



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

Airport Concession

Disadvantaged Business Enterprise

ACDBE Program

(49 CFR Part 23)

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Section 23.1, 23.23 Objectives/Policy Statement

The Metropolitan Knoxville Airport Authority (MKAA) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 23. MKAA is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). MKAA has signed airport grant assurances that it will comply with 49 CFR Part 23 (Part 23).

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

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the eligibility standards of Part 23 are permitted to participate as ACDBEs;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions our airport(s);
6. To promote the use of ACDBEs in all types of concessions activities at our airport(s);
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
8. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

Terrence Carter has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, ACDBELO is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded with the same priority as compliance with all other legal obligations incurred by MKAA in its financial assistance agreements with the Department of Transportation.

MKAA has disseminated this policy statement to the Board of Commissioners and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area, via publications in local printed publications, web-based media, community meetings and flyknoxville.com.

Patrick Wilson, President/CEO

Date

SUBPART A - GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

MKAA will use terms in this program that have the meaning defined in 49 CFR Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

MKAA is a small hub primary airport and a 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

MKAA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any 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 ACDBE program, MKAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

MKAA 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

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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 cause those businesses to similarly include the statements in further agreements.”

Section 23.11 Compliance and Enforcement

MKAA acknowledges that the compliance and enforcement provisions of 49 CFR Part 26 (Section 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

MKAA operates McGhee Tyson Airport, a small hub primary airport and Downtown Island Airport, a fixed based operator (FBO) and is required to have an ACDBE program. This ACDBE program is applicable to the following airport(s):

- McGhee Tyson Airport

This ACDBE program will be implemented at McGhee Tyson Airport. As a condition of eligibility for FAA financial assistance, MKAA will submit its ACDBE program and overall goals to FAA according to Sections 23.21 and 23.45(a) of Part 23.

Prior to implementing significant changes to this ACDBE program, MKAA will provide the amended program to FAA for review and approval.

Section 23.23 Administrative Provisions

Policy Statement: MKAA is committed to operating its ACDBE program in a nondiscriminatory manner. The Policy Statement is elaborated on the first page of this program.

MKAA will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged

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individuals in the community and make reasonable efforts to use these institutions. MKAA will also encourage prime concessionaires to use such institutions.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our ACDBELO:

Terrence Carter
Director of Business Diversity
Metropolitan Knoxville Airport Authority
P.O. Box 15600
Knoxville, Tennessee 37901
(865) 342-3062
Terrence.Carter@tys.org

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that MKAA complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the President/CEO of MKAA concerning ACDBE program matters. An organizational 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 part-time administrative assistant 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 DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes MKAA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.

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10. 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).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Unified Certification Program (UCP) in Tennessee.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains MKAA's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: MKAA through the Tennessee Unified Certification Program (TNUCP) maintains a directory identifying all firms eligible to participate as DBEs and 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 Directory clearly specifies whether a firm is certified as an ACDBE for the purposes of 49 CFR Part 23.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

MKAA will seek ACDBE participation in all types of concession activities.

MKAA 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. MKAA will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (49 CFR Section 23.25(a)):

MKAA will use the types of measures listed below ensure nondiscriminatory participation of ACDBEs in concession and other covered activities. 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 Part 23;
- 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;

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- 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 49 CFR Section 26.35); technical assistance programs; or taking other steps to foster ACDBE participation in concessions.

MKAA 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 concession opportunities.
 - a. In setting concession-specific goals for concession opportunities other than car rental, MKAA 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, MKAA 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, MKAA 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, MKAA 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, MKAA 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, MKAA will require competitors to make good faith efforts to meet this goal. A competitor may

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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 49 CFR Part 26, Sections 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.

MKAA 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

MKAA 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 2 to this ACDBE Program. The program's elements will be actively implemented to foster small business participation. MKAA acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program.

MKAA will submit an annual report on small business participation obtained using this small business element. The report will 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_offices/acr/bus_ent_program.

