

Memphis-Shelby County Airport Authority
DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Memphis-Shelby County Airport Authority 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 Memphis-Shelby County Airport Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Memphis-Shelby County Airport Authority (MSCAA), has signed an assurance that it will comply with 49 CFR Part 26.

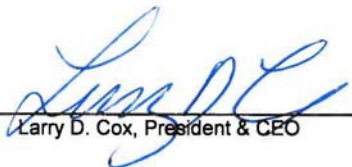
It is the policy of the Memphis-Shelby County Airport Authority to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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.

Richard V. White, A.A.E., Vice President Properties and Business Development, has been delegated as the DBE Liaison Officer. In that capacity, Richard V. White is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Memphis-Shelby County Airport Authority in its financial assistance agreements with the Department of Transportation.

The Memphis-Shelby County Airport Authority has disseminated this policy statement to the Memphis-Shelby County Airport Authority Board of Commissioners and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts in the following ways:

1. A copy of this policy statement will be posted on the MSCAA website.
2. A copy of this policy will be made available to each attendee of all informational and pre-bid meetings dealing with covered contracting opportunities.
3. This policy statement will be provided to each and every entity that enters into a covered agreement with the MSCAA.
4. This policy statement and the entire program will be made an appendix to the MSCAA General Policies and Procedures Manual.



Larry D. Cox, President & CEO

2-21-2012
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

The Memphis-Shelby County Airport Authority is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Memphis-Shelby County Airport Authority will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The Memphis-Shelby County Airport Authority 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 Memphis-Shelby County Airport Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

Since the Memphis-Shelby County Airport Authority will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to DOT as follows:

We will transmit to FAA annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

Bidders List: 26.11(c)

The Memphis-Shelby County Airport Authority will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following ways:

We will include a form with all solicitations requiring bidders to list the name, address, phone number and contact person for all firms who provided a bid or a quote regardless of whether these firms were ultimately selected as subcontractors or partners on a given contract. The Memphis-Shelby Airport

Authority will then follow up with each firm for which we need to obtain additional required information. All of this data will be maintained in the Airport Authority's data collection and management system.

Section 26.13 Federal Financial Assistance Agreement

The Memphis-Shelby County Airport Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The Memphis-Shelby County Airport Authority 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 Memphis-Shelby County Airport Authority'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 the Memphis-Shelby County Airport Authority of its failure to carry out its approved program, the Department may impose sanctions 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.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Memphis-Shelby County Airport Authority will receive an annual grant for airport planning or development totaling \$250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding \$250,000 annually, during the reporting period..

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Richard V. White, A.A.E., Vice President Properties and Business Development
2491 Winchester Rd., Suite 113,
Memphis, TN 38116,
Phone: 901-922-8000
Email: richardw@mscaa.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Memphis-Shelby County Airport Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the President & CEO 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 DBELO has a staff of five to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Memphis-Shelby County Airport Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in Tennessee.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Memphis-Shelby County Airport Authority's updated directory on certified DBEs and distinguishes them from ACDBEs.

The specific duties of other airport staff with responsibilities for the DBE Program are listed below:

Manager of Contract Compliance: Oversees the daily operation of the Contract Compliance department.

DBE Accountant: Prepares FAA reports and audits compliance.

Contract Analyst: Assists with monitoring of MMBC/UCA (our certification consultant) activities. Plans and coordinates outreach activities with internal departments and external community organizations/small business owners.

Contract Compliance Coordinator:

This position performs on- site audits for monitoring and enforcement purposes on MSCAA construction projects.

Contract Compliance Departmental Clerk: Maintains project files and compliance reporting files.

Section 26.27 DBE Financial Institutions

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

To date, we have identified the following such institutions:

- (1) Tri-State Bank
- (2) MMBC Loan Fund

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

The Memphis-Shelby County Airport Authority will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from the Memphis-Shelby County Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Memphis-Shelby County Airport Authority. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

The Memphis-Shelby County Airport Authority uses the State of Tennessee DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Tennessee revises the Directory monthly. We make the Directory available as follows:

It is available for review at the Memphis-Shelby County Airport Authority Administrative Facility, 3505 Tchulahoma Rd., Memphis, TN 38118. The Directory may also be found on the Memphis-Shelby County Airport Authority at www.mscaa.com.

Section 26.33 Over-concentration

The Memphis-Shelby County Airport Authority has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Memphis-Shelby County Airport Authority has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Memphis-Shelby County Airport Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by:

The Contract Compliance Department employs a DBE Accountant and Compliance Coordinator to specifically monitor the compliance of DBEs in addition to prime contractors/vendors.

Prime contractors/vendors are required to submit DBE Monthly Compliance Reports to the appropriate MSCAA Division Director and the Contract Compliance Department along with proof of DBE payment.

The Contract Compliance Accountant enters the data detailing DBE Accomplishments into the Contract Compliance Department database tracking covered agreements activity.

The Contract Compliance Accountant calculates the percentage and dollar amount of DBE participation.

If it appears that DBE participation is not consistent with the goal, then the Contract Compliance Department contacts the prime to confirm the accuracy of payment data received.

If it is determined that a problem exists, then the Contract Compliance Department in conjunction with the appropriate MSCAA Division representative works with the prime contractor/vendor in resolving the issue.

If necessary the Contract Compliance DBE Accountant and the Contract Compliance Coordinator will visit prime contractor/vendor to obtain any records necessary to confirm compliance with DBE regulations and/or policies.

4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.
5. We annually audit a sample of certified firms to ensure compliance with eligibility requirements.
6. The Memphis-Shelby County Airport Authority includes in all contractual agreements a right to audit, at MSCAA expense, contractor/vendor records to facilitate monitoring and ensure compliance with Part 26.

Section 26.39 Fostering small business participation.

