

POLICY AND PROGRAM  
FOR PROJECTS FUNDED BY  
THE UNITED STATES DEPARTMENT OF TRANSPORTATION

MAY 2018



**BIRMINGHAM-SHUTTLESWORTH INTERNATIONAL AIRPORT**

BIRMINGHAM AIRPORT AUTHORITY

DBE PROGRAM

POLICY STATEMENT

### **Section 26.1, 26.23 Objectives/Policy Statements**

The Birmingham Airport Authority (Birmingham International Airport) 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 Birmingham Airport Authority is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Birmingham Airport Authority has signed airport grant assurances that it will comply with 49 CFR PART 26.

It is the policy of the Birmingham Airport Authority, as provided in 49 CFR Part 26.1(f) to promote the use of DBEs in all types of federal-assisted contracts and procurement activities conducted by recipients. 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:

- To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT assisted contracts;
- To assist the development of firms that can compete successfully in the market place outside the DBE Program;
- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities; and
- To make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Leslie Murray has been delegated as the DBE Liaison Officer. In that capacity, Mrs. Gillam 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 Birmingham Airport Authority in its financial assistance agreements with the Department of Transportation.

The Birmingham Airport Authority has disseminated this policy statement to the Board of Directors 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. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the Birmingham Airport Authority in its financial assistance agreements with the Department of Transportation.

---

Interim President and CEO

---

Date

BIRMINGHAM AIRPORT AUTHORITY

5900 AIRPORT HIGHWAY

Birmingham, Alabama 35212

BIRMINGHAM AIRPORT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE POLICY AND PROGRAM

SECTION 1 — POLICY AND OBJECTIVES

The United States Congress has determined that certain groups of people described as Disadvantaged Business Enterprises (DBEs) have been disadvantaged due to discrimination in the transportation industry. It is therefore the policy of the Birmingham Airport Authority (Authority) that small business concerns owned and controlled by socially and economically disadvantaged individuals referred to by Congress, as DBEs will have the maximum opportunity to compete for and participate in the performance of construction, architectural, engineering, and professional services contracts procured by the Authority funded in whole or in part by the United States Department of Transportation (USDOT). In addition, neither the Authority nor its contractors will discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. In accordance with 49 CFR Part 26, the Authority is required to recognize and certify these DBEs in its construction, architectural, engineering and professional services and management contracts. Concession-related contracts will be governed by the Authority's Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program.

Section 1.1 Policy

The Authority hereby covenants and agrees that no person will be excluded from participation in, or denied the benefits of, or otherwise discriminated against, in connection with the award and performance of any contracts covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE program, the Authority also agrees not to use, whether directly or through contractual or other arrangements, criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin. The Authority, as a recipient of airport funds authorized by 49 U.S.C. 47101, et seq., does hereby covenant and agree to maintain its DBE program in accordance with 49 CFR Part 26. The DBE Policy can be found at [https://www.faa.gov/about/office org/headquarters offices/acr/bus ent program](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program).

Section 1.2 Objectives

The Authority's DBE policy and program, in accordance with 49 CFR Part 26, seeks to achieve several objectives:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the Authority's 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 USDOT-assisted contracts;
6. To assist in the development of firms so that they can compete successfully in the marketplace outside the DBE program;
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities; and
8. To make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

### Section 1.3 Application of 49 CFR Part 26

The recipients of the following types of federal funds are required to comply with 49 CFR Part 26:

- A. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178m 112 Stat. 107.
- B. Federal transit funds authorized by Titles I, II, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.
- C. Airport funds authorized by 49 U.S.C. 47101, et seq. If a recipient is letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, 49 CFR Part 26 does not apply to the contract. If a recipient is letting a contract in which UDSOT financial assistance does not participate, 49 CFR Part 26 does not apply to the contract.

### Section 1.4 USDOT Assistance

- A. The Authority is a recipient of USDOT funds in excess of \$250,000.
- B. The Authority will continue to carry out its DBE policy and program until all USDOT funds are expended.
- C. Each financial assistance agreement the Authority signs with a USDOT Operating

Administration (OA), or a primary recipient, will include the following assurance:

"The Authority will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The Authority's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, 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 Authority of its failure to carry out its approved program, the USDOT 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)."

- D. The Authority will not use quotas for DBEs on USDOT-assisted contracts subject to 49 CFR Part 26. The Authority will not set aside contracts for DBEs on USDOT-assisted contracts subject to 49 CFR Part 26, except that, in limited and extreme circumstances, the Authority may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.
- E. The Authority's DBE policy and program will be incorporated by reference in every USDOT-assisted agreement.

## SECTION 2—DEFINITIONS USED

### Section 2.1 Applicable Definitions

The definitions of 49 CFR Part 26.5 are incorporated herein as follows:

- A. Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.
  - 1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
    - (a) One concern controls or has the power to control the other; or
    - (b) A third party, or parties, controls or has the power to control both; or
    - (c) An identity of interest between or among parties exists such that

affiliation may be found.

2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

B. Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a native village or native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

C. Alaska Native Corporation or ANC means any regional corporation, village corporation, urban corporation, or group corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

D. Compliance means correctly implementing the requirements of this policy and program.

E. Contract means a legally binding relationship obligating a seller to furnish supplies or services

(including, but not limited to, construction and professional services) and the buyer to pay for them.

F. Contractor means one who participates, through a contract or subcontract, at any tier, in a USDOT-assisted highway, transit, or airport program.

G. Department or USDOT means the U. S. Department of Transportation, including the Office of the Secretary, and the Federal Aviation Administration (FAA).

H. Disadvantaged Business Enterprise or DBE means a for-profit small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

H. DBE Liaison Officer or DBELO means the individual who is responsible for developing and implementing the DBE policy and program in accordance with 49 CFR Part 26. The DBELO is also responsible for administering and managing the DBE policy and program on a day-to-day basis; for carrying out technical assistance activities for DBEs;

and for disseminating information on available business opportunities so that DBEs are provided a maximum opportunity to participate in Authority contracts in accordance with 49 CFR Part 26.

- I. Alabama Unified Certification Program or ALUCP means the standards and criteria utilized in the certification process are uniform and thus reduce the temptation and opportunity for a firm to "forum" shop for certification. The ALUCP provides "one stop shopping" for all firms seeking certification as a DBE in Alabama.
- K. Good Faith Efforts means efforts to achieve a DBE goal or other requirement of this policy and program, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. All good faith efforts are required at the time of bid openings.
- L. Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
- M. Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the state in which the tribe, band, nation, group, or community resides. See definition of tribally-owned concern in this section.
- N. Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- O. Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the state of Hawaii.
- P. Native Hawaiian Organization means any community service organization serving Native Hawaiians in the state of Hawaii which is a not-for-profit organization chartered by the state of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
- Q. Noncompliance means the requirements of this policy and program have not been correctly implemented.
- R. Operating Administration or OA means any of the following parts of USDOT: FAA. The administrator of an operating administration includes his or her designees.
- S. Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his



or her own share of assets held jointly or as community property with the individual's spouse.

