
Memphis-Shelby County Airport Authority
Memphis International Airport



Airport Concession
Disadvantaged Business Enterprise Program

October 2024



Prepared by Ken Weeden & Associates, Inc.

TABLE OF CONTENTS

SUB-PART A - GENERAL REQUIREMENTS & INFORMATION 3

- Section 23.1, 23.23 Policy Statement and Objectives 3
- Section 23.1 Objectives..... 4
- Section 23.3 Definitions 4
- Section 23.5 Applicability..... 4
- Section 23.9 Non-discrimination Requirements 4
- Section 23.11 Compliance and Enforcement 5

SUBPART B - ACDBE PROGRAMS 5

- Section 23.21 ACDBE Program Updates 5
- Section 23.23 Administrative Provisions..... 5
- Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs..... 6
- Section 23.26 Fostering Small Business Participation 8
- Section 23.27 Reporting 8
- Section 23.29 Compliance and Enforcement Procedures..... 9

SUBPART C - CERTIFICATION AND ELIGIBILITY 10

- Section 23.31 Certification Standards 10
- Section 23.33 Business Size Standards..... 10
- Section 23.35 Personal Net Worth..... 11
- Section 23.37 Firms Certified as DBEs..... 11
- Section 23.39 Other ACDBE Certification Requirements..... 11

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING 11

- Section 23.41 Basic Overall Goal Requirement 11
- Section 23.43 Consultation in Goal Setting 12
- Section 23.45 Overall Goals 12
- Section 23.53 Counting ACDBE Participation for Car Rental Goals 13
- Section 23.55 Counting ACDBE participation for Concessions Other than Car Rentals..... 13
- Section 23.57(b) Goal shortfall accountability..... 14
- Section 23.61 Quotas or Set-asides..... 14

SUBPART E - OTHER PROVISIONS 15

- Section 23.71 Existing Agreements..... 15
- Section 23.73 Privately-Owned or Leased Terminal Buildings 15
- Section 23.75 Long-Term Exclusive Agreements..... 15
- Section 23.77 Preemption of Local Requirements..... 16
- Section 23.79 Geographic Preferences..... 16

ATTACHMENTS 16

Sub-Part A - General Requirements & Information

Section 23.1, 23.23 Policy Statement and Objectives


The Memphis Shelby County Airport Authority (hereafter the "MSCAA") has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program, on behalf of the Memphis International Airport ("Airport"), in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 23. The MSCAA has received Federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The MSCAA has signed grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the MSCAA to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also the MSCAA's policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving USDOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that the MSCAA's ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at the Airport;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at the Airport;
6. To promote the use of ACDBEs in all types of concession activities conducted by recipients;
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program;
8. To provide appropriate flexibility to the MSCAA in establishing and providing opportunities for ACDBEs.

ReGina Armstrong, Senior Manager of Business Diversity Development, Memphis Shelby County Airport Authority, 2491 Winchester Road, Suite 113, Memphis, TN 38116, 901-922-0167, has been designated as the ACDBE Liaison Officer (ACDBELO). In this capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE Program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the Memphis Shelby County Airport Authority in its financial assistance agreements with the Department of Transportation.

ReGina Armstrong


Michael Fulton (Nov 1, 2024 13:56 CDT)

The Memphis Shelby County Airport Authority has disseminated this policy statement to its board members and all of the components of the organization. The MSCAA has distributed this statement to ACDBE and non-ACDBE concessionaire communities in the area on the MSCAA's website, via local newspapers, local chambers of commerce, local trade organizations, professional organizations and local minority, women, and disadvantaged business organizations.

Terry Blue

Terry S. Blue, President & Chief Executive Officer

Date

Section 23.1 Objectives

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

Section 23.3 Definitions

The Memphis Shelby County Airport Authority will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The Memphis International Airport is a medium-hub primary airport, and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

The MSCAA 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 concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its DBE program, the MSCAA 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 ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The MSCAA acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The MSCAA will include the following assurances in all concession agreements and management contracts it executes with any firm:

- (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and causes those businesses to similarly include the statements in further agreements.

Section 23.11 Compliance and Enforcement

Memphis Shelby County Airport Authority acknowledges that the compliance and enforcement provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under Part 23 in the same way that they apply to FAA recipients and programs under Part 26.

SUBPART B - ACDBE Programs

Section 23.21 ACDBE Program Updates

The MSCAA is the operator of at least one primary airport and is required to have an ACDBE program. This ACDBE program applies to the following airport(s):

- **Memphis International Airport**

Prior to implementing significant changes to this ACDBE program, the Memphis Shelby County Airport Authority will provide the amended program to the FAA for review and approval.

Section 23.23 Administrative Provisions

Policy Statement: The MSCAA is committed to operating its ACDBE program in a nondiscriminatory manner. The MSCAA's policy statement is elaborated on the first page of this program.

Financial Institutions: The MSCAA will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. The MSCAA will also encourage prime concessionaires to use such institutions. To date, the following institution has been identified:

Liberty Bank & Trust
4606 Elvis Presley Boulevard
Memphis, TN 38116
<https://www.libertybank.net>
901.398.1342

ACDBE Liaison Officer (ACDBELO):The MSCAA has designated the following individual as its ACDBELO:

ReGina Armstrong
Senior Manager of Business Diversity Development
Memphis Shelby County Airport Authority
2491 Winchester Road, Suite 113
Memphis, TN 38116
901-922-0167
rarmstrong@flymemphis.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the MSCAA complies with all provisions of 49 CFR Part 23. The ACDBE Liaison Officer

has direct, independent access to the President & Chief Executive Officer, who is the equivalent to the CEO of an organization, on ACDBE program issues. An organization chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of 1 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 FAA or USDOT.
2. Reviews third-party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
4. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract-specific goals).
5. Analyzes the MSCAA's progress toward attainment and identifies ways to improve progress.
6. Advises the President & Chief Executive Officer and the governing body on ACDBE matters and achievements.
7. Chairs MBE/DBE/ACDBE Advisory Committee.
8. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
9. Explaining the ACDBE participation guidelines at pre-bid and pre-proposal conferences.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Unified Certification Program in Tennessee.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

Directory: The Tennessee Uniform Certification Program (UCP) maintains a directory identifying all firms eligible to participate as ACDBEs. 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 an ACDBE. The UCP revises the directory updated when a firm has been certified. The directory is available to the public and interested persons can obtain access to the directory. The directory may be found in Attachment 2 to this program plan.

Bidders/offerors may also be referred to the FAA's directory of firms at FAA Matchmaker (<https://faa.dbesystem.com>).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The MSCAA will not use set-asides or quotas as a means of obtaining ACDBE participation.

The MSCAA will seek ACDBE participation in all types of concession activities.

The MSCAA will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. The MSCAA will take the

following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)):

Race-neutral measures may include but are not limited to:

- 1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
- 2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- 3) When practical, structuring concession activities to encourage and facilitate the participation of ACDBEs;
- 4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
- 5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;
- 6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
- 7) Establishing a business development program (see part 2 § 26.35); technical assistance programs; or taking other steps to foster ACDBE participation in concessions.

