POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

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

1. To ensure nondiscrimination in the award and administration of DOT — assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The DBE Coordinator has been delegated as the DBE Liaison Officer. In that capacity, the DBE Coordinator is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Birmingham Airport Authority in its financial assistance agreements with the Department of Transportation.

Diane Gillam has disseminated this policy statement and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The information is available by contacting the DBE Coordinator's Office and posted in advertisements for bids.

Mr. Al Denson, CEO and President

6/19/12

Date
SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Birmingham Airport Authority is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.


Section 26.5 Definitions

The Birmingham Airport Authority will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The Birmingham Airport Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

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

We will report DBE participation to DOT as follows:

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

Bidders List: 26.11(c)
The Birmingham Airport Authority will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following ways: By requesting all bidders to provide their annual gross receipts in terms of a bracket of under $500,000, $500,001 to $1,000,000, or over $1,000,000.00.

Section 26.13 Federal Financial Assistance Agreement

Birmingham Airport Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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

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

Contract Assurance: 26.13b

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Birmingham Airport Authority will receive an annual grant for airport planning or development totaling $250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding $250,000 annually, during the reporting period.
Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Diane Gillam  
Properties and DBE Coordinator  
5900 Airport Highway, Birmingham, Alabama 35212  
205-599-0522

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Birmingham Airport Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer, Mr. Al Denson concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment "Organizational Chart" 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 four (4) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
4. Analyzes the Birmingham Airport Authority's progress toward attainment and identifies ways to improve progress.
5. Participates in pre-bid meetings.
6. Advises the CEO/governing body on DBE matters and achievement.
7. Chairs the DBE Advisory Committee.
8. Determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Acts as liaison to the Uniform Certification Process in Alabama.
12. Provides outreach to DBEs and community organizations to advise them of opportunities
13. Maintains the Birmingham Airport Authority's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

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

The DBE Coordinator attends various functions and meets financial institutions that work with DBE firms.

Section 26.29 Prompt Payment Mechanisms

The Birmingham Airport Authority will include the following clause in each DOT-assisted prime contract:
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ninety (90) days from the receipt of each payment the prime contractor receives from Birmingham Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within ninety (90) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Birmingham Airport Authority. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

The Birmingham Airport Authority maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

We or the State of Alabama revises the Directory bi-annually. We make the Directory available as follows: It is emailed to anyone that calls or emails requesting a copy of the DBE Directory. The Directory may be found at www.flybirmingham.com.

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

Birmingham Airport Authority has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by monitoring the contract during the process and at the conclusion to insure that all provisions have been attained.

4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.
Section 26.39 Fostering small business participation.

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

This element has been submitted and approved by FAA for approval by February 28, 2012. The program element is included as Attachment C. As part of this program element, we will include the following strategies:

1. Establish a race-neutral small business set-aside for prime contracts under a stated amount $400,000.
2. In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") we will require the bidders on prime contracts to specify elements of the contract or specific subcontractors that are of a size that small businesses, including DBEs, can reasonably perform.
3. On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
5. To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

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

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Birmingham Airport Authority does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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

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

In accordance with Section 26.45(f) the Birmingham Airport Authority will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, Birmingham Airport Authority will consult with minority, women's and general contractor groups, community
organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Birmingham Airport Authority's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 8:30 to 3:30 for 30 days following the date of the notice, and informing the public that The Birmingham Airport Authority and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by July 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

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

Section 26.47 Failure to meet overall goals.

If the Birmingham Airport Authority awards and commitments are less than the goal for that year, we will:

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

Section 26.49 Transit Vehicle Manufacturers Goals

Birmingham Airport Authority will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Birmingham Airport Authority may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.
Section 26.51(d-g) Contract Goals

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

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

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

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offor or is to make good faith efforts. The bidder/offor can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

Diane Gillam, the DBE Coordinator is responsible for determining whether a bidder/offor who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

Birmingham Airport Authority treats bidder/offors' compliance with good faith efforts' requirements as a matter of responsiveness.

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

or

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))
Within 7 business days of being informed by Birmingham Airport Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Mary Mindingall, Senior Vice President, Finance and Administration, 5900 Airport Highway, Birmingham, Alabama 35212, 205-599-0507, or mmindingall@flybirmingham.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

Birmingham Airport Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

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

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

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

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

Sample Bid Specification:

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

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

Section 26.55 Counting DBE Participation

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

Birmingham Airport Authority will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.
For information about the certification process or to apply for certification, firms should contact:

Diane Gillam
Properties and DBE Coordinator
5900 Airport Highway
Birmingham, Alabama 35212
205-599-0522
DGiIIam@flybirmingham.com

Our certification application forms and documentation requirements are found in Form 2: Letter of Intent to this program.