The Memphis-Shelby County Airport Authority has created an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

This element will be submitted to the appropriate DOT operating administration for approval by February 28, 2012. The program element is included as Attachment **12**. As part of this program element, we will include the following strategies:

- (1) Establish a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, \$1 million or other amount.)
- (2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

We will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Memphis-Shelby County Airport Authority does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Memphis-Shelby County Airport Authority will establish 3-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the 3-year goal period. Goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Memphis-Shelby County Airport Authority does not anticipate awarding more than \$250,000 in FAA funding annually during the 3-year reporting period, we will not develop an overall goal; however the existing DBE program will remain in effect and the Memphis-Shelby County Airport Authority will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

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

In accordance with Section 26.45(f) the Memphis-Shelby County Airport Authority will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, the Memphis-Shelby County Airport Authority will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on

opportunities for DBEs, and the Memphis-Shelby County Airport Authority efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 2491 Winchester Rd., Suite 113, Memphis, TN 38116 and Memphis-Shelby County Airport Authority Administration Facility, 3505 Tchulahoma Rd., Memphis, TN 38118 for 30 days following the date of the notice, and informing the public that the Memphis-Shelby County Airport Authority and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Failure to meet overall goals.

If the Memphis-Shelby County Airport Authority awards and commitments are less than the goal for that year, we will:

- (1) Analyze the reasons for difference
- (2) Establish specific steps and milestones to fully meet the goal for the new fiscal year
- (3) As an Operational Evolution Partnership (OEP) Plan or primary airport we will submit, within 90 days of the end of that fiscal year, the analysis and corrective actions developed, to the appropriate FAA DBE Team

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program

Section 26.51(d-g) Contract Goals

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

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need 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., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-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. Examples of good faith efforts are found in Appendix A to Part 26.

Richard V. White, A.A.E., Vice President Properties and Business Development/DBE Liaison Officer 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.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The Memphis-Shelby County Airport Authority treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

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 5 business days of being informed by the Memphis-Shelby County Airport Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Larry D. Cox, President and CEO, Memphis Shelby County Airport Authority, 2491 Winchester Road, Suite 113, Memphis, Tennessee 38116, (901) 922-8000, larryc@mscaa.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

Memphis-Shelby County Airport Authority 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. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Memphis-Shelby County Airport Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 23.17 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Memphis-Shelby County Airport Authority will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact: Regina Martin, Manager Contract Compliance, 3505 Tchulahoma Rd., Memphis, TN 38118, Phone: (901) 922-8228, Email Address: reginam@mscaa.com

Our certification application forms and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Memphis-Shelby County Airport Authority is the member of a Unified Certification Program (UCP) administered by Tennessee Unified Certification Program. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will ensure the UCP reviews the eligibility of DBEs that we certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will be:

- Perform an on-site visit to the offices of the firm. We must interview the principal officers of the firm and review their resumes and/or work histories. We must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. We may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- If the firm is a corporation, analyze the ownership of stock in the firm;
- Analyze the bonding and financial capacity of the firm;
- Determine the work history of the firm, including contracts it has received and work it has completed;
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- Require potential DBEs to complete and submit an appropriate application form.
- We must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
- We must review all information on the form prior to making a decision about the eligibility of the firm.
- Certification will be completed within 60-90 days upon receipt of a completed application.

For firms that we ensure UCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility every year on the anniversary of the date of the certification. These reviews will include the following components:

- You must provide to the TNUCP, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form.
- If changes in management, ownership or control have occurred since the company's certification or last update, becomes the responsibility of the DBE to notify the TNUCP by attaching supporting documentation describing in detail the nature of such changes.
The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c)
- On-site reviews will be done.

"No Change" Affidavits and Notices of Change (26.83(j))

The UCP requires all DBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the Memphis-Shelby County Airport Authority's application for certification.

The UCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I agree that the TNUCP will be notified in writing within 30 days of any changes in ownership and/or control, personal net worth and/or size standard that would impact the firm's eligibility to remain in the program.

I, _____ (name of DBE firm owner{s}), swear¹ (or affirm) that there have been no changes in _____ (name of DBE firm) circumstances affecting its ability to meet the size, disadvantaged status, ownership or control requirements of 49 CFR Part 26 and 13 CFR Part 121. I swear (or affirm) there have been no material changes in the information provided with _____ (name of DBE firm) application for certification, except for any changes about which I have provided written notice to _____ (name of DOT recipient) pursuant to 49 CFR § 26.83(i).

I swear (or affirm) that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear (or affirm) that my personal net worth does not exceed \$1.3 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear (or affirm) _____ (name of DBE firm) continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26 and _____ (name of DBE firm) average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed _____ (dollar amount). I provide the attached size and gross receipts documentation to support this affidavit.

The UCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The UCP will notify all currently certified DBE firms of these obligations 60 days prior to certification anniversary date. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. We have a system for administrative appeals of certification decisions. Attachment 9 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the UCP have determined that the Tennessee State Certification Program will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative "firewall" to ensure that the Tennessee State Certification Program will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

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

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

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

The Memphis-Shelby County Airport Authority has a system for administrative appeals of certification decisions as set forth in Attachment 13

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We 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 provision of Federal or state law, if allowed by law we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Memphis-Shelby County Airport Authority or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