The MSCAA will also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures we will implement, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
 - a. In setting concession-specific goals for concession opportunities other than car rental, the MSCAA will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is *de minimis* availability for direct ownership arrangement participation for that concession opportunity.
 - b. In setting car rental concession-specific goals, the MSCAA will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, the MSCAA is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
 - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the MSCAA will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

- d. If the goal applies to purchases or leases of goods and services from ACDBEs, the MSCAA will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
 - e. When a concession-specific goal is set, the MSCAA will require competitors to make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
 - f. The administrative procedures applicable to contract goals in part 26, § § 26.51 through 26.53. apply with respect to concession-specific goals.
2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.
 3. With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

The MSCAA requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

Section 23.26 Fostering Small Business Participation

The MSCAA has created a small business element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as Attachment 11 to this ACDBE program plan. The program elements will be actively implemented to foster small business participation. The MSCAA acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program plan.

The MSCAA will submit an annual report on small business participation obtained through the use of this small business element. The report must be submitted in the format acceptable to the FAA based on a schedule established and posted to the agency's website, available at https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program.

Section 23.27 Reporting

The MSCAA will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

The MSCAA will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

The MSCAA will create and maintain active participants list information and enter it into a system designated by the FAA. The MSCAA will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession opportunities.

- a. Firm name;
- b. Prime or Sub;
- c. Point of Contact;
- d. Firm status as an ACDBE or non-ACDBE;
- e. Race and gender information for the firm's majority owner;
- f. Firm address including ZIP code;
- g. Phone Number;
- h. Scope of Work;
- i. Email Address;
- j. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- k. Age of the firm; and
- l. The annual gross receipts of the firm.

The MSCAA will collect data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. The MSCAA will collect the data using the form in Attachment 3. The MSCAA will enter this data in FAA's designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded.

The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to USDOT's Departmental Office of Civil Rights each year. The MSCAA, if a certifying member of the state UCP, ensures the collection and reporting of the following information in the UCP directory:

- 1) The number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
- 2) The number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
- 3) The number of decertified firms;
 - i) Total in-state and out-of-state firms decertified;
 - ii) Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;
 - iii) Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- 4) Number of in-state and out-of-state ACDBEs summarily suspended;
- 5) Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and
- 6) Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

The MSCAA will take monitoring and enforcement mechanisms discussed in [Attachment 4](#) to ensure compliance with 49 CFR Part 23. The specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means used to ensure compliance are included in the attachment.

1. The MSCAA will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The MSCAA will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The MSCAA has listed the regulations, provisions, and contract remedies available in the event of non-compliance with the ACDBE regulation by a participant in its procurement activities (see [Attachment 4](#)).

SUBPART C - CERTIFICATION AND ELIGIBILITY

Section 23.31 Certification Standards

The MSCAA is a non-certifying member of the Tennessee Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. The Tennessee UCP will use the certification standards of Subpart C of Part 23 to determine the eligibility of firms to participate as ACDBEs in airport concessions contracts. To be certified as an ACDBE, a firm must meet all certification eligibility standards. Certifying Tennessee UCP members make all certification decisions based on the facts as a whole.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of Part 23, or both.

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

ReGina Armstrong, Senior Manager of Business Diversity Development

Memphis Shelby County Airport Authority

2491 Winchester Road, Suite 113

Memphis, TN 38116

901-922-0167

ramstrong@flymemphis.com

A link to the certification application forms and documentation requirements is found in [Attachment 8](#) to this program.

Section 23.33 Business Size Standards

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm's previous five (5) fiscal years.
2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.
4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in [13 CFR 121.104\(a\)](#)) of affiliates are included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

Section 23.35 Personal Net Worth

The personal net worth standard used in determining eligibility for purposes of Part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

Section 23.37 Firms Certified as DBEs

Certifying members of Tennessee UCP will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, certifying Tennessee UCP members will ensure that the disadvantaged owners of a DBE certified under Part 26 are able to control the firm with respect to its activity in the concessions program.

Section 23.39 Other ACDBE Certification Requirements

The provisions of § 26.83(c)(1) of 49 CFR Part 26 do not apply to ACDBE certifications. The MSCAA will defer to the Tennessee UCP to make the determination whether or not a firm is eligible to become an ACDBE. The UCP will follow the procedures in § 23.39 to make the determination.

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The MSCAA will establish two separate, overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period, and the MSCAA will review the goals annually to make sure the goal continues to fit the MSCAA's circumstances. The MSCAA will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding three years do not exceed \$200,000, The MSCAA will not need to submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding three years do not exceed \$200,000, the MSCAA need not submit an overall goal for concessions other than

car rentals. The MSCAA understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The MSCAA’s overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

The MSCAA consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the MSCAA’s efforts to increase participation of ACDBEs.

When submitting the overall goals, the MSCAA will identify the stakeholders consulted with and provide a summary of the information obtained from the stakeholders.

The requirements of this section do not apply if no new concession opportunities become available during the goal period. However, the MSCAA will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

Section 23.45 Overall Goals

Overall goals will be submitted to the FAA for approval. The Memphis International Airport is a **medium-hub** primary airport. As a condition of eligibility for FAA financial assistance, the MSCAA will submit its overall goals according to the following schedule for medium-hub primary airports:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Medium-Hub	All regions	October 1, 2023	2024/2025/2026	October 1, 2026 (2027/2028/2009)

Source: https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart_New.Final.pdf

The goals must be submitted every three years based on the published schedule.

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the County will submit an appropriate adjustment to the overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

The MSCAA will establish overall goals in accordance with the two-step process as specified in § 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in the sponsor’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect

ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training, and union apprenticeship).

The MSCAA will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that Airport's goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral "split." In such a case, the adjusted goal is binding on the County.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

The MSCAA will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR § 23.53.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of Part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the MSCAA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the MSCAA will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of Part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. The MSCAA will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.*, in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform the MSCAA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

Section 23.55 Counting ACDBE participation for Concessions Other than Car Rentals

The MSCAA will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR § 23.55.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of Part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the MSCAA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the MSCAA will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of Part 23 or any other material changes, other than changes regarding

the firm's business size or the owner's personal net worth. The MSCAA will not count the former ACDBE's participation toward ACDBE goals beyond the termination date for the agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform the MSCAA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

Section 23.57(b) Goal shortfall accountability.

If the awards and commitments on the Uniform Report of ACDBE participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- (3) MSCAA will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval by April 1 following the report submittal.

The FAA may impose conditions as part of its approval of the MSCAA's analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

The MSCAA may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- (1) The MSCAA does not submit the analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of § 23.57;
- (2) FAA disapproves the analysis or corrective actions; or
- (3) The MSCAA does not fully implement:
 - a. The corrective actions to which we have committed, or
 - b. Conditions that FAA has imposed following review of our analysis and corrective actions.
 - c. If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set-asides

We will not use quotas or set-asides as a means of obtaining ACDBE participation.

SUBPART E - OTHER PROVISIONS

Section 23.71 Existing Agreements

If permitted by the existing agreement, the MSCAA will use any means authorized by Part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.73 Privately-Owned or Leased Terminal Buildings

The MSCAA does not have any privately-owned or leased terminal buildings.