- T. Policy means the general principles or plan by which the Authority is guided in its management of public affairs.
- U. Primary Industry Classification means the Standard Industrial Classification (SIC) code designation that best describes the primary business of a firm. The SIC code designations are described in the SIC Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce, Springfield, VA, 22261. NTIS also makes materials available through its web site, [www.ntis.gov/naics](http://www.ntis.gov/naics).
- V. Primary Recipient means a recipient to which USDOT financial assistance is extended and who passes some or all of it on to another recipient.
- W. Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the Authority will determine the principal place of business for DBE program purposes.
- X. Program means any undertaking on the Authority's part to use USDOT financial assistance, authorized by the laws, to which this policy applies.
- Y. Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women owned DBEs.
- Z. Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this policy and program, race-neutral includes gender-neutrality.
- AA. Reconsideration Official is an official who did not take part in the original determination that the contractor failed to meet a DBE goal or make adequate good faith efforts to do so; denial of an applicant's request for DBE certification; or notice of intent to remove DBE certification.
- BB. Recipient is any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
- CC. Secretary means the Secretary of Transportation or his/her designee.
- DD. Set aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
- EE. Small Business Administration or SBA means the United States Small Business Administration.
- FF. Small business concern means, with respect to firms seeking to participate as DBEs in

USDOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations indicates it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b). See SBE Program attached as Attachment 9

GG. Socially and economically disadvantaged individual means any individual who is a citizen, or lawfully admitted permanent resident, of the United States and who is:

1. Any individual whom the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, the members of which are rebuttably presumed to be socially and economically disadvantaged:
  - a. Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
  - b. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - c. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - d. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - e. Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - f. Women; or
  - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

HH. Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

II. USDOT-assisted contract means any contract between a recipient and a contractor, at any tier, funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

## Section 2.2 Changes to Definitions

Unless provided herein, no other definitions will apply. In the event such definitions in 49 CFR Part 26.5 is revised or amended, such changes will be incorporated hereto.

## SECTION 3 — DETERMINING ELIGIBILITY

### Section 3.1 Ownership

A. In determining whether the socially and economically disadvantaged owners in a firm own the firm, the Authority must consider all the facts in the record, viewed as a whole. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

1. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
2. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
3. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
4. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
5. All securities that constitute ownership of a firm will be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of the firm, unless:
  - a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

- b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- 6. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- 7. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
  - a. The owner's expertise must be:
    - (1) in a specialized field;
    - (2) of outstanding quality;
    - (3) in areas critical to the firm's operations;
    - (4) indispensable to the firm's potential success;
    - (5) specific to the type of work the firm performs; and
    - (6) documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - c. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- B. For purposes of determining ownership, all interests in a business or other assets obtained by the individual will be deemed by the Authority as held by a socially and economically disadvantaged individual, if such interests are obtained:
  - 1. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - 2. Through inheritance, or otherwise because of the death of the former owner.
- C. For purposes of determining ownership, the Authority must presume as not being held by a socially and economically disadvantaged individual, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is -

1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
  2. Involved in the same or a similar line of business; or
  3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- D. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the Authority, by clear and convincing evidence, that:
1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  2. The disadvantaged individual actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- E. The Authority must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
1. When marital assets, other than the assets of the business in question, held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the Authority must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The Authority cannot count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
  2. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- F. The Authority may consider the following factors in determining the ownership of a firm. However, the Authority will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
1. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift or transfer without adequate consideration, other than the types set forth in Paragraph C of this section;

2. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase and sale of real or personal property, bank signature cards, or other documents; or
3. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, the Authority must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as form, by a socially and economically disadvantaged individual.

### Section 3.2 Control

- A. In determining whether socially and economically disadvantaged owners control a firm, the Authority must consider all the facts in the record, viewed as a whole.
- B. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
  1. In determining whether a potential DBE is an independent business, the Authority will scrutinize relationships with non DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  2. The Authority will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
  3. The Authority will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
  4. In considering factors related to the independence of a potential DBE firm, the Authority will consider the consistency of relationships between the potential DBE firm and non-DBE firms with normal industry practice.
- C. DBE firm must not be subject to any formal or informal restrictions, which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR Part 26.69 (j) (2).

D. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
2. In a corporation, disadvantaged owners must control the board of directors.
3. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

E. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

F. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of Board must be revocable, and the socially and disadvantaged owners must retain the power to hire and fire any person to whom such Board is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the Authority can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

G. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

H. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have a license or credential to own and/or control a firm, the Authority will not deny certification solely on the ground that the person lacks the license or credential. However, the Authority may take into account the absence of the license or

credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

1. The Authority may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration will be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The Authority may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.
2. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the Authority may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

I. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

I. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members, who themselves are not socially and economically disadvantaged individuals, participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the Authority must make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as the Authority does in other situations, without regard to whether or not the other persons are immediate family members. If the Authority cannot determine that the socially and economically disadvantaged owners - as distinct from the family as a whole - control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

J. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual, whether or not an immediate family member, ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to the Authority, by



clear and convincing evidence, that:

1. The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
2. The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

K. In determining whether a firm is controlled by its socially and economically disadvantaged owners, the Authority may consider whether the firm owns equipment necessary to perform its work. However, the Authority will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

L. The Authority will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to the Authority only that it is socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The Authority may not, in this situation, require that the firm be re-certified or submit a new application for certification, but the Authority will verify the disadvantaged owner's control of the firm in the additional type of work.

M. A business operating under a franchise or license agreement may be certified if it meets the standards in 49 CFR Part 26 and Part 23 and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the Authority generally will not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

N. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

O. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling

the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

### Section 3.3 Small Business Concern

- A. Regulations of the SBA, 13 CFR Part 121 (10-1-00 Edition), contain guidelines and standards for determining eligibility as a small business concern.
- B. Any person who has a current certification from the SBA under Section 8(a) of the Small Business Act and who is a member of any of the presumptive groups listed in Section 2.1 (II) (2) is considered to be socially and economically disadvantaged for purposes of the Authority's DBE policy and program.

### Section 3.4 Business Size Determination

The following will be evaluated with each application for certification:

- A. The dollar financial ceiling listed in 13 CFR Part 121 of the SBA refers to the average annual receipts earned by the firm, including its affiliates, for the previous three-year period. For example, the standard dollar financial ceiling for electrical contractors, as listed in 13 CFR Part 121 of the SBA, is \$14 million; meaning that the firm is small if its average gross receipts in the three preceding years were \$13 million or less. Different trades have different ceilings. Notwithstanding the foregoing, a firm is not an eligible DBE in any federal fiscal year if the firm, including its affiliates, has average annual gross receipts, as defined by SBA regulations, over the firm's previous three fiscal years, in excess of \$22.41 million.
- B. In addition, an individual, who claims to own and control a firm applying for DBE certification and whose ownership and control are relied on for certification, cannot have a personal net worth that exceeds \$1,320,000. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

### Section 3.5 Case-by-Case Determinations

Persons who are not members of any of the presumptive groups listed in Section 2.1 (FF) (2) may nevertheless be found to be socially and economically disadvantaged by the Authority on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male or any other person may claim to be disadvantaged due to individual circumstances. If one of these individuals owns a business and applies for eligibility as a DBE, the Authority must determine, as part of the certification, whether that person qualifies as socially and economically disadvantaged. It is emphasized that these persons would have to make an individual showing of disadvantage rather than on the basis of group membership.

### Section 3.6 Alabama Unified Certification Program (ALUCP)

Within the three-year time period required by the Final Rule as published in the Federal Register on February 2, 1999, the Authority and other USDOT recipients in the state of Alabama signed an agreement establishing the UCP for the state of Alabama and submitted said agreement to the Secretary. All USDOT recipients in the state of Alabama accept the ALUCP DBE certification. The Authority is a certifying member of the ALUCP and will be responsible for making the decisions regarding the DBE certifications of DBE applicants who apply through the Authority's program.

### Section 3.7 Process for Determining DBE Eligibility

- A. To ensure that its DBE policy and program benefits only eligible DBEs as defined by 49 CFR Part 26, the Authority will certify the eligibility of DBEs.
  
