

MKAA DBE Program

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**McGHEE TYSON AIRPORT**  
**K N O X V I L L E**

# **Disadvantaged Business Enterprise DBE Program**

**(49 CFR Part 26)**

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## Table of Contents

### **OBJECTIVES/POLICY STATEMENT**

Section 26.1, 26.23	1
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### **GENERAL REQUIREMENTS**

Section 26.1 – Objectives	2
Section 26.3 – Applicability	2
Section 26.5 – Definitions	2
Section 26.7 - Non-Discrimination Requirements	2
Section 26.11 – Data Collection and Reporting	2
Section 26.13 – Assurances Recipients and Contractors Must Make	3

### **ADMINISTRATIVE REQUIREMENTS**

Section 26.21 - DBE Program Updates	4
Section 26.23 – Policy Statement	5
Section 26.25 – DBE Liaison Officer (DBELO)	5
Section 26.27 – DBE Financial Institutions	6
Section 26.29 – Prompt Payment Mechanisms	6
Section 26.31 – Directory of Certified Firms	8
Section 26.33 – Over-concentration	9
Section 26.35 – Business Development and Mentor-Protégé’ Programs	9
Section 26.37 – Monitoring Responsibilities	9
Section 26.39 – Fostering Small Business Participation	10

### **GOALS, GOOD FAITH EFFORTS, AND COUNTING**

Section 26.43 – Set-asides or Quotas	11
Section 26.45 – Overall Goals	11
Section 26.47 – Failure to Meet Overall Goals	13
Section 26.51 – Means Recipients Use to Meet Overall Goals	13
Section 26.53 – Good Faith Efforts Procedures	15
Section 26.55 – Counting DBE Participation	19

### **CERTIFICATION STANDARDS/PROCEDURES**

Section 26.61-26.73 – Certification Process	20
Section 26.81 – Uniform Certification Programs	20
Section 26.83 – Procedures for Certification Decisions	21
Section 26.85 – Interstate Certification	21
Section 26.86 – Decision Letters	22
Section 26.87 – Decertification	23
Section 26.88 – Summary Suspension of Certification	24
Section 26.89 – Appeals	25

## MKAA DBE Program

### **COMPLIANCE AND ENFORCEMENT**

Section 26.101- Compliance Procedures Applicable to MKAA	25
Section 26.105 – Enforcement Actions Applicable to FAA Programs	26
Section 26.107 – Enforcement Actions Applicable to Participating Firms	26
Section 26.109 – Confidentiality, Cooperation, and Intimidation or Retaliation	27

### **LIST OF ATTACHMENTS**

Attachment 1	Regulations: Link to 49 CFR Part 26 (eCFR)	29
Attachment 2	Organizational Chart	30
Attachment 3	Bidders List Collection Form	31
Attachment 4	Link to UCP Directory of Certified Firms	32
Attachment 5	Demonstration of Good Faith Efforts Form	33
	• Form 1 DBE Utilization	33
	• Form 2 Letter of Intent	34
	• Form 3 DBE Regular Dealer/Distributor	35
Attachment 6	DBE Monitoring and Enforcement Mechanisms	36
Attachment 7	Link to Certification Application and PNW	37
Attachment 8	State’s UCP Agreement	38
Attachment 9	Small Business Element	53

**POLICY STATEMENT**

**Section 26.1, 26.23 Objectives/Policy Statement**

Metropolitan Knoxville Airport Authority (MKAA), owner of McGhee Tyson Airport and Downtown Island Home 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. MKAA has received federal financial assistance from the DOT, and as a condition of receiving this assistance, MKAA has signed an assurance that it will comply with 49 CFR Part 26 (Part 26).

It is the policy of MKAA to ensure that DBEs (as defined in Part 26) have an equal opportunity to receive and participate in DOT-assisted contracts. It is also MKAA's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Terrence Carter, Director of Business Diversity of MKAA, has been delegated as the DBE Liaison Officer. In that capacity, Mr. Carter is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded with the same priority as compliance with all other legal obligations incurred by MKAA in its financial assistance agreements with the DOT.

MKAA has disseminated this policy statement to the Board of Commissioners and will enclose in all bid and contract documents for federally assisted projects. This statement has been distributed to DBE and non-DBE business communities that may perform work on MKAA DOT-assisted contracts.

\_\_\_\_\_  
Patrick Wilson, President & CEO

\_\_\_\_\_  
Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

MKAA is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

MKAA will use terms in this program that have their meanings defined in 49 CFR Section 26.5.

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

MKAA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MKAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Data Collection and Reporting Requirements**

MKAA will provide data about its DBE Program to DOT as directed by DOT and its operating administration.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

MKAA will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Part 26. MKAA will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

MKAA will collect bidders list information as described in 49 CFR Section 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for

## MKAA DBE Program

evaluating the extent to which the objectives of 49 CFR Section 26.1 are being achieved.

MKAA will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

MKAA will collect the data from all bidders for our federally assisted contracts by requiring the information in 49 CFR Section 26.11(c)(2) to be submitted with their bids or initial responses to negotiated procurements.

MKAA will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to 49 CFR Section 26.53(e), MKAA will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

MKAA will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, MKAA will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of MKAA's financial assistance agreement. Other certification or compliance-related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

### **Section 26.13      Assurances Recipients and Contractors Must Make**

MKAA has signed the following assurances applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement MKAA signs with DOT operating administration will include the following assurance:

## MKAA DBE Program

MKAA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. MKAA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The MKAA DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. The 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 MKAA of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: MKAA will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

### **ADMINISTRATIVE REQUIREMENTS**

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

MKAA is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

MKAA is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and MKAA is in compliance with it and Part 26. MKAA will continue to carry out this program until all funds from DOT financial assistance have been expended. MKAA does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

**Section 26.23 Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for MKAA:

Terrence Carter  
Director of Business Diversity  
Metropolitan Knoxville Airport Authority  
2055 Alcoa Highway  
(865) 342-3062  
Terrence.Carter@tys.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MKAA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the MKAA President and CEO concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 1 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one to assist in the administration of the DBE program, and support of other MKAA staff, involved in planning and implementing DOT-assisted projects. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes MKAA'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.



## MKAA DBE Program

13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of MKAA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. The availability of such institutions will be investigated on an annual basis; census records, DBE, Minority/Women directories, area Chambers of Commerce data serves as a resource to capture data for business opportunity.

### **Section 26.29 Prompt Payment Mechanisms**

MKAA requires that all subcontractors performing work on DOT-assisted contracts be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR Section 26.29, MKAA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from MKAA.

MKAA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to 49 CFR Section 26.29, MKAA has selected the following method to comply with this requirement:

- MKAA will decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor(s) within 30 days after the subcontractor's work is satisfactorily completed.

### Prompt Payment Monitoring for DBEs and Non-DBEs

MKAA clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, MKAA undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of Part 26. Such monitoring activities will be accomplished through the following method(s):

## MKAA DBE Program

- MKAA maintains a database that monitors prime contractor payments to subcontractors for each project and/or contract. Both primes and subcontractors may review such data by making a request to do so with the DBE Liaison Officer. All such requests will be honored in a timely manner.

MKAA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for MKAA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of MKAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

MKAA proactively reviews contract payments to subcontractors, including DBEs, quarterly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported MKAA by the prime contractor.

### Prompt Payment Dispute Resolution

MKAA will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by 49 CFR Section 26.29. MKAA will conduct meetings with primes, subs, DBEs, and MKAA representatives, including DBELO to discuss and resolve disputes. MKAA will take appropriate enforcement action, according to regulatory guidelines.

MKAA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors, unless and until the prime contractor ensures that the subcontractor(s) are promptly paid for the work they have performed.

### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- MKAA maintains a database that monitors prime contractor payments to subcontractors for each project and/or contract. Both primes and subcontractors may review such data by making a request to do so with the DBELO. If prime contractors fail to comply with prompt payment, the DBELO will conduct meetings with primes and affected to resolve payment discrepancies.