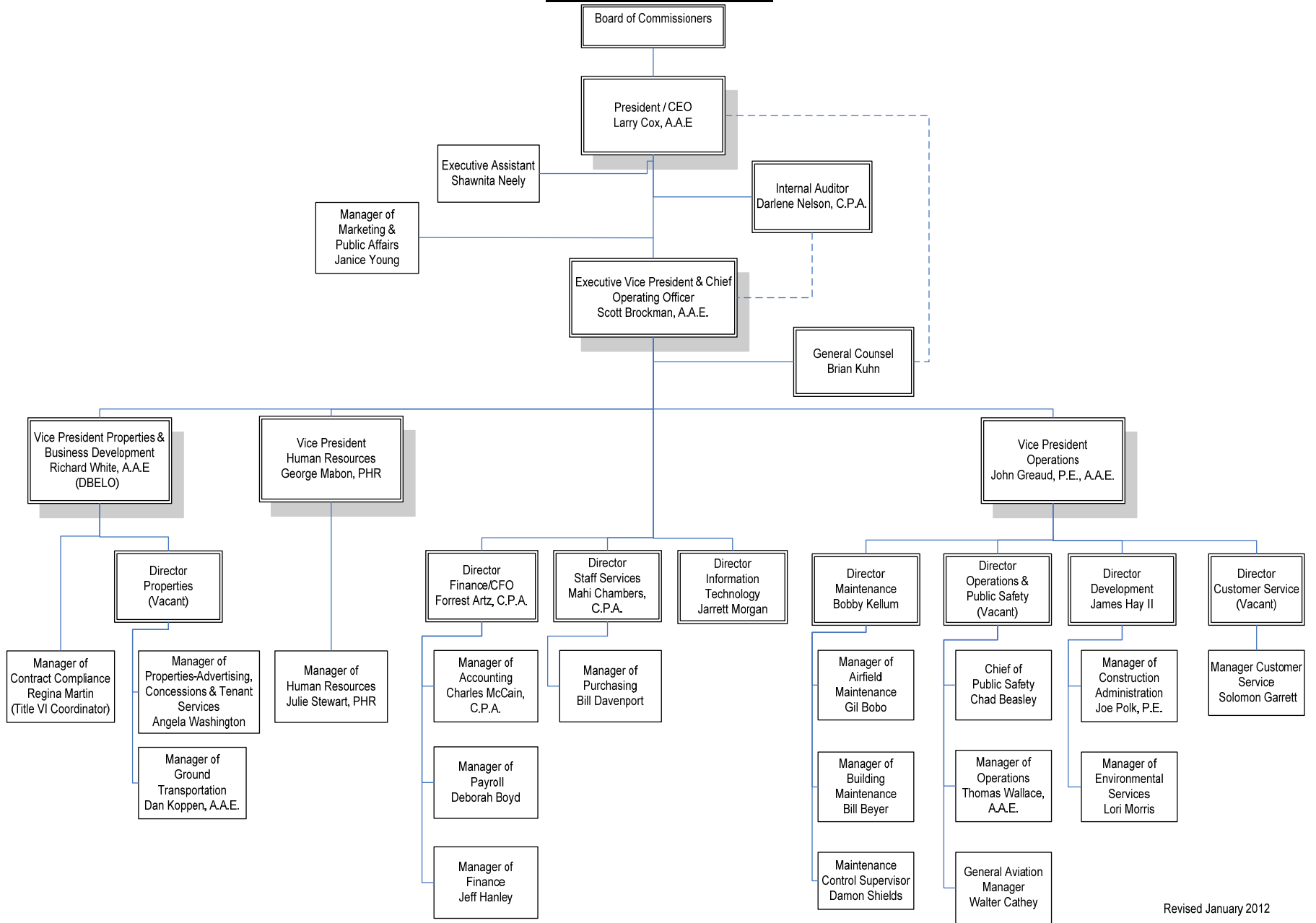
ATTACHMENTS

| | |
|---------------|---|
| Attachment 1 | Regulations: 49 CFR Part 26 or website link |
| Attachment 2 | Organizational Chart |
| Attachment 3 | Bidder's List Collection Form |
| Attachment 4 | DBE Directory or link to |
| Attachment 5 | Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race-Conscious Participation, Public Participation, and Contract Goal) |
| Attachment 6 | Form 1 & 2 for Demonstration of Good Faith Efforts or Good Faith Effort Plan |
| Attachment 7 | Monitoring and Enforcement Mechanisms <i>(If not included in program document)</i> |
| Attachment 8 | Certification Application Form [<i>form can be found at</i> http://osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/index.cfm] |
| Attachment 9 | Procedures for Removal of DBE's Eligibility or copy of the State's UCP |
| Attachment 10 | Signed UCP Agreement Form <i>(signature page only- recipient signing with UCP)</i> |
| Attachment 11 | Reporting Forms |
| Attachment 12 | Small Business Set-Aside Program |
| Attachment 13 | TN UCP Appeals Process |

Attachment 1
49 CFR Part 26 (Link)

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?region=DIV1:type=boolean;c=ecfr;cc=ecfr;sid=63ec8ee17cd685f61a5920f9f979d5e9;q1=dbe;rgn1=Section%20Heading;op2=and;rgn2=Section;op3=and;rgn3=Section;view=text;idno=49;node=49%3A1.0.1.1.20;rgn=div5>

Attachment 2 Organizational Chart



Revised January 2012

**Attachment 3
Bidder's List Collection Form**

Information on All Firms that Provided Bids or Quotes to:

This requirement applies to all firms, regardless of whether they are subs or primes, regardless of the gender or race of their owners, and regardless of whether they are ultimately chosen to participate in the contract. Please list below the name, address, phone number and contact person for every firm that provided you a bid or a quote on this project – even if you ultimately decided not to use the firm in preparing your final bid. The first line should be used for the **prime contractor** on this project. All sections must be completed to the best of your ability.

MSCAA Proj./Bid No.: _____

| Name of Firm | Full Address of Firm | Point of Contact | Phone No. | DMWBE ? Y/N | Firm Age | AGRR * |
|--------------|----------------------|------------------|-----------|-------------------|-------------|-----------|
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |
| | | | | | yrs | |

*Footnote: Please enter the letter for the category that best identifies your annual gross revenue.

AGRR =Annual Gross Revenue Ranges: **A** = Less than \$500,000 **B** = \$500,000 - \$1 Million **C** = \$1 - \$2 Million

D = \$2 - \$5 Million

Attachment 4 **DBE Directory Link**

MSCAA Directory:

<http://www.mscaa.com/themes/memairport/images/quicklist020912.pdf>

*Please note the directory does not have static link. It changes as the Directory is updated monthly.

It can always be reached at the bottom of the following link:

http://www.mscaa.com/business/enterprise_program

TNDOT Directory:

<http://www.tdot.state.tn.us/dbedirectinternet/Vendor.aspx>

Attachment 5
Overall Goal Calculation
(Includes Breakout of Estimated Race-Neutral & Race Conscious Participation, Public Participation and Contract Goal)

VIA Facsimile and Overnight Delivery

March 10, 2011

Mr. Anthony Brown,
 Civil Rights Officer
 U.S. Department of Transportation/FAA
 1701 Columbia Ave.
 College Park, GA 30337

Re: 2011 through 2013 DBE Goal and Methodology

Dear Mr. Brown:

Consistent with our most recent communication, the Memphis-Shelby County Airport Authority (MSCAA) submits its 2011-2013 DBE Overall Goal and Methodology. The overall DBE Goal for MSCAA's contracting opportunities for the years 2011-2013 is 23.17%. MSCAA will use race conscious means to achieve 20.17% of the goal and race neutral means to achieve remaining 3%. The methodology for achieving the overall goal is based upon 49 CFR 26 and MSCAA's December 2008 disparity study, *Race, Sex, and Business Enterprise: Evidence from Memphis, Tennessee*, (henceforth referred to as Disparity Study) by NERA Economic Consulting. The methodology for MSCAA's 2011-2013 DBE Goal is set out below:

I. Step One—DBE Base Figure

A. Amount of Goal

The MSCAA's overall goal for FYs 2011-2013 is 23.17%. Given that MSCAA anticipates letting **\$214,350,000.00** in DOT-assisted contracts during FYs 2011-2013, MSCAA has set a goal of expending **\$49,664,895.00** with DBEs.

