

**Huntsville-Madison County
Airport Authority**

Huntsville, Alabama

**DISADVANTAGED BUSINESS
ENTERPRISE (DBE) PROGRAM**

Revised February 2021

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HUNTSVILLE-MADISON COUNTY AIRPORT AUTHORITY
Disadvantaged Business Enterprise (DBE) Program
POLICY STATEMENT

The Huntsville-Madison County Airport Authority (HMCAA) has revised its Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26, as amended. HMCAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, HMCAA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy objective of HMCAA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also HMCAA's policy:

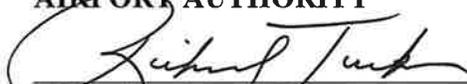
1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms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

Randy Taylor, Chief Financial Officer, has been designated as the DBE Liaison Officer. In that capacity, the DBE Liaison is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by HMCAA in its financial assistance agreements with the Department of Transportation.

This policy statement will be disseminated to HMCAA's Board of Directors, all departments of HMCAA, and to DBE and non-DBE businesses that perform work on DOT-assisted contracts for HMCAA through HMCAA website. HMCAA will also publish this policy statement in all DOT-assisted project specifications and in bid documents provided to DBE and non-DBE businesses.

Date: February 2021

HUNTSVILLE MADISON-COUNTY
AIRPORT AUTHORITY


Richard Tucker, Chief Executive Officer

Section 100. Applicability.

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

Section 200. Definition of Terms

The terms used in this DBE Program have the meanings defined in 49 CFR Part 26.5. The entire DBE Final Rule (49 CFR Part 26), as amended, is set forth at Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26).

Section 300. Nondiscrimination.

HMCAA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE Program, HMCAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Section 400. DBE Program Updates

HMCAA is required to have a DBE Program meeting the requirements of 49 CFR Part 26 as it will receive grants for airport planning or development and will award prime contracts, the cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. HMCAA is not eligible to receive DOT financial assistance unless DOT has approved this DBE Program and HMCAA in compliance with this DBE Program and 49 CFR Part 26. HMCAA will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. HMCAA will provide the DOT any DBE Program updates representing significant changes in the program.

Section 500. DBE Liaison Officer (DBELO)

HMCAA has designated the following individual as its DBE Liaison Officer (DBELO): Randy Taylor, Chief Financial Officer, Huntsville Madison-County Airport Authority, Huntsville International Airport, 1000 Glenn Hearn Blvd., Box 20008, Huntsville, AL 35824, Telephone 256.258.1950, Fax 256.258.1850, Email:DBE@hsvairport.org. Randy Taylor is responsible for implementing the DBE Program and ensuring that HMCAA complies with all provisions of 49 CFR Part 26. Mr. Taylor has direct, independent access to the Chief Operating Officer of HMCAA, Luther H. Roberts, Jr., concerning DBE Program matters. An organizational chart displaying the DBELO's position in the organization is attached as Exhibit A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by HMCAA in its financial

assistance agreements with the Department of Transportation. Duties and responsibilities of the DBELO include the following:

1. Certifying DBEs in accordance with the criteria set by the DOT and acting as liaison to the Unified Certification Program in Alabama.
2. Gathering and reporting DBE-related statistical data required by the DOT, including but not limited to reporting DBE participation to the DOT by the annual submission of DOT Form 4630.
3. Working with HMCAA staff to set overall DBE goals.
4. Communicating bid notices and requests for proposals to DBEs.
5. Participating in project pre-bid meetings to promote DBE participation.
6. Advising the executive staff on DBE matters.
7. Working with the project manager to determine contractor compliance with good faith efforts.
8. Planning and participating in DBE training seminars.
9. Analyzing HMCAA's progress toward attainment of its DBE goal and identifying ways to improve its progress to achieve its goal of DBE participation.
10. Providing outreach to DBEs and community organizations to advise them of DBE opportunities.

The DBELO has a support staff to assist in implementing HMCAA's DBE Program. The DBELO has access to DBE directories and trade journals and to DOT-funded project data and participation results of HMCAA. The DBELO also has access to project managers and officers of HMCAA as well as financial resources of HMCAA. All of these resources are instrumental in the DBELO's ability to fulfill the duties and responsibilities of the position.

Section 600. Assurances

HMCAA agrees to the following assurance in each financial assistance contract executed by HMCAA with the DOT and to the administration thereof:

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

Section 700. Required Contract Clauses

HMCAA will include the following clauses in each DOT-assisted contract specification:

A. Contract Assurance

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but it not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and (4) disqualifying the contractor from future bidding as non-responsible.

Section 800. Prompt Payment

Payment Requirements

HMCAA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant Federal, State and local law. The requirements of this section apply to DBE and non-DBE subcontractors.

In accordance with 49 CFR Part 26.29, HMCAA established a contract clause implementing this requirement which obligates the prime contractor to pay each subcontractor for satisfactory performance of their contract no later than seven (7) days from the prime contractor's receipt of each payment from HMCAA.