**SUBPART E — CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

Birmingham Airport Authority is not a member of a UCP at this time. We intend to have an agreement signed by March 31, 2012. The ALUCP was submitted to DOT in March 2002 for review and approval. Once that process is finalized, the Birmingham Airport Authority will actively participate in the program.

**Section 26.83 Procedures for Certification Decisions**

Re-certifications 26.83(a) & (c)

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

For firms that we ensure UCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility every three years.

These reviews will include the following components: A minimum of a new application, and potentially to include an On-Site Review.

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

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

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

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the Birmingham Airport Authority under 25.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as...
defined by SBA rules) over the firm's previous three fiscal years do not exceed $20.41 million.

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

Section 26.85 Interstate Certification

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

Section 26.86 Denials of Initial Requests for Certification

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

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment F to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the UCP have determined that the US Department of Transportation, Departmental Office of Civil Rights will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative "firewall" to ensure that the US Department of Transportation, Departmental Office of Civil Rights will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

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

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

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).
Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

Monitoring Payments to DBEs

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

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

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<td>Attachment 10</td>
<td>Small Business set-aside program</td>
</tr>
</tbody>
</table>
Attachment 4

DBE Directory link to DBE directory

www.flybirminghamdbe.com
Attachment 5

Section 26.45: Overall DBE 3-Year Goal Methodology

Name of Recipient: ________________________________


DOT-assisted contract amount:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
</table>
| FY-2012| _______
| FY-2013| _______
| FY-2014| _______

Total

DBE 3-Year Overall Goal: (percentage) __________

Total dollar amount to be expended on DBE’s:

Describe the Number and Type of Projects that the airport anticipates awarding:

1. _______
2. _______
3. _______
4. _______

Market Area: [List counties/parishes for local market area - The market area is the area in which the majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located and the area in which the Airport spends the majority of its contracting dollars. The market area is usually the counties/parishes surrounding the Airport but can also extend to additional areas where contractors and/or subcontractors can be found to do the types of projects being awarded at the Airport.]

Step 1. Analysis: Actual relative availability of DBE’s

[Part 26.45 allows for the goal to be set 1 of 5 different methods. The example provided below is the most often used method but is not mandatory to use. The DBE Program Regulation can be found at http://osdbu.dot.gov/DBEProgram/index.cfm


and Census Bureau Data http://www.census.gov/econ/cbp/index.html

[For each project anticipated to be awarded during the 3-year period, please provide the following information]

<table>
<thead>
<tr>
<th>NAICS</th>
<th>Type of Work</th>
<th>Total DBE’s</th>
<th>Total All Firms</th>
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</thead>
<tbody>
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</tbody>
</table>

Divide the total number of DBE’s by the total number of All Firms = base figure for each project.

[Weighting is not mandatory, but is encouraged for a more accurate base figure.]
See Tips for Setting-Goals:
http://osdhu.dot.gov/DBFProgram/GuidanceforDBFProgramAdministrators/index.cfm

To determine the overall base figure for more than one project, add all the project percentages together.

**Step 2. Analysis:** Adjustment to Step 1 base figure to make it more precise.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment (if any) was needed to the base figure in order to arrive at the overall goal.

The data used to determine the adjustment to the base figure was the median of historical DBE accomplishments which range from 3% to 9% as follows:

- FY-09 = 4%
- FY-10 = 3%
- FY-11 = 9%

Arranging this historical data from low to high, the median is 4%.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of ________. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during FY-12113/14.

Or,

There is no historical DBE data to reference to make an adjustment to the Step 1 base figure, therefore, the Airport Authority is adopting its Step 1 base figure as its overall goal for FY-2012, 2013 and 2014.

Or,

There is no historical DBE data to reference to make an adjustment to the Step 1 base figure, however, the Airport Authority feels it can achieve a slighter higher DBE goal during the 3-year period because additional DBE firms that perform work are to be certified in the local market area. Therefore, the Airport Authority is increasing its Step 1 base figure by 1.5% for a total overall goal of __________ for FY-2012, 2013 and 2014.
Also include if applicable:

Further, there are no applicable disparity studies for the local market area or recent legal case information available from the State of Illinois Department of Commerce E. 0. office to show any evidence of barriers to entry or competitiveness of DBEs in Cook or Kelly counties.

