

Capital Region Airport Commission

Richmond International Airport

Fiscal Year 2010 DBE Plan

and

Fiscal Year 2009 DBE Achievements Report

for

Federally-Assisted Contracts

Jon E. Mathiasen, A.A.E.
President & Chief Executive Officer

Aubrey M. Stanley
Chairman

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POLICY STATEMENT

The Capital Region Airport Commission (the Commission) has established a Disadvantaged Business Enterprise (DBE) Program to meet the U.S. Department of Transportation (DOT) DBE Program regulatory requirements and to increase the opportunities for businesses contracting with Richmond International Airport. The Commission has received Federal financial assistance from DOT and as a condition of receiving this assistance has signed an assurance that it will comply with Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26).

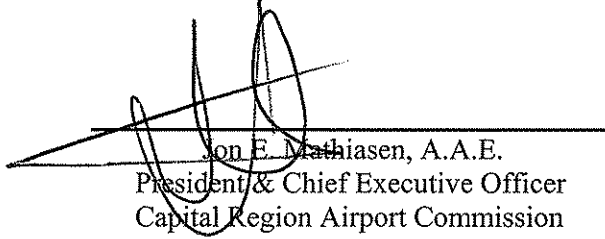
It is the policy of the Commission to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to compete for and participate in DOT-assisted contracts. It is also the Commission's policy:

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 its DBE program is narrowly tailored in accordance with applicable law;
4. to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. to help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. to assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Commission's policies prohibit discrimination against any person or company because of race, color, sex, or national origin, in the award or performance of any contract subject to the requirements of 49 CFR Part 26.

Russ L. Peaden has been designated as the Commission's Disadvantaged Business Enterprise Liaison Officer (DBELO) with day-to-day responsibility and direct independent access to the President and Chief Executive Officer to implement the DBE Program. The Commission will also require that its employees, agents and contractors adhere to the Part 26 requirements. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Commission in its financial assistance agreements with the DOT.

Copies of this statement shall be disseminated to the Airport Commission and all departments of the Commission, to the minority-owned, women-owned and disadvantaged business community, to the non-DBE business community, to community organizations, and as requested, to bidders on the Commission's DOT-assisted contracts.



Jon E. Mathiasen, A.A.E.
President & Chief Executive Officer
Capital Region Airport Commission

Date: September 16, 2009

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Commission is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Commission will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will submit annually DOT Form 4630, as modified for use by FAA recipients.

Bidders List: 26.11(c)

The Commission will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts, in order to allow use of the bidder's list approach to calculating overall goals. This information will be collected from bidders/offerors on the Offeror List Form (Attachment 5 – Form 1), Contract Participation Form (Attachment 5 – Form 2) and Letter of Intent (Attachment 5 – Form 3). These forms are included as part of the Commission's solicitation documents.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance 26.13(a)

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and

reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Commission of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13b

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the Commission has received a grant of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

Jon E. Mathiasen, President and Chief Executive Officer of the Commission, has ultimate responsibility for executing the DBE Program. The President & Chief Executive Officer has designated Russell L. Peaden, the Commission's Director Real Estate and Facilities, as the DBE Liaison Officer (DBELO) to administer day-to-day DBE Program responsibilities. The DBELO has direct, independent access to the President and Chief Executive Officer concerning DBE program matters. Contact information for the DBELO is Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, VA 23250-2400. Phone (804) 226-8520 email: rpeaden@flyrichmond.com. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO's duties and responsibilities are:

- a. developing, managing, and implementing the DBE program on a day-to-day basis;
- b. carrying out technical assistance activities for DBEs;

- c. disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to compete for FAA-assisted contracts awarded by the Commission;
- d. explaining DBE participation requirements internally and externally at pre-bid conferences;
- e. ensuring that solicitations contain the clauses and goals required by this program; and
- f. gathering and reporting statistical data and other information as required by DOT.
- g. advising the CEO on DBE matters and achievement.