B. Determination of the Market Area of the Study

The MSCAA's market area is the Memphis Metropolitan Statistical Area (MSA). The Disparity Study reviewed prime and subcontracts let by MSCAA from 1999-2005. During that period, 76.8% of MSCAA construction related contracting dollars were spent with firms within the MSA. During the same period, 89.9% of MSCAA architectural and engineering related service expenditures were spent within the MSA.

C. Determination of Relevant NAICS Codes

Based on information provided by the MSCAA staff concerning the proposed projects for this fiscal year, a list of NAICS codes corresponding to these projects was developed and is shown below in Table 2.

Table 2: Proposed FY 2011 thru 2013 Projects—Memphis International Airport

| Project | Activity | NAICS Code |
|---|---|------------|
| CCTV & Access Control Construction | Electrical Contractor - CCTV & Access Control | 238210 |
| | Electrical Contractor | 238210 |
| | Electrical Contractor - Low Voltage Wiring | 238210 |
| | Plumbing, Heating and Air Conditioning Contr. | 238220 |
| | Security & Fire Alarm Systems Contractor | 238210 |
| | Commercial Building Contractor - Interiors | 236220 |

| | | |
|---|---|--------|
| Upper Inner Drive Design | Engineering Services - Structural | 541330 |
| | Engineering Services - Electrical | 541330 |
| | Engineering Services - Plumbing | 541330 |
| Upper Inner Drive Construction | Highway, Street & Bridge Construction | 237310 |
| | Electrical Contractor | 238210 |
| | Plumbing and Mechanical Contractor | 238220 |
| Terminal Elevator Replacement Design | Architectural Services | 541310 |
| | Engineering Services - Electrical | 541330 |
| Terminal Elevator Replacement Construction | Other Bldg. Equipment Contractors -Elevator | 238290 |
| | Electrical Contractor | 238210 |
| Escalator Replacement | Other Bldg. Equipment Contractors -Elevator | 238290 |
| | Electrical Contractor | 238210 |
| | Commercial Building Contractor - Demolition | 541360 |
| | Commercial Building Contractor - Interiors | 236220 |
| Family Restrooms (Construction) | Indus. Building Construction | 236210 |
| | Plumbing, Heating and Air Conditioning Contr. | 238220 |
| | Plumbing, Heating and Air Conditioning Contr. | 238220 |
| | Electrical Contractor | 238210 |
| In-Line Baggage Building (Design) | Testing Labs | 541380 |
| | Engineering Services - Electrical | 541330 |
| | Engineering Services - Plumbing | 541330 |
| | Engineering Services - Mechanical | 541330 |
| | Architectural Services | 541310 |
| | Engineering Services - Conveyor | 541330 |
| | Geophysical Mapping and Survey Services | 541360 |
| | Engineering Services - Structural | 541330 |
| In-Line Baggage Building (Construction) | Indus. Building Construction | 236210 |
| | Elec. Contractors and Other Wiring Installation Contractors | 238210 |
| | Other Bldg. Equipment Contractors -Elevator | 238290 |
| | Plumbing, Heating, and AC Contractors | 238220 |
| | Plumbing, Heating, and AC Contractors | 238220 |
| Passenger Terminal Apron (Construction) | Highway, Street, and Bridge Construction | 237310 |
| | Oil and Gas Pipeline Construction | 237120 |
| | Plumbing, Heating, and AC Contractors | 238220 |
| | Other Bldg. Equipment Contractors -Jet Bridge | 238290 |
| | Elec. Contractors and Other Wiring Installation Contractors | 238210 |
| Apron Replacement (Design) | Engineering Services - Civil | 541330 |
| | Engineering Services - Geotechnical | 541330 |
| | Geophysical Surveying and Mapping Services | 541360 |
| Apron Replacement (Design) | Engineering Services - Fuel | 541330 |
| | Engineering Services - Electrical | 541330 |
| | Engineering Services - Structural/Specialty | 541330 |
| Winchester Structures Seismic Retrofit (Construction) | Engineering Services - Plumbing | 541330 |
| | Highway, Street, and Bridge Construction | 237310 |
| TWs H & R Crossings & Glycol Controls - Design | Engineering Services - Civil | 541330 |
| | Engineering Services - Electrical | 541330 |
| | Engineering Services - Plumbing | 541330 |
| | Engineering Services - Environmental | 541330 |
| | Engineering Services - Mechanical | 541330 |
| | Engineering Services - Structural | 541330 |

| | | |
|---|---|--------|
| TWs H & R Crossings & Glycol Controls - Construction | Indus. Building Construction | 236210 |
| | Elec. Contractors and Other Wiring Installation Contractors | 238210 |
| | Highway, Street, and Bridge Construction | 237310 |
| | Highway, Street, and Bridge Construction | 237310 |
| | Plumbing, Heating, and AC Contractors | 238220 |
| | Other Building Equipment Contractors | 238290 |
| Hurricane Creek Realignment/Channelization | Highway, Street, and Bridge Construction | 237310 |
| Hurricane Creek Second Taxiway Crossing | Highway, Street, and Bridge Construction | 237310 |
| | Highway, Street, and Bridge Construction | 237310 |
| | Elec. Contractors and Other Wiring Installation Contractors | 238210 |

Source: MSCAA staff

D. Determination of Relative Availability of DBEs in Market Area

The relative availability of DBEs within the market area, by major NAICS code, multiplied by the percent of estimated project costs in those same codes, yields a "weighted" percent of DBEs for the proposed FY 2011-2013 projects. DBE directories were used to determine the numerator, or the number of DBE firms in the market area. The results are shown below in Table 3.