Section 23.75 Long-Term Exclusive Agreements

The MSCAA will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a "long-term" agreement is one having a term of more than 10 years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

The MSCAA may enter into a long-term, exclusive concession agreement only under the following conditions:

- 1) Special local circumstances exist that make it important to enter such agreement; and
- 2) FAA approves the MSCAA 's plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, the MSCAA will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

- 1) A description of the special local circumstances that warrant a long-term, exclusive agreement;
- 2) A copy of the solicitation;
- 3) ACDBE contract goal analysis developed in accordance with this part;
- 4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;
- 5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
- 6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
- 7) Final long-term exclusive concession agreement, subleasing or other agreements;
 - a) In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, the MSCAA will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
 - b) In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, the MSCAA will submit to the responsible FAA

regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:

- i. A description of the special local circumstances that warrant the holdover;
- ii. Anticipated date for renewal or re-bidding of the agreement;
- iii. The method to be applied for renewal or re-bidding of the agreement;
- iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

Section 23.77 Preemption of Local Requirements

In the event that a State or local law, regulation, or policy differs from the requirements of this part, the MSCAA will, as a condition of remaining eligible to receive Federal financial assistance from USDOT, take such steps as may be necessary to comply with the requirements of 49 CFR Part 23. However, nothing in Part 23 preempts any state or local law, regulation, or policy enacted by the governing body of the MSCAA, or the authority of any state or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with Part 23.

Section 23.79 Geographic Preferences

The MSCAA will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g., our local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport(s).

ATTACHMENTS

Attachment 1	Memphis Shelby County Airport Authority Organizational Chart
Attachment 2	Link to Tennessee UCP Directory
Attachment 3	Active Participants List Collection Form
Attachment 4	Monitoring and Enforcement Mechanisms (26.37)
Attachment 5	Overall Goal Calculations for Car Rentals
Attachment 6	Overall Goal Calculations for Concessions Other Than Car Rentals
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts; Form 3 & 4 for Demonstration of Participation Plan
Attachment 8	Certification Application Forms
Attachment 9	State's UCP Agreement
Attachment 10	Regulations: 49 CFR Parts 23
Attachment 11	ACDBE Small Business Element

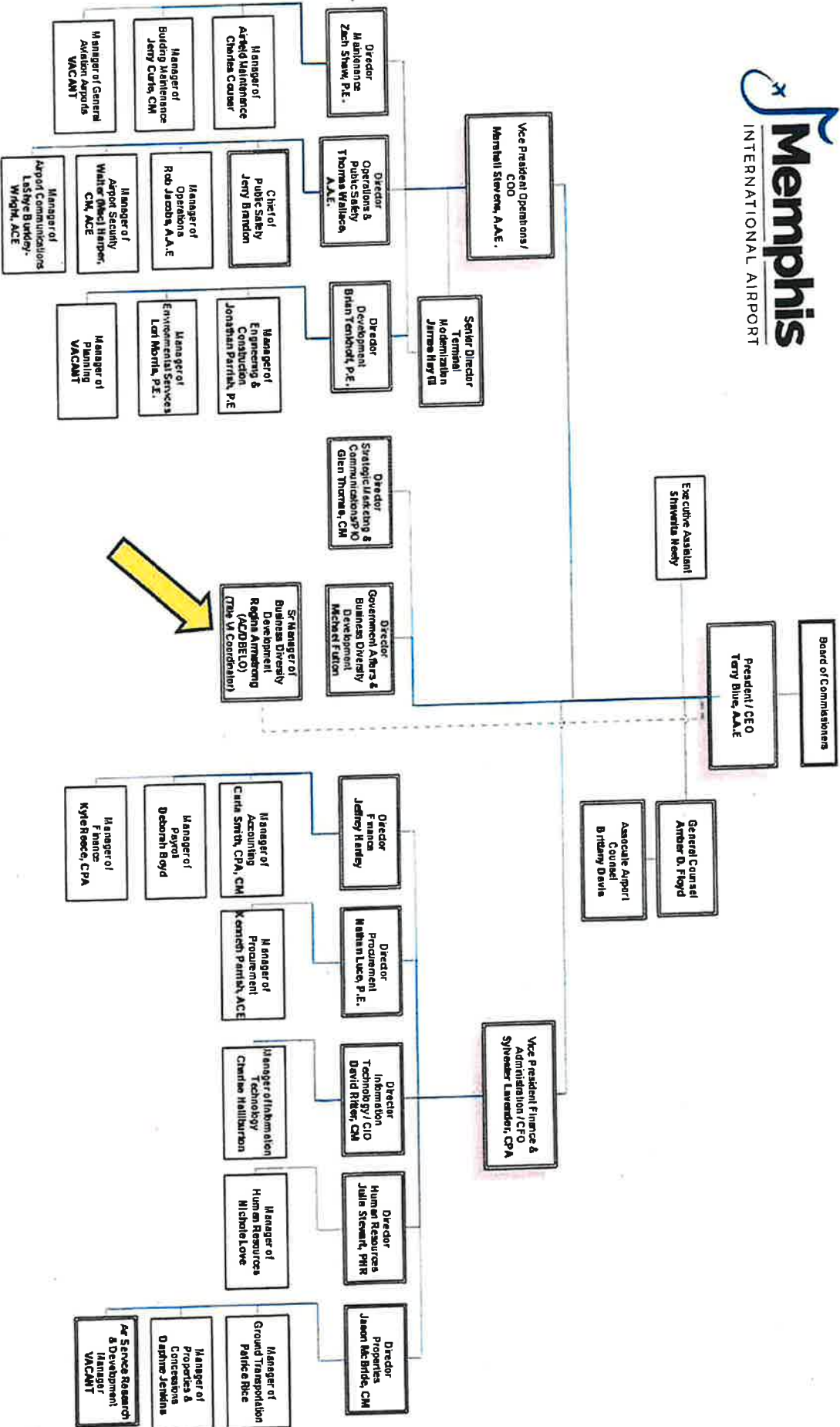
ATTACHMENT 1

Organizational chart

Memphis Shelby County Airport Authority



MEM Organization Chart



ATTACHMENT 2

ACDBE DIRECTORY

The DBE Directory for the State of Tennessee may be found at

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

Attachment 3

Active Participants List
Collection Form

ATTACHMENT 4

Monitoring and Enforcement Mechanisms

The Memphis Shelby County Airport Authority has available several remedies to enforce the ACDBE 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 Section 47-50-109, Tennessee Statutes.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, 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.

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

1. The MSCAA will insert the following provisions into concessions agreements and management contracts at the next lease renewal:
 - A. The ACDBELO and/or its designee will conduct reviews of attainments versus commitments, on an as-needed basis. This review will ensure the actual attainments of the ACDBE, as committed at contract award.
2. The MSCAA will implement the following additional monitoring and compliance procedures, consistent with concession contract provisions:
 - A. The MSCAA has the right to inspect books and records of the ACDBE concerning operations at the Airport, directly or indirectly, at the discretion of the MSCAA.
3. The MSCAA will implement its compliance and monitoring procedures as follows:
 - A. All concessions will be required to submit monthly revenue reports to the MSCAA. The MSCAA performs annual reconciliations and periodic revenue audits. Concessionaires will submit the ACDBE Attainment Reports annually.



Commercially Useful Function (CUF)/ Compliance Evaluation Form - Contractor

This form serves as written certification that the elements of work performed by a Disadvantaged Business Enterprise (DBE) contractor were monitored and evaluated according to the Commercially Useful Function (CUF) and counting requirements of 49 Code of Federal Regulation Part 26.55. This form also contains data and questions to supplement monitoring of payments, termination of work, or changes in contract scope that may require prompt action to ensure compliance with applicable BDE regulations. The CUF review will be conducted annually for each DBE on each project. This form is to be completed by MSCAA personnel only.