HMCAA ensures prompt and full payment of retainage from the prime contractor to the subcontractor in all events within thirty (30) days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, HMCAA has selected the following method to comply with this requirement:

HMCAA may hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to the prime contractor based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after HMCAA's payment to the prime contractor (but in all events within thirty (30) days after the subcontractor's work is satisfactorily completed).

To implement this measure, HMCAA includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

The Owner may hold retainage from the prime contractor and provide for prompt and regular incremental portions of the prime contract, pay retainage to the prime contractor based upon these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after the Owner's payment to the prime contractor.

a. From the total amount determined to be payable on a partial payment, ten percent (10%) of such total amount will be deducted and retained by the Owner for protection of the Owner's interests until fifty (50) percent completion has been accomplished after which no further retainage shall be withheld. The amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) The prime contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. The prime contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially partially-accepted work.

b. The prime contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than seven (7) days after the prime contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime contractor to the subcontractor in all events within thirty (30) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of the prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the prime contractor.

In addition, HMCAA provides the following method of resolution in its construction contracts:

(a) Failure to comply with the prompt payment requirements under this DBE Program may result in the non-reimbursement of the prime contractor for work performed by the subcontractor(s) unless and until the prime contractor ensures that the subcontractor(s) is promptly paid for work it has performed.

Subcontractor Payment Delays

HMCAA shall require a prime contractor to provide a written request to HMCAA of its intention to delay or postpone any payment prescribed in the prime contract. HMCAA shall require that

such request may only occur for good cause and that no delay or postponement may occur without written approval of HMCAA.

Prompt Payment Monitoring

HMCAA shall monitor prime contractors for payments to subcontractors over the course of any covered contract. HMCAA shall utilize enforcement mechanisms to ensure that work committed to DBEs at prime contract award or subsequently are actually performed by the DBE(s) to which the work was committed, and that the actual amounts paid to each DBE equal or exceed the dollar amounts stated in the schedule of DBE participation.

These monitoring and enforcement mechanisms shall be implemented at the pre-bid, bid proposal, and contracting phase by ensuring that good faith efforts are employed by the prime contractor and that the prime contractor is using the specified DBE(s) to which it has committed. These mechanisms shall also be utilized during the construction phase through onsite monitoring of performance of work by DBEs and evaluation of pay requests and disbursements by the prime contractor. HMCAA shall proactively review the prime contractor's payments to the subcontractors to ensure compliance. Payment reviews will evaluate whether the actual amount paid to each DBEs is equivalent to the amount reported to HMCAA by the prime contractor. The mechanisms shall be a part of the reporting process to ensure that the dollars committed to DBEs by the prime contractor and the actual amounts paid to DBEs meet the commitments presented by the prime contractor at contract bid and execution. A written certification that HMCAA has reviewed contracting records and monitored work sites will be provided by HMCAA pursuant to 49 CFR Part 26 for every contract involving DBE participation.

HMCAA shall require the prime contractor to maintain records and documents of payments to the subcontractors, including DBEs, for a minimum of three (3) years following the performance of the contract unless otherwise provided by applicable record retention requirements under HMCAA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of HMCAA or the DOT.

Prompt Payment Dispute Resolution

To assist in the resolution of prompt payment disputes regarding the satisfactory completion of work for purposes of 49 CFR Part 26.29, HMCAA shall encourage and participate in, by and through its project managers, a meeting between the prime contractor and the subcontractor to discuss and attempt to resolve the dispute. HMCAA shall recommend that such meetings include individuals authorized to bind each interested party, and HMCAA shall include a representative who has authority to take enforcement action.

Prompt Payment Complaints

Complaints by subcontractors regarding prompt payment requirements are handled as follows:

- a. The affected subcontractor should contact the prime contractor to discuss the subcontractor's complaint with respect to prompt payment.

- b. If the affected subcontractor is not comfortable contacting the prime contractor directly regarding payment or is unable to resolve payment discrepancies with the prime contractor, the subcontractor should contact an HMCAA representative to initiate a complaint. HMCAA shall require that all prompt payment complaints received by any HMCAA representative be communicated to the DBELO. The DBELO will initiate and coordinate the HMCAA inquiry and response to the prime contractor regarding the complaint.
- c. If an affected subcontractor does not realize timely and meaningful action by HMCAA to resolve prompt payment disputes, the affected subcontractor may contact the HMCAA Chief Operating Officer for further assistance. The Chief Operating Officer shall initiate and coordinate the additional resolution attempts regarding the complaint.
- d. Pursuant to Section 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Prompt Payment Enforcement Actions

HMCAA has established the following mechanisms to help ensure prompt payment and return of retainage:

- a. HMCAA has incorporated contract clauses in each DOT-assisted prime contract implementing all of the prompt payment requirements set forth in this section.
- b. HMCAA has incorporated contract clauses in each DOT-assisted prime contract as set forth in FAA Advisory Circular 150/5370-10 pertaining to retainage.
- c. HMCAA may include a contract clause providing that the prime contractor will not be reimbursed for work performed by its subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have satisfactorily performed.
- d. HMCAA may include a contract clause providing that the prime contractor may be assessed liquidated damages for every day the prime contractor is noncompliant with prompt payment requirements.
- e. HMCAA will advise the subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- f. HMCAA may pay the subcontractors directly and deduct this amount from the retainage owed to the prime contractor.
- g. HMCAA may issue a stop-work order until payments are released to the subcontractors, specifying in the contract that any such order shall constitute an

unauthorized delay for the purpose of calculating liquidated damages if milestones are not met.

h. HMCAA may terminate the contract with the prime contractor.

i. HMCAA will notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with payments by the prime contractor to the subcontractors, so that the DOT can take the steps provided in 49 CFR Part 26.105 and Part 26.107, including initiation of suspension or disbarment proceedings.

j. HMCAA may initiate action under its own legal authorities and contract instruments, including responsibility determinations in future contracts.

Section 900. DBE Financial Institutions

HMCAA has not identified any financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. HMCAA will continue to investigate the full extent of services offered by any such financial institutions and will make reasonable efforts to use any institutions later identified. HMCAA will further encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Section 1000. Directory

HMCAA assists in the maintenance of the Alabama UCP DBE Directory which identifies all firms certified as DBEs in the state of Alabama. The directory lists the firm's name, address, and phone number, and the types of work the firm performs, described in terms of the most specific NAICS Codes. The Directory is available to contractors and the public on the Alabama Department of Transportation - Alabama Unified Certification Program website. A link to this website is provided on HMCAA website.

Section 1100. Overconcentration.

HMCAA has not identified that overconcentration of DBEs exists in any areas of work that DBEs perform under this DBE Program.

Section 1200. Business Development Programs

HMCAA has not established a Business Development Program. However, HMCAA does work to foster small business participation as set forth in Section 2500.

Section 1300. Monitoring Responsibilities and Enforcement Mechanisms

HMCAA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 Program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms in HMCAA's DBE Program.

HMCAA actively monitors participation by maintaining a tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Contracts and Work Sites

HMCAA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award is actually performed by the DBE(s) to which the work was committed. Work site monitoring is performed by HMCAA project managers or contracted project consultants. Contracting records are reviewed by HMCAA project managers and the DBELO. HMCAA will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Prompt Payment Monitoring and Enforcement

Refer to Section 800 for all monitoring and enforcement mechanisms related to prompt payment.

Exhibit B to this DBE Program lists the regulations, provisions, and contract remedies available to HMCAA in the event of non-compliance with the DBE regulations by a participant in the program.

Section 1400. Overall Goals

HMCAA will set an overall goal for DBE participation on DOT-assisted contracts for a three (3) year period and submit this goal to the DOT by August 1 preceding the three year period. HMCAA will begin using its overall goal on October 1 of the first year of the three (3) year period, unless it has received other instructions from the DOT, or, if the goal is established on a project basis, it shall be used for the first solicitation on a DOT-assisted contract for the project. The three (3) year overall goal applies to each individual year. HMCAA will submit annual awards and accomplishment reports for each individual year. During the three (3) year period, the goal may be adjusted to reflect changed circumstances. Any adjusted goal shall be submitted for approval by the DOT.

Step One

The overall goal will be based upon the relative availability of ready, willing, and able DBEs in the relevant geographical market for each applicable area of work. The base figure for the relative availability of DBEs will be calculated as follows:

$$\text{Base Figure} = \frac{\text{Ready, Willing and Able DBEs}}{\text{All Firms Ready, Willing and Able}} = \frac{\text{Available DBEs for Each Area}}{\text{of Work}}$$

To determine the number of ready, willing and able DBEs and the total number of firms for Step One, HMCAA reviews the Alabama UCP DBE Directory and the United States Census Bureau County Business Patterns to count DBEs and firms which are located in the relevant geographical market for HMCAA projects and which perform services in each anticipated area of work for upcoming projects.

The relevant geographical market will include those areas where the substantial majority of funds are spent by HMCAA and where the substantial majority of contractors and subcontractors who quote and/or perform HMCAA projects are located. The numerator and denominator are based upon the same relevant geographical market.

Step Two

The base figure (relative availability of DBEs for each area of work) is adjusted by HMCAA through use of historical data to reflect as accurately as possible the DBE participation HMCAA would expect in the absence of discrimination. HMCAA will examine the evidence available in its jurisdiction to determine what adjustment, if any, is needed; and if the evidence does not suggest an adjustment is necessary, then no adjustment will be made. More specifically, HMCAA analyzes historical data of actual DBE participation in the relevant areas of work during previous years. HMCAA may also use previous project goals, available statistical data, disparity studies, public comments, other recipient goals, and information available from the Alabama Department of Transportation, the United States Census Bureau, and local minority/small business directories regarding disadvantaged businesses to adjust its overall goals. HMCAA will not use quotas in the administration of this DBE Program.