Section 23.27 Reporting

MKAA 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

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minimum of 3 years following the end of the concession agreement or other covered contract.

MKAA 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.

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

- a. Firm name;
- b. Firm address including ZIP code;
- c. Firm status as an ACDBE or non-ACDBE;
- d. Race and gender information for the firm's majority owner;
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

MKAA will collect the data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. MKAA 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 UCP established pursuant to 49 CFR Section 26.81 must report certain information from the UCP directory to DOT's Departmental Office of Civil Rights each year. MKAA is a certifying member of the Tennessee UCP. MKAA 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;

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- 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.

Section 23.29 Compliance and Enforcement Procedures

MKAA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

- 1. MKAA will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Section 26.107.
- 2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities. See Attachment 3.

SUBPART C - CERTIFICATION AND ELIGIBILITY

Section 23.31 Certification Standards and Procedures

MKAA is a certifying member of the TNUCP. MKAA 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. MKAA makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the TNUCP agreement. The full UCP agreement can be found at: www.tdot.gov/ucp. A copy of the UCP agreement can also be found in Attachment 4.

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The TNUCP directory of eligible ACDBEs specifies whether a firm is certified as an ACDBE for purposes of Part 23.

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

David W. Neese | Small Business Development Program Director

Civil Rights Division

James K. Polk Bldg, 18th Floor

505 Deaderick St., Nashville, TN 37243

p. 615-253-1075

David.Neese@tn.gov

www.tn.gov/tdot/civil-rights/small-business-development-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 Section 121.104(a)) of affiliates are included in a manner consistent with 13 CFR Section 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 Limits

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 personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of Part 23, 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 TNUCP 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 TNUCP 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 49 CFR Section 26.83(c)(1) do not apply to ACDBE certifications. Instead, in determining whether a firm is an eligible ACDBE, Certifying TNUCP members will take the following steps:

- 1) Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. Certifying TNUCP members will review those persons' résumés and/or work histories and maintain a complete audio recording of the interviews. Certifiers will also visit one or more active job sites (if there is one). These activities comprise the “on-site review” (OSR), a written report of which the certifying TNUCP member will keep in its files.
- 2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;
- 3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;
- 4) Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;
- 5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- 6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;
- 7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the

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last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and

- 8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in 49 CFR Section 26.85.

In reviewing the Declaration of Eligibility required by 49 CFR Section 26.83(j), Certifying TNUCP members will ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in 49 CFR Section 23.33.

For purposes of Part 23, the term *prime contractor* in 49 CFR Section 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of 49 CFR Section 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of Part 23 is governed by 49 CFR Section 26.63(c)(1).

Certifying TNUCP members will use the Uniform Certification Application found in 49 CFR Part 26 without change. If TNUCP seeks to supplement the form by requesting specified additional information consistent with Part 23 and Part 26, the TNUCP will first seek written approval from the concerned Operating Administration.

Certifying TNUCP members will require every applicant to clearly state that it is applying for certification as an ACDBE and complete all of section 5.

Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs.

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

MKAA 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 MKAA will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. MKAA will submit any significant overall goal adjustments to the FAA.

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If the average annual concession revenues for car rentals over the preceding three (3) years do not exceed \$200,000, MKAA is not required to develop and submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding three (3) years do not exceed \$200,000, MKAA is not required to develop and submit an overall goal for concessions other than car rentals. MKAA understands that “revenue” means total revenue generated by concessions, not the revenue received by the airport from concessions agreements. MKAA’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

MKAA 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 MKAA’s efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we 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 are available during the goal period. However, MKAA 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 overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA’s website.

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 sponsor will submit an appropriate adjustment to our overall goal

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to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

MKAA will establish overall goals in accordance with the 2-Step process as specified in 49 CFR Section 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).