Table 3: All Firms and DBEs—MSCAA by relevant NAICS Codes for FY 2010 Projects

| NAICS CODES | % Availability of DBEs* | % of estimated total expended | Weighted Total Availability |
|--|-------------------------|-------------------------------|-----------------------------|
| 236210 | 22.13 | 7.73 | 1.71 % |
| 236220 | 31.41 | 0.66 | 0.21 % |
| 237120 | 0.00 | 14.00 | 0.00 % |
| 237310 | 29.66 | 37.22 | 11.04% |
| 238210 | 26.07 | 10.88 | 2.84% |
| 238220 | 21.98 | 9.71 | 2.13 % |
| 238290 | 30.04 | 12.14 | 3.65 % |
| 541310 | 37.91 | 0.42 | 0.16% |
| 541330 | 34.08 | 6.93 | 2.36% |
| 541360 | 32.11 | 0.226 | 0.08% |
| 541380 | 32.00 | 0.006 | 0.02% |
| Weighted Step 1 DBE Base Figure | | | 24.20% |

*Source: "Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee"

E. Calculation of the DBE Base Figure

The Step 1 DBE Base Figure was derived by using a weighting process by which the percentage of dollars spent on various activities (represented by NAICS codes) were multiplied by the percentage of ready, willing, and able DBE firms to all relevant firms as indicated in Table 3 above. The Step 1 DBE Base Figure for the MSA is **24.20%**.

II. Adjustments to the DBE Base Figure:

After the DBE Base Figure has been developed, 49 CFR 26.45(d) provides that:

“...additional evidence in the sponsor’s jurisdiction be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal” .

A. Adjustment Factors

The regulations further state there are many types of evidence that may be considered when determining whether an adjustment to the base figure is appropriate including: the current capacity of DBEs to perform work in the DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years (49 CFR 26.45(d)(1)(i)).

The past history of overall utilization at MSCAA in recent years was examined relative to the above consideration. The following chart, taken from the 2008 Disparity Study, shows M/W/DBE utilization at MSCAA for the period 1999-2005. The overall M/W/DBE utilization for the reporting period as shown above for MSCAA is **17.07%**.

Table 4: M/W/DBE Utilization at Memphis International Airport: 1999 –2005

| M/W/DBE Type | Procurement Category | | | | | |
|--------------------------|----------------------|------------|--------------|-----------------|--------------------|-----------------|
| | Construction (%) | A&E (%) | Services (%) | Commodities (%) | Overall (%) | Concessions (%) |
| Black | 6.84 | 5.76 | 14.15 | 6.24 | 7.92 | 11.52 |
| Hispanic | 0.64 | 0.00 | 0.01 | 0.00 | 0.41 | 0.00 |
| Asian | 0.42 | 6.21 | 0.00 | 0.00 | 1.33 | 0.04 |
| Native American | 0.38 | 0.00 | 0.00 | 0.00 | 0.24 | 0.00 |
| Minority total | 8.28 | 11.97 | 14.16 | 6.24 | 9.90 | 11.56 |
| White Females | 10.40 | 1.91 | 1.42 | 0.28 | 7.17 | 2.15 |
| M/W/DBE Total | 18.69 | 13.88 | 15.58 | 6.53 | 17.07 | 13.71 |
| Non-M/W/DBE Total | 81.31 | 86.12 | 84.42 | 93.47 | 82.93 | 86.29 |
| Total (%) | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| Total (\$) | 269,944,698 | 73,026,814 | 73,089,426 | 10,105,865 | 427,066,804 | 486,048,282 |

Source: “Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee”

Since the study period, MSCAA has three additional years of DBE achievement data:

- 2007 - the achievement level was 21.80%
- 2008 - the achievement level was 18.30%,
- 2009 - the achievement level was 26.30%

Thus the average for all available years is **22.13%**.

B. Consultation

1. Evidence from Disparity Studies

The MSCAA commissioned NERA Economic Consulting to conduct the Disparity Study completed in 2008. The Disparity Study found both statistical and anecdotal evidence of business discrimination against M/W/DBEs in the Memphis area marketplace. The Disparity Study was particularly useful in establishing this period’s goal, as it provided information that was used to

determine availability in Step One and Utilization in the Step Two Adjustment. (See Tables 3 and 4 above.)

2. Data on Discrimination in the Market

The Disparity Study provided evidence supporting the view that M/W/DBE firms, particularly Black-owned firms, suffer discrimination in the small business credit market. Some of the evidence is listed below:

- Minority-owned firms were particularly likely to report that they did not apply for a loan over the preceding three years because they feared the loan would be denied.
- When minority-owned firms did apply for a loan, their requests were substantially more likely to be denied than other groups, even after accounting for differences in factors like size and credit history.
- When minority-owned firms did receive a loan, they paid higher interest rates than comparable White-owned firms.
- Far more minority-owned firms report that credit market conditions are a serious concern than is the case for White-owned firms.
- A greater share of minority-owned firms believes that the availability of credit is the most important issue likely to confront the firm in the next 12 months.

The Disparity Study also found that there are statistical disparities in the rates at which DBEs form businesses and in the earnings from those businesses. The overall business formation rate for minorities and women in the Construction and A&E sector is 15.8%. That rate would be 24.4%, or 54% higher, in a race- and gender-neutral marketplace. At this time, past goal achievement at MSCAA does not suggest sufficient DBE capacity to support a goal adjustment of this nature. Nevertheless, MSCAA intends to continue its efforts to remedy discrimination and to develop and enhance new DBE capacity. We will continue to monitor the situation and determine whether future adjustments are advisable.

C. Adjustment to DBE Base Figure: Memphis International Airport

Considering this additional information, MSCAA determined it was appropriate to adjust the DBE Base Figure of 24.20%, by adding the overall M/W/DBE utilization for the years 1999 to 2005, which was shown in Table 4 above, i.e., 22.13% to the baseline = 46.33% and averaging the total, for an adjusted overall goal of **23.17%**.

III. Process

Every three years, MSCAA will normally submit its overall goal to the FAA on August 1st. MSCAA is submitting its overall goal of 23.17% at this time. Additionally, MSCAA has written letters to the state Departments of Transportation for: Tennessee, Arkansas, and Mississippi; the Hispanic Business Alliance, the Mid-South Minority Business Council, the Black Business Association of Memphis, the Uniform Certification Agency (UCA), Latino-Memphis Connection, and the Memphis Urban League, to solicit comments regarding MSCAA's goal and program.

