

- IV. Responsibility Determinations in Contracts, *49 CFR Part 26.53*

- V. Termination and Disbarment Proceedings, *49 CFR Part 26.107, 49 CFR Part 29*