MKAA 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 MKAA’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 MKAA.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

MKAA will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR Section 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, MKAA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, MKAA 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. MKAA will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession

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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 MKAA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of Subpart C of Part 23 or any material change. Reporting must be made as provided in 49 CFR Section 26.83(i).

Section 23.55 Counting ACDBE participation for Concessions Other than Car Rentals

MKAA will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR Section 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, MKAA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, MKAA 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. MKAA 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 MKAA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of Subpart C of Part 23 or any material change. Reporting must be made as provided in 49 CFR Section 26.83(i).

Section 23.57 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:

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- Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- 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;
- As an airport not meeting the criteria of 49 CFR Section 23.57(b)(3)(i), we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

FAA may impose conditions as part of its approval of MKAA'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.

MKAA may be regarded as being in noncompliance with Part 23, and therefore subject to the remedies in 49 CFR Section 23.11 and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- MKAA does not submit the analysis and corrective actions to FAA in a timely manner as required under 49 CFR Section 23.57(b)(3);
- FAA disapproves the analysis or corrective actions; or
- MKAA 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

MKAA 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, MKAA 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

MKAA will pass through applicable provisions of Part 23 to any private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with Part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23.

Section 23.75 Long-Term Exclusive Agreements

MKAA 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.

MKAA 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 MKAA’s plan for meeting the standards of 49 CFR Section 23.75(c).

To obtain FAA approval of a long-term exclusive concession agreement, MKAA 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;

MKAA ACDBE PROGRAM

- 2) A copy of the solicitation;
- 3) ACDBE contract goal analysis developed in accordance with Part 23;
- 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, MKAA 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, MKAA 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 Part 23, MKAA will, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of Part 23. However, nothing in Part 23 preempts any State or local law, regulation, or policy enacted by the governing body of MKAA, 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

MKAA 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).

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Airport Board



MKAA
President



VP of Public
Relations



Business Diversity
Director



MKAA Disadvantaged Business Org. Chart

Attachment 2

DBE/ACDBE Directory (or website link)

Copies of the Federal Regulations that govern the ACDBE Program and the certification of ACDBEs can be found on-line at:

Department of Transportation
Office of Civil Rights
Uniform Certification Program
(615) 253-1067 or toll free (888) 370-3647
<http://www.tdot.state.tn.us/dbedirectinternet/>

Airport Concessions Disadvantaged Business Enterprise Program – 49 CFR Part 23
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

Disadvantaged Business Enterprise Program – 49 CFR Part 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

State of Tennessee's UCP Directory link is below:
<https://www.tdot.tn.gov/APPLICATIONS/DBEDirect>

Attachment 3

Metropolitan Knoxville Airport Authority (MKAA)
Active Participants List Form

Instructions: Each firm must complete this form when submitting proposals or initial responses to procurement requests. The completed form should be submitted to the MKAA ACDBELO liaison in the Business Diversity Office.

Submission Requirements: This form should be submitted by firms pursuing concession opportunities or other relevant contracts as Part of MKAA's ACDBE Program. This form captures the required data points needed for tracking participation and ACDBE compliance and assist in calculating triennial goals as required by the FAA.

Project Information

- Project Name: [Enter Project Name]
- RFP or Contract Number: [Enter RFP/Contract #]

Part A: Firm Information

- Firm Name: [Enter Firm Name]
- Firm Address (including ZIP code): [Enter Address]
- Contact Person: [First Name, Last Name]
- Contact Email: [Enter Email Address]
- Contact Phone Number: [Enter Phone Number]
- County: [County of Business Location]

Part B: Business Details

- ACDBE Status: [ACDBE / Non-ACDBE]
- Ethnic Group/Race (for owner): [Enter Race]
- Gender (for owner): [Enter Gender]
- Age of Firm (in years): [Enter Number of Years]
- Annual Gross Receipts Bracket: [Select applicable range: less than \$1M, \$1M-\$3M, etc.]
- NAICS Code(s): [List applicable NAICS code(s)]