This week, MSCAA also published a notice of the proposed overall goal in the *Commercial Appeal*, *La Prensa Latina*, and *Tri-State Defender*. The notice informed the public that the proposed goal and its rationale were available for inspection during normal business hours at the MSCAA's administrative offices for 30 days following the date of the notice. Within the notice, the public is also informed that MSCAA would accept comments on the goals for forty-five (45) days from the date of the notice. The notice included addresses and particular offices and individuals to which comments could be addressed. Finally, the notice is being posted on the Authority's website (www.mscaa.com).

If MSCAA receives comments and/or information during this public participation process, MSCAA will follow-up with an additional letter to you and amend the goal if appropriate. However, based on past public participation processes, MSCAA does not anticipate an adjustment to the goal.

MSCAA will continue to establish goals on a project by project basis using the data and information contained in the Disparity Study as reviewed and adjusted by MSCAA staff as appropriate and pursuant to federal law.

IV. Breakout of Estimated Race-Neutral/Race-Conscious Participation

MSCAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. MSCAA will use a combination of the following race-neutral means to increase DBE participation:

- A. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- B. Disseminating information on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors) and holding pre-bid meetings to facilitate interaction between potential contractors and potential subcontractors whenever practical and beneficial;
- C. Providing technical assistance and other services including exploring opportunities for training to increase DBE participation in areas where there has historically been a zero goal, and;
- D. Ensuring that prime contractors are aware of and know how to obtain the approved DBE listing from the Uniform Certification Agency (UCA) and other agencies, who maintain DBE directories.

MSCAA estimates that, in meeting its overall goal of **23.17%**, that it will obtain 3.0% from race-neutral participation and 20.17% through race-conscious measures. The basis for this projected split comes from several sources. In 2009, the most recent year for which information is available, MSCAA exceeded its overall goal of 23% by 3.30% achieved 26.30%. However, during the study period (1999-2005) there were no prime construction contracts awarded to DBEs and only .2% of A/E dollars were awarded to DBE primes. Additionally, DBE participation was at or slightly below the overall annual goal in most of the study period years. Still, MSCAA seeks every opportunity to meet our overall annual goals through race neutral means and for that reason; we are establishing a goal of obtaining at least 3.0% DBE participation through race-neutral means during the years 2011-2013.

MSCAA will adjust the estimated breakout of race-neutral and race-conscious participation, as needed, to reflect actual DBE participation (49 CFR 26.51(f)) and it 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 as a prime contractor obtained 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.

V. CONTRACT GOALS

MSCAA will use contract goals to meet any portion of the overall goal that it does not anticipate being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not anticipated to be met through the use of race-neutral means.

MSCAA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract and

the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). MSCAA will express its contract goals as a percentage of the federal share of a DOT-assisted contract.

Should you have questions in regard to this goal and its methodology, please contact me at (901) 922-8031 or Regina Martin at (901) 922-8228.

Sincerely,

Richard White, A.A.E.
DBE Liaison Officer

Attachment 6.1

Demonstration of Good Faith Efforts or Good Faith Effort Plan

RESPONDENT D/M/WBE GOALS ACCOMPLISHMENT STATEMENT

The undersigned Respondent has satisfied the requirements of the bid/proposal specification in the following manner (please complete the appropriate spaces):

_____ The Respondent is committed to a minimum of _____% D/M/WBE utilization on this contract.

_____ The Respondent is unable to meet the D/M/WBE goal of _____% but is committed to a minimum of _____% D/M/WBE utilization on this contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26. **The Respondent should attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative must be written on company letterhead and signed.**

Please provide an explanation for the percentage quoted above:

Provide an explanation of the dollar value of D/M/WBE's participation and compensation and how this has been determined to meet the specific goal requirements of this solicitation in whole or part.

If D/M/WBE and company will enter into a Joint Venture, please describe the terms of the relationship and attach a copy of the contract between the parties.

It is the present intent of the Respondent to utilize the specific D/M/WBE firms identified in this proposal in the execution of this contract. If for any reason, one or more of the D/M/WBE identified here are unable or unwilling to participate, the Respondent will make good faith efforts to replace the D/M/WBE with a similar D/M/WBE. The Authority D/M/WBE Good Faith Procedures are provided in this package and apply to this proposal.

Respondent's Name: _____

State Registration No.: _____

Federal Tax ID No.: _____

By: _____

Signature and Title

Date

Attachment 6.2

D/M/WBE ASSURANCE STATEMENT/LETTER OF INTENT

(D/M/WBE's current certification must be attached.)

RESPONDENT:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

D/M/WBE:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Description of work to be performed by D/M/WBE:

The Respondent is committed to utilizing the above-named D/M/WBE for the work described above. The estimated dollar value of this work is \$ _____, which is _____% the total base bid proposal.

AFFIRMATION

The above-named D/M/WBE affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____

Signature of D/M/WBE and Title Date Name

By: _____

Signature of 2nd/3rd Tier Subcontractor Date Name
and Title

If the Respondent does not receive award of the prime contract, any and all representations in this letter of Intent and Affirmation shall be null and void.

By: _____

Signature of Respondent and Title Date Name

Attachment 7

Monitoring and Enforcement Mechanisms

- A. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- B. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
- C. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished by:
- The Contract Compliance Department employs a DBE Accountant and Compliance Coordinator to specifically monitor the compliance of DBEs in addition to prime contractors/vendors.
 - Prime contractors/vendors are required to submit accomplishment reports to the appropriate MSCAA Division Director and the Contract Compliance Department along with proof of DBE payment.
 - The Contract Compliance Accountant enters the data detailing DBE Accomplishments into the Contract Compliance Department database tracking covered agreements activity.
 - The Contract Compliance Accountant calculates the percentage and dollar amount of DBE participation.
 - If it appears that DBE participation is not consistent with the goal, then the Contract Compliance Department contacts the prime to confirm the accuracy of payment data received.
 - If it is determined that a problem exists, then the Contract Compliance Department in conjunction with the appropriate MSCAA Division representative works with the prime contractor/vendor in resolving the issue.
 - If necessary the Contract Compliance DBE Accountant and the Contract Compliance Coordinator will visit prime contractor/vendor to obtain any records necessary to confirm compliance with DBE regulations and/or policies.
- D. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.
- E. We annually audit a sample of certified firms to ensure compliance with eligibility requirements.
- F. The MSCAA includes in all contractual agreements a right to audit, at MSCAA expense, contractor/vendor records to facilitate monitoring and ensure compliance with Part 26.