- B. All socially and economically DBEs interested in participating as eligible DBEs in contracting/subcontracting opportunities must be ALUCP DBE certified. Certification may be obtained by submitting a complete Application for DBE Certification and a Personal Statement of Net Worth (PSNW) to an ALUCP certifying member. If certification is granted, the DBE will be included in the ALUCP DBE Directory the DBELO will make a decision on an applicant's certification within 90 days of receiving a completed application for DBE certification and PSNW, including all necessary supporting documentation. The Authority does not charge a fee to apply for ALUCP DBE certification.
  
- C. In accordance with the regulations establishing uniform standards for certifying the eligibility of DBE firms, and as part of the certification process, the Authority will take at least the following steps in determining whether a firm is eligible:
  - 1. Perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation.
  - 2. Obtain the résumés or work histories of the principal owners of the firm and personally interview these individuals.
  - 3. Analyze the ownership of stock in the firm, if it is a corporation.
  - 4. Analyze the bonding and financial capacity of the firm.
  - 5. Determine the work history of the firm, including contracts it has received and work it has completed.
  - 6. Obtain or compile a list of equipment owned or available to the firm and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program.
  - 7. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.

D. Once certified, a DBE firm will be required to monitor and submit the following information to the DBELO:

1. Change in circumstances affecting the firm — The DBE must submit a written affidavit within 30 days of the date of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria or any material changes in the information provided in its Application for DBE Certification. If at any time there is a change in ownership or control of the firm, the DBE also must submit with the written affidavit a new Application for DBE Certification and PSNW.
2. Annual No Change Affidavit — On or before the anniversary date of the DBE's certification, the DBE must submit a No Change Affidavit along with the firm's and DBE owner's income tax return for the previous year, an up-to-date PSNW and a copy of the current business, occupational and professional licenses and certification meeting the requirements of CFR Part 26.83(j).
3. Five year review of financial information — the DBE must continue certification by submitting to the DBELO the firm's income tax.

E. Section 26.85 Interstate Certification When a firm currently certified in its home state (“State A”) applies to a member of this State’s UCP (“State B”) for DBE certification, the UCP will follow the procedures defined in §26.85c which is provided here:

[https://www.ecfr.gov/cgi-bin/text-idx?SID=e291f9870fc684d1df2ef1175d8c93c4&mc=true&node=se49.1.26\\_185&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=e291f9870fc684d1df2ef1175d8c93c4&mc=true&node=se49.1.26_185&rgn=div8)

- F. Certification will be in accordance with 49 CFR Part 26. When the DBELO denies a request for certification from a firm not currently certified, a written explanation of the reason for the denial must be provided to the firm, specifically referencing the evidence in the record that supports each reason for the denial in accordance with 49 CFR Part 26.86. All documents and other information on which the denial is based must be made available to the applicant, upon request. Any firm denied certification may re-apply for certification no sooner than 12 months, from the date of the DBELO's denial of certification.
- G. The Authority will safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with federal, state, and local law in accordance with 49 CFR Part 26, Subpart F. Confidential business and personal information may be provided to a third party only with the written consent of the individual to whom the information pertains.
- H. The initial Application for DBE Certification and PSNW must be submitted to:

DBE Liaison Compliance Officer  
Birmingham Airport Authority  
Birmingham-Shuttlesworth International Airport  
5900 Airport Highway

Birmingham, Alabama 35212  
Telephone (205) 599-0522  
FAX (205) 599-0736

or, in person at the Authority's Executive Offices located on the first floor of the Main Terminal Building, Birmingham-Shuttlesworth International Airport (Airport).

Section 3.8 Appeal of Denial of Certification

- A. Within 30 days of being notified in writing by the DBE Liaison Compliance Officer that a firm will be denied certification, the firm may request administrative reconsideration. The firm must make this request in writing to the following Reconsideration Official:

IT Director  
Birmingham Airport Authority  
Birmingham-Shuttlesworth International Airport  
5900 Airport Highway  
Birmingham, Alabama 35212  
Telephone (205) 599-0533  
FAX (205) 599-0537

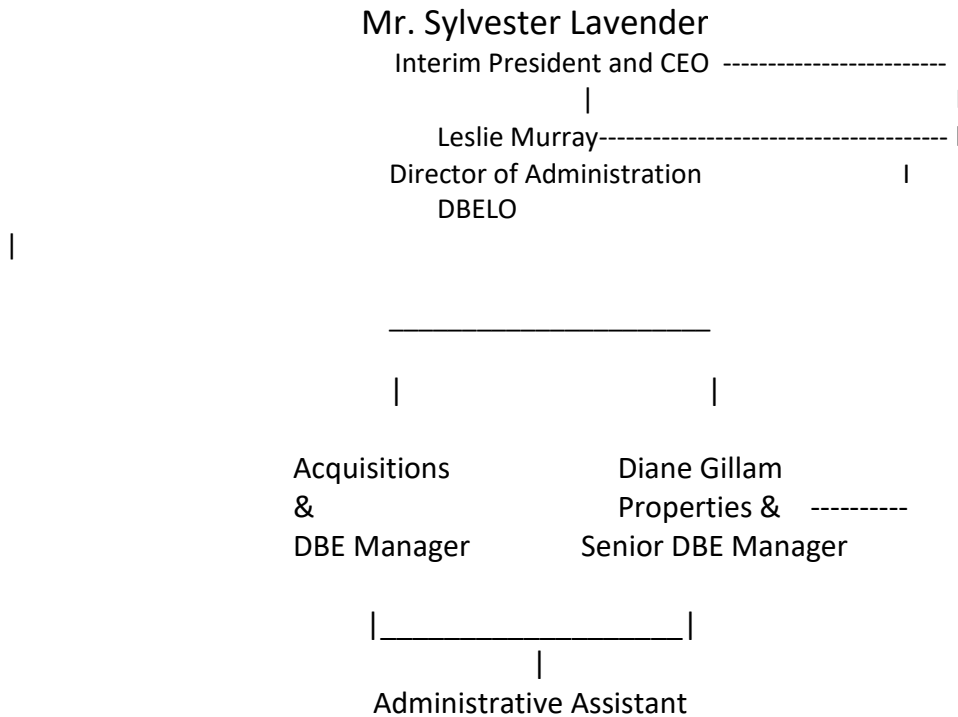
- B. The Reconsideration Official will not have a role in the original determination that a firm failed to meet DBE certification requirements.
- C. As part of the reconsideration, the firm will have the opportunity to provide written documentation or argument regarding the firm's case for granting certification. The firm will have the opportunity to meet the Reconsideration Official in person and present its case for granting certification. The Reconsideration Official may request additional information for consideration or send a decision in writing no later than 30 business days following the firm's request for administrative reconsideration. The decision of the Reconsideration Official is administratively final.
- D. A firm may appeal the final decision of the Reconsideration Official. Such appeals must be made in writing no later than 90 days after the date of the Reconsideration Official's final decision denying certification and submitted in accordance with 49 CFR Part 26.89 and Section 9 to :

U. S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave. S.E.  
Washington, DC 20590  
Telephone (202) 366-4754  
TTY (202) 366-9696  
FAX (202) 366-5575

SECTION 4 - PROGRAM STRUCTURE AND RESPONSIBILITIES

Section 4.1 Overall Responsibility for Authority's DBE Program

As Chief Executive Officer of the Authority, the President will exercise overall responsibility and direction of the Authority's DBE policy and program; ensure compliance with 49 CFR Part 26; and ensure active participation at all staff levels toward the realization of such goals. The organizational chart is listed below:



Section 4.2 Implementation and Management of DBE Program

The DBELO will be appointed by the Authority's President/CEO and will have direct, independent access to the President/CEO concerning DBE program matters. Implementation of the DBE policy and program will be the responsibility of the DBELO. The DBELO for the

Authority is:

Leslie Murray  
Birmingham Airport Authority  
Birmingham-Shuttlesworth International Airport  
5900 Airport Highway  
Birmingham, Alabama 35212  
Telephone (205) 599-0522  
FAX (205) 599-0736

The DBELO will advise and consult with the Authority staff members as required for the effective and responsive functioning of the DBE policy and program. The President/CEO will assign adequate staff to administer the program in compliance with 49 CFR Part 26.