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.
26.51(b)(1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. [Use all the applicable RN measures that the recipient will use to increase DBE participation:]

[Examples]
1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;
6. Providing services to help DBE's 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 DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
10. [You may have other race neutral measures]

The recipient estimates that in meeting its overall goal 90%, it will obtain 10% from RN participation and 90% through RC measures.

Add a summary of the basis of the estimated breakout of RN and RC DBE participation for example:

This breakout is based on: (These are 4 different examples you may consider using, if applicable)

In FY-11, the Airport Authority’s accomplishments exceeded their goal by 3%, which is evidence of race-neutral participation, therefore, 3% of our 9.07% goal is being applied to race-neutral and the remaining 6.07% is applied to race-conscious participation.

The Airport Authority expects to have 1 DBE prime contractor in 2012 that was the lowest bidder. This DBE is expected to accomplish at least 2% of the project work, therefore, we are applying 2% of our 9.07 goal to race-neutral and 7.07 to race-conscious participation.

The Airport Authority holds quarterly meetings open to all small businesses that will result in at least 1% additional DBE participation in 2012, therefore, we are applying 1% of our 9.07 goal to race-neutral and the remaining 8.07 to race-conscious.

The Airport Authority does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, we are applying the entire goal of 9.07 to race-conscious participation.
The recipient will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Public Participation

Consultation: Section 26.45(g)(1).

[In establishing the proposed goal, consult with minority, women's and general contractor groups, community organizations who can share information on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's and the recipients efforts to establish a level playing field for the participation of DBE's.]

Suggested language to use:

The Airport Authority submits its overall 3-year goal to DOT on August 1 as required.

Before establishing the overall goal, the Airport Authority will consult with Cook and Kelly County's Chamber of Commerce, Cook and Kelly County's Public Works Department, Illinois Contractors Association, IDOT, State of Illinois Minority Business Development Office, Women Business Development Council, Airport Minority Business Council, without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport Authority's efforts to establish a level playing field for the participation of DBEs.

Following the consultation, we will publish a notice in the Illinois Daily Herald of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the airport administration building for 30 days following the date of the notice, and informing the public that the Airport Authority and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

The following comments were received:

Or, no comments have been received.
Sample Public Notice Language:

PUBLIC NOTICE

The Birmingham Airport Authority hereby announces its fiscal year 20__ goal of ___ for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday at [location's name and address] for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

[DBELO, name, complete address]

or

Federal Aviation Administration
Office of Civil Rights Staff
Attn: Nancy Cibic, AGL-9
2300 East Devon Avenue
Des Plaines, IL 60618

Contract Goals

The recipient will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the recipient’s overall goal that is not projected to be met through the use of RN means.

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

We will express our contract goals as a percentage of the [total amount of a DOT-assisted contract] or [the Federal share of a DOT-assisted contract]. [Note: Recipients can choose either approach]
Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

_____ The bidder/offeror (if unable to meet the DBE goal of ____% DBE goal of ___cY___) is committed to a minimum of _____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: __________________________________________

State Registration No. __________________________

By ____________________________________________

(Signature) Title
FORM 2: LETTER OF INTENT

Name of bidder/offerors firm: ______________________________
Address: ________________________________________________
City: __________________________________ State: _____ Zip: _____

Name of DBE firm: ______________________________
Address: ________________________________________________
City: __________________________________ State: _____ Zip: _____
Telephone: ______________________________

Description of work to be performed by DBE firm:
	________________________________________________________________________
	________________________________________________________________________
	________________________________________________________________________

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

Affirmation

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

By ________________________________ (Signature) (Title)

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

[Submit this page for each DBE subcontractor.]
Attachment 7

Monitoring and Enforcement Mechanisms

The Birmingham Airport Authority has available several remedies 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;
2. Breach of contract action, pursuant to [insert State Code Section No.];
3. [List the other laws, statutes, regulations, etc. that are available to enforce the DBE requirements.]

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 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.
ATTACHMENT C
Small Business Set-Aside Program

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

This element has been submitted and approved by FAA for approval by February 28, 2012. The program element is included as Attachment C. As part of this program element, we will include the following strategies:

1. Establish a race-neutral small business set-aside for prime contracts under a stated amount $400,000.

2. In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably
perform.

(3) On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

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