Attachment 8
Certification Application Form



Certification Application Form.PDF

Attachment 9
Procedures for Removal of DBE's Eligibility or Copy of the State's UCP

By – Laws
of
Tennessee State Certification Program

Third Party Challenge Committee

Article I. Purpose

The purpose of the Third Party Challenge Committee is to provide firms whose DBE certification has been challenged alleging that a currently certified firm may be ineligible, an opportunity for an informal hearing or to present in writing reasons that its certification should not be removed.

Article II. Membership

Members – The committee shall consist of five (5) Tennessee State Certification Program partners with an alternate in the case that one of the partners is the one who is the original certifying partner, in which the partner will reclude himself. Members shall serve a maximum term of three (3) years.

Article III. Officers

Section 1. Elections – The members of the Third Party Challenge Committee shall elect on the first meeting a Chairperson and a Vice-Chairperson.

Section 2. Chairperson – The Chairperson shall be the principal executive officer of the committee and in general shall supervise and control all of the business and affairs of the committee. The chairperson when present shall preside at all meetings of the committee. Whoever is elected will serve for two years from the date of election.

Section 3. Vice Chairperson - The Vice Chairperson in the absence of the chairperson shall perform the duties of the chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the chairperson and shall perform such other duties as from time to time may be assigned by the chairperson.

Article IV. Meeting

Section 1. Place of meetings – The chairperson may designate any place within the headquarters office of the Tennessee Department of Transportation or any other selected location as the place for any committee meeting(s), hearings, special meeting, telecommunication or teleconferencing.

Section 2. Notice of Meetings – Written notice stating the place, day and hour of the meeting and, in case of special meeting, the purpose or purposes for which the meeting is called shall be delivered before the date of the meeting either personally or by mail. In the alternative, the chairperson may otherwise advise the members of said meetings.

Section 3. Quorum - Three (3) members of the committee shall constitute a quorum at a committee meeting. If less than a quorum is represented at a meeting, those committee members present must adjourn until a time when a quorum is present. No business may be conducted unless a quorum is present.

Article V. Sub-Committees

The Chairperson may appoint sub-committees from with the TSCP (including consultants) as the need arises.

Article VI. Order of Business

The following order of business shall be observed at all meetings: (a) call the roll; (b) reading corrections, and approval of minutes of previous meeting; (c) report of/from sub-committees; (d) new business relating to DBE Review Committee; and (e) hearing of appeals or reviewing of submitted rebuttal.

Article VII. Rebuttals

Procedure – The office or TSCP member presenting the DBE's removal will be given an opportunity to present their information and reasons for the proposal of removal. The respondent(s) and other interested parties will be given an opportunity to appear in person and/or be appropriately represented and will be given an opportunity to rebut the findings of TSCP member. The Committee shall render a decision when all information has been heard within seven (7) working days from the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time. If the DBE elected to present in writing their rebuttal, the Committee shall review the submitted rebuttal and render a decision within seven (7) working days form the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time.

Third Party Challenge Committee Members

Ross Webb, TDOT

Joe Claiborne, MSCAA

Alan Jones, MKAA

Kebbyn Bryant, MNAA

Annie Powell, CARTA

Pat Downs, MTA (alternate)

Attachment 10
Signed UCP Agreement Form



Signed UCP Agreement Form.PDF

Attachment 11
Reporting Forms



Final Reporting
Form.xlsx



acdbe_accomplishj
ent_rpt_form_excel.x

Attachment 12

Small Business Set-aside Program

MEMPHIS SHELBY COUNTY AIRPORT AUTHORITY (MSCAA)

Section 26: 39- Fostering Small Business Participation

A. Purpose and Objective of this Program Element

This element, required by 49 CFR 26.39, and included as an amendment to our DBE Program Plan, is called the Small Business Participation Program (SBPP or SBP Program). Part 26.39 requires recipients to “structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.” The SBPP is also part of MSCAA’s efforts to fulfill part 26.51, i.e. to meet the “maximum feasible portion” of its overall goal by using race-neutral means of obtaining DBE participation. Therefore, implementation of the SBPP will be based on the standard of business size and personal net worth, without regard to race or gender of the business owner.

MSCAA’s plan consists of three major components. First, we will implement a small business set-aside pilot program for one year OR 3 pilot set aside contracts, whichever comes first. Afterwards, the set-aside program will be evaluated to determine its success. Second, the MSCAA will make additional efforts to prevent the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors. Third, MSCAA has arranged to have a range of supportive services made available to verified small businesses. Taken together, we believe that these program components will greatly assist small businesses.

MSCAA perceives the objectives of this section to be consistent with its DBE Program Policy Statement, which states in part:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To help remove barriers to the participation of DBEs in DOT assisted contracts...

Our Policy Statement and the SBP Program are consistent with the MSCAA’s and the Airport’s long history of creating and implementing economic development strategies to support and encourage business growth at all levels.

B. SBPP Strategy

The MSCAA and the Memphis International Airport intends to carry out the objectives of this part by employing the following strategies and supporting activities:

1. **Establishment of Pilot Small Business Set-Aside Program:** The MSCAA and the Airport proposes that certain prime contracts be set-aside solely for competition by firms that have been verified as small businesses in accordance with 13 CFR 121 and are owned and controlled by individuals with personal net worths at or below the level established in 49 CFR 26.67. MSCAA will initially identify 3 projects to be completed by verified Small Business Concerns and then will evaluate the program and its effectiveness before setting-aside additional contracts.
2. **Reduction in “Size” of Prime Contracts – Unbundling:** Each program year, the Compliance Staff will coordinate with the Development Staff, to review upcoming projects and, where feasible, will “unbundle” larger projects. Pursuant to this review process,

staff will seek to "break up" larger contracts so that smaller "prime" contracts might be let of a reasonable size so that Small Business Concerns (SBC's) may reasonably bid as primes. In undertaking this task, the airport will seek to balance the need to provide more opportunities for small businesses to gain experience as primes with the need to limit contract administration cost.