#### Section 4.3 Staff Responsibilities

Implementation of the DBE policy and program will be the responsibility of the DBELO. The administration of the DBE policy and program will be the responsibility of the DBELO and will include, but not be limited to, the following activities:

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 Birmingham 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 Alabama.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Birmingham Airport Authority's updated directory on certified DBEs.

#### Section 4.4 Activities to Increase Race Neutral Participation

The following activities are designed to ensure that DBEs have the maximum opportunity to participate in contracts and increase DBE participation on Authority contracts through race-neutral means where possible.

- A. It is the responsibility of the DBELO to perform the following activities:
  1. Inform and communicate to DBEs the Authority's contracting procedures and specific contracting opportunities by planning and participating in training seminars and community outreach activities for the purpose of informing potential contractors of available business opportunities.
  2. Maintain a current DBE directory as a source of identifying all DBEs currently certified by the ALUCP, and make available copies of the ALUCP DBE directory to prospective contractors desiring contract information for affected projects.
  3. E-mail copies of contract notices to those firms listed in the ALUCP DBE directory. Ensure notices of contracting opportunities are published in a minority publication as well as a newspaper of general circulation in the area.
  4. Assist in identifying problems confronting DBEs in performing Authority contracts and work diligently to arrive at acceptable solutions.
  5. Facilitate the receipt of timely progress payments to DBEs for work completed, following such request for payment.
  6. Encourage DBE attendance at pre-bid/pre-proposal meetings. Provide assistance to DBEs during the solicitation or bid period for any project, and assist with any



explanation of documents, including language barriers, that may exist.

7. Certify and monitor the eligibility of DBEs and joint venture DBEs named by prime contractors who are making proposals on a particular project in accordance with the criteria set by the USDOT under 49 CFR Part 26.
8. Provide assistance, to the extent possible, in obtaining bonding, financing and insurance which will enable DBEs to participate in Authority contracting activities.
9. Maintain a system of records and reports documenting:
  - a. specific efforts made to identify and award contracts to DBEs;
  - b. specific awards made to DBEs; and
  - c. all contract advertising prepared in accordance with procedures established by the Authority.

9. The Authority will provide data about its DBE policy and program to the USDOT as directed by the USDOT OA.

10. For all USDOT-assisted contracts, in accordance with 49 CFR Part 26, the Authority will maintain a bidders list consisting of all firms bidding prime contracts and bidding or quoting subcontracts. For every firm submitting a bid, the following information must be included:

- a. firm name;
- b. firm address;
- c. firm's status as a DBE or non-DBE;
- d. the age of the firm; and
- e. the annual gross receipts of the firm.

For non-DBE firms, the above information will be obtained from the firm's audited financial statement submitted with their bid or proposal. For DBEs, the information will be obtained from their application and financial information submitted for certification. DBEs are not required to submit their financial information to prime contractors.

Currently, we collect the data from all bidders, at the time of bid opening. The information is requested to be provided in the bid proposal.

The list will be maintained with the DBELO.

- B. The Authority, as a whole, will utilize the following race neutral means to increase DBE participation:
  1. Arrange solicitation times for presentation of bids and pre-bid meetings that facilitate DBEs and other small firms' participation;

2. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
3. Provide technical assistance and other project related services;
4. Ensure distribution of the ALUCP's DBE directory through print and electronic means to the widest universe of potential prime contractors;
5. Utilize the Authority's website to announce bid opportunities and post all bids, request for proposal (RFPs) and request for qualifications (RFQs) documents for greater convenience to contractors;
6. Transmit and receive valuable feedback from individuals via-email and other on-line services.
7. Mail thank you letters from the DBELO to contractors and consultants who exceed DBE utilization on contracts.

#### Section 4.5 Program Compliance

The DBELO is responsible for reviewing and approving DBE subcontractor opportunities identified for all construction, architectural and engineering contracts, and all management and professional services contracts. Such opportunities will be identified as soon as the project scope is developed. In addition, the DBELO is responsible for monitoring the performance and actual utilization of DBEs as proposed at the time bids/proposals are opened, as well as throughout the term of the contract. In the event the DBE is unable to perform the work, and a substitution is necessary, the DBELO will ensure that the contractor makes a good faith effort to replace the DBE subcontractor with a qualified DBE who is also certified with the ALUCP.

#### FAILURE TO MEET OVERALL GOALS:

Failure to meet overall goals – The Authority cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Authority fails to administer its DBE program in good faith. The Authority understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith. The Authority understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith: (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year; (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met; and (3) The Authority will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to [operating administration] upon request.

#### Section 4.6 Banks and Financial Institutions Owned and Controlled by Minorities

The Authority has made an investigation in an effort to locate minority owned banks or financial institutions in the Birmingham Metropolitan Area (BMA). According to The Federal Reserve Board Statistical Release report dated September 30, 2008 Alamerica Bank is the only minority owned bank in the BMA. The Authority will encourage prime contractors to use such institutions, and information on these institutions will be available to the public through the Authority's DBELO.

#### Section 4.7 Disadvantaged Business Enterprise Directory

The ALUCP will maintain a DBE directory containing a current listing of all ALUCP certified DBEs is available for use by prospective contractors in identifying DBEs with skills particular to their contracting and business needs. The ALUCP DBE directory is posted on the Authority's website at [www.flybirmingham.com](http://www.flybirmingham.com).

- A. The ALUCP directory will be updated on a daily basis and will include the following information on ALUCP certified DBE firms:
  - 1. Company Name
  - 2. NAICS Code of Company
  - 3. Name of DBE
  - 4. Address of DBE
  - 5. Work Phone Number
  
  - 6. FAX Number
  - 7. E-mail Address
  - 8. DBE Status

#### Section 4.8 Project Monitoring

- A. 49 CFR Part 26 will be utilized to enforce the requirements of the Authority's DBE policy and program. In addition, the Authority will utilize any and all available federal, state, and local laws if the Authority's DBE policy and program participants fail to comply with 49 CFR Part 26 or this policy and program. The DBELO will ensure that language is incorporated into all contracts to ensure compliance with the DBE program contract goals or the contract could be cancelled, or other appropriate mechanisms as provided.
- B. The DBELO will monitor all USDOT funded contracts to ensure that it does not have an over concentration of DBEs in certain areas of work. Should an over concentration occur, the Authority will submit a recommended solution to the concerned USDOT operating administration for its approval in accordance with 49 CFR Part 26.33.
- C. The DBELO will monitor all USDOT funded contracts to ensure that work committed to DBEs at contract award is actually performed by the DBEs. The DBELO will review monthly progress payments from the prime contractor to ensure that DBE participation is

credited toward overall or contract goals. This mechanism will include a written certification that the DBELO has reviewed contracting records and monitored work sites in the state for this purpose. The monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

D. The DBELO will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In the reports of DBE participation to the Department, the DBELO will display both commitments and attainments.

## SECTION 5 — DBE PROJECT OPPORTUNITIES

The purpose of the DBE policy and program is to identify opportunities for ready, willing and able DBEs to participate on all USDOT-assisted contracts. In accordance with 40 CFR Part 26.45, the Authority will establish an annual overall goal for DBE participation. This overall goal will be based on demonstrated evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on USDOT-assisted contracts procured by the Authority ("relative availability of DBEs").

