

AMENDMENT NO. 1 TO THE
HILLSBOROUGH COUNTY AVIATION AUTHORITY
WOMAN AND MINORITY-OWNED BUSINESS ENTERPRISE
POLICY AND PROGRAM

OCTOBER 7, 2010



HILLSBOROUGH COUNTY AVIATION AUTHORITY

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TABLE OF CONTENTS

Section 1 – Policy and Objectives	
1.1 Policy	3
1.2 Objectives	3
1.3 Historical Information and Disparity Study.....	4
Section 2 – Definitions Used	4
Section 3 – Eligibility	
3.1 Recognition of Certification by Other Agencies	6
Section 4 – Program Structure and Responsibilities	
4.1 Overall Responsibility for Authority’s W/MBE Program	6
4.2 Implementation and Management of W/MBE Program.....	7
4.3 Staff Responsibilities	7
4.4 Activities to Enhance Opportunities	8
4.5 Business and Supplier Registration Database.....	9
Section 5 – Race-Neutral Measures to Ensure Equal Contracting Opportunities	10
Section 6 – W/MBE Opportunities – Goods and Services	
6.1 Annual Review of Goods and Services	11
6.2 Procurement Activities.....	12
Section 7 - W/MBE Opportunities – Capital Projects	
7.1 W/MBE Contract Expectancies	12
7.2 Small Projects Contracting – under \$100K	13
Section 8 – Procedures to Ensure Good Faith Efforts	
8.1 Bid/Proposal Information.....	13
8.2 Good Faith Efforts	14
8.3 Contractor’s Bid or Proposal Documents	16
8.4 Re-consideration of Lack of Good Faith Efforts	16
Section 9 – Contractor and Supplier/Vendor Compliance Requirements	
9.1 Required Contract Provisions	16
9.2 Sanctions for Non-Compliance.....	17
9.3 Counting W/MBE Participation Toward Expectancies	18
9.4 Procedures Relating to W/MBE Terminations or Changes during a Contract	20
Section 10 – Supplier/Vendor Compliance Requirements	21
Section 11 – Notice of Ineligibility and Misrepresentation	22
Exhibit A - W/MBE Subcontractor Bid/Proposal Solicitation Worksheet	

HILLSBOROUGH COUNTY AVIATION AUTHORITY
WOMAN AND MINORITY-OWNED BUSINESS ENTERPRISE POLICY AND PROGRAM

SECTION 1 – POLICY AND OBJECTIVES

Section 1.1 Policy

It is the policy of the Hillsborough County Aviation Authority (Authority) that woman and minority-owned business enterprises, as defined herein, (W/MBEs) will have full and fair opportunities to compete for and participate in the performance of non-federally funded contracts or in the purchase of goods and services procured by the Authority. Contracts containing federal funding will be governed by the Authority's Disadvantaged Business Enterprise Policy and Program for Projects Funded by the United States Department of Transportation (DBE policy and program). Concession-related contracts will be governed by the Authority's Airport Concession Disadvantaged Business Enterprise Policy and Program (ACDBE policy and program).

In advancing this opportunity for W/MBEs, neither the Authority nor those companies doing business with the Authority will discriminate on the basis of race, color, national origin, religion or sex in the award and performance of any Authority contract or in the administration of this W/MBE program. The Authority will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of Authority contracts. Under its W/MBE policy and program, the Authority will recognize and encourage W/MBEs to participate as prime contractors or as subcontractors in its construction contracts, architectural and engineering contracts, professional services contracts, and goods and services purchases and contracts.

Section 1.2 Objectives

The Authority's W/MBE policy and program seeks to achieve several objectives:

- A. To ensure nondiscrimination in the award and administration of Authority contracts and purchases;
- B. To create a level playing field on which W/MBEs can compete fairly for Authority contracts and purchases;
- C. To ensure that the Authority's W/MBE program is narrowly tailored in accordance with applicable law;
- D. To identify and remove barriers to the participation of W/MBEs in Authority contracts and purchases;
- E. To assist in the development of firms so that they can compete successfully in the marketplace outside the W/MBE program; and

- F. To provide appropriate flexibility to the Authority in establishing and providing opportunities for W/MBEs.