Other personnel assigned DBE Program responsibilities include:

- a. Commission's Legal Counsel, who shall be called upon to:
 - 1. review contract documents for legal sufficiency; and
 - 2. advise the Commission on matters impacting on DBE programs.
- b. Designated Commission staff, together with the Commission's Program Managers, who will:
 - 1. review design and construction contract proposals, advising the Commission regarding DBE participation levels offered;
 - 2. provide recommendations on award of construction contracts;
 - 3. review and report on DBE participation during the progress of design and construction contracts; and
 - 4. seek to include DBE participation in those airfield construction/airfield maintenance projects managed by the Facilities Department in which the Program Managers are not participants.
- c. The Director for Airport Operations and Director of Airport Public Safety, together with the Director of Facility Maintenance will seek to include DBE participation in those building construction and maintenance projects managed by the Airport Operations and Airport Public Safety Divisions.
- d. The Chief Financial Officer is responsible for:
 - 1. providing information to the President and Chief Executive Officer and DBELO on contracting and leasing opportunities, together with a breakdown of subcontracting possibilities; and
 - 2. consulting with the President and Chief Executive Officer and DBELO on financial requirements, including bonding, licenses, insurance, financial information and other requirements.
- e. The Procurement Specialist is responsible for:

1. providing advice, guidance, and information to the DBELO regarding the Commission's procurement policies and procedures and requirements, and for reviewing recommendations by the DBELO regarding incorporating DBE participation language in Commission request for proposal and contract documents;
2. ensuring that DBE goals and procedures adopted by the Commission are properly contained in Commission project advertisements; and
3. advising the DBELO of the results of procurement advertisements for recommendation to the Commission regarding contract awards.

Section 26.27 DBE Financial Institutions

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

The Commission will provide the following notification to each prime contractor who will perform on FAA-assisted projects:

“The Capital Region Airport Commission encourages you to make the greatest feasible use of the services offered by financial institutions owned and controlled by DBEs.”

To date we have identified the following such institutions: Consolidated Bank and Trust Company.

Information on these institutions may be obtained from the Chief Financial Officer.

Section 26.29 Prompt Payment Mechanisms

The Commission will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Commission or to notify the Commission and subcontractor in writing of its intent to withhold all or a part of the subcontractor's payment with the reason for nonpayment. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame shall obligate the prime contractor to pay the subcontractor interest unless moneys were withheld for good cause shown. Unless otherwise provided in this agreement, interest shall accrue at the rate of 1% per month. The prime contractor shall require its subcontractor to include this provision in contracts with their subcontractors. This clause applies to both DBE and non-DBE subcontractors.

The Commission also conducts post-award compliance reviews, and requires prime contractors to submit, with their invoices, information concerning payments to DBEs on the Commission's Invoice Attachment Form (Attachment 2a.).

Section 26.31 Directory

The Commission has on file up-to-date directories of firms eligible to participate as DBE businesses. These directories are available at the office of the DBELO and shall be provided to all bidders and proposers upon request. These directories specify which firms are DBEs, their addresses, phone numbers, and types of work for which they are certified.

The Commission will also utilize the Virginia Department of Transportation (VDOT) DBE directory, and will participate in a combined statewide directory when the Unified Certification Program (UCP) becomes operational in the Commonwealth of Virginia.

Section 26.33 Overconcentration

The Commission has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Commission has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Commission will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

The Commission will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts. These matters will be brought to the attention of the Commission's legal counsel, Christian and Barton, for investigation and any required legal action. Attachment 2b lists the regulations, provisions and contract remedies available to us in the event of non-compliance with the DBE regulations by a participant in our procurement activities.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Commission does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 3 to this program. This section of the program will be updated annually.

Before establishing the overall goal each year, the Commission will consult with DOT and local organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Commission's efforts to establish a level playing field for the participation of DBEs. Following this consultation, we will publish a notice of the proposed overall

goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Commission's principal office for 30 days following the date of the notice, and informing the public that the Commission and DOT will accept comments on the goals for 45 days from the date of the notice.

The Commission's overall goal submission to DOT will include a summary of information and comments received and the Commission's responses.

The Commission will begin using its overall goals on October 1 of each year, unless it has received other instructions from DOT.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

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

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. 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 Part 26.

The Commission will evaluate the good faith efforts of a bidder/offeror to determine whether the efforts to obtain DBE participation were those that a firm aggressively seeking subcontractors or partners would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the subcontract, there were DBE firms ready, willing and able to accept the contract at a competitive price.