### Section 5.1 Annual Reviews

- A. On an annual basis, the DBELO will review the Authority's five year Capital Improvement Program and estimate the level of DBE participation on USDOT-assisted projects to be bid or proposed during the upcoming fiscal year based on the relative availability of DBEs in the Authority's market. Estimated levels of participation will be set forth as a goal, representing a percentage of the total cost of a USDOT-assisted project in accordance with the methodology set forth in 49 CFR Part 26.45.
- B. DBE goals on USDOT-assisted contracts will be set by utilizing the ALUCP DBE directory, bidders lists and any other applicable data. The maximum feasible portion of the overall goal will be met by using race-neutral means of facilitating DBE participation. After race-neutral measures are utilized, race-conscious means (contract goals) will be utilized to achieve the remaining DBE participation of the DBE goal.
- C. On an annual basis, the DBELO will analyze the goal and address goal shortfalls and analyze causes, as well as corrective actions for goal shortfalls.

### Section 5.2 Race-Neutral Means

The Authority will meet the maximum feasible portion of its overall goal by using race-neutral means to facilitating DBE participation.

### Section 5.3 Contract Goals

- A. The authority will use contract goals to meet any portion of the overall goal that is not met by using race-neutral means. Further, contract goals will be established so they will cumulatively result in meeting any portion of the overall goal that is not accomplished through the use of race-neutral means.
- B. To estimate contract goals, the DBELO will review proposed contracts in order to identify opportunities for participation by certified DBEs on proposed contracts for construction, engineering, architecture, and professional and management services. The level of participation will be determined on the basis of DBE participation on previous projects, the type of work involved, and the availability of certified DBEs for the work of the particular project. The procedure for determining such participation will be as follows:
  - 1. At 90 percent design review or during the development of an RFP/RFQ, the DBELO will meet with project staff to review the proposed scope of work for the project and identify potential areas of subcontracting.
  - 2. Once the final scope of work has been determined, the scope will be submitted to the DBELO with a detailed assessment of all subcontracting opportunities including suggestions for participation by DBEs on the project.
- C. The Authority will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Authority may not establish a contract goal on every contract, and the size of contract goals will be adapted to the circumstances of each such contract, such as location of the work and the availability of DBEs to perform the particular type of work.
- D. The Authority will express its contract goals as a percentage of the total dollar amount of a USDOT-assisted contract.

Section 5.4 DBE Overall Annual Goal

A description of the methodology used to calculate the overall goal for the USDOT-assisted contracts and the data the Authority relied on can be found in Attachment 1 to this policy and program. This Attachment will be updated annually and submitted to FAA without further amendment to this Policy and Program.

The DBELO will analyze the goals on an annual basis and provide in the yearly DBE report that is submitted to the FAA, the explanation regarding shortfalls and analyze causes of the shortfall. The DBELO will also provide corrective actions for goal shortfalls.

Section 5.5 Communication with FAA

All documentation required by the FAA concerning proposed DBE goals or actual DBE participation accomplishments on construction, engineering, architectural and professional services contracts will be transmitted to the FAA by the DBELO on an annual basis on USDOT Uniform Report of DBE Awards or Commitments and Payments, and other reports as requested.

## SECTION 6 - PROCEDURES TO ENSURE GOOD FAITH EFFORTS

### Section 6.1 Bid/Proposal Information

A. On all contracts for which contract goals have been established, the Authority will inform all competitors that they will be required to submit certified DBE participation information to the Authority as part of their bid or proposal documenting either that the bidder or proposer has obtained enough DBE participation to meet the goal or that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. Pertinent information regarding skills and services of certified DBEs will be available to prime contractors but will, in no way, relieve contractors of their responsibility to use any and all sources of information available to them in locating certified DBEs. Failure of a contractor to submit the certified DBE information stated below as part of their bid or proposal may render the bid or proposal non-responsive:

1. The names and addresses of certified DBE firms that will participate in the contract;
2. A description of the work each named certified DBE firm will perform;
3. The dollar amount of participation by each named certified DBE firm;
4. Written confirmation in the form of a letter of intent signed by the certified DBE that it will be participating in the contract as provided in the prime contractor's bid or proposal; and
5. A copy of each named DBEs certification letter from the ALUCP certifying member.

### Section 6.2 Good Faith Efforts

A. In all USDOT-funded contracts, the apparent successful contractor will satisfy the Authority that it has made good faith efforts to utilize certified DBEs in meeting the established DBE goal, as per Appendix A of 49 CFR Part 26. Good faith efforts are those efforts that could reasonably be expected to result in DBE goal attainment by a contractor who aggressively and actively seeks to obtain DBE participation. Efforts that are merely pro forma are not good faith efforts to meet DBE goals. The DBELO will

evaluate the good faith efforts of the apparent successful contractor within 48 hours following the receipt of bids or proposals. In determining whether or not the apparent successful contractor has made such good faith efforts, the Authority will require copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on a contract. Some of the factors the Authority will consider, as provided in Appendix A, are the following:

1. Whether the contractor attended any pre-solicitation or pre-bid/proposal meetings scheduled by the Authority to inform certified DBEs of contracting and subcontracting opportunities.
2. Whether the contractor advertised at least ten days prior to bid opening or proposal submission in newspapers of general circulation, trade associations, and minority-focus media concerning subcontracting opportunities.
3. Whether the contractor provided written notice by certified mail at least ten days prior to bid/proposal opening to a reasonable number of specific certified DBEs that their interest in the contract was being solicited.
4. Whether the contractor followed up initial solicitations of interest by contacting certified DBEs to determine with certainty whether the certified DBEs were interested.
5. Whether the contractor selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goals including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.
6. Whether the contractor provided interested certified DBEs with adequate information about the plans, specifications or requirements of the contract.
7. Whether the contractor negotiated in good faith with interested certified DBEs, not rejecting certified DBEs as unqualified without sound reasons after a thorough investigation of their capabilities.
8. Whether the contractor made efforts to assist interested certified DBEs in obtaining bonding, lines of credit, or insurance required by the Authority or contractor.
9. Whether the contractor effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of certified DBEs.
10. Whether the scope of work submitted by the contractor to any certified DBE contractor, certified DBE subcontractor, certified DBE sub-subcontractor,

certified DBE supplier, certified DBE sub-supplier or certified DBE sub-sub-supplier, and so on, either directly or indirectly, was intended to achieve, in whole or in part, the specified DBE participation.

11. Whether the replies or quotes from certified DBEs in response to scopes of work submitted to them by contractors, either directly or indirectly, were fair and responsive.
  12. Whether the contractor fairly represented the DBE quotations in the formulation of the contractor's bid as shown on the contractor's bid tabulation or other work documents to support the contractor's bid.
  13. Whether all other bidders or proposers achieved the DBE goal but the apparent low bidder or proposer did not.
  14. Whether the contractor or proposer contacted the Authority's DBELO for assistance in meeting the Authority's DBE project goal.
- B. Bidders or proposers who do not meet the DBE contract goal may alternately satisfy the good faith efforts requirement by documenting their efforts to do so, and on a finding by the Authority that the bidder or proposer did not meet the DBE goal or demonstrate a good faith effort to do so, are entitled, at their option, to the administrative reconsideration.
- C. Any contractor who meets the DBE goal will be deemed to have made the necessary good faith efforts without the need for further proof. Failure to meet these goals may be grounds for refusing to award the contract to the contractor if, upon investigation by the Authority, such investigation shows that the contractor refused to make a good faith effort to meet the goal, or that the failure was due to discrimination.
- D. The Authority will require bidders or proposers to submit documents that show bidders or  
or  
proposers obtained enough DBE participation to meet the DBE goal. Failure to provide such information may render the bid or proposal non-responsive. However, the Authority reserves the right to require such additional and supplemental information solely for the purpose of clarifying the DBE information submitted. The DBELO will be the individual responsible for making initial good faith effort determinations for the Authority.