Section 1.3 Historical Information and Disparity Study

In 1992, the Authority established a disadvantaged business enterprise program to ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals, referred to by the United States Congress as DBEs, have the maximum opportunity to compete for and participate in the performance of all Authority contracts and in all purchases of goods and services by the Authority. In 1999, pursuant to federal requirements, a separate but similar, non-federally funded DBE program was established to govern contracts and purchases not involving federal funding. Contracts containing federal funding continue to be governed by the Authority's DBE policy and program under 49 CFR Part 26.

The preponderance of capital projects awarded by the Authority and all non-capital purchases of goods and services contain no federal funding. Therefore, in 2004, the Authority undertook a Multi-jurisdictional Disparity Study with the City of Tampa to determine if a significant disparity existed between the availability of ready, willing, and able minority and woman-owned businesses and the utilization of such businesses in the Authority and City's procurement process. The results of the Disparity Study were issued March 2007, and included a statistical analysis and evaluation of goods, construction, construction-related services, professional services and non-professional services prime contracts and subcontracts awarded between October 1, 2001 and September 30, 2004. The Disparity Study, as well as other relevant evidence, will be used as the evidentiary basis for the remedial actions in this W/MBE policy and program.

SECTION 2 –DEFINITIONS USED

The following definitions are incorporated in the Authority's W/MBE program:

- A. Business and Supplier Registration Database or Database means a database, or directory of registered companies interested in bidding as prime contractors and/or as subcontractors, including suppliers of goods and services.
- B. Compliance means correctly implementing the requirements of this policy and program.
- C. Company means a commercial business that provides goods and/or services.
- D. Construction means new construction and renovations.
- E. Construction-related means construction-related design, consulting, specification development, testing and construction management services.
- F. Consultant means a professional who is called on for expert or technical advice or opinions.

- G. 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.
- H. Contractor means one who participates, through a contract or subcontract, at any tier, in the supply of materials or the provision of work relative to the Authority's airport development program.
- I. Disadvantaged Business Enterprise or DBE means a business certified by the Florida Unified Certification Program (FLUCP) in accordance with 49 CFR Part 26.
- J. DBE Liaison Officer is the individual responsible for developing and implementing both the DBE and the W/MBE policies and programs.
- K. DBE Program Manager means the individual who is responsible for administering and managing both the DBE and W/MBE policies and programs on a day-to-day basis; for carrying out technical assistance activities for D/W/MBEs; and for disseminating information on available business opportunities so that D/W/MBEs are provided a full and fair opportunity to participate in Authority contracts.
- L. Expectancy means a race/gender specific subcontracting goal that is established as an expectation of W/MBE participation on each applicable non-federally funded project and contract.
- M. Good Faith Efforts means efforts undertaken by a contractor to achieve W/MBE expectancy which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program objectives.
- N. Goods mean materials, equipment, supplies and commodities.
- O. Joint Venture means an association of a W/MBE and one or more other persons or firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the W/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are its ownership interest.
- P. Woman or Minority-Owned Business Enterprise or W/MBE means a business concern certified as a woman or minority-owned business by:
1. City of Tampa
 2. Hillsborough County
 3. State of Florida Department of Management Services and Supplier Diversity, or

4. The Florida Unified Certification Program pursuant to 49 CFR Part 26 as a DBE.
- Q. Noncompliance means the requirements of this policy and program have not been correctly implemented.
- R. National Institute of Governmental Purchasing, Inc. (NIGP) codes, means a proprietary listing of detailed codes that describe a wide variety of products and services and are nationally recognized and used by government purchasing agents.
- S. Non-Professional Services means services that can be performed without specialized education or training.
- T. Policy means the general principles or plan by which the Authority is guided in its management of public affairs.
- U. Professional Services mean work that requires specialized education or training.
- V. Reconsideration Official is an official who did not take part in the original determination that the contractor failed to meet a W/MBE expectancy or make adequate good faith efforts to do so.
- W. Small Business means a company whose annual gross receipts, averaged over five years, do not exceed the applicable size standards promulgated by the United States Small Business Administration under 13 CRF Part 121.

SECTION 3 – ELIGIBILITY

Section 3.1 Recognition of Certification by Other Agencies

A business certified as a W/MBE by Hillsborough County, City of Tampa, State of Florida or as a DBE will be eligible to participate on Authority-funded contracts as a W/MBE pursuant to this policy and program.