Public Participation

HMCAA uses public meetings to consult with minority, women and contractor groups, community organizations, and other officials and/or businesses, to determine the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and HMCAA's efforts/success in establishing a level playing field for participation by DBEs. Public participation is likewise solicited for review of HMCAA's annual overall DBE goal. Notice of the goal is published on HMCAA's website and in local newspapers and publications providing that the goal and its methodology are available from HMCAA for a thirty (30) day period and that public comments will be accepted for a forty-five (45) day period. HMCAA will review all responses and comments received and determine whether adjustments to the overall goal are needed. HMCAA hereby commits in writing that it will provide the DOT with an amended DBE goal should the responses from public comment justify a change. In any event, HMCAA will provide the DOT with a summary of any comments received during this public comment period. The public comment period will not extend the August 1st deadline for submission of the DBE goal.

Race-Neutral versus Race Conscious Means

HMCAA will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. HMCAA implements the following race neutral means to increase DBE participation: unbundling various jobs on the projects to allow for subcontractor participation, awarding contracts to DBE prime contractors as the lowest bidder through customary competitive procedures, awarding subcontracts to the lowest bidder, holding public meetings to discuss upcoming fiscal year projects and areas of work, arranging times and solicitations for presenting bids on subcontract jobs, and providing the DBE Directory to prime contractors. If necessary, HMCAA uses race conscious means to increase DBE participation. Its race conscious means include the calculation of an overall DBE goal for DOT-funded projects and the establishment of separate DBE contract/project goals to be bid by prime contractors.

In order to ensure that HMCAA's DBE Program will be narrowly tailored to overcome the effects of discrimination, if HMCAA uses contract goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and HMCAA will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award. HMCAA will maintain data separately on DBE achievements on those contracts with and without contract goals, respectively.

Section 1500. Contract Goals

HMCAA will use contract goals to meet any portion of the overall goal that HMCAA does not project being able to meet using race-neutral means. Contract goals are established so that during the period to which the overall goal applies the contract goals will serve to cumulatively meet any portion of the overall goal that will not foreseeably be met through the use of race-neutral means.

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

HMCAA will express its contract goals as a percentage of the Federal-eligible share of a DOT-assisted contract. Only the DBE's performance of a commercially useful function and the value of the work actually performed by the DBE will be counted towards the contract DBE goal.

Section 1600. Good Faith Efforts

Good Faith Efforts by Contractors

A. Information to be Submitted.

HMCAA treats bidders/offers' compliance with good faith effort requirements as a matter of responsibility (i.e., the contract goal and designation of DBEs must be submitted before HMCAA commits itself to the performance of the contract by the bidder/offeror).

Each solicitation for which a contract DBE goal has been established will require the bidders/offers to submit the following information before HMCAA committing to the performance of the contract:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform – to count toward meeting the goal, each DBE firm must be certified in a NAICS Code applicable to the kind of work the firm would perform on the contract;

3. The dollar amount of the participation of each DBE firm;
4. Written and signed documentation of the prime contractor's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract in the type and amount of work as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

B. Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts to achieve the contract goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.53(a).

The DBELO will determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. HMCAA will review all bidder/offeror's information of good faith efforts for completeness and accuracy and to ensure it adequately documents the bidder/offer's good faith efforts before its commitment to the performance of the contract by the bidder/offeror.

C. Administrative Reconsideration

Within fifteen (15) days of being informed by HMCAA that it is not responsible because it has not documented sufficient good faith efforts to meet a contract goal, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to HMCAA's Chief Operating Officer, Huntsville Madison-County Airport Authority, The Huntsville International Airport, 1000 Glenn Hearn Blvd., Post Office Box 20008, Huntsville, Alabama 35824, Telephone 256.772.9395, Fax 256.772.0305. This reconsideration official will not have played any role in the initial determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. HMCAA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. Per 49 CFR 26.53(d)(5), the result of the reconsideration process is not administratively appealable to the Department of Transportation.

D. Good Cause when a DBE is Replaced on a Contract

A prime contractor may not terminate a DBE to which it has committed without the prior written consent of HMCAA providing its reasons for concurring with the prime contractor's request to terminate. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm. HMCAA will provide its consent only if the prime contractor has good cause to terminate the DBE firm. Such good cause includes (i) the failure of the DBE to execute a written contract; (ii) the failure or refusal of the DBE to perform work in a manner consistent with normal industry standards (provided, however, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract result from the bad faith or discriminatory action of the prime contractor); (iii) the failure or refusal of the DBE to meet the prime contractor's reasonable nondiscriminatory bond requirements; (iv) the bankruptcy, insolvency or credit unworthiness of the DBE; (v) the suspension or disbarment of the DBE (2 CFR Parts 180, 215 and 1,200 or applicable state law); (vi) the death or disability of the DBE owner; (vii) the voluntary withdrawal by the DBE; (viii) the DBE is not a responsible contractor; (ix) the DBE is ineligible to receive DBE credit for the type of work required; or (x) other documented good cause that HMCAA determines compels the termination of the DBE subcontractor.