### Section 6.3 Reconsideration of Lack of Good Faith Efforts

- A. Within five days of being informed by the DBELO that a bidder or proposer is not responsive because it has not documented sufficient good faith efforts, the bidder or proposer may request administrative reconsideration. The bidder or proposer must make this request in writing to the following Reconsideration Official:

Director of Operations  
Birmingham Airport Authority



Birmingham-Shuttlesworth International Airport  
5900 Airport Highway  
Birmingham, Alabama 35212  
Telephone (205) 599-0533  
FAX (205) 599-0537

- B. The Reconsideration Official will not have a role in the original determination that a bidder or proposer failed to meet the DBE goal or to document good faith efforts.
- C. As part of the reconsideration, the bidder or proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the DBE goal or made adequate good faith efforts to do so. The bidder or proposer will have the opportunity to meet the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate good faith efforts. The Reconsideration Official will send the bidder or proposer a written decision on reconsideration no later than seven days prior to the award of the contract, explaining the basis for finding that the bidder or proposer did or did not meet the DBE goal or make adequate good faith efforts. In the event a bidder or proposer protests the decision of the Reconsideration Official, the bidder or proposer must submit a formal bid protest of the decision no later than 72 hours prior to the award of the contract by the Authority's CEO. The result of the reconsideration process is not administratively appealable to the USDOT.

#### SECTION 7 - CONTRACTOR COMPLIANCE REQUIREMENTS Section

##### 7.1 Required Contract Provisions

- A. It is the Contractor's Duty to Comply with Governmental Regulations. In all USDOT assisted contracts, the contract signed by the contractor and each subcontract the prime contractor signs with a subcontractor must assure the Authority that:
  - "The prime contractor, subcontractor, sub-subcontractor, supplier, sub-supplier, sub-sub-supplier, and so on, will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-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 Authority deems appropriate."
  - B. Authority Payment Mechanism. In accordance with 49 CFR Part 26.29, all contractors must pay their subcontractors who have submitted invoices for work already performed within 10 calendar days of being paid by the Authority. In addition to promptly paying all sub-contractors within 10 days, contractors must also release their retainage to those sub-contractors who have submitted an invoice for completed work accepted by the contractor and the Authority within 10 calendar days.
- C. Prompt Payment Clause. The following prompt payment clause is required

in each USDOT-assisted prime contract and the prime contractor will require all subcontractors to have this clause in their subcontracts:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the Authority. The prime contractor agrees further to release retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors."

Any exception to this prompt payment provision will only be for good cause with prior written consent of the Authority. On USDOT-assisted contracts, these prompt payment and prompt payment of retainage requirements apply to all sub-contractors on the contract, DBE and non-DBE. Failure of the contractor to pay DBE and non-DBE subcontractors accordingly will be a material breach of the contract.

D. The DBELO will monitor documents to be reviewed, i.e. contracts, equipment and supply orders, and all other pertinent information, to ensure a review that DBEs are being utilized, and that contract provisions are being secured throughout the operation of the contract, but in no event less than one on-site review.

E. The DBELO or other assigned person will be responsible for performing a review of the documents submitted with the Proposal to ensure DBE participation and that the DBEs submitted are performing in the NAICS codes that they are certified, then continue to monitor the work to provide that DBEs are working as provided in the proposal.

## Section 7.2 Sanctions for Non-Compliance

- A. In the event of the contractor's non-compliance with the Authority's DBE policy and program or failure to meet the prescribed DBE goal set forth in a contract, or to establish a good faith effort to do so, the Authority, after due process, will impose such contract sanctions as the Authority, the FAA or both may determine to be appropriate, including but not limited to:
1. Withholding of payments to the contractor under the contract until the contractor complies; and/or
  2. Cancellation, termination or suspension of the contract in whole or in part;

- and/or
3. Suspension or debarment of contractor from eligibility to contract with the Authority in the future or to receive bid packages or RFP/RFQ packages.

### Section 7.3 Counting DBE Participation Toward Goals

- A. The Authority will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55. The Authority will count only the value of the work actually performed by the DBE toward DBE goals on a contract in accordance with the following:
  1. One hundred percent of that portion of a construction contract, or other contract not covered by 49 CFR Part 26.55 (a) (2), that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE, except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.
  2. One hundred percent of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the Authority determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
    - a. One hundred percent of the value of the work subcontracted by one DBE subcontractor to another DBE subcontractor. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
    - b. A portion of the total dollar value of the contract performed by a DBE as a participant in a joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- B. Expenditures by a DBE contractor will count toward DBE goals only if the DBE is performing a commercially useful function on that contract. The following factors are considered in determining commercially useful function:
  1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will evaluate the amount of work

subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Authority will examine similar transactions, particularly those in which DBEs do not participate.
  3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice for the type of work involved, the Authority will presume that it is not performing a commercially useful function.
  4. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  5. The Authority's decisions on commercially useful function matters are subject to review by the concerned OA, but are not administratively appealable to USDOT.
- C. The following factors are used in determining whether a DBE trucking company is performing a commercially useful function:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  4. The DBE may lease trucks from another DBE firm, including from an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  5. DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessor, since these services are not provided by a DBE.
  6. For purposes of 49 CFR Part 26, a lease must indicate that the DBE has exclusive use of

and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

- D. Expenditures with certified DBEs for materials or supplies will be counted toward DBE goals as provided in the following:
1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- E. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
1. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  2. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  3. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
  4. With respect to materials or supplies purchased from a certified DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the Authority determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- F. If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, Subpart D at the time a bid or proposal is submitted, the Authority will not count the firm's participation toward any DBE goals, except as provided in 49 CFR Part 26.87(i).
- G. The Authority will not count toward the Authority's overall USDOT-funded DBE goal the dollar value of work performed under a contract with a firm after it has ceased to be certified.
- H. The Authority will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or its overall goal until the amount being counted toward the goal has been paid to the DBE.

#### Section 7.4 Procedure Relating to DBE Terminations or Changes during a Contract

- A. Should the prime contractor, or any of its subcontractors, sub-subcontractors, suppliers, sub-suppliers, or sub-sub-suppliers desire to alter or change the scope of work of a DBE subcontractor or supplier, or if the DBE subcontractor is unable to perform the work, the prime contractor will immediately notify the Authority, prior to taking any action and request written approval for the remedial steps which the contractor propose to take to comply with the DBE goal. The prime contractor will provide the DBE subcontractor with a minimum of five (5) days to respond to a termination proposal as provided in 49 CFR Part 26.53 (f).
- B. A prime contractor will be prohibited from terminating for convenience, a DBE subcontractor listed in the contractor's letter of intent submitted to the Authority according to 49 CFR Part 26.53 (b) (2), or an approved substitute DBE firm, and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without the Authority's prior written consent.
- C. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Authority will require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts will be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Authority established for the procurement.
- D. The Authority will include in each prime contract a provision for appropriate administrative remedies that it will invoke if the prime contractor fails to comply with the requirements of this section. Failure to comply with the procedure relating to DBE terminations or changes during the contract will be a material violation of the contract and will invoke the sanctions for non-compliance specified in this policy and program, to include the potential of contract termination.