## MKAA DBE Program

- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action, the DBELO will report the contract discrepancy to MKAA's legal representative and seek legal remedies to resolve payment discrepancies.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### Enforcement Actions for Noncompliance of Participants

MKAA provides appropriate means to enforce the requirements of 49 CFR Section 26.29. These means include:

- In accordance with the contract, MKAA will assess liquidated damages against the prime contractor for each day beyond the required 30-day prompt payment period to pay the subcontractor.
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.

MKAA will actively implement the enforcement actions detailed above.

### **Section 26.31      Directory of Certified Firms**

MKAA is a certifying member of the Tennessee Unified Certification Program (TNUCP). The TNUCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the TNUCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm have been certified to perform as a DBE and/or ACDBE.
- The type of work DBE and/or ACDBE are eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm

## MKAA DBE Program

performs. Pursuant to 49 CFR Section 26.81(n)(1) and (3), the UCP directory allows NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

- The TNUCP directory may include additional data fields of other items readily verifiable in Tennessee or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The TNUCP directory is an online system that permits the public to search and/or filter for DBEs by:
  1. Physical location
  2. NAICS code(s)
  3. Work descriptions
  4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

### **Section 26.33      Over-concentration**

MKAA has not identified that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35      Business Development and Mentor-Protégé Programs**

MKAA has not established a Business Development Program, or a Mentor-Protégé Program as described by Part 26.

### **Section 26.37      Monitoring Responsibilities**

MKAA implements and carries out appropriate mechanisms to ensure compliance with Part 26 program requirements by all program participants and describes and sets forth these mechanisms in MKAA's DBE program. MKAA has tools and methods for maintaining an accurate running tally of DBE commitments and payments, allowing for active monitoring of DBE attainment relative to commitments.

- MKAA actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), Monthly DBE reports from prime contractors are required, detailing payments made to DBEs. MKAA DBELO cross-check cumulative payments against contractual DBE commitments each quarter. This method helps spot discrepancies early and assess if contractors are on track to meet DBE goals.

MKAA actively monitors attainment toward overall goals by maintaining a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal.

## MKAA DBE Program

These contract-specific running tallies are used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to 49 CFR Section 26.53(g).

This mechanism to maintain a running tally of overall goal attainment will be used to inform MKAA's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

### Monitoring Contracts and Work Sites

MKAA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of 49 CFR Section 26.55. Work site monitoring for counting and commercially useful function review is performed by MKAA project managers, project consultants, and reported to DBELO. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by project managers, project consultants and DBELO. MKAA will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. MKAA will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

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

MKAA has created a Small Business Element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program's elements will be actively implemented to foster small business participation. MKAA acknowledges that implementation of the small business element is

## MKAA DBE Program

required for us to be considered by DOT as implementing our DBE program in good faith.

### **GOALS, GOOD FAITH EFFORTS, AND COUNTING**

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

MKAA does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

#### **Section 26.45 Overall Goals**

MKAA will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with 49 CFR Section 26.45(f), MKAA will submit its overall three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If MKAA does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and MKAA will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. MKAA will use a DBE directory information and Census Bureau Data, or other alternative method that complies with 49 CFR Section 26.45 as a method to determine the base figure. MKAA understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Section 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry into past competitiveness of DBEs on contracts. MKAA will examine all the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

## MKAA DBE Program

Any methodology selected will be based on demonstrated evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in MKAA market.

In establishing the overall goal MKAA will provide for consultation and publication. This includes consultation with minorities, women and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by MKAA to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before MKAA is required to submit the goal methodology to the operating administration for review pursuant to 49 CFR Section 26.45(f). The goal submission will document the consultation process in which MKAA engaged. Notwithstanding 49 CFR Section 26.45(f)(4), the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, MKAA will publish a notice announcing the proposed overall goal before submission to the Federal Aviation Administration on August 1st. The notice will be posted on MKAA's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by Federal Aviation Administration, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to Federal Aviation Administration will include a summary of information and comments received, if any, during this public participation process and MKAA responses.

MKAA will begin using the overall goal on October 1 of the relevant period, unless other instructions from Federal Aviation Administration have been received.

### Project Goals

If permitted or required by the Federal Aviation Administration, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

## MKAA DBE Program

### Prior Operating Administration Concurrence

MKAA understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by MKAA for calculating goals is inadequate, FAA may, after consulting with MKAA, adjust the overall goal or require that the goal be adjusted by MKAA. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to 49 CFR Section 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 6 to this program.

### **Section 26.47 Failure to meet overall goals**

MKAA 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 MKAA fails to administer its DBE program in good faith.

MKAA 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.

MKAA 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;
- (3) MKAA 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 a copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

### **Section 26.51 Means Recipients Use to Meet Overall Goals**

#### Breakout of Estimated Race-Neutral & Race-Conscious Participation

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



## MKAA DBE Program

includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 49 CFR Section 26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 6 to this program.

MKAA will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 49 CFR Section 26.39.

### Contract Goals

If the approved projection under 49 CFR Section 26.51(c) estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order to meet the overall goal.

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

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

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

#### Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good-faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good-faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. MKAA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - a. The names and addresses of DBE firms that will participate in the contract;
  - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - c. The dollar amount of the participation of each DBE firm participating;
  - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime

## MKAA DBE Program

contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of 49 CFR Section 26.53 (c)(1).

- f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include 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 the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by 49 CFR Section 26.53(b)(2) before the final selection for the contract is made by MKAA. 49 CFR Section 26.53(b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in 49 CFR Section 26.53(e).

For each DBE listed as a regular dealer or distributor MKAA will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in 49 CFR Section 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, MKAA will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which MKAA solicits proposals to design and build a project with minimal project details at time of letting, MKAA may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of 49 CFR Section 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, MKAA will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. MKAA and the design-builder may agree to make written revisions of the OEPP throughout the

## MKAA DBE Program

life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjust the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

MKAA will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, MKAA will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

### Administrative Reconsideration of Good Faith Efforts determinations

Within 10 business days of being informed by MKAA that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Patrick Wilson, President  
Metropolitan Knoxville Airport Authority  
P.O. Box 15600  
Knoxville, TN 37901  
Phone (865)342-3000

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

### Good Faith Efforts procedural requirements (post-solicitation/award)

MKAA will include in each prime contract the contract clause required by 49 CFR Section 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that MKAA deems appropriate if the prime contractor fails to comply with the requirements of this section.

MKAA will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

## MKAA DBE Program

MKAA will require that a prime contractor not terminate a DBE or any portion of its work listed in response to 49 CFR Section 26.53(b)(2) (or an approved substitute DBE firm per 49 CFR Section 26.53(g)) without our prior written consent, unless MKAA causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

MKAA will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains MKAA's written consent as provided in 49 CFR Section 26.53(f); and
- (2) Unless MKAA's consent is provided under 49 CFR Section 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

MKAA may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of 49 CFR Section 26.53(f)(3), good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law;
- (6) MKAA has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to MKAA written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;

## MKAA DBE Program

- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- (10) Other documented good cause that MKAA determines compels the termination of the DBE subcontractor;

Before transmitting to MKAA the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to MKAA sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE ten (10) business days to respond, advising MKAA and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why MKAA should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), MKAA may provide a response period shorter than ten (10) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in 49 CFR Section 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If MKAA requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. MKAA shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

### **Section 26.55      Counting DBE Participation**

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

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in 49 CFR Section 26.87(j).

For FAA-funded projects only, firms that exceed the business size standard in 49 CFR Section 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they

## MKAA DBE Program

do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

### **CERTIFICATION STANDARDS**

#### **Section 26.61 – 26.73 Certification Process**

MKAA is a certifying member of the Tennessee Unified Certification Program (TNUCP). MKAA will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. MKAA makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the Tennessee UCP agreement. The full UCP agreement can be found at:

For information about the certification process or to apply for certification, firms should contact:

Terrence Carter  
Director of Business Diversity  
DBE Liaison Officer  
Metropolitan Knoxville Airport Authority  
P.O. Box 15600  
Knoxville, TN 37901  
Terrence.Carter@tys.org

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

The Uniform Certification Application form and documentation requirements are found in Attachment 9 to this program.