Part C: Project-Specific Information

- Scope of Work or Services: [Brief description of services/materials provided]
- Will subcontracting be used? [Yes/No] (If "Yes," list subcontractors separately)

Attachment 4

Monitoring and Enforcement Mechanisms

MKAA has several remedies available 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; and
2. Breach of contract action, pursuant to State Statute

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

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

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

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

Attachment 5

Form 1 & 2 for Demonstration of Good Faith Efforts

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title

Date

FORM 2: Letter of Intent

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

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

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

Affirmation: The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____ Date: _____

(Signature)

(Title)

* Submit this page for each DBE subcontractor. If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter Intent and Affirmation shall be null and void.

Attachment 6

Certification Application Forms

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

Metropolitan Knoxville Airport Authority Knoxville

McGhee Tyson Airport P.O. Box 15600

(865)342-3062

www.tys.org/disadvantaged-business-enterprise-program

State of Tennessee

Tennessee Uniform Certification Program

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

Attachment 7

State of Tennessee's UCP Agreement

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

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Disadvantaged Business Enterprise Program

Tennessee Uniform Certification Program

Uniform Certification Partners

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

Definitions

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

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

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

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including but not limited to construction and professional services) and the buyer to pay for them.

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

MOU means a “Memorandum of Understanding”.

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

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

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

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

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

Overview

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

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

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

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

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

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

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

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

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

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

While TNUCP partners will accept and process applications in their respective metropolitan areas, it may be burdensome for some recipients to be expected to travel into more rural sections of the state to conduct the required on-site visits. Therefore, rural certifications would remain the responsibility of TDOT, as well as overall statewide certifications. However, applicants in transit or aviation/airport services may be better served by an entity more familiar with their particular work type. Memphis Area Transit Authority and Memphis Shelby County Airport Authority have and will continue to utilize outside agents who conduct their certification legwork, such as Schedule A dissemination Schedule A and supporting documentation processing and performing on-site visits, then forwarding their recommendations onto the respective partners to make a determination of eligibility. These agents will have no voting power and will not be placed on any committee within the UCP. MOU's drafted between the partners and their agent are enclosed with the UCP agreement.

Impact on Recipient Programs. Federal Regulation 49 CFR Part 26, requires that all USDOT fund recipients execute a UCP agreement within three years of March 4, 1999. The statewide UCP must establish a single uniform process or "one stop-shop" for DBE applications, certifications, and the development of a single point DBE Directory. All US DOT recipients will be required to ratify the UCP agreement and all DBE certifications by the TNUCP will be binding. The UCP supplements the recipients' existing approved DBE programs regarding certification. In the event of a conflict between the UCP and the DBE plan, the provisions of the UCP shall prevail. The lead agency in Tennessee, which is the funding agency for the majority of the recipients of USDOT federal funds, is the Tennessee Department of Transportation.

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

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

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

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

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

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

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

Roles and Responsibilities. The Eligibility/Certification Subcommittee will be responsible for: (1) Reviewing all firms submitted by a TNUCP partner that a partner feels an eligibility determination needs to be assessed under 49 CFR Part 26. 43 (2) Formulating and executing MOU’s and/or reciprocity agreements between the TNUCP and other UCP’s. Such an agreement shall outline the specific responsibilities of each participant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third Party Challenge. The TNUCP shall accept written challenges from any party, including TNUCP partners, alleging that a currently certified firm may be ineligible. The challenge must state specific reasons for ineligibility and submit written documentation in

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

The TNUCP establishes a Third Party Challenge Committee, which will hear all Third Party challenges coming before the TNUCP. The committee shall ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision makers shall be individuals who are knowledgeable about the certification requirements of the DBE program and this agreement. The firm shall be notified of the final decision made by the Third Party Challenge Committee and the reasons for the decision. If the decision is not to remove the firm, the complainant will be notified of the right to appeal to USDOT under 49 CFR Section 26.89. If the firm is removed and is certified by the SBA, a written notice shall be provided to the SBA that includes the reasons for the removal, as required by 49 CFR Section 26.87. The firm has the opportunity within 90 days of receipt of the date of the final decision to appeal the decision to USDOT under 49 CFR Part 26 Subpart E Section 26.89.