#### Section 7.5 Contractor's Bids or Proposal Documents

- A. All invitations to bid, RFPs, or RFQs for construction, engineering, architectural, professional services and management contracts, prepared by contractors and/or subcontractors on USDOT-funded Authority projects, having established goals for DBE participation, will comply with the DBE requirements of 49 CFR Part 26 and the Authority's DBE policy and program.
- B. All invitations to bid, RFPs or RFQs will state that...."Failure to comply with the requirements for participation by DBEs in the performance of the contract may disqualify the contractor for award of the contract." Any precondition applicable to the project will be fully explained in the bid specifications, RFP, or RFQ.

## SECTION 8 — REMOVAL OF CERTIFICATION

### Section 8.1 Third Party Complaints

- A. Any third party may challenge whether the owner of a firm certified by the Authority or seeking certification, which is presumed to be socially and economically disadvantaged, actually is disadvantaged. The Authority may also make such a challenge. The USDOT also may challenge a certification made by the Authority. However, the disadvantaged status of an individual who has a current certification under Section 8(a) of the Small Business Act is not subject to challenge.
- B. The confidentiality of the complainant will be protected in accordance with 49 CFR Part 26.109 (b). The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. However, the Authority is not required to accept a general allegation that a firm is ineligible or an anonymous complaint.

### Section 8.2 Authority-Initiated Proceedings

If, based on notification by the firm of a change in its circumstances or other information that comes to the Authority's attention, the Authority may determine that there is reasonable cause to believe that a currently certified firm is ineligible. In accordance with 49 CFR Part 26.87, at that time, the Authority will provide written notice to the firm that the Authority proposes to remove the DBE certification of the firm, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### Section 8.3 USDOT Directive to Initiate Proceeding

- A. If the concerned OA determines that information in the Authority's certification records, or other information available to the concerned OA, provides reasonable cause to believe that an Authority-certified firm does not meet the eligibility criteria of 49 CFR Part 26, the concerned OA may direct the Authority to initiate a proceeding to remove the firm's certification.
- B. In so doing, the concerned OA must provide the Authority and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. The Authority will immediately commence and prosecute a proceeding to remove eligibility as provided in 49 CFR Part 26.87 (b).

### Section 8.4 Hearing

If a firm is notified that the Authority, either by third party challenge, Authority determination, or USDOT determination, intends to remove the firm's DBE eligibility, the Authority will give the firm an opportunity for an informal hearing in accordance with 49 CFR Part 26.87(d). The Authority will maintain a complete record of the hearing and provide a copy to the firm of the hearing if the firm requests. The Authority will charge the firm for the cost of copying the record of the hearing.

### Section 8.5 Separation of Functions

- A. The Authority's decision in a proceeding to remove a firm's eligibility will be made by an office and personnel who have not taken part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
  - 1. The Authority's method of implementing this requirement is a part of its DBE policy and program.
  - 2. The decision maker in such circumstances will be an individual who is knowledgeable about the certification requirements of the Authority's DBE policy and program and 49 CFR Part 26 and not subject to direction from the DBELO.
- B. The individual responsible for making the determination to remove a firm's DBE eligibility for the Authority is:

IT Director  
Birmingham Airport Authority  
Birmingham-Shuttlesworth International Airport  
5900 Airport Highway  
Birmingham, Alabama 35212  
Telephone (205) 599-0533  
FAX (205) 599-0537



## Section 8.6 Grounds for Decision

- A. The Authority will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the Authority at the time of its certification of the firm. The Authority may base such a decision only on one or more of the following:
1. Changes in the firm's circumstances since the certification of the firm by the Authority that render the firm unable to meet the eligibility standards of 49 CFR Part 26;
  2. Information or evidence not available to the Authority at the time the firm was certified;
  3. Information that was concealed or misrepresented by the firm in previous certification actions by the Authority;
  4. A change in the certification standards or requirements of the USDOT since the Authority certified the firm; or
  5. A documented finding by the Authority's determination to certify the firm was factually erroneous.

## Section 8.7 Notice of the Authority's Decision

Following the Authority's decision, the Authority will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the Authority's decision and of the availability of an appeal to the USDOT under 49 CFR Part 26.89 and Section 9. The Authority will send copies of the notice to the complainant in an ineligibility complaint or to the concerned OA that had directed the Authority to initiate the proceeding.

## Section 8.8 Status of Firm During Proceedings

A firm remains an eligible certified DBE during the pendency of the Authority's proceedings to remove its eligibility. The firm does not become ineligible until the issuance of the notice provided for in 49 CFR Part 26.87 (g).

## Section 8.9 Effects of Removal of Eligibility

When the Authority removes a firm's eligibility, the Authority will take the following action:

- A. If a prime contractor has made a commitment to use the ineligible firm, or the Authority has made a commitment to using a certified DBE prime contractor, but a subcontract or contract has not been executed at the time the Authority issues the removal notice provided for in 49 CFR Part 26.87 (g), the ineligible firm will not count toward the contract goal or overall goal. The Authority will direct the prime contractor to meet the

contract goal with an eligible certified DBE firm or demonstrate to the Authority that it has made a good faith effort to do so.

- B. If a prime contractor has executed a subcontract with the firm before the Authority has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the Authority has let a prime contract to the certified DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Authority issued the notice of its ineligibility will not count toward the Authority's overall goal, but may count toward the contract goal.
- C. If the certified DBE's ineligibility is caused solely by having exceeded the size standard during the performance of the contract, the Authority may continue to count its participation on that contract toward overall and contract goals.

## SECTION 9—USDOT CERTIFICATION APPEAL PROCEDURES AND ENFORCEMENT ACTIONS

### Section 9.1 Action Firms May Take Following Denial or Removal of Certification

- A. Following a final decision by the Reconsideration Official to uphold the removal of a firm's certification under this section, the firm may appeal the decertification to the USDOT under 49 CFR Part 26.89. Firms that have been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated socially and economically disadvantaged group, or whose owner the presumption of disadvantage has been rebutted, must provide a letter stating the name and address of any other recipient which currently certified the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of appeal, or before which an application for certification or a removal of eligibility is pending. Failure of the appellant to provide any information requested by the USDOT may be deemed a failure to cooperate in accordance with 49 CFR Part 26.109(c). This appeal must be submitted to the USDOT within 90 days of the Authority's denial. The firm's appeal must be submitted to:

U. S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave. S.E.  
Washington, DC 20590  
Telephone (202) 366-4754  
TTY (202) 366-9696  
FAX (202) 366-5575

- B. The USDOT makes its decision on the appeal based solely on the entire administrative record. The USDOT does not make a de novo review of the matter and does not conduct a hearing.

### Section 9.2 Actions the Authority May Take Following USDOT Certification Appeal Decisions

- A. If the Authority is the recipient from whose action and appeal under 49 CFR Part 26.89 is taken,

the decision by USDOT is binding. It is not binding on other recipients.

B. If the Authority is the recipient to which a USDOT determination under 49 CFR Part 26.89 is applicable, the Authority must take the following action:

1. If the USDOT determines that the Authority erroneously certified a firm, the Authority must remove the firm's eligibility on receipt of the determination, without further proceedings on its part. Effective on the date of the Authority's receipt of the USDOT's determination, the consequences of a removal of eligibility set forth in 49 CFR Part 26.87(i) take effect.
2. If the USDOT determines that the Authority erroneously failed to find reasonable cause to remove the firm's eligibility, the Authority must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR Part 26.87.
3. If the USDOT determines that the Authority erroneously declined to certify or removed the eligibility of the firm, the Authority will certify the firm, effective on the date of its receipt of the written notice of USDOT's determination.
4. If the USDOT determines that the Authority erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the Authority will take appropriate corrective action as determined by the USDOT.
5. If the USDOT affirms the Authority's determination, no further action is necessary. Where USDOT has upheld the Authority's denial of certification or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR Part 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed the Authority's denial of certification or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision.