### **CERTIFICATION PROCEDURES**

MKAA is the member of TNUCP administered by the Tennessee DOT's Civil Rights Division. TNUCP will meet all the requirements of this section.

Detailed certification procedures are enumerated in the full TNUCP agreement. The full UCP agreement can be found at: <http://www.tdot.state.tn.us/dbedirectinternet/>.

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

MKAA is a member of a Unified Certification Program (UCP) administered by Tennessee DOT. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

### **Section 26.83      Procedures for Certification Decisions**

MKAA will take all required steps outlined in § 26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26. In the case of a denial of certification, MKAA will make an entry in DOT's Departmental Office of Civil Rights (DOCR) Online Portal within five (5) days of the denial. MKAA will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part (*i.e.*, NAICS code removal), through the procedures of 49 CFR Section 26.87.

MKAA will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or any functionally equivalent requirement. However, a certification review of a certified DBE firm may be conducted at a reasonable time and/or at a regular interval of two years. The certification review may, at MKAA's discretion, include a new onsite review (OSR). MKAA may also make an unannounced visit to the DBE's offices and/or job site. MKAA may also rely on another certifier's report of its OSR of the DBE.

#### Notices of Change and Annual Declarations of Eligibility

The UCP requires all DBEs to submit every year, on the anniversary of the date they were certified in their Jurisdiction of Original Certification (JOC), a new Declaration of Eligibility (DOE) along with documentation verifying the gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the UCP will generally consider the following documents to be "safe harbors," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. The UCP will treat non-compliance, whether full or partial, as a 49 CFR Section 26.109(c) failure to cooperate.

The UCP also requires all DBEs to provide written notice of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of Part 26, or of any material changes in the information provided with DBEs' applications for certification. DBEs must provide the UCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice.

### **Section 26.85      Interstate Certification**

MKAA complies with certification procedures requirements of Subpart E of Part 26 in all matters related to interstate certification. Any procedures included here are highlights



## MKAA DBE Program

only. Detailed interstate certification procedures are enumerated in the full Tennessee UCP agreement.

When a DBE certified in any UCP applies to MKAA for certification, MKAA will accept the DBE's certification from its JOC. To obtain interstate certification, the DBE must provide:

- (1) A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)
- (2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
- (3) A new DOE.

Within ten (10) business days of receiving the documents required above, MKAA will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this section and MKAA confirms the DBE's certification, MKAA will certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

MKAA will require DBEs to provide an annual DOE with documentation of gross receipts, under 49 CFR Section 26.83(j), on the anniversary date of the DBE's original certification by its JOC.

If MKAA has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), MKAA will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain MKAA's reasons for believing the DBE's certification should be removed.

If MKAA receives such a notification from another UCP, within 30 days of receiving the notice MKAA will email the UCP contemplating decertification of a concurrence or non-concurrence with the proposed action. MKAA's responses may provide written arguments and evidence and may propose additional reasons to remove certification. MKAA understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If MKAA finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. MKAA will email a copy of its decision to the other jurisdictions within 3 business days.

### **Section 26.86      Decision Letters**

When MKAA denies a firm's request for certification or decertifies the firm, MKAA will provide the firm a notice of decision (NOD) explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. MKAA will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. If a

## MKAA DBE Program

currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date the decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. MKAA will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

If an applicant appeals this decision to the DOT pursuant to 49 CFR Section 26.89, such an appeal does not extend the waiting period.

### **Section 26.87      Decertification**

MKAA complies with all decertification procedures requirements of Subpart E of Part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Tennessee UCP agreement.

MKAA's first step in any decertification proceeding will be to email a notice of intent (NOI) to the DBE. The NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both. The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, MKAA will issue a notice of decision (NOD) decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

MKAA has determined that the DBELO will serve as the hearing officer for informal hearings provided pursuant to 49 CFR Section 26.87(c)-(e). The DBELO oversees the informal hearing, sets procedural rules, and ensures an impartial review based on the facts and DBE certification standards.

The DBELO is responsible for DBE decertification cases when issuing Notices of Decertification. The MKAA internal appeal process is optional and not required before appealing to the DOT under 49 CFR Section 26.89 and administrative appeals; firms are informed of their right to appeal to the DOT if needed.

Appellants are given 45 days to submit a narrative explaining why the initial decision was incorrect, specifying outcome-determinative facts not considered and any provisions of Part 26 misapplied.

The MKAA President and CEO, is the final decisionmaker on certification appeals, ensuring separation from the DBELO decertification actions.

## MKAA DBE Program

MKAA will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of 49 CFR Section 26.87(g). MKAA will make an entry in DOCR's Online Portal within 5 days of the action, entering the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until MKAA issues a NOD.

Once a firm is decertified MKAA will take appropriate actions related to contract and overall goals and DBE participation as described in 49 CFR Section 26.87(j).

These MKAA practice meet FAA requirements for decertification and appeals processing while maintaining transparency and impartiality.

### **Section 26.88 Summary Suspension of Certification**

MKAA will follow procedures consistent with 49 CFR Section 26.88 regarding the suspension of a DBE's certification.

MKAA will mandatorily and immediately suspend a DBE's certification when MKAA has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

MKAA may elect to suspend a DBE's certification when MKAA has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that 49 CFR Section 26.83(j) requires.

MKAA will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which MKAA relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why MKAA should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, MKAA will follow all procedures required under 49 CFR Section 26.88(d)(2)-(6).

## **Section 26.89 Appeals**

Applicants and decertified firms may appeal adverse NODs to the Department. An ineligibility complainant or applicable Operating Administration (the latter by the terms of 49 CFR Section 26.87(c)) may appeal to the Department if MKAA does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

Appellants must email appeals as directed in MKAA's NOD within 45 days of the date of NOD. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions MKAA misapplied.

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 the denial of its application was erroneous).

## **Section 26.91 Actions Following DOT Certification Appeal Decisions**

If MKAA is a certifier to which a DOT determination under 49 CFR Section 26.89 is applicable, we will take any and all required action(s) pursuant to 49 CFR Section 26.91.

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

### **Section 26.101 Compliance Procedures Applicable to MKAA**

MKAA understands that if it fails to comply with any requirement of this part, MKAA may be subject to formal enforcement action under 49 CFR Section 26.103 or Section 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. Chapter 53 or applicable FTA program requirements.

MKAA understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

- (1) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the

## MKAA DBE Program

operating administration to initiate a compliance review based on complaints received.

### **Section 26.105 Enforcement Actions Applicable to FAA Programs**

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of 49 CFR Section 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR Part 16 with the FAA Office of Chief Counsel.

### **Section 26.107 Enforcement Actions Applicable to Participating Firms**

If a firm that does not meet the eligibility criteria of Subpart D of Part 26 attempts to participate in a DOT-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 Department may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

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 subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR Parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department 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.

The Department 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.

The Department 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 DOT-assisted program or otherwise violates applicable Federal statutes.

**Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation**

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

MKAA, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. MKAA understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENTS**

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Demonstration of Good Faith Efforts Forms
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 8 State's UCP Agreement
- Attachment 9 Small Business Element

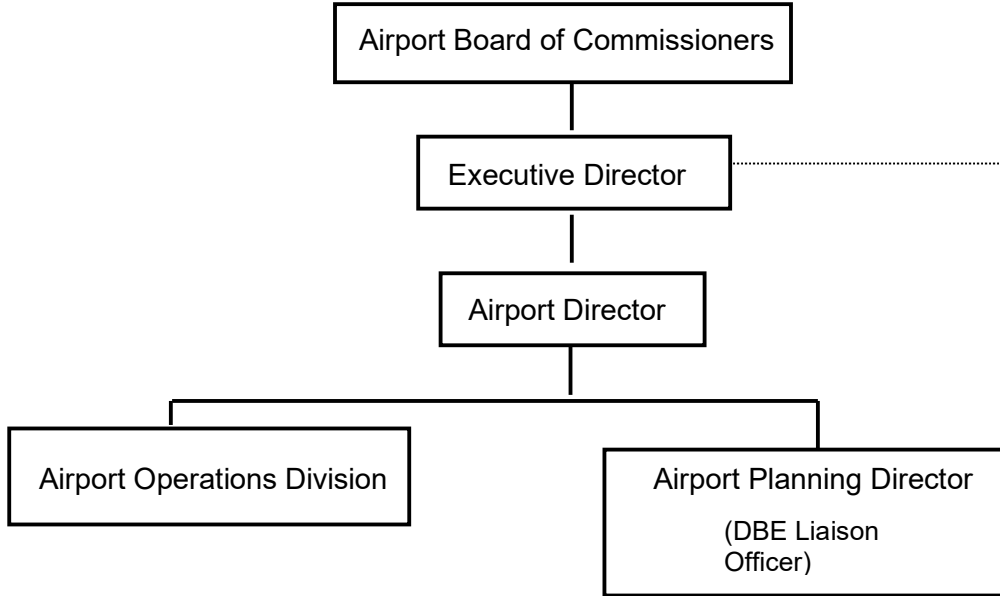
**ATTACHMENT 1**

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>



**ATTACHMENT 2**  
**ORGANIZATIONAL CHART**



**ATTACHMENT 3**

**Metropolitan Knoxville Airport Authority  
Bidder's List Collection Form**

**General Information:**

- **Project Name:** \_\_\_\_\_
- **Project Number:** \_\_\_\_\_
- **Date of Bid Submission:** \_\_\_\_\_

**Bidder Information:**

1. **Firm Name:** \_\_\_\_\_
2. **Firm Address:** \_\_\_\_\_
  - **City:** \_\_\_\_\_ **State:** \_\_\_\_ **ZIP:** \_\_\_\_\_
3. **Contact Person:** \_\_\_\_\_
  - **Phone Number:** \_\_\_\_\_
  - **Email:** \_\_\_\_\_

**Majority Owner's Race:**

\_\_\_\_ African America \_\_\_\_ Hispanic American \_\_\_\_ Native American  
\_\_\_\_ Asian Pacific American \_\_\_\_ Subcontinent Asian American \_\_\_\_ Other

**Majority Owner's Gender:**

\_\_\_\_ Male \_\_\_\_ Female

**Bid Details**

- **Bid Amount:** \$ \_\_\_\_\_
- **DBE Status:** [ ] DBE-Certified [ ] Non-DBE
- **NAICS Code(s):** \_\_\_\_\_
- **Description of Work:** \_\_\_\_\_
- **Age of Firm (years):** \_\_\_\_\_
- **Annual Gross Receipts:** *less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million*

**Certification**

*The undersigned certifies the information is accurate and complete to the best of their knowledge.*

- **Signature:** \_\_\_\_\_
- **Date:** \_\_\_\_\_

**ATTACHMENT 4**

State of Tennessee's UCP Directory link is below:

<https://www.tdot.tn.gov/APPLICATIONS/DBEDirect>

**ATTACHMENT 5**

**Demonstration of Good Faith Efforts - Forms 1, 2, and 3**

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

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.
  
- Bidder/offeror has not met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MKAA DBE Program

**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

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

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

*\*Percentage is to be used only in negotiated procurements*

*\*\*For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

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

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

\_\_\_\_\_  
Signature of DBE's Authorized Representative

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

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

**Submit this page for each DBE subcontractor.**

# MKAA DBE Program

## FORM 3

OMB Approval Pending 04/17/2024



U.S. Department of  
Transportation

### DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

**DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment?  YES  NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?  YES  NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES  NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

\*If I., I.a), and I. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES  NO<sup>1</sup>

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?  YES<sup>2</sup>  NO<sup>3</sup>

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

## ATTACHMENT 6

### Monitoring and Enforcement Mechanisms

MKAA has several remedies available to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract; and
2. Breach of contract action, pursuant to State Statute

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 23;
2. Enforcement action pursuant to 49 CFR Part 31; and
3. Prosecution pursuant to 18 USC 1001.

MKAA will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:
  - A. Concessionaire shall include its proposed DBE participation plan that identifies the efforts to achieve the published goal.
2. We will implement the following additional monitoring and compliance procedures:
  - A. Concession revenue reports be reviewed quarterly
  - B. Monthly visits to sites of operations with DBE participation
  - C. Submit Annual ACBDE Report
  - D. Compliance measures will be implemented, if deemed appropriate

**ATTACHMENT 7**

**Certification Application Forms**

DBE Certification Application Form and Personal Net Worth Statement:

Firms interested in certification as DBE may contact the Metropolitan Knoxville Airport Authority (MKAA). Additionally, MKAA is a member of the Tennessee Uniform Certification Program, who performs certifications for member agencies located in the State of Tennessee.

**DBE Certification Application Form**

Metropolitan Knoxville Airport Authority Knoxville  
McGhee Tyson Airport P.O. Box 15600  
(865)342-3062  
[www:tys.org/disadvantaged-business-enterprise-program](http://www.tys.org/disadvantaged-business-enterprise-program)

State of Tennessee  
Tennessee Uniform Certification Program  
TNUCP DBE - State of Tennessee <https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>

Personal Net Worth Statement:

<https://www.transportation.gov/DBEPNW>



**ATTACHMENT 8**

**State of Tennessee's UCP Agreement**

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM UNIFORM CERTIFICATION  
PROGRAM TENNESSEE UNIFORM CERTIFICATION PROGRAM  
(TNUCP)**

**Table of Contents**

Page 3	Partners
Page 4	Definitions
Page 5	The Partnership Program Objective
Page 6	Partners and Partners Agents
Page 7	Impact on Recipient Programs Communication Reciprocity Ratification Process
Page 8	Process Review Data Requirements
Page 9	Initial Consolation Roles and Responsibilities
Page 10	Geographical Designation NAICS Codes
Page 11	Certification Process Initial Certification/Applicant Denials
Page 12	Removal of Certification Eligibility Third Party Challenge DOT Directive TNUCP Partner-initiated
Page 13	Administrative Removal of Eligibility Partner Compliance
Page 14	Non-Disclosure/Confidentiality Training

**Disadvantaged Business Enterprise Program  
Tennessee Uniform Certification Program**

**Uniform Certification Partners**

Bristol Tennessee Transit  
Chattanooga Area Regional Transportation Authority  
Chattanooga Metropolitan Airport Authority  
Clarksville Transit System  
Jackson Airport Authority  
Jackson Transit Authority  
Kingsport Area Transit Service  
Knoxville Area Transit  
Memphis Area Transit Authority  
Shelby County Airport Authority  
Metropolitan Knoxville Airport Authority  
Metropolitan Nashville Airport Authority  
Metropolitan Transit Authority  
Murfreesboro Rover Public Transit Regional Transit Authority  
Tri-City Airport Authority  
Smyrna Airport Authority  
Johnson City Transit  
Tennessee Department of Transportation (Lead Agency)

## Definitions

**Agent** means an entity that performs certification legwork for a TNUCP partner in which a MOU is formed between the two.

**Agreement** means this document, the Tennessee Uniform Certification Program agreement.

**Committee** means the Committee created by this document to administer and implement the UCP.

**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.

**Department or DOT Department and DOT** means the United States Department of Transportation.

**MOU** means a “Memorandum of Understanding”.

**Partner** means a direct recipient of USDOT funds who is a member of the Tennessee Uniform Certification Program (TNUCP).