Section I- Project and Payment Data

Project No./ID: Project Name:

Prime Contractor: DBE Goal: Air or Land Side:

DBE Subcontract \$: DBE Commitment \$: % of DBE Work Completed:

DBE Start Date: DBE Payments to Date \$:

DBE Company Name: DBE Representative:

DBE Company Owner: DBE Representative Title:

DBE is Performing as: Prime Contractor Subcontractor Lower-tier Subcontractor Trucker/Hauler

Type of Arrangement: Furnish and Install Labor Only

Provide a brief description of the DBE's scope of work from the approved subcontract:

The following two questions pertain to DBE participation submitted (under commitment) to meet a contract goal:

- Are the descriptions of work in the DBE's subcontract and the Prime's DBE commitment consistent?
 YES NO (If "NO," how was this resolved?) N/A

- Have there been any changes in project scope that would affect the DBE's commitment?
 YES (If "YES," describe changes in scope, impacts, and actions to resolve) NO N/A

Section II- Evaluation

Management	YES	NO	N/A
1. Does the DBE's Supervisor/Foreman direct and schedule all work activities, including material deliveries, without assistance from the prime or upper-tier subcontractor?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is the person who signs the DBE's certified payrolls an employee of the DBE and not the prime or upper-tier subcontractor?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Performance	YES	NO	N/A
3. Did MSCAA make adjustments in counting where the DBE itself subcontracted any portion of its work to a non-DBE?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Did the DBE perform at least 30% of its subcontract with its own workforce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Did the prime make every good faith effort to replace the value of work under commitment not performed by the DBE for any reason (other than MSCAA-initiated changes in scope)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Workforce	YES	NO	N/A
7. Do DBE employee names only appear on the DBE's payrolls and not the payrolls of the prime or other contractor employed on the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Based on the review of at least one certified payroll, is the number of DBE personnel documented in the project work report/diary consistent with the number of personnel on the DBE's payroll(s)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Based on employee interviews, is the DBE the only contractor providing pay and other compensation (i.e. benefit plans) to its personnel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are the DBE's employees working on a distinct element of work, independently without assistance of other participating contractors?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Equipment	YES	NO	N/A
11. For equipment used in the performance of work <u>without permanent markings</u> , were ownership documents verified?(i.e. registrations, leases, or rental agreements)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Was all equipment used by the DBE owned by the DBE?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Is all leased equipment being leased by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. If 12. or 13. above is "NO," provide the value of equipment borrowed or leased from the prime or an upper-tier subcontractor:			<input type="checkbox"/>

Provide explanation for equipment not leased by DBE:

15. For work under commitment, did the prime increase its DBE participation to replace the value of equipment borrowed or leased from the prime or upper-tier subcontractor, as indicated in "13." above?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is all equipment being operated by DBE employees and under the direct supervision of the DBE?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Materials (This section applies to "Furnish and Install" work only)	YES	NO	N/A
17. Were material shipping documents addressed to the DBE?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Was the DBE on-site to receive delivery of its materials?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. According to the material invoice, did the DBE purchase materials from a source other than the prime or one of its affiliates? (If "NO" DBE credit is disallowed)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. According to the material invoice, were materials billed to the DBE or DBE Owner/ representative? (Attach Invoice)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Was proof of payment obtained? (Attach document such as electronic funds transfer, copy of check, signed payment certification, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22. If a joint check was used, did it go through the proper approval process, and did the DBE present it to the manufacturer/supplier?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Trucking/Hauling (Complete only page 1 and this section for trucking contracts/subcontracts)

YES NO N/A

23. Briefly describe the on-site controls used to identify DBE and non-DBE haulers and to track the value of their participation, i.e. number of trips, quantities, etc. (Attach supporting documents, such as haul tickets, vehicle logs, trucking worksheets, etc.)

24. Was at least one DBE-owned and operated truck used in the hauling operation? YES NO N/A
25. Does the MSCAA approved DBE Program allow hauling credit for non-DBEs? If "NO" complete Questions 26-28. If "YES" complete Questions 29-31. YES NO N/A
26. Were all trucks operated by DBE owner-operators, employees of the DBE or lower-tier DBE, or leased from a non-DBE truck leasing company and operated by DBE drivers, bearing the name and MSCAA identification number of the DBE? YES NO N/A
27. Was the value of any non-DBE hauler's participation adjusted to allow only fees and commissions? YES NO N/A
28. Considering the value/running tally of DBE hauling completed to date, as compared to remaining hauling, does it appear that the DBE commitment will be met? YES NO N/A

1:1 DBE/Non-DBE Counting

29. Does the on-site monitoring of trucks provide a means to identify and count non-DBE and DBE haulers, ensuring non-DBE hauling is limited to the value of DBE hauling? YES NO N/A
30. Was credit for only fees and commissions given for additional non-DBE hauling that exceeded the value of DBE hauling? YES NO N/A
31. Considering the value/running tally of DBE and non-DBE hauling completed to date, as compared to remaining hauling, does it appear that the DBE commitment will be met? YES NO N/A

Comments Required for all "NO" or "N/A" Responses:

Section III - CUF Determination

Based on the observations reported in this document, including relevant attachments, I affirm that the participation of the DBE entered at the top of this form has been counted in accordance with 49 CFR §26.55, and accurately reflected in MSCAA's reporting system.

Reviewer Signature:

Date:

Printed Name and Title of Reviewer:

Questions/Comments/Concerns:

Attachment 5

Overall DBE Goal Calculations for Car Rentals

The ACDBE Goal Methodology for FY 2023 through 2025 was submitted through FAA Open Doors and approved.

Attachment 6

Overall Goal Calculations for Concessions Other Than Car Rentals

The ACDBE Goal Methodology for FY 2023 through 2025 was submitted through FAA Open Doors and approved.

ATTACHMENT 7

FORM 1: AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) 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 ___ % ACDBE utilization on this contract.

The bidder/offeror (if unable to meet the ACDBE goal of ___%) is committed to a minimum of ___% ACDBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title
(Signature)

FORM 2: LETTER OF INTENT

(THIS PAGE SHALL BE SUBMITTED FOR EACH ACDBE PARTICIPATING FIRM)

Proposer Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____

ACDBE Participant: Firm Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____

ACDBE Contact Person: Name: _____ Phone: (____) _____

Firm is performing as: Certified ACDBE Sub Certified ACDBE Joint Venture Team Member
 Certification #: _____
 Applicable NAICS code (note: ACDBE must be certified in the trade of the contract): _____

Description of Work Item(s) To Be Performed By ACDBE	Estimated Gross Revenue Dollars (\$) To Be Earned	Percentage (%) of Total Contract Gross Revenues
TOTAL ACDBE % Credit Claimed for this Contractor		

The Proposer is committed to utilizing the above-named ACDBE firm for the work described above and the ACDBE agrees to participate as listed. The estimated participation is as follows:

ACDBE estimated gross revenues: \$ _____ Percent of total contract: _____ %
 Total Contract estimated gross revenues: \$ _____

The above-named firms affirm that it will perform the portion of the contract for the estimated gross revenues as stated above.

By: _____
 (Proposer Authorized Representative name) (Title)

 (signature) (date)

By: _____
 (ACDBE Authorized Representative name) (Title)

 (signature) (date)

*** In the event the Proposer does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void (make copies of this form as needed for each participant)**

ATTACHMENT 8

Certification Application Forms

The ACDBE certification application for the State of Tennessee may be found at

<https://www.tn.gov/tdot/civil-rights/small-business-development-program.html>.