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

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

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

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

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

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

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

The specific minimum requirements are:

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

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

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

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

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

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

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

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

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

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

Attachment 8

Regulations: 49 CFR Part 23

Use the following link:

49 CFR Part 23 - eCFR

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.

Attachment 9

**MKAA ACDBE Program
Race-Neutral Small Business Element**

The Metropolitan Knoxville Airport Authority (MKAA) has developed a race-neutral Small Business Element (SBE) as part of the MKAA ACDBE Program in compliance with 49 CFR Section 23.26. We will plan and execute strategies that are designed to expand opportunities for small businesses without relying on race or gender as eligibility factors.

1. Objectives

The Small Business Element (SBE) fosters inclusive participation of small businesses, including but not limited to ACDBEs, in MKAA's concession opportunities, promoting diversity without using race or gender as eligibility factors.

2. Program Components

A. Small Business Set-Asides

Implementation: Identify concession spaces suitable for small business set-asides, considering business size, anticipated traffic, and opportunity viability.

Documentation: MKAA will document criteria for each set-aside space to ensure transparency and feasibility, confirming that opportunities designated as set-asides offer reasonable potential for profitability.

B. Subleasing Opportunities

Subleasing Requirements: Require large concessionaires without ACDBE goals to set aside subleasing spaces for small businesses. Concessionaires will report identified subleasing opportunities, which MKAA will promote through outreach to local businesses.

Monitoring: Regular reviews of concessionaire compliance and small business sublease utilization will be conducted quarterly to verify adherence and effectiveness.

C. Alternative Concession Models

Pop-Up Shops: Establish short-term lease "pop-up" opportunities for small businesses, supported by MKAA or larger concessionaires. These short-term leases encourage business testing at lower costs.

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Right-Sized Financing Requirements: For these alternative models, MKAA will tailor bonding, insurance, and other financial requirements, easing entry barriers for small businesses.

D. Outreach and Technical Assistance

Networking Events: Host bi-annual networking events where small businesses can connect with prime concessionaires and learn about upcoming opportunities.

Workshops and Training: Offer workshops covering business planning, proposal preparation, compliance, and airport operations. These sessions provide foundational knowledge for small businesses unfamiliar with airport concession processes.

E. Verification and Eligibility

Eligibility Verification: Firms must meet small business size standards under 49 CFR Section 23.33 to qualify. MKAA will verify eligibility based on business size and exclude race/gender criteria to comply with race-neutral requirements.

No New Certification Category: Verification will use established standards rather than creating a separate certification, allowing ACDBEs and other small businesses to participate without redundant certifications.

3. Monitoring and Record-Keeping

Annual Participation Tracking: Track and report the participation of ACDBEs and other small businesses within concession spaces through the Uniform Report of ACDBE Participation.

Quarterly Progress Reviews: Conduct quarterly assessments to gauge program effectiveness and adjust strategies as needed, ensuring the small business element supports the intended objectives.

4. Assurances

MKAA will adhere to the following assurances:

State Law Compliance: This Small Business Element complies with applicable state laws.

Certification Eligibility: Certified ACDBEs meeting size criteria are eligible without additional certification.

No Geographic Preferences: MKAA will not impose location-based preferences, ensuring fair access for all qualified small businesses.

Encouragement for Certification: MKAA will actively encourage minority- and women-owned small businesses to pursue ACDBE certification.

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Equal Opportunity: Open to all qualifying small businesses, MKAA's Small Business Element provides equal access to concession opportunities.

This Small Business Element aligns with FAA Section 23.26 requirements, fostering race-neutral opportunities through strategic subleasing, accessible concession spaces, and active outreach.