**Processing Agency** Processing agency means the agency to which the firm applied for DBE certification.

**Recipient** means any entity, public or private, that has an approved DBE Program, to which DOT financial assistance is extended, whether directly through another recipient, through the programs of FAA, FHWA or FTA or who has applied for such assistance.

**Regulation** means 49 CFR Parts 23 and 26, and any of its revisions, additions, deletions, or replacement.

**Uniform Certification Program (UCP)** means the program created by this agreement.

## MKAA DBE Program

### Overview

The participants discussed the requirements for developing a uniform certification program and directory. The need for training in certification and supportive services and the unified group were also discussed. Each agency discussed its perceptions of the following: lead agency, minimum requirements, limitations, and the process for eventual program approval. All participants were encouraged to bring ideas, input and cooperation to the discussion.

The USDOT recipients agreed to meet to begin the task of developing Tennessee's UCP. The group's initial task was to define how unification would take place. After much discussion it was decided that a reciprocity process would be the most effective way to accomplish the UCP. However, it was agreed that the process would go beyond a mere reciprocity agreement. The recipients felt that this solution allowed each agency to maintain their staff and resources while achieving the requirements. The recipients agreed to the name of "Tennessee Uniform Certification Program" or TNUCP and developed a notification letter and a certification certificate. All entities involved agreed to act as local assisting agencies in certification, including, but not limited to onsite reviews and firm contacts. At this point in the agreement, the recipients will also be referred to as partners through the entirety of the agreement.

**Program Objective.** To develop a uniform certification program for the State of Tennessee. This program should help create a level playing field in which Disadvantaged Business Enterprises (DBEs) can compete fairly for Department of Transportation and other federally funded assisted projects across the state. This requires a better link between program development, certification and the development of DBEs.

The UCP will follow all certification procedures and standards as set forth in 49 CFR Part 26 Subparts D and E, on the same basis as recipients and cooperate fully with oversight, review and monitoring activities of DOT and its operating administrations. The UCP shall implement DOT directives and guidance concerning certification matters and make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program. The UCP shall provide one-stop shopping to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state. The UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business (the 'home state' UCP shall share its information and

## MKAA DBE Program

documents concerning the firm with other UCPs that are considering the firm's application). The UCP may also enter into written reciprocity agreements with other UCPs (see Certification/Eligibility Subcommittee) and may accept the certification of any other UCP or DOT recipient. The UCP shall also maintain a uniform DBE directory for all firms certified by the UCP (including those from other states certified under the provisions of Subpart E) containing the information required by §26.31. TDOT shall make the directory available to the public electronically, on the internet, as well as in print and update the electronic version of the directory by including additions, deletions and other changes as soon as they are made. Any subrecipient will be bound by the UCP, as well, by submitting a signed statement of such binding signed by an individual who is authorized to bind the subrecipient in such a manner.

Certification decisions by the UCP shall be binding on all DOT recipients within the state. All certifications by the UCP shall be considered as precertification.

**Partners and Partners' Agents.** The need for assistance and cooperation from the other recipients was recognized early in the UCP process. All partners agree that assistance and cooperation is needed in the development and implementation of the UCP agreement, as well as for the certification process. The partners agree to support and provide sufficient resources and expertise to carry out the ongoing operation of the UCP and the requirements set forth for the UCP.

As well, the Finance Committee, which consists of representatives from each partner, shall meet within forty-five (45) days following adoption of the UCP to adopt rules by which the Committee shall function and to determine the appropriate cost structure to support the UCP. TDOT shall issue a ten (10) business day minimum notification to all partners of this first Finance Committee meeting. After the first meeting, the Finance Committee Chair will issue a ten (10) business day minimum notification to all partners of every subsequent meeting. A quorum of the Finance Committee shall consist of a majority of all the partners.

The Finance Committee shall adopt rules including but will not be limited to: election/terms of officers, meeting notification procedure(s) and voting structure of the committee. The rules shall be adopted by vote of a simple majority of the Finance Committee. Meetings of the Finance Committee shall be held at the TDOT Offices in Nashville, Tennessee, or at such other location as mutually agreed upon by the Finance Committee.

## MKAA DBE Program

After the rule setting described above has occurred, the Finance Committee shall determine the appropriate cost structure to support the UCP. The deliberations and decisions with respect to the cost structure will be conducted pursuant to the rules adopted by the Finance Committee. All partners shall receive a ten (10) business day minimum notification of the said meeting. The partners agree to accept the decision of the Finance Committee regarding the appropriate cost structure. If the Committee is unable to reach a decision within a reasonable period of time, but not to exceed ninety (90) days, TDOT is authorized to establish an appropriate cost structure by default, which shall be binding on the partners. TDOT has agreed to commit to covering the majority of the initial startup costs and the Finance Committee will in turn determine the appropriate cost structure for the ongoing operation of the UCP. The partners and partners' agents agree to support and be bound by the terms and conditions of the UCP.

While TNUCP partners will accept and process applications in their respective metropolitan areas, it may be burdensome for some recipients to be expected to travel into more rural sections of the state to conduct the required on-site visits. Therefore, rural certifications would remain the responsibility of TDOT, as well as overall statewide certifications. However, applicants in transit or aviation/airport services may be better served by an entity more familiar with their particular work type. Memphis Area Transit Authority and Memphis Shelby County Airport Authority have and will continue to utilize outside agents who conduct their certification legwork, such as Schedule A dissemination Schedule A and supporting documentation processing and performing on-site visits, then forwarding their recommendations onto the respective partners to make a determination of eligibility. These agents will have no voting power and will not be placed on any committee within the UCP. MOU's drafted between the partners and their agent are enclosed with the UCP agreement. Impact on Recipient Programs. Federal Regulation 49 CFR Part 26, requires that all USDOT fund recipients execute a UCP agreement within three years of March 4, 1999. The statewide UCP must establish a single uniform process or "one stop-shop" for DBE applications, certifications, and the development of a single point DBE Directory. All US DOT recipients will be required to ratify the UCP agreement and all DBE certifications by the TNUCP will be binding. The UCP supplements the recipients' existing approved DBE programs regarding certification. In the event of a conflict between the UCP and the DBE plan, the provisions of the UCP shall prevail. The lead agency in Tennessee, which is the funding agency for the majority of the recipients of USDOT federal funds, is the Tennessee Department of Transportation.

Communication. Sharing information on any matter related to the operation of the UCP is a core element of the process. All TNUCP partners agreed to and shall continue to

## MKAA DBE Program

communicate openly with each other. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings correspondence, electronic transmittals and/or discussion databases. If any TNUCP partner is in receipt of information that is necessary or critical to making a determination of DBE eligibility, the TNUCP partner shall notify and submit the appropriate information to the TNUCP or any partner. Each TNUCP partner shall be notified of all status changes affecting certifications, All TNUCP partners shall be notified of all certification and denial actions of each TNUCP partner as soon as they occur. The notification shall take the form of, but not limited to, electronic mail (email).

**Reciprocity.** The TNUCP through the Eligibility/Certification Committee will elect to enter into a reciprocity agreement with any USDOT approved UCPs in other states or regions. When a firm certified by another state UCP or the Small Business Administration seeks certification by the TNUCP, the TNUCP will make an independent certification decision based on documentation provided by the other recipient or the SBA, augmented by any additional information requested from the applicant such as additional items that may be unique to the TNUCP unless the Eligibility/Certification Committee has entered into a MOU or reciprocity agreement with that UCP Also an onsite review will be performed for firms that are SBA certified. TNUCP partners shall process requests from DBEs or the SBA made pursuant to the DOT/SBA MOU in accordance with 49 CFR 26.85.