ATTACHMENT 9

State's UCP Agreement

TENNESSEE UNIFORM CERTIFICATION PROGRAM

TNUCP Draft Agreement

Last Updated:

2/7/2019

Contents

Article I – Vision2

Article II – Definitions2

Article III – Regulatory Requirements.....4

Article IV – Rights and Responsibilities of the TNUCP5

Article V – Reciprocity5

Article VI – TNUCP Partner Roles and Responsibilities6

Article VII – Communication.....7

Article VIII – Executive Committee and Special Committees.....7

Article IX – Ratification Process8

Article X – Process Review.....9

Article XI – Certification Process.....9

Article XII – Initial Certification and Applicant Denials.....10

Article XIII- Data Requirements11

Article XIV- Initial Consolidation11

Article XV – Geographical Designation11

Article XVI—NAICS CODES12

Article XVII—Removal of Certification Eligibility13

Article XVIII—Partner Compliance14

Article XIX—Non-disclosure and Confidentiality15

Article XX—Training16

Article XXI—Voting Criteria.....16

Article XXII—Role of Supportive Services.....16

Article XXIII—Regional Outreach.....16

Article XXIV—TNUCP Meetings17

Article XXV – General Provisions17

Article I – Vision

Tennessee’s USDOT Recipients share the common goal to develop a uniform certification program for the State of Tennessee that creates a level playing field in which Disadvantage Business Enterprises (DBEs) can compete fairly for Department of Transportation and other federally funded projects across the state. This aim requires a cohesive link between the development of DBEs, similarly situated programs, and an effective approach to certification.

Article II – Definitions

- 2.1. **Agent**
Agent means an entity that has been given certification oversight through a memorandum of understanding executed by and between a TNUCP Certifying Partner.
- 2.2. **Agreement**
Agreement means the Tennessee Uniform Certification Program Agreement executed by and between all USDOT Recipients within the State of Tennessee.
- 2.3. **Appeals Committee**
Appeals Committee means a committee created by this agreement and governed by Article V to oversee third party challenges to the eligibility of Disadvantaged Business Enterprises Certified by Certifying Partners of Tennessee Uniform Certification Program.
- 2.4. **Certifying Agency**
Certifying Agency means a USDOT Recipient whose current DBE Program Plan approved by an appropriate USDOT Operating Administration includes provisions for DBE certification and revocation processes.
- 2.5. **Certifying Partner**
Certifying Partner means a USDOT Recipient in the State of Tennessee whose current DBE Program Plan approved by an appropriate USDOT Operating Administration includes provisions for DBE certification and revocation processes.
- 2.6. **Contract**
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.
- 2.7. **Department or DOT**
Department and DOT mean the United States Department of Transportation.

2.8. Disadvantage Business Enterprise (DBE)

Disadvantage Business Enterprise means a for-profit small business concern, that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and whose management and daily business operations of the entity are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2.9. Executive Committee

Executive Committee means a standing committee created by this agreement comprised of a representative of the Small Business Development Program of Tennessee Department of Transportation's Civil Rights Division, a representative from a Certifying Partner selected annually by and among FAA TNUCP Partners, and a representative from a Certifying Partner selected annually by and among FTA TNUCP Partners.

2.10. Lead Agency

Lead agency means the Tennessee Department of Transportation

2.11. MOU

MOU means a "Memorandum of Understanding".

2.12. Non-Certifying Agency

Non-Certifying Agency means a USDOT Recipient who has a current DBE Program Plan approved by an appropriate USDOT Operating Administration that does not include provisions for DBE certification and revocation processes.

2.13. Non-Certifying Partner

Non-Certifying Partner means a USDOT Recipient in the State of Tennessee who has a current DBE Program Plan approved by an appropriate USDOT Operating Administration that does not include provisions for DBE certification and revocation processes.

2.14. Personal Net Worth

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. Pursuant to 49 CFR Section 26.67 and as used herein, the personal net worth of each disadvantaged owner of an applicant or a DBE firm, excluding the individual's ownership interest in the applicant or a DBE firm and the individual's equity in his or her primary place of residence, must not exceed \$2.047 million.

2.15. Processing Agency

Processing agency means the TNUCP Certifying Partner to which the applicant firm applied for DBE Certification.

2.16. Recipient

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.

2.17. Regulation

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

2.18. Sub-Recipient

Sub-Recipient means any entity, public or private to which USDOT financial assistance is extended through another Recipient.

2.19. Tennessee Uniform Certification Program(TNUCP)

The Tennessee Uniform Certification Program means the Uniform Certification Program within the State of Tennessee fashioned according to the standards of 49 CFR 29.81, approved by the USDOT, and comprised of all USDOT Recipients in the State of Tennessee.

2.20. TNUCP Partner

TNUCP Partner means all USDOT Recipients in the State of Tennessee participating in this agreement including both TNUCP Certifying and TNUCP Non Certifying Partners.

Article III – Regulatory Requirements

3.1. Participation

- a. As required by 49 CFR Part 26.81, all USDOT recipients in the State of Tennessee must participate in the Tennessee Uniform Certification Program.
 - i. All recipients, including airports and transit authorities, that receive funds directly from FHWA, FAA, or FTA must agree in writing to participate as members in the TNUCP.
 - ii. Signatures to the UCP agreement of all USDOT recipients in this State shall be maintained on file in the office of the Tennessee Department of Transportation’s Civil Rights Division.

3.2. Certification Procedural Oversight

- a. TNUCP must follow all certification procedures and standards as set forth in 49 CFR Subparts D and E.
- b. TNUCP must cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations.
- c. TNUCP must implement DOT directives and guidance concerning certification matters and make all certifications decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

Article IV – Rights and Responsibilities of the TNUCP

4.1. Certification Decisions

- a. Certification decisions made by the Certifying Partners are binding on all TNUCP Partners with respect to participation in the DBE Program. In the event of conflict, the TNUCP, through the Executive Committee, shall make a final decision, subject to the provisions of 49 CFR, Part 26.

4.2. “One-Stop Shopping”

- a. The TNUCP 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 TNUCP Partners.

4.3. Processing Out-of-State Applications

- a. The TNUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in the state.
- b. When a Certifying Partner processes an out of state application, a full certification application file with all supporting documentation will be compiled by the Certifying Partner, including a copy of the Site Visit Report obtained from the applicant’s home state or from the state’s UCP if it is in place, before the firm is included in the DBE Directory.
- c. The TNUCP shall make an independent certification decision based on the documentation provided by the other UCP or certifying agency unless the TNUCP has entered into an MOU or reciprocity agreement with that UCP or certifying agency

Article V – Reciprocity

5.1. Reciprocity With Other UCPs, State Certifying Agencies, and State DOTs

- a. The TNUCP may enter into written reciprocity agreements at any time with other UCPs, State Certifying Agencies, and State DOTs.
 - i. The process of entering into reciprocity agreements shall be led by the Tennessee Department of Transportation as lead agency with the assistance of the Executive Committee of the TNUCP.

- ii. Reciprocity agreements must be approved by a majority vote of the TNUCP Partners present at the TNUCP Meeting to which it the reciprocity agreement is proposed.
 - iii. The approved reciprocity agreement is further subject to the approval of USDOT.
- b. The reciprocity agreement must outline the specific responsibilities of each participating UCP, State Certifying Agency, or State DOT.
- c. The TNUCP, and the Certifying Partners, may accept the DBE certification decision made by another UCP or state DOT, on a case-by-case basis.