Prior to transmitting to HMCAA its request to terminate and/or substitute a DBE subcontractor, a prime contractor must give notice in writing to the DBE with a copy to HMCAA of its intent to request to terminate or substitute the DBE and the reason for the request. The DBE shall be provided five (5) days to respond to the prime contractor and advise HMCAA and the prime contractor of the reasons its objects to such termination and why the prime contractor's action should not be approved. (If required in a particular case as a matter of public necessity (e.g. safety), a response period shorter than five (5) days may be provided). This provision applies to post-award terminations as well as pre-award deletions or substitutions of DBEs put forward in negotiated procurements.

Should HMCAA consent to the termination of a DBE, HMCAA will require the prime contractor to make good faith efforts to replace the DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the terminated DBE, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the prime contractor. Furthermore, HMCAA will require the prime contractor to obtain prior approval for any substitute subcontractors and provide copies of new or amended subcontracts or documentation of good faith efforts. If the prime contractor fails or refuses to comply in the time specified, HMCAA's contracting officer will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the prime contractor continues to refuse/fail to comply, the contracting officer may issue a termination for default proceeding.

Good Faith Efforts by HMCAA

HMCAA cannot be penalized, or treated by the DOT as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless HMCAA fails to administer its DBE Program in good faith. HMCAA understands that to be considered in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained and this DBE Program must be administered in good faith.

HMCAA understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be recorded by the DOT as implementing this DBE Program in good faith:

- a. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
- b. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.
- c. HMCAA will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under subparagraphs (a) and (b) of this section. HMCAA will retain a copy of the analysis and corrective actions in its records for a minimum of three (3) years and will make it available to the DOT upon request.

Section 1700. Counting DBE Participation

HMCAA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. HMCAA will count only the value of work actually performed by the DBE, while performing a commercially useful function, toward the DBE goal. In addition, DBE participation will only be included after the amount being counted has actually been paid to the DBE.

In cases of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of Subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided in Section 26.87(j). Pursuant to Section 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standards in Section 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

Section 1800. Certification Process

HMCAA/Alabama UCP (defined below) will use the certification standards of Subpart D of 49 C.F.R. Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. An applicant will be advised within thirty (30) days of its application submittal whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. The certification application form and documentation requirements utilized by

HMCAA/Alabama UCP are found in Appendix F to 49 CFR Part 26. Included in Appendix G to 49 CFR Part 26 is the personal net worth statement required to be signed by the applicant, before a notary public, stating that he or she is indeed socially and economically disadvantaged pursuant to 49 CFR Part 26.67. The DBE Uniform Certification Application and the Personal Net Worth Statement are available on the Alabama Department of Transportation - Alabama Unified Certification Program website.

If an applicant withdraws its application before HMCAA/Alabama UCP issues a decision, the applicant may resubmit its application at any time; however, the application will be placed to the “end of the line” behind other applications that have been submitted since the firm’s previous application was withdrawn.

For information about the certification process or to apply for certification, firms should contact HMCAA’s DBELO: Randy Taylor, Chief Financial Officer, Huntsville-Madison County Airport Authority, 1000 Glenn Hearn Blvd., P.O. Box 20008, Huntsville, AL 35824, Telephone 256.258.1950, Fax 256.258.1850, Email: DBE@hsvairport.org.

Section 1900. Unified Certification Program

The State of Alabama Unified Certification Program (the “Alabama UCP”) was approved by the U.S. Department of Transportation on August 10, 2010. HMCAA is a Responsible Certifying Member of the Alabama UCP. The purpose of the Alabama UCP is to provide “one stop shopping” to applicants seeking DBE certification in the State of Alabama. All obligations of HMCAA with respect to certification and to non-discrimination will be carried out through the Alabama UCP.

Section 2000. Suspension. Decertification and Certification Appeals

Suspension of Certification.

HMCAA/Alabama UCP will follow procedures consistent with 49 CFR Part 26.88 regarding the suspension of a DBE’s certification.

A DBE’s certification shall be immediately suspended without adhering to the requirements in 49 CFR Part 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm’s certification dies or is incarcerated. A DBE’s certification will be immediately suspended without adhering to the requirements of 49 CFR Part 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify HMCAA/Alabama UCP in writing of any material change in circumstances as required by 49 CFR Part 26.83(i) or fails to timely file an affidavit of no change under 49 CFR Part 26.83(j).

When a firm is suspended pursuant to 49 CFR Part 26.88(a) or (b), HMCAA/Alabama UCP will notify the firm by certified mail (to the last known address) (Notice of Suspension). Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part 26.87 to determine whether or not the DBE is eligible to participate in the DBE Program

and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract and any work such firm does on a contract received during the suspension shall not be counted toward HMCAA's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and its participation may be counted toward the contract goal during the period of suspension so long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of a Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the DBE Program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide HMCAA/Alabama UCP information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated or a decertification action under 49 CFR Part 26.87 will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under 49 CFR Part 26.88(a) or (b) is not appealable to the DOT. Failure of HMCAA/Alabama UCP to either lift the suspension and reinstate the firm or commence a decertification proceeding is considered a constructive decertification, which action is appealable to the DOT under 49 CFR Part 26.89.