**Ratification Process.** All recipients of federal funds administered by the USDOT, either directly or indirectly, must participate in a UCP. Failure to comply may result in the loss of federal funds from the TNUCP partners and/or the USDOT. 8 All partners listed in this UCP and their agents have agreed to support and be bound by the terms and conditions of the UCP. Upon approval by USDOT of the UCP, all partners will submit to the UCP a signed letter confirming their agreement to support and be bound by the terms and conditions of the UCP that will be forwarded to USDOT. Any new recipients required to participate in the UCP who were not present at the inception of this plan shall be added at any time after they have reviewed the plan and agree to terms and conditions set forth in this plan. Process Review. The partners agreed to the name of “Tennessee Uniform Certification Program” or TNUCP and developed an application letter, notification correspondence and certificates for approvals of eligibility. A uniform certification application developed by USDOT was addressed and will be utilized by the partners and/or partners’ agents. The letterhead and certificate includes the logos/names of the various direct recipients. While defining the process, there were many issues identified that had to be detailed in order to provide enough information to create the agreement while meeting the requirements of the individual agencies. Process issues were divided among the partners for definition and

## MKAA DBE Program

inclusion in this document. Those issues included, but were not limited to, were:  
Certification by Specialty Reciprocity with Other States or Agency Industry Familiarity  
Geography Grand fathering Currently Certified Firms Compliance with CFR UCP Effect on  
Individual Agency DBE Third Party Challenge/Certification Eligibility Procedures Goals Data  
Tracking Training Communication

**Data Requirements.** One of the major issues to be resolved was the method and the format of data necessary for detailing the certification status, DBE directory development and maintaining communication between the partners. The TNUCP designated TDOT as the “clearinghouse” for the data. TDOT is the database manager and will continue to work with their personnel to develop the common database. TDOT will maintain a unified DBE directory containing all firms certified by the TNUCP (including those from other states certified under 49 CFR Part 26). The listing for each firm will include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The TNUCP shall also print the directory at least annually and make it available to the public and contractors on the Internet. TDOT will update the electronic version of the DBE directory by including updates, additions, deletions and other changes as soon as they occur. TDOT currently maintains this information several ways via TDOT website and through TDOT’s construction management software, which is used by all bidding contractors. TDOT’s website address is [www.tdot.state.tn.us](http://www.tdot.state.tn.us) and the complete DBE list can be found there as well as information on future bidding opportunities. The construction management software is an electronic bidding tool for prime contractors that maintain certification information on the DBEs such as ethnicity, certification date, name, address, and eventually on what contracts they have performed for TDOT and the contract amount(s).

**Initial Consolidation.** Only firms certified based upon guidelines prescribed in 49 CFR Part 26 and provisions under this Agreement shall be recognized as certified by the TNUCP.

**Roles and Responsibilities.** The Eligibility/Certification Subcommittee will be responsible for: (1) Reviewing all firms submitted by a TNUCP partner that a partner feels an eligibility determination needs to be assessed under 49 CFR Part 26.43(2) Formulating and executing MOU’s and/or reciprocity agreements between the TNUCP and other UCP’s. Such an agreement shall outline the specific responsibilities of each participant.

The Eligibility/Certification Subcommittee will consist of five (5) TNUCP partners with one (1) alternate in the case that one of the five (5) TNUCP partners is the one who submitted the firm for review, in which they will recuse themselves from the review.



## MKAA DBE Program

Tennessee Department of Transportation: Provide oversight to the UCP Program Develop forms: Uniform Certification Application Uniform On-Site Visit Annual Affidavit of No Change Personal Financial Statement Make all forms available with instruction on the TDOT web page Maintain the UCP DBE database Provide a standardized training program for certification officials in the state Provide all coordination with certification officials in each region Perform statewide certification and on-site visits DBE plan for TDOT.

Tennessee Uniform Certification Program Continue to perform regional certifications Continue to create and submit a DBE plan for their organization Perform regional on-sites Forward completed certified files to TDOT Forward new applications that are not in their area/region to TDOT or applicable certifying partner Monitoring payments to DBEs Perform on-site visits for members who have received applications outside their region/area.

Agents Perform regional on-site visits Collection of application materials Submit completed application to a direct recipient of USDOT funds/TDOT etc. for review and certification approval.

**Geographical Designation.** The TNUCP shall review and make an eligibility determination on all firms applying for DBE certification whose business is located in the State of Tennessee. TDOT will still review applicant firms statewide and the other TNUCP partners will continue certifying applicants in their perspective areas for their specific industry or market needs unless assistance is needed by another agency. For example: The Airport would review applicants that are primarily aviation oriented, including concessionaires. These may include, but are not limited to, non-heavy products and services, food service firms, aviation specialty firms or structural construction firms.

TDOT would review applicants that are primarily heavy highway-oriented services or products, including but not limited to, heavy and bridge construction products and services, planning and engineering consultants, specialty consultants, roadway suppliers, and steel manufacturers or fabricators. RTA, MTA, and the other transit organizations that do certification would review applicants that are primarily transit oriented services or products. These may include, but are not limited to, transit services, maintenance services, maintenance products or transportation services.

All TNUCP partners agree that there may be exceptions to assignments based upon familiarity with the firm, historical knowledge, resources, etc. A partner of the TNUCP may in the following situations, request that another TNUCP certifying partner act as a consultant for a particular applicant and assist in the certification process by:

## MKAA DBE Program

1. Performing the onsite visit for the initial certifying partner if the geographical location of the applicant firm is within their geographical area or within their expertise.
2. Reviewing the application and its supporting documents if the initial certifying partner would like the application reviewed by a certifying partner who has more familiarity with the particular field or occupation of the DBE applicant.

The consulting certifying partner will report their findings to the primary certifying partner. The primary certifying partner will retain the responsibility, for the TNUCP, of the final decision concerning the DBE certification as well as being responsible for all communication with the applicant firm and performing all administrative duties required for both denials and approvals. It is expected that all certifying recipients will agree to assist if requested. However, in the event that the consulted certifying partner refuses to accept the application the TDOT will assume the responsibility of the application process and onsite visit.

**NAICS Codes.** The TNUCP agrees to certify all firms in compliance with 49 CFR Part 26, including designating specific work types. The partners agree to use the NAICS codes for those designations. All firms will be informed of the specific codes and a short narrative description of that designation (see SBA regulations 13 CFR part 121). Any firm may request modification and/or additions to their approved codes by making a written request to the certifying partner. That request must include the equipment and experience indicating the firm's ability to perform the particular work type. In addition, the firm must submit documentation of past contracts on which the firm has performed the specific type of work in the industry.

**Certification Process.** All TNUCP partners will require applicants seeking to be certified for participation in the Disadvantaged Business Enterprise Program to complete and submit the attached application forms and the items listed on the check list. However, if the applicant is certified by the U.S Small Business Administration (SBA), the application will be processed in accordance with 49 CFR 26.84. Applicants will also be required to attest to the accuracy and truthfulness of the information provided on the forms. When a TNUCP partner receives an application it is given a cursory review to assess whether that application can be processed by that partner. If it is determined that the receiving partner has received an application that is in the region they are able to conduct an on-site (because of mile radius restrictions imposed on the entity) and the firm's specialty is one specifically needed by or unique to their entity (for example concessionaires and the

## MKAA DBE Program

airport authorities) that partner may accept that application and process it to certification or denial. If that partner feels that the above-cited scenario does not apply they may forward that application to another consulted TNUCP partner or TDOT for processing to certification or denial as referenced in the “Geographical Designation” section of this agreement.

All applications received by any TNUCP partner must be reviewed and pass the standards of proof outlined in 49 CFR Parts 23 & 26. When a new DBE becomes certified and upon entry to the directory, a form letter should be automatically generated to the applicant stating:

1. The business is a certified DBE and the certification renewal date.
2. An Annual Affidavit of No Change is required to state that no changes have occurred in the firm in accordance with 49 CFR Section 26.83(j).
3. Certification may be removed should circumstances change that make the firm no longer eligible for DBE status.
4. Any other information the committee deems important now and in the future.

The partner should then send out an e-mail to TDOT informing them of the certification of the new DBE, who they are, contact information, the firm’s specialty (to be added to the TDOT web-site) as soon as the certification occurs and a complete copy of the file.