3. **Provision of Supportive Services:** MSCAA has arranged for its certification partner, the Mid-South Minority Business Council to provide a range of supportive services to verified small businesses. These services are set out in Section E. below.

C. Definitions of Small Business

For purposes of this program element the definition of "Small Business" shall have two components:

A. The firm must meet the requirements contained in 49 CFR, 26.5, which states that **"Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b), " and**

B. At least 51% of the firm's owners, including those who also control the firm, must meet the personal net worth requirements set out in 49 CFR 26.67.

Under this definition, DBE firms that have up-to-date certifications will automatically qualify as Small Businesses. MSCAA will announce the SBP Program at least six months before offering any small business set-aside contracts in order to give non-DBE firms, regardless of the race or gender of their owners, sufficient time to submit the necessary forms and documents to enable them to be verified as Small Businesses. Notwithstanding the fact that non-DBE firms may, subject to the verification of firm size, affiliation and the personal net worth of their owners, participate in the SBP Program, only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts in this program.

D. Verification Standards and Procedures

For purposes of the SBP Program, the MSCAA will require verification (for non-DBE Small Businesses) and/or certification (for DBEs) by the Tennessee Unified Certification Program (TNUCP). Specifically, applications for verification or certification should be submitted to:

Uniform Certification Agency /Mid-South Minority Business Council
158 Madison Ave Suite 300
Memphis, TN 38103
901-525-6512
www.mmbc-memphis.org

MSCAA retains complete signature authority for all applications and all applications and files maintained with UCA are audited for accuracy by MSCAA Office of Contract Compliance annually or as required.

E. Supportive Services

The MSCAA and Memphis International Airport is a certifying member of the Tennessee UCP and contracts the certification services to a local agency, the Mid-South Minority Business Council, (MMBC) which operates an entity called the Uniform Certification Agency (UCA). The MMBC contract also includes a number of supportive and/or business development services for DBE firms and/or

potential DBE firms. Often firms which make contact with the Airport are referred to the MMBC. These services, as relevant, will also be made available to verified small business concerns. Currently, these services include:

1. Assisting contractors by providing financial assistance through the **MMBC Working Capital Loan Fund**.
2. Access to the Technical Assistance and Development Pool (TADP), a 501(c)(3) training and development program established by the Mid-South Minority Business Council (MMBC) to highlight the required experience and knowledge needed to advance minority economic development. With some of its core initiatives being; Quarterly Training Seminars; TADP Referral Network; and Strategic Consulting Services.
3. An annual trade show that promotes interaction between minority and women suppliers and corporate buyers called the Economic Development Fair. The Airport actively encourages businesses that come in contact with the airport to take advantage of this opportunity.
4. Dissemination and publication of business opportunities and bid information.
5. MMBC currently provides outreach efforts, i.e., information sessions, open houses, etc., as part of its recruitment efforts of qualified DBE firms. This will be expanded to include potential Small Business concerns.

F. Implementation Plan and Time-Table

The MSCAA and Memphis International Airport proposes to have its SBPP fully implemented within 120 days (four months) of the FAA final approval of the Plan. The Airport will utilize the time frame to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

1. Review, in coordination with the Development Staff, all upcoming projects to try and pre-determine which, if any, will be conducive for application of either of the two selected SBPP strategies, described in Section B, above.
2. Review, in coordination with the Development Staff, Compliance, Staff Services and the Legal staff, the necessary revisions and modifications to solicitation language etc., prior to implementation.
3. Coordination with the Mid-South Minority Business Council (MMBC), which is the Airports contracted entity currently providing certification assistance, as well as some supportive services, to prepare appropriately for the potential expanded role.

G. Principal Responsible Person

The principal responsible person for overseeing and implementing the Airport's SBPP, will be the Disadvantaged Business Enterprise Liaison Officer.

Attachment 13

TN UCP Appeals Process

Logo

Letterhead

**Tennessee
Uniform
Certification
Program**

Member Agencies

Tennessee Department
of Transportation

Metropolitan Knoxville
Airport Authority

Chattanooga Metropolitan
Airport Authority

Memphis Shelby County
Airport Authority

Metropolitan Nashville
Airport Authority

Chattanooga Area Regional
Transportation Authority

Memphis Area
Transit Authority

Jackson Transit Authority

Smyrna Airport Authority

Tri-Cities Airport Commission

Clarksville Transit System

Regional Transportation
Authority [Middle TN]

Metropolitan Transit Authority
[Davidson County]

Knoxville Area Transit

Jackson Airport Authority

Johnson City Transit

CERTIFIED MAIL

Denial / Appeals Process

DATE

NAME

COMPANY NAME

ADDRESS

CITY, STATE ZIP CODE

RE: Disadvantaged Business Enterprise Program Application

Dear APPLICANT:

The Tennessee Uniform Certification Program (TNUCP) has made a determination that ****COMPANY NAME**** does not meet the eligibility requirements of **49 CFR Part 26**, for participation as a disadvantaged business enterprise.

The specific reason for denial includes the following:

Failure to respond to the requests of the TNUCP. This office mailed three certified letters, dated ****DATE****, ****DATE**** and ****DATE****, requesting information needed to make a determination for your application. In addition, two telephone calls were made to you on ****DATE**** and ****DATE****. The ****DATE**** (last letter) letter specified this information was required to be received by this office no later than ****DATE****. All three letters have been enclosed for your review.

Federal Regulation 49 CFR Part 26 specifically states:

§26.89 What is the process for certification appeals to the Department of Transportation?

To file a DBE certification appeal, firms should send a letter to the U.S. Department of Transportation within 90 days from the date of denial by a DOT recipient. The appeal should at a minimum include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information you believe to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with; or who has rejected its application for certification; or removed the firm's eligibility within one year prior to the date of the appeal. All appeals should be submitted to:

**U.S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Program Development Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754 TTY: 202-366-9696 Fax: 202-366-5575**

You may contact our office with questions regarding this letter.

Sincerely,

Name
Title

Enclosure

cc: file