Article VI – TNUCP Partner Roles and Responsibilities

6.2. Types of TNUCP Partners

- a. TNUCP agrees that this Agreement provides for two (2) classes of TNUCP Partners, Certifying Partners and Non-Certifying Partners as defined in 2.5 and 2.13, and each class shall have specific rights and responsibilities as set forth herein.

6.3. Lead Agency Roles and Responsibilities

- a. TNUCP agrees that the lead agency, TDOT, shall have the following roles and responsibilities
 - i. Providing oversight to the UCP
 - ii. Developing forms for the Uniform Certification Application, Uniform On-Site Visit, Annual “No Change” Affidavit, Personal Net Worth Statement
 - iii. Making all preceding forms available with instructions on the TDOT website
 - iv. Maintaining the UCP DBE database
 - v. Providing standardized training programs for certification officials in the state
 - vi. Performing state-wide certification and on-site visits
 - vii. Overseeing the development of DBE programs for TDOT and the TNUCP

6.4. Certifying Partner Roles and Responsibilities

- a. Certifying Partners agree to the following roles and responsibilities
 - i. Performing regional certifications
 - ii. Developing and submitting DBE plans for their respective organizations
 - iii. Performing regional on-sites
 - iv. Forwarding completed certified files to TDOT in the appropriate manner outlined in Article XI
 - v. Forwarding applications that do not belong in their region/ area to either TDOT or an applicable Certifying Partner
 - vi. Monitoring payments to DBEs
 - vii. Performing on-site visits for members who have received applications outside their region/ area if reasonable.

6.5. Non-Certifying Partner Roles and Responsibilities

- a. Non-Certifying Members agree to the following roles and responsibilities
 - i. Comply with the terms of this Agreement
 - ii. Promptly forward DBE applications to the Responsible Certifying Partner
 - iii. Provide information on any certified DBE upon request by TNUCP Partner

6.6. Agent Roles and Responsibilities

- a. Agents agree to the following roles and responsibilities:
 - i. Performing regional on-site visits
 - ii. Collecting application materials
 - iii. Submitting completed applications to TDOT or a direct recipient of USDOT/ TDOT funds for review and certification approval

Article VII – Communication

7.1. Communication Among TNUCP Partners

- a. All TNUCP partners agree to and shall continue to 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.

7.2. Communication With UCPs, State DOTs, and Certifying Agencies

- a. The TNUCP, and its TNUCP Partners, shall share information concerning TNUCP DBE firms or applicants with other UCPs, State DOTs, or State Certifying Agencies upon written request.

Article VIII – Executive Committee and Special Committees

8.1. Executive Committee

- a. The TNUCP agrees that the Executive Committee of the TNUCP shall be primarily responsible for the oversight and implementation of this agreement.
- b. The Executive Committee shall meet as necessary to provide oversight and ensure compliance with 49 CFR Section 26.81.
- c. The Executive Committee shall at all times seek the participation, and may call special meetings of all TNUCP Partners to ensure compliance with 49 CFR Part 26.
- d. The Executive Committee will ensure that the TNUCP has sufficient resources and expertise to carry out the requirements of 49 CFR Section 26.81.
- e. The Executive Committee will advise all TNUCP Members when it appears expertise and resources are not sufficient to carry out the requirements of 49 CFR Section 26.81.

8.2. Special Committees

- a. The Executive Committee may establish special committees, by majority vote, which may include, but are not limited to, Finance Committee, Appeals Committee, and Eligibility/ Certification Committee.
- b. Finance Committee
 - i. The TNUCP establishes a Finance Committee to provide oversight related to the appropriate cost structure to support the UCP.
 - ii. The deliberations and decisions with the respect to the cost structure will be conducted pursuant to the rules adopted by the Finance Committee.
 - iii. All TNUCP Partners agree to accept the decision of the Finance Committee regarding the appropriate cost structure.
 - iv. The Finance Committee is comprised of a representative of TDOT, a representative from a Certifying Partner selected annually by and among FAA TNUCP Partners, and a representative from a Certifying Partner selected annually by and among FTA TNUCP Partners.
- c. Appeals Committee
 - i. The TNUCP Establishes an Appeals Committee, which will hear all Third Party challenges coming before the TNUCP
 - ii. The committee is comprised of five (5) representatives from Certifying Partners.
- d. Eligibility/ Certification Committee
 - i. The TNUCP Establishes an Eligibility/Certification Committee for eligibility determinations
 - ii. The committee is comprised of five (5) Certifying Partners with one alternating in the case that an eligibility review is submitted by one of the five committee members. In the case that an eligibility review is submitted by one of the committee members, the partner responsible for submitting the review request shall recuse themselves from the review

Article IX – Ratification Process

9.1. TNUCP Participation

- a. 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.

9.2. TNUCP Sign Agreement

- a. All partners listed in this UCP and their agents agree to be bound by the terms and conditions of this TNUCP Agreement. Upon approval this newly executed TNUCP Agreement by USDOT, all partners must submit to the TNUCP a signed letter

confirming their agreement to support and be bound by the terms and conditions of this TNUCP Agreement that will be forwarded to USDOT.

- b. Further by executing the Signature and Declaration Status Page of this Agreement all TNUCP Partners agree to become Partners of the TNUCP Agreement, and agree to accept the terms and conditions of this TNUCP Agreement.
- c. Any new recipient required to participate in the TNUCP who were not present at the inception of this agreement shall be added at any time after they have reviewed the plan and agree to terms and conditions set forth in this agreement.

Article X – Process Review

10.1. The Certification Process

- a. The TNUCP and its Partners must follow DBE certification processes and adhere to standards set forth in 49 CFR Part 26, Subparts D and E, Certification Procedures, as well as those guidelines set forth herein or otherwise attached hereto.
- b. The certification process begins when a recipient receives an application from an applicant and ends only when conditions of 49 CFR Part 23 and/or 49 CFR Part 26 are satisfied.
- c. Full descriptions of the certification and denial processes are provided below in Articles X and XI.

10.2. Uniform Certification Documents

- a. Tennessee Uniform Certification Program (TNUCP) agrees to utilize the uniform certification application and personal net worth statement developed by USDOT.

10.3. Use Of TNUCP Partner Marks

- a. TNUCP Partners agree to use their respective logos and names on correspondence sent to applicants including letterheads and certificates.

Article XI – Certification Process

11.1. Uniform Certification Application Materials

- a. All Certifying Partners must require applicants seeking DBE certification to complete and submit the uniform certification application and personal net worth statement.
- b. Applicants must also be required to attest to the accuracy and truthfulness of the information provided on the forms.