**Initial Certification/Applicant Denials.** When a TNUCP partner denies a request by a firm, who is not currently certified with them, to be certified as a DBE, a written explanation is provided outlining the reasons for the denial referencing the evidence in the record and the citation of the appropriate corresponding regulation. If DBE certification is denied to a firm that is certified by the SBA, written notice shall be provided to the SBA that includes the reasons for the denial, as required by 49 CFR Section 26.86(b). Any information and documentation that was utilized in making the decision will be available to the applicant upon request. The firm who is denied may reapply for certification twelve (12) months from the date that the firm receives the denial letter from the TNUCP. The final decision of denial of certification may be appealed to the US DOT within ninety (90) days of the partner’s denial.

**Removal of Certification Eligibility.** The removal of certification eligibility may be initiated by either a third-party challenge, TNUCP partner, or DOT directive.

**Third Party Challenge.** The TNUCP shall accept written challenges from any party, including TNUCP partners, alleging that a currently certified firm may be ineligible. The

## MKAA DBE Program

challenge must state specific reasons for ineligibility and submit written documentation in support of the challenge. The firm being challenged will receive written notification from the original certifying agency, the basic issues involved, and the relevant regulations. The TNUCP partner originally responsible for the certification shall thoroughly investigate the challenge within a reasonable time frame not to exceed ninety (90) business days. If reasonable cause to remove the firm does not exist, the TNUCP partner must notify the complainant and the firm of its determination the reasons for its determination, and the right of the complainant to appeal the decision to USDOT. If reasonable cause to remove certification eligibility is found, the TNUCP partner will notify the challenged firm in writing by certified mail of the specific reasons for the proposal to remove its certification and of its right to request an informal hearing to respond to the proposed decertification in person. The firm may elect to present information and arguments in writing without going to a hearing consistent with 49 CFR Section 26.87.

The TNUCP establishes a Third Party Challenge Committee, which will hear all Third Party challenges coming before the TNUCP. The committee shall ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take 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. The decision makers shall be individuals who are knowledgeable about the certification requirements of the DBE program and this agreement. The firm shall be notified of the final decision made by the Third Party Challenge Committee and the reasons for the decision, If the decision is not to remove the firm, the complainant will be notified of the right to appeal to USDOT under 49 CFR Section 26.89. If the firm is removed and is certified by the SBA, a written notice shall be provided to the SBA that includes the reasons for the removal, as required by 49 CFR Section 26.87. The firm has the opportunity within 90 days of receipt of the date of the final decision to appeal the decision to USDOT under 49 CFR Section 26.89.

**DOT Directive.** The USDOT may notify the TNUCP of reasonable cause to find a certified DBE firm to be ineligible and the TNUCP shall immediately commence and initiate a proceeding to remove eligibility as provided by the abovementioned Third-Party Challenge paragraph of this agreement.

**TNUCP Partner-initiated.** The original certifying partner may also initiate proceedings to remove a DBE's certification, if based on notification by the firm of a change in its circumstances or other information that comes to your attention; it determines that there is reasonable cause to believe that a currently certified firm is ineligible. Upon this

## MKAA DBE Program

determination, the original certifying partner shall immediately notify the firm in writing setting forth the reasons for the determination and prosecute a proceeding to remove eligibility as provided by the abovementioned Third-Party Challenge paragraph of this agreement. The firm whose eligibility is removed may reapply for certification twelve (12) months from the date that the firm receives the removal letter from the TNUCP.

**Administrative Removal of Eligibility.** In circumstances where a certified firm's owner(s) exceed(s) the Personal Net Worth limit and there is no dispute, then the firm's certification may be removed without using the procedures of 49 CFR Section 26.87.

**Partner Compliance.** A great deal of the discussion in the final stages of development centered on the need to trust each TNUCP partner, as well as, acknowledging issues that may arise related to quality and compliance. The partners agree there are many agency specific issues related to their agency's certification processes. The primary areas of concern are:

- Political influence or interference in certification decisions
- Incomplete or inadequate definition of processes
- Non-Compliance with 49 CFR Part 26
- Quality of decisions

In order for the UCP to succeed and the partners to maintain the level of trust needed to effectively comply with the UCP requirements it is necessary to implement minimum requirements for compliance, as well as a process for dealing with any recipient that is found to be in non-compliance.

The specific minimum requirements are:

- All decisions related to certification must be made in compliance with 49 CFR Parts 23 & 26. This requires the political independence to make decisions based upon the specific eligibility requirements as outlined in the regulations.
- Outside entities such as construction boards or other politically mandated organizations cannot be involved in the certification determination or investigations of third-party challenges.
- All TNUCP Partners must have an approved DBE Program/Plan in place that clearly defines the role of the administrative staff.
- Any partner with a DBE Program administered in conjunction with an MBEIWBE program of another entity must have the procedures and policies for the DBE program clearly defined and separated. This includes eligibility requirements, data tracking, and removal/denial of certification.

## MKAA DBE Program

- All partners agree to make decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or other factors.

If any TNUCP partner feels that a partner is not complying with the requirements of 49 CFR Parts 23 & 26, they may make a written complaint to TDOT. The TNUCP will review and process the complaint and circumstances. If a majority of the TNUCP partners, not including the complaining partner or the partner in question, agree that the partner is not complying with the requirements, remedial action will be taken. The remedial action can take the form of one of the following:

- **Written Findings** — The TNUCP may issue a formal written determination of the issues regarding that partner's certification, procedures, or practices. This determination will be sent to the senior management officials and the USDOT. It is hoped that the partner will review the procedures at issue and make improvements to the process in order to meet 49 CFR Part 26.
- **Monitoring & Concurrence** — The TNUCP may issue a formal written determination as set out above, as well as provide a procedural review and concurrence process. It is the hope of the partners that the partner in question will take this opportunity to gain additional knowledge and education of the regulations and requirements.
- **Non-Compliance** — Should the TNUCP make every effort to correct the deficiencies in a partner's certification process, extreme measures may be necessary. The TNUCP may find that a partner is not acting in good faith and determine that the UCP will not accept firms certified by that agency until the required changes are implemented.

The TNUCP recognizes that this is a method of last resort and would not apply this remedy liberally. In addition, the TNUCP would not proceed with this remedy without notification to the USDOT, as well as the lead federal agency for the partner agency. The TNUCP further agrees that should the USDOT or the lead federal agency wish to assist or provide guidance on resolution, the TNUCP would make every effort to resolve the situation prior to implementing this remedy.

**Non-Disclosure/Confidentiality.** The participants to this agreement will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation in accordance with 49 CFR Section 26.109.

## MKAA DBE Program

When another recipient of United States Department of Transportation funding, in connection with its consideration of the eligibility of the applicant, makes written request for certification information from a participant to this agreement which it has obtained from the applicant (e.g. including in application materials, reports of onsite visits) the participants will make the information available to the other recipient.

**Training.** All TNUCP partners recognize the need for continued training for staff members, as well as recipients and agency management personnel. Upon execution of the final UCP agreement the partners agree to initiate a series of training sessions aimed at improving the certification processes of the partners, as well as provide for consistent eligibility determinations, The TNUCP will seek the assistance of the USDOT, FTA, FHWA, FAA and other agencies as appropriate to provide guidance and training The TNUCP will also embark upon ongoing in-service opportunities to continue to update the partners, as well as the staff members. Many of these opportunities may be in conjunction with other UCP's, states, or entities.

The TNUCP partners also discussed the need for improved technical and business supportive services. It was agreed that the efforts of all of the agencies could be combined to provide additional and meaningful training to all of the DBE firms. The partners decided to develop a communication effort to ensure that all agencies were notified of the upcoming training and given an opportunity to assist in the training and development activities.

**Voting Criteria.** A majority of the TNUCP partners are needed for a quorum. Only the official designated representative, or an approved alternate, from each partner may vote. Partner's specific name and their respective designated representative and vote will be recorded.