The Commission's DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive and responsible. If the contract goal is not met, bidders/offerors must provide evidence of good faith efforts, documented on the Commission's DBE Goal Waiver Request Form (Attachment 5 – Form 4).

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

Information to be submitted (26.53(b))

The Commission treats bidders'/offerors' compliance with good faith efforts requirements as a matter of responsiveness and responsibility.

Each solicitation for which a contract goal has been established will require bidders/offerors to submit the following information:

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

Administrative reconsideration (26.53(d))

Within ten days of being informed by the Commission that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to Jon E. Mathiasen, President & CEO, Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, VA 23250-2400. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

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

In this situation, the Commission will require the prime contractor to obtain the Commission's prior approval of the substitute DBE and to provide copies of new or amended subcontracts. The substitute DBE must be certified in accordance with Part 26. When a substitute DBE cannot be identified, a contractor must provide documentation of the good faith efforts made to locate another DBE to perform the work.

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

Section 26.55 Counting DBE Participation

The Commission will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Currently, the Commission does not certify firms, but accepts the DBE certification of a firm from the Virginia Department of Transportation (VDOT) and, on a case-by-case basis, other DOT recipients.

The Commission will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification firms should contact: Russell L. Peaden, Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, VA 23250-2400; (804) 226-8520 or e-mail: rpeaden@flvrichmond.com.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Currently, the Commonwealth of Virginia does not have a Unified Certification Program (UCP). The Virginia Department of Transportation (VDOT) is the agency of record for the Commission until the UCP is developed. The Commission will participate in the Unified Certification Program when it becomes operational.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

All firms certified by VDOT on behalf of the Commission and included in the VDOT directory have been reviewed and recertified by VDOT based on the submittal of the information required for recertification, in accordance with Subparts D and E of Part 26.

“No Change” Affidavits and Notices of Change (26.83(j))

All DBEs will be required to inform VDOT, in a written affidavit, of any change in their circumstances affecting their ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

All owners of all certified DBEs will be required to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(i). A copy of the renewal serves as the Commission’s and VDOT’s no change affidavit.

Section 26.85 Denials of Initial Requests for Certification

If a firm’s application is denied or a firm is decertified, it may not reapply until six (6) months have passed from our actions.

Section 26.87 Removal of a DBE’s Eligibility

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with 49 CFR§26.87. To ensure separation of functions in a decertification, we have determined that the President & Chief Executive Officer will serve as the final decision maker in decertification proceedings. We have established an administrative “firewall” to ensure that the President & Chief Executive Officer will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

Whenever the Commission comes to believe that a firm with a current DBE certification is no longer eligible, the firm will be advised that it must provide new evidence to verify its eligibility in order to continue participating in the Commission’s DBE Program.

- a. A letter will be sent to the firm, stating that the Commission is contemplating decertification. A brief description of the reasons for the proposed action will be included.
- b. The firm will be given an opportunity to respond in person and in writing to present information and arguments. An informal meeting or hearing may be part of the process, but a formal adversary proceeding will not be used.
- c. The hearing will be conducted by a person designated by the President & Chief Executive Officer who did not take part in actions leading to or seeking to implement the proposal to remove the firm’s eligibility and who is not subject to direction from the office or persons who did take part in these actions.
- d. The procedures shall conform to the requirements of 49 CFR § 26.87.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the Commission’s decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW, Room 2104
Washington, DC 20590

The Commission will promptly implement any DOT certification appeal decision affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of the firm’s application for certification or of a firm’s continued eligibility for DBE status was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

The Commission will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the Virginia Freedom of Information Act. The Virginia Freedom of Information Act., VA. Code § 2.1-340, et seq. provides for disclosure of public documents when a proper request is made unless they fall within specified expectations. There are numerous exceptions which may or may not apply depending on the type of documents. The Virginia Public Procurement Act, VA. Code § 2.2-4342 provides a further exception to disclosure for trade secrets or proprietary information submitted in connection with a procurement transaction if the protection of the act is invoked at time of submission.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The Commission will require prime contractors to pay subcontractors for satisfactory performance of their contracts within five business days after receiving payment from the Commission. The Commission will also require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. An authorized representative of the Commission will make these records available for inspection upon request.

The Commission will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award on its Invoice Attachment Form.

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

Attachments:

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