Decertification and Certification Appeals.

In the event HMCAA/Alabama UCP proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR Part 26.87. A firm receiving notification that there is a reasonable cause to remove its eligibility will be given the opportunity for an informal hearing to provide information and arguments concerning why it should remain certified. The Alabama UCP Hearing Board will consider the appeal. The Hearing Board will ensure that no personnel who took part in the action leading up to the decision to remove the firm's certification are part of the Hearing Board. Following the Hearing Board's decision, the Alabama UCP will provide a written notice of the decision and reasons therefore, including references to evidence in the record that supports each reason for the decision. The firm will also be notified of its right to appeal to the U.S. Department of Transportation under 49 CFR Part 26.89. The firm may not reapply until twelve (12) months have passed from the decertifying action.

Any firm or complainant may appeal a decision in a certification matter to the DOT, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) HMCAA/Alabama UCP failed to consider, or what provisions of 49 CFR Part 26 were not properly applied. Such appeals may be sent to:

United States Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division
1200 New Jersey Ave. S.E. W78-340
Washington, DC 20590
Telephone: (202) 366.4754

The DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The DOT does not make a de novo review of the matter and does not conduct a hearing. The DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

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

Section 2100. Re-certifications

For firms that the Alabama UCP has certified and found eligible under 49 CFR Part 26, such DBE firm will remain certified unless or until its certification is removed, in whole or in part, through the procedures of 49 CFR Part 26.87 (except as provided in 49 CFR Part 26.67(b)(1)). The Alabama UCP may conduct a certification review of a certified DBE, including a new onsite review, five (5) years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances.

Section 2200. Notices of Change/Affidavits of "No Change"

HMCAA/Alabama UCP will require all DBEs to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control criteria under 49 CFR Part 26 or of any material changes in the information provided with the firm's application for certification. If a firm's Owner knows or should know that he or she, or the firm, fails to meet an eligibility requirement under 49 CFR Part 26 (e.g., personal net worth, business size), the obligation to submit a notice of change applies. Annually, DBEs must submit a "no change" affidavit meeting the requirements of 49 CFR Part 26.83(j). DBE owners should use the No Change Affidavit available on the Alabama Department of Transportation – Alabama Unified Certification Program website. The Owner must affirm that they meet all regulatory requirements of 49 CFR Part 26 and comply with the annual submission requirements thereunder.

Section 2300. Personal Net Worth

HMCAA/Alabama UCP will require all disadvantaged Owners of DBE applicants (at time of application) to submit a statement of personal net worth as provided in Appendix G to 49 CFR Part 26 ("Statement of Personal Net Worth"). Personal net worth shall be that amount as defined by the DOT from time to time in 49 CFR Part 26.67(a)(2)(i).

Section 2400. Information Collection, Record Keeping, and Reporting

HMCAA will provide data about its DBE Program to the DOT as directed by DOT operating administrations.

A. Bidders List

HMCAA will maintain a bidders list containing information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age of firm, annual gross receipts, and contact numbers of all DOT-assisted contract bidders. HMCAA may collect this information from its previous contract bids, through prime bidders who report the names and addresses of firms who quote to them on subcontracts, through recipient surveys, and by notice to firms quoting on subcontracts to report information directly to HMCAA, in addition to any other available means. The purpose of this list is to assist in calculating overall goals.

B. Reporting to DOT

DBE participation will be reported to the DOT as follows: HMCAA will report DBE participation as required by the “Uniform Report of DBE Awards or Commitments and Payments,” described in Appendix B to Part 26, to the DOT annually for FAA funds and semiannually for FTA funds. These reports will reflect contracts awarded as well as payments actually made to DBEs on completed DOT-assisted contracts. HMCAA will similarly report the required information about participating DBE firms. All reporting will be done through the DOT official reporting system, or another format acceptable to the DOT as instructed thereby.

If HMCAA fails to achieve its three (3) year goal in any individual year, in order to be regarded by the DOT as implementing its DBE program in good faith, HMCAA shall analyze in detail the reasons for the difference between the overall goal and HMCAA awards and commitments in that fiscal year; establish specific steps and milestones to correct the problems that HMCAA has identified in its analysis to enable HMCAA to fully meet its goal for the new fiscal year; and retain any analysis and corrective action in HMCAA records for three (3) years as required by 49 CFR Part 26.47. HMCAA commits to fully implementing the corrective actions to which it has identified in its analysis.

C. Confidentiality

HMCAA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, HMCAA will not release to a third party (other than the DOT) personal financial information submitted in response to the requirement for a statement of personal net worth except with the written consent of the submitter.