## ATTACHMENT 9

### **Race-Neutral Small Business Element for MKAA DBE Program**

The Metropolitan Knoxville Airport Authority (MKAA) has developed a race-neutral Small Business Element (SBE) as part of the MKAA DBE Program in compliance with 49 CFR Section 26.39. We will plan and execute strategies that are designed to expand opportunities for small businesses without relying on race or gender as eligibility factors. This approach will help increase the participation of small businesses in MKAA's contracting and procurement activities by removing barriers and promoting inclusiveness.

#### **1. Objective**

The objective of the Small Business Element (SBE) is to provide race-neutral opportunities that encourage small business participation in airport-related contracts and procurement processes. MKAA aims to promote inclusivity and support economic growth in the Knoxville area by increasing accessibility and leveling the playing field for all qualified small businesses.

#### **2. Program Components**

##### *A. Outreach and Education*

**Networking Events:** Host semi-annual networking events, such as "Meet the Primes" sessions, where small businesses can connect with prime contractors and learn about upcoming opportunities. These events will be open to all small businesses, allowing them to develop relationships and improve their competitiveness.

**Workshops and Webinars:** Conduct regular workshops covering topics like bid preparation, proposal writing, and compliance with FAA requirements. These educational sessions will be designed to help small businesses navigate MKAA's procurement processes and enhance their capacity to participate successfully.

##### *B. Access to Resources and Technical Assistance*

**Mentorship Program:** Pair experienced contractors with small businesses to guide them through MKAA's contracting process. The mentorship program will provide direct support for building business capability, developing competitive bids, and understanding contract requirements.



## MKAA DBE Program

**Small Business Toolkit:** Develop and distribute a toolkit containing templates for proposals, capability statements, and guidelines for bonding and insurance requirements. This toolkit will be available on MKAA's website, making it accessible to all potential vendors.

**One-on-One Consultation:** Offer free one-on-one consultations where small business owners can meet with MKAA procurement officers to ask questions and receive personalized guidance.

### *C. Unbundling Contracts*

**Breaking Down Large Contracts:** Where feasible, MKAA will unbundle large contracts into smaller segments that are more manageable for small businesses. This practice allows small businesses to bid on portions of contracts that align with their capacity and expertise, rather than competing for entire large contracts.

**Set-Aside Subcontracts for Small Businesses:** MKAA will encourage prime contractors to set aside portions of their subcontracts specifically for small businesses. This creates direct subcontracting opportunities for small businesses, even on large-scale projects.

### *D. Expedited Payment Procedures*

**Prompt Payment Policy:** MKAA will implement an expedited payment policy for small business contracts, ensuring that small businesses receive timely payments to support their cash flow and operational stability. The policy includes a commitment to process payments within 15 days of approval.

**Advance Payment Option:** For specific contracts, MKAA may offer advance payments on a case-by-case basis to small businesses that demonstrate financial need. This measure supports small businesses in maintaining liquidity during project execution.

### *E. Sourcing Opportunities and Access to Bidding Information*

**Small Business Vendor Directory:** Develop a vendor directory listing all interested small businesses, which will be shared with prime contractors and MKAA departments. The directory will increase visibility for small businesses, making it easier for them to be considered in contracting decisions.

**Procurement Portal Access:** Ensure that the MKAA website includes a dedicated procurement portal with open and upcoming bid opportunities for small businesses. This portal will include contract requirements, bidding deadlines, and instructions for submission.

### **3. Monitoring and Reporting**

Quarterly Participation Review: MKAA will conduct quarterly reviews to track small business participation across contracts. This review will include tracking the number of contracts awarded to small businesses, the total dollar amount awarded, and project completion rates.

Feedback Loop: After each contract cycle, MKAA will request feedback from small business participants to identify barriers or challenges encountered. This feedback will be used to refine and improve the SBE and increase accessibility.

Annual Reporting: MKAA will provide an annual report summarizing SBE participation, contract outcomes, and any adjustments to program components. This report will be made available to stakeholders and the public to maintain transparency.

### **4. Assurances and Compliance**

MKAA assures that the Race-Neutral Small Business Element complies with all federal regulations and will not exclude any business from participation based on race or gender. Participation in the SBE is based solely on meeting the small business criteria established by the U.S. Small Business Administration (SBA) and adhering to MKAA's program requirements.

MKAA's race-neutral Small Business Element provides a structured approach for MKAA to increase small business participation in airport projects, thereby promoting fair competition and economic growth within the Knoxville region. The SBE's emphasis on outreach, technical assistance, unbundling contracts, prompt payments, and accessibility supports MKAA's commitment to an inclusive procurement environment.

The MKAA Race-Neutral Small Business Element (SBE) aligns closely with the FAA-recommended strategies for a compliant small business element under 49 CFR §26.39. This section of FAA regulations outlines requirements for promoting race-neutral small business participation, focusing on inclusion, competitive equity, and support for small businesses. MKAA's approach incorporates strategies for implementing a race-neutral small business element effectively.

#### **Unbundling Contracts:**

MKAA commits to unbundling larger contracts where feasible, creating manageable contract segments that are accessible to small businesses. By dividing larger contracts, MKAA enables small businesses to bid on portions they can perform independently, which encourages broader participation without considering race or gender. MKAA will require

## MKAA DBE Program

bidders to specify elements of the contract or subcontracts that small businesses can reasonably perform.

### **Prime Contracts and Set-Aside Opportunities:**

Ensuring that a reasonable number of prime contracts are of a size that small businesses can perform create contract portions that small businesses can bid on, particularly in large, multi-year projects. MKAA does not directly set aside prime contracts, it encourages prime contractors to designate subcontracts specifically for small businesses.

### **Outreach and Education:**

Through workshops, mentorship programs, and one-on-one consultations, MKAA provides tools and knowledge that empower small businesses to engage in consortia or partnerships, strengthening their ability to compete for larger contracts. This aligns with FAA's race-neutral approach to enhancing small business competency and market access.

### **Expedited Payment Policies:**

MKAA's commitment to expedited payments and advance payment options supports small businesses financially, allowing them to sustain project engagement without waiting on lengthy payment cycles. This is a race-neutral support measure that benefits small businesses across the board.

### **Verification of Eligibility:**

The verification process ensures that businesses are eligible based on size and other neutral criteria, maintaining the integrity of the program. MKAA uses SBA standards to verify small business eligibility without relying on race, gender, or geographic preferences. This is designed to minimize fraud and abuse by verifying program eligibility of firms without using race/gender/geographical certification.

MKAA's race-neutral SBE program structure directly addresses 49 CFR Section 26.39 by:

#### **1. Promoting Small Business Participation:**

- The SBE is designed to remove participation barriers by providing tailored resources (e.g., Small Business Toolkit, mentorship, outreach). This approach complies with 49 CFR Section 26.39 mandate to expand small business access and participation in airport contracts without consideration of race or gender.

**2. Assuring Fair Access to Contracts:**

- MKAA implements mechanisms to ensure that small businesses of all backgrounds can compete for appropriate contract sizes, avoiding competitive conflict between DBE and non-DBE firms. This assurance supports 49 CFR Section 26.39's requirement for inclusivity and fair competition.

**3. Monitoring and Adjusting for Effectiveness:**

- MKAA will conduct quarterly participation reviews and annual reporting to assess the program's effectiveness, an FAA-recommended practice and a 49 CFR Section 26.39 requirement. Regular evaluations allow MKAA to refine its program as needed, ensuring it meets its objectives.

**4. Public Transparency and Access:**

- MKAA's procurement portal and open access to SBE resources provide transparency and readily available information for all small businesses. By offering a race-neutral program open to all qualified small businesses, MKAA fulfills the requirement to promote opportunities without geographic or demographic limitations.

MKAA's race-neutral SBE aligns with FAA strategies and 49 CFR Section 26.39 by offering small businesses structured support, maintaining competitive equity, and ensuring open, accessible procurement opportunities. This approach not only complies with regulatory standards but also strengthens the local economy by fostering a diverse base of competitive small businesses.