11.2. Application Review

- a. When a Certifying Partner receives an application, an agent for the certifying partner will provide a cursory review to assess whether that application can be processed by that certifying partner.
- b. 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 airport authorities) that partner may accept that application and process it to certification or denial.
 - i. If that partner feels that the above-cited scenario does not apply, they may forward that application to another consulted Certifying Partner or TDOT for processing.
- c. All applications received by any Certifying Partner must be reviewed and assessed applying the standards of proof outlined in 49 CFR Part 23 & 26.
- d. When a new DBE becomes certified and upon entry to the directory, a form letter should be automatically generated to the applicant stating that:
 - i. the business is a certified DBE as well as the certification renewal date
 - ii. an Annual Affidavit of No Change is required to state that no changes have occurred in the firm in accordance with 49 CFR Part §26.83 (j)
 - iii. certification may be removed should circumstances change that render the firm ineligible for DBE status
 - iv. any other information the executive committee deems important now and in the future.
- e. The Certifying Partner must send out an e-mail to TDOT using the required TNUCP Listing Update Form informing them of the certification of the new DBE, who they are, contact information, and the firm's specialty (to be added to the TDOT website), and a complete copy of the file.

Article XII – Initial Certification and Applicant Denials

12.1. Denial Decisions

- a. When a Certifying Partner denies a request by a firm to be certified as a DBE, a written explanation must be provided outlining the reasons for the denial referencing the evidence in the record and the citation of the appropriate corresponding regulation.
- b. Any information and documentation that was utilized in making the decision must be available to the applicant upon request.

12.2. Appeal

- a. The final decision of denial of certification may be appealed to the USDOT within ninety (90) days of the certifying partner's denial.

12.3. Reapplication

- a. The applicant firm who is denied may reapply for certification twelve (12) months from the date that the firm receives the denial letter from the TNUCP.

Article XIII- Data Requirements

13.1. DBE Directory

- a. TDOT agrees to maintain a unified DBE directory containing all firms certified by TNUCP (including out-of-state firms).
- b. The data in the directory must always contain, at a minimum, each firm's address, phone number, and types of work the firm is certified to perform. TDOT will make this directory readily available to recipients and will print the directory annually.
- c. The database will be updated with any changes as soon as TDOT receives such updates. TDOT is the database manager and will serve as the "clearinghouse" for data required for the operation of TNUCP including, but not limited to, data regarding certification statuses, data required for the DBE directory, and data required for maintaining communication between partners.

Article XIV- Initial Consolidation

14.1. TNUCP Certification Recognition

- a. TNUCP affirms that only firms which are certified based upon compliance with the requirements of 49 CFR Part 26 shall be recognized as certified by TNUCP.

Article XV - Geographical Designation

15.1. Application Review

- a. TNUCP agrees to make eligibility determinations for all firms applying for DBE certification whose business is located in the state of Tennessee.
- b. TDOT will continue to review and certify statewide applicants, and the other TNUCP partners will continue to review and certify applicants in their prospective areas.
- c. TNUCP agrees that there may be exceptions to assignments based upon familiarity with the firm, historical knowledge, resources, etc.

15.2. Onsite Reviews

- a. A Certifying Partner may request that a different Certifying Partner perform an on-site visit if the first is geographically closer to the second Certifying Partner or if the firm is within the second Certifying Partner's realm of expertise.
- b. A Certifying Partner may also request that another Certifying Partner review a firm's application if the second Certifying Partner has more expertise with that kind of firm.
- c. By default, the second Certifying Partner will be TDOT unless the Certifying Partner specifically requests a different Certifying Partner.
- d. If the Certifying Partner's request for assistance is denied by the second Certifying Partner, TDOT will assume responsibility for assisting, e.g. processing applications and/or on-site visits.

15.3. Reporting

- a. In all such cases, the assisting Certifying Partner will report findings to the primary Certifying Partner, and the primary Certifying Partner will retain ultimate responsibility for communications with the applicant firm and determining the firm's eligibility.

Article XVI—NAICS CODES

16.1. TNUCP Certification Work Types

- a. TNUCP agrees that all certifications will include designation of specific work types.
 - i. TNUCP agrees to use the North American Industry Classification System codes for such designations.
 - ii. A firm's NAICS code designation must be provided to the firm as well as a short description of that code.

16.2. Certification Expansion

- a. Firms may request modification or expansion of their approved NAICS codes lists.
 - i. Such a request must be made in writing to the certifying partner and must include the equipment and experience indicating that firm's ability to perform the particular type of work.
 - ii. A firm seeking expansion of their NAICS codes must also submit documentation of past contracts showing the firm has performed the specific type of work in the past.

Article XVII—Removal of Certification Eligibility

17.1. Eligibility Process Initiation

- a. TNUCP agrees that process for removal of a firm's certification may be initiated by a third party challenge, TNUCP partner, or DOT directive.

17.2. Third Party Challenges

- a. The TNUCP shall accept written challenges from any party alleging that a currently certified firm may be ineligible. The 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 listing all 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 26.87.
- b. 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 § 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 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 Part 26 Subpart E § 26.89.

17.3. DOT Directive

- a. At any time, USDOT may notify TNUCP of reasonable cause to remove a firm's certification. In such a case, TNUCP agrees to immediately begin the process of decertification

17.4. TNUCP Partner-Initiated

- a. The original certifying partner may 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 the partner's attention, it determines that there is reasonable cause to believe that the currently certified firm is ineligible. Upon this 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. 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

17.5. Administrative Removal of Eligibility

- a. In the event that a currently-certified firm's owner exceeds the limits for personal net worth and there is no dispute regarding this fact, then the firm's certification may be removed without the procedures listed under 49 CFR 26.87.

Article XVIII—Partner Compliance

18.1. Minimum Requirements

- a. TNUCP agrees 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:
 - i. 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.
 - ii. Outside entities such as construction boards or other politically mandated organizations cannot be involved in the certification determination or investigations of third party challenges.
 - iii. All TNUCP Partners must have an approved DBE Program/Plan in place that clearly defines the role of the administrative staff.
 - iv. 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.

- v. All partners agree to make decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or other factors.
- vi. 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, agrees 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:
- vii. 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.
- viii. 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 14 partner in question will take this opportunity to gain additional knowledge and education of the regulations and requirements.

18.2. Non-Compliance

- a. 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.
- b. 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.

Article XIX—Non-disclosure and Confidentiality

19.1. Confidentiality

- a. TNUCP partners agree not to release information that could be reasonably construed to be confidential business information with any third party without the prior written consent of the firm(s) involved.

19.2. Disclosure

- a. If one partner makes a written request to another partner to gain certification information about a firm, the requested partner is to comply

Article XX—Training

20.1. Training Procedures

- a. TNUCP agrees that on-going training procedures are needed for partners and recipients.

20.2. Guidance and Support

- a. TNUCP agrees to monitor partners' certification processes and provide guidance and training where applicable.
- b. TNUCP furthermore agrees to seek out additional guidance and training from USDOT, FHWA, FTA, FAA, and other agencies. TNUCP will also seek and promote ongoing in-service opportunities to provide updates for partners, staff, and recipients.

Article XXI—Voting Criteria

21.1. Quorum

- a. A simple majority of TNUCP partners is needed for a quorum.

21.2. Voting Procedures

- a. Only a partner's official designated representative or approved alternative may vote.
- b. Each partner's name, their designated representative, and their vote will be recorded.

Article XXII—Role of Supportive Services

(further discussion is needed)

Article XXIII—Regional Outreach

23.1. Regional Support

- a. TNUCP partners agree to make reasonable efforts to organize and/or host social and educational events quarterly in their respective regions. This may include, but is not limited to, mixer events, conferences, town hall-style information sessions, email/traditional mail outreach to prospective DBE firms

Article XXIV—TNUCP Meetings

24.1. Frequency and Location

- a. TNUCP partners agree to meet quarterly for the purpose of sharing new information, ideas, and insights. Meetings will be hosted by TDOT.