### Section 9.3 Enforcement Actions That Apply to Firms Participating in the DBE Program

- A. If a firm that does not meet the eligibility criteria of subpart D of 49 CFR Part 26 attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the USDOT may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- B. If a firm, in order to meet DBE contract goals or other DBE program requirements, uses

or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of 49 CFR Part 29, the USDOT may initiate suspension or debarment proceedings against the firm.

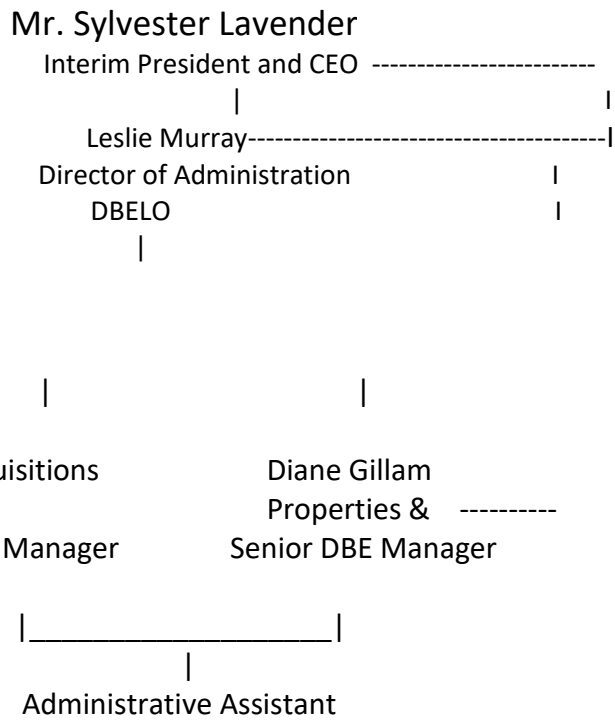
- C. In a suspension or debarment proceeding brought under paragraph A or B of this section, the concerned OA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the USDOT from determining that the purported DBE or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- D. The USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31.
- E. The USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

Leslie Murray  
Director of Administration  
Birmingham Airport Authority

Attachment 1

Organization Chart

Organization Chart





**Attachment 2**

**DBE Directory**

<http://cpmsweb2.dot.state.al.us/alucp/default.aspx#!view=search>

### **Attachment 3**

#### **Monitoring and Enforcement Mechanisms**

The Birmingham Airport Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but no limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action - We abide by the State of Alabama, and City of Birmingham and other applicable rules and regulations.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26;
2. Enforcement action pursuant to 49 part 31; and
3. Prosecution pursuant to 18 USC 1001.

The Birmingham Airport Authority will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including, but not limited to the following:

1. We will insert the following provisions into agreements and Contracts:
  - a. Job or Contract Monitoring
  - b. DBE Payment Verifications
  - c. DBE Monthly Pay Form
  - d. Site and/or Job Visits
2. We will implement the following additional monitoring and compliance procedures:
  - a. Birmingham Airport Authority's Legal Help where Applicable – BAA Attorneys
  - b. Running total of DBE Payments
  - c. Meetings with Prime and Subs, or DBE concerning matters under 49 CFR Part 26



# DBE REVIEW

# CHECKLIST

ITEM TO REVIEW	ANSWER	SIGNATURE OF REVIEWER	DATE
Arrived at DBE location	_____	_____	_____
DBE Working?	_____	_____	_____
DBE Manager Company	_____	_____	_____
Performing Responsib.	_____	_____	_____
Provided on DBE Form?	_____	_____	_____

Are DBE(s) submitted  
Being utilized?                      Yes \_\_\_\_\_                      No \_\_\_\_\_

---

Substitution Requested?                      Yes \_\_\_\_\_                      No \_\_\_\_\_

---

If Substitution Req'd,  
Approved?                      Yes \_\_\_\_\_                      No \_\_\_\_\_

---

List of Responsibilities  
Provided?                      Yes \_\_\_\_\_                      No \_\_\_\_\_

---

Issues Noted?    \_Meeting DBE  
Goal? \_\_\_\_\_

**Attachment 4**

**Overall Goal Calculation is provided in a separate attachment**

Attachment 5

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

(Forms 1 and 2 should be provided as part of the solicitation documents.)

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

\_\_\_ The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_%) is committed to a minimum of \_\_\_% DBE utilization on this contract submits documentation demonstrating good faith efforts.

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

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
Signature Title

**FORM 2: LETTER OF INTENT**

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The bidder/offeror is committed to utilizing the above-name DBE firm for the work described above. The estimated dollar value of this work is \$\_\_\_\_\_.

**Affirmation**

The above-name DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

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

**If the bidder/offeror does not receive award of the prime contractor, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each DBE subcontractor.)

## **Attachment 6**

### **Certification Application Forms**

(Include in this attachment a copy of the certification forms that you require the ACDBE to fill out. Also make sure to include the affidavit of personal net worth.)

[http://www.flybirmingham.com/wp-content/uploads/2015/12/APPLICATION-FOR-CERTIFICATION\\_2014.pdf](http://www.flybirmingham.com/wp-content/uploads/2015/12/APPLICATION-FOR-CERTIFICATION_2014.pdf)

[http://www.flybirmingham.com/wp-content/uploads/2015/12/PNW-STATEMENT\\_NOV-2014.pdf](http://www.flybirmingham.com/wp-content/uploads/2015/12/PNW-STATEMENT_NOV-2014.pdf)

## Attachment 7

### Procedures for Removal of DBEs Eligibility

The UCP will notify all currently certified DBE firms of their obligations yearly. 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.

Personal Net Worth, (26.67(b)) All disadvantaged owners of applicant firms and currently certified DBE firms whose eligibility under Part 26 is reviewed are required to submit a statement of personal net worth. Attachment 6 sets forth our personal net worth form (you are required to use SBA Form 413) and the documentation respondents must submit with it.

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 after denial 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. To ensure separation of functions in a de-certification, the UCP have determined that ALDOT will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative “firewall” to ensure that ALDOT 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).

## **Attachment 8**

### **Regulations: 49 CFR Part 26**

We recommend that you attach a copy of the regulations to your program so that the public users to whom you send copies can have it handy.)

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program).

## ATTACHMENT 9

### Small Business Element

#### 1. Objective/Strategies

The Authority has established a Small Business (SB) Element as part of the DBE program. The following strategies may be used (this list is not meant to be conclusive):

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount of \$400,000.
- (2) In multi-year design-build contracts or other large contracts (e.g., on-going Runway Safety Area) Authority agency oversight on specifying elements of the contract or specifying subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, requiring 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 projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

#### 2. Definition

- DBE firms should be identified in the SB Element of the recipient's DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.

#### 3. Verification

- The Authority shall diligently attempt to minimize fraud and abuse in the SB Element of its DBE program by verifying program eligibility of firms.

#### 4. Monitoring/Record Keeping

- Monitoring shall be accomplished using Authority's quarterly and final report submissions.
- Utilization of the SBEs shall be monitored through the use of the reports.

#### 5. Implementation Timeline



- Implementation of the Authority's SB Element dates 2012 and is currently in effect. Projects continue to be placed in the SB Element component of the DBE program. Implementation shall remain in effect in compliance with the DBE program requirements.

6. Assurance

- The SB Element shall include the following assurances:

1. assurance that the program is authorized under state law;
2. assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
5. assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
6. assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).