D. Records Retention and Reporting.

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

HMCAA, as a member of the Alabama UCP established pursuant to 49 CFR Part 26.81, will report to the DOT's Office of Civil Rights each year the percentage and location in the State of certified firms in the UCP Directory controlled by the following:

- (a) Women;
- (b) Socially and economically disadvantaged individuals (other than women); and
- (c) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 2500. Fostering of Small Business Participation

HMCAA commits to facilitating participation on its DOT funded projects by small business entities (SBEs). As a means to facilitate this participation, HMCAA commits to taking all reasonable steps to eliminate obstacles to the participation by small businesses, including unbundling contract requirements that may preclude participation in procurements by small businesses as a prime contractor or subcontractor, establishing set asides on certain projects where small business participation is available, and participating in outreach and technical assistance opportunities to promote, train, and encourage involvement by SBEs in DOT projects.

Because DBE goals should be met through a mixture of race conscious and race neutral methods and, by definition DBE firms are small businesses, HMCAA is implementing its small business element into its current DBE Program in accordance with applicable law. HMCAA hopes to facilitate competition by and expand opportunities for small businesses.

Small businesses must meet the same size guidelines utilized for DBEs. Certified DBEs that meet the size criteria under the DBE Program are presumptively eligible to participate in the small business element of this program. Notwithstanding, a small business is not defined by the race or gender of its owner. A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field.

Strategies to be implemented by HMCAA include:

1. **Set asides:** Where feasible, HMCAA will establish race-neutral small business set-asides for prime contracts under a stated amount - this may be established as a percentage of the total value of the DOT funded project set aside for participation by small businesses. This "set aside" is a reserved portion of the contract that is exclusively for participation by small businesses.

The determination will be made based upon the small business opportunities existing and the estimated availability of small businesses able to provide the requisite scope of work, giving consideration to the overall size and scope of the project to establish such a set aside percentage.

2. **Unbundling:** HMCAA may, where practical, “unbundle” projects or separate large projects into smaller contracts which may be more suitable for small business participation. HMCAA will conduct reviews to determine whether portions of a project could be “unbundled” or bid separate. HMCAA may require bidders to identify elements of a contract or subcontract that are of a size that small businesses can reasonably perform. On prime contracts not having DBE contract goals, HMCAA may require prime contractors to provide subcontracting opportunities of a size that small businesses can reasonably perform (rather than self-performing all the work involved). In making such decisions, HMCAA will consider any economic or administrative burdens which may be associated with unbundling.

3. **Outreach and technical assistance:** HMCAA will identify outreach and technical assistance opportunities to promote, train, and encourage involvement by SBEs in DOT projects. This may include internal programs established by HMCAA and/or participation in community-established programs created to foster small business development. HMCAA will also identify and promote opportunities for contractors to provide small business development through mentoring and protégé type programs. In addition, HMCAA will consider alternative acquisition strategies and structuring procurements to facilitate the ability of joint ventures consisting of small businesses to compete for and perform prime contracts.

HMCAA will endeavor to meet a portion of HMCAA’s overall DBE goal through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses can reasonably perform. There are no limits on the number of contracts that may be awarded to firms participating in the DBE program. HMCAA will make reasonable efforts to avoid creating barriers to the use of new, emerging and untried businesses. Finally, aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE program, that are eligible for DBE certification, to become certified.

Section 2600. Compliance Procedures Applicable to HMCAA

HMCAA understands that if it fails to comply with any requirement of 49 CFR Part 26, HMCAA may be subject to formal enforcement action under 49 CFR Part 26.103 or Part 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remediated. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122, and in the case of the FTA program, any actions permitted under 49 U.S.C. Chapter 53 or applicable FTA program requirements.

Section 2700. Information, Confidentiality, Cooperation and Intimidation or Retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, State or local law, will be safeguarded from disclosure to third parties. Notwithstanding any provision of Federal or State law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to the DOT in any certification appeal proceeding under 49 CFR Part 26.89, or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85.

All participants in the DOT's DBE program are required to cooperate fully and promptly with the DOT in recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g. with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and disbarment).

HMCAA, any prime contractor or other participant in the DBE Program will not intimidate, threaten, coerce or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing under 49 CFR Part 26. HMCAA understands that it is in noncompliance with 49 CFR Part 26 if it violates this prohibition.

EXHIBIT “A”