24.2. Attendance

- a. A simple majority of partners must be available in order to hold a meeting.

24.3. Notice

- a. If a partner is unable to attend a quarterly meeting, the partner must provide prior notice of one week.

Article XXV – General Provisions

25.1. Exhibits and Attachments

- a. All exhibits and attachments to this agreement are incorporated herein by reference and made a part hereof.

25.2. Interpretation

- a. Article and section headings and Table of Contents are for convenience only and shall not affect construction of this Agreement

25.3. Amendments

- a. This Agreement may not be amended, modified, or supplemented except by an instrument in writing agreed to by the TNUCP Partners. Should any provisions of 49 CFR Part 26 be changed or modified, corresponding provisions of this Agreement shall be modified accordingly.

25.4. Compliance with Law

- a. TNUCP Partners agree that the operation of this Agreement and performance of all obligations hereunder must at all times comply with 49 CFR Part 26 and with applicable federal and state laws.

25.5. Signed Agreement

- a. This Agreement shall become effective upon approval by USDOT and its operating administrations
- b. By executing the Signature and Declaration of Status page of this Agreement recipients agree to become Partners of the TNUCP, and agree to accept the terms and conditions of this Agreement

- c. Following approval, a recipient may become a member by submitting a fully executed Signature and Declaration of Status page from this Agreement to the Executive Committee, which shall be delivered to the Civil Rights Division of The Tennessee Department of Transportation, where it shall remain on file.

25.6. Severability

- a. Should any part, term, portion, or provision of this Agreement be in conflict with any law of the United States or the State of Tennessee, or otherwise be unenforceable or ineffectual, the remaining provisions shall be deemed valid and severable, and not affected thereby

25.7. Successors

- a. This Agreement shall be binding upon and inure to the benefit of any successors or assigns of the TNUCP Partners.

25.8. Execution

- a. Execution of this Agreement by the TNUCP Partners must comply with appropriate procedures, resolutions, authorized signatures, and required filings pursuant to the law governing each TNUCP Partner.
- b. This Agreement will be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ATTACHMENT 10

49 CFR Part 23

The federal regulations, Title 49
Code of Federal Regulations
Part 23, may be found at
<https://www.ecfr.gov/>.

ATTACHMENT 11

Small Business Element

Attachment 11
Small Business Element

I. Objectives and Strategies

A. Objective

This element, 49 CFR Part 23.26, is included as an amendment to the ACDBE program plan for the Memphis Shelby County Airport Authority (“MSCAA”). The element is herein referenced as the ACDBE Small Business Element. This part calls for the inclusion of an element to

“provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations” (49 CFR 23.26(a)).

MSCAA regards its ACDBE Small Business Element as a substantial effort toward meeting the requirements of the regulations to maximize a feasible portion of its overall ACDBE goal by using race-neutral means to obtain ACDBE participation.

MSCAA’s policy statement and this small business element are consistent with MSCAA’s mission of creating and encouraging business opportunities at all levels.

B. Strategy

MSCAA will explore opportunities for small, minority, and women owned firms eligible for certification to participate in food and beverage or retail business operations at the Airport, where feasible. Such opportunities may include short-term leases for temporary locations, which could address seasonal needs and special local events. MSCAA believes these locations will not only offer unique experiences but also support opportunities for small businesses. Opportunities may also include leases for mobile retail and food units (such as kiosks) in select locations, resulting in lower overhead costs. This may assist small businesses to establish a footprint in a more affordable concession setting for potential future growth.

II. Definitions

1. **Small Business**

For the purpose of the ACDBE Small Business Element, which is part of MSCAA's ACDBE program, "small business" shall have the same definition as "small business concern" contained in 49 CFR 23.3 and 23.33(a):

"Small business concern means a for profit business that does not exceed the size standards of § 23.33."

"Except as provided in paragraph (b) of this section, recipients must treat a firm as a small business eligible to be certified as an ACDBE if the gross receipts of the applicant firm and its affiliates, calculated in accordance with 13 CFR 121.104 averaged over the firm's previous five fiscal years, do not exceed \$56.42 million."

For additional clarification, it is useful to include some excerpts from the SBA regulations, 13 CFR 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...." and,
(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

Small business concerns must meet the business size standards, as defined by the SBA. The business size standards are based upon the average annual revenues, and they vary according to the type of business. More information can be found at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Personal Net Worth standards – should be consistent with 49 CFR Part 23 thresholds.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

2. **Airport Concessions Disadvantaged Business Enterprise**

Airport Concessions Disadvantaged Business Enterprise (ACDBE) means a for-profit small business (defined by SBA rules, above) that meets the standards of 49 CFR Part 23, i.e.

- At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals.

- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) of \$2.047 million.
- Has been certified as an ACDBE by a certifying member of the Tennessee in accordance with the full requirements of 49 CFR Part 23.

MSCAA understands that in the implementation of this element, all of the “small business concerns” may not be DBE firms. However, small businesses that are also owned and controlled by individuals who meet the DBE standard will be encouraged to seek ACDBE certification. Only ACDBE-certified firms who participate as small business concerns, pursuant to this element, will be counted towards ACDBE race-neutral participation on FAA-assisted contracts in this program.

III. Verification Standards and Procedures

MSCAA will accept the following certification(s) for participation in the small business element of MSCAA’s ACDBE Program with applicable stipulations:

A. Tennessee Unified Certification Program ACDBE Certification

ACDBE certification by a certifying member of the Tennessee that stipulates that a firm has met all the requirements in accordance with 49 CFR Part 23. All certification determinations are evidenced by a letter of ACDBE certification issued by a certifying member of the Tennessee. It should be noted that the Memphis Shelby County Airport Authority is a non-certifying member of the Tennessee and relies on certification decisions of the certifying members of the UCP. The UCP certification staff applies the standards and procedures for ACDBE certification applicants contained in Subparts D and E of 49 CFR 26.61 – 26.91.

B. Small business status

A non-ACDBE certified small business may have to complete a simplified application and/or provide at the time of response to a solicitation or proposal the following information, as evidence of the small business status:

- a. Evidence of SBA 8(a) or SBD Certification (as described in 13 CFR Parts 121 and 124);
- b. A copy of the business tax returns for the most recent three-year period indicating the gross receipts; and/or
- c. A notarized statement from a Certified Public Accountant indicating the firm’s average gross receipts for the past three years.

C. Use of Personal Net Worth

MSCAA, in addition to the standards for small businesses described above, plans to utilize the current personal net worth standards of the ACDBE program (49 CFR 23.35(a)), which is presently at \$2.047 million.

Certified ACDBE firms that meet the size criteria established under 49 CFR 23.33(b) are presumptively eligible to participate as a part of the ACDBE Small Business Element.

IV. Monitoring and Recordkeeping

A. Monitoring of Participation

The Memphis Shelby County Airport Authority will track and monitor the participation by ACDBEs and other small businesses that results from the implementation of the ACDBE Small Business Element. MSCAA will report the participation on an annual basis as a part of the Uniform Report of ACDBE Participation.

B. Recordkeeping

The Memphis Shelby County Airport Authority will maintain records of participation by ACDBEs and other small businesses that result from the implementation of the ACDBE Small Business Element and will make those records available to the FAA upon request.

V. Assurances

The Memphis-Shelby County Airport Authority will comply with the assurances under 49 CFR 23.26(d).