**Huntsville-Madison County Airport Authority
Organization Chart (limited)**

DBE Responsibilities

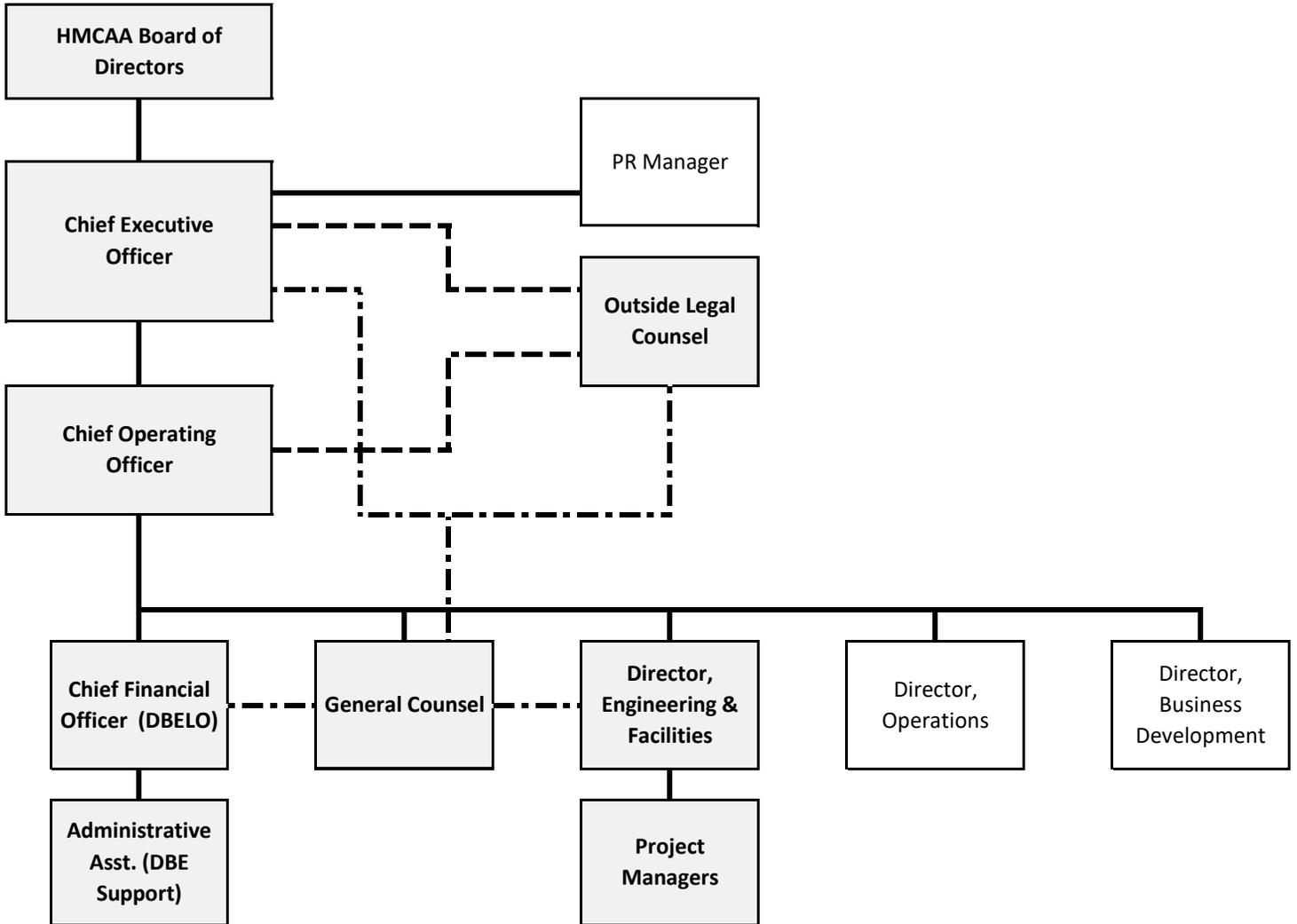


EXHIBIT "B"

MONITORING AND ENFORCEMENT MECHANISMS

The HMCAA may use any of the following regulations, provisions and contract remedies to ensure compliance by non-DBE contractors and/or subcontractors with 49 CFR Part 26:

- I. Department of Transportation Regulation, *49 C.F.R. Part 26*, as amended, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, *Section 26.101 et seq.*
 - (a) Establishing individual contract DBE goals for prime contractor accomplishment
 - (b) Requirement of showing Good Faith Efforts at contract bid and/or award if DBE goals are not met
 - (c) Requirement of replacing DBEs on contracts where DBE is terminated
 - (d) Onsite documented monitoring of actual performance of work by DBEs to which prime contractor has committed
 - (e) Evaluation of pay requests from prime contractors
 - (f) Review of disbursements to subcontractors by prime contractors
 - (g) Assess liquidated damages to prime contractors for failure to make timely payments to subcontractors
 - (h) Preparation of written certification by HMCAA that contracting records have been reviewed and work sites monitored
 - (i) Maintain tally of actual payments to DBE firms for work committed to such DBE at the time of contract award
 - (j) Annual preparation of written reports of DBE commitments and actual DBE attainments

- II. Breach of Contract Remedies, *Alabama Common Law*
 - (a) Cancellation of Contract
 - (b) Specific Performance

- III. Fraud Remedies
 - (a) Program Fraud and Civil Remedies, *49 CFR Part 31*
 - (b) *Alabama Code §6-5-100 et seq* -- Cancellation of Contract

- IV. Responsibility Determinations in Contracts, *49 CFR Part 26.53*

- V. Termination and Disbarment Proceedings, *49 CFR Part 26.107*, *49 CFR Part 29*