SECTION 4 - PROGRAM STRUCTURE AND RESPONSIBILITIES

Section 4.1 Overall Responsibility for Authority's W/MBE Program

As Chief Executive Officer of the Authority, the Executive Director will exercise overall responsibility and direction of the Authority's W/MBE policy and program; direct staff to establish contract expectancies in Authority contracts with W/MBE expectancy opportunities and ensure active participation at all staff levels in support of the program's objectives.

Section 4.2 Implementation and Management of W/MBE Program

The DBE Liaison Officer will be appointed by the Authority's Executive Director and will have direct, independent access to the Executive Director concerning W/MBE program matters. The DBE Liaison Officer for the Authority is the:

Senior Director of Properties and Contracts Administration
Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622-2287
Telephone (813) 870-8789
FAX (813) 875-6670

The DBE Liaison Officer will advise and consult with Authority staff members as required for the effective and responsive functioning of the W/MBE policy and program. The Executive Director will assign adequate staff to administer the Authority's W/MBE policy and program.

Section 4.3 Staff Responsibilities

Administration of the W/MBE policy and program will be the responsibility of the DBE Program Manager and will include, but not be limited to, the following activities:

- A. Act as liaison between the Authority and prime contractors, W/MBE prime contractors, consultants and subcontractors, and other certifying agencies.
- B. Maintain files and related record keeping, including literature, forms and reference materials pertaining to W/MBE matters.
- C. Develop support staff for maintaining the W/MBE policy and program and work with all management/supervisory personnel to implement W/MBE policies and practices.
- D. Monitor the performance and actual utilization of W/MBEs as proposed at the time bids/proposals are opened, as well as throughout the term of the contract, including any changes in scope. The DBE Program Manager will monitor all contracts to ensure that work committed to W/MBEs at contract award is actually performed by the W/MBEs. The DBE Program Manager will monitor and review monthly activity reports from the prime contractor to ensure that W/MBE participation is legitimate and is credited toward overall or contract expectancies only when the work is performed and payments are actually made to W/MBE firms, and, if necessary meet with project managers and inspectors. In the event the W/MBE is unable to perform the work, and a substitution is necessary, the DBE Program Manager will ensure that the contractor makes a good faith effort to replace the W/MBE subcontractor with a qualified W/MBE.

- E. Assist the Purchasing Department with the preparation of quarterly performance reports showing W/MBE participation on purchase orders and contracts in relation to expectancies for each.
- F. Assist all other departments with the preparation of monthly performance reports showing W/MBE participation on projects and contracts in relation to expectancies for each.
- G. Implement and manage the W/MBE policy and program on a day-to-day basis by working with other departments to establish realistic expectancies and by providing technical assistance to other departments regarding the availability of W/MBE businesses who can participate in Authority contracts.
- H. Develop, manage and implement the W/MBE policy and program on a day-to-day basis by carrying out technical assistance activities for W/MBEs and by disseminating information on available business opportunities so that W/MBEs are provided an equitable opportunity to participate in Authority contracts.
- I. Conduct public meetings to review projects identified in the capital improvement program for the next two years.
- J. Conduct presentations with interested groups concerning the W/MBE program.

Section 4.4 Activities to Enhance Opportunities

The following activities are designed to ensure that W/MBEs and other small and local firms have fair and full opportunities to compete for Authority contracts. It is the responsibility of the DBE Program Manager to perform the following activities:

- A. Inform and communicate to W/MBEs the Authority's contracting procedures and specific bid/proposal opportunities; plan and participate in business development training seminars; plan and participate in networking events and community outreach activities for the purpose of conveying information about various business and development opportunities at the Airport to potential contractors and suppliers and to bring potential prime and subcontractor companies together.
- B. Assist Authority staff in evaluating opportunities for unbundling large projects to enable greater, more affordable access for W/MBEs as primes and as subcontractors.
- C. Assist Authority staff in prequalifying W/MBEs to bid on projects under \$100,000 as primes, evaluate bonding requirements for possible reduction/elimination where appropriate.
- D. E-mail copies of bid/proposal notices to those firms listed in the Database and ensure that contracting opportunities are posted on the Authority's website, in minority publications as well as newspapers of general circulation in the area.

- E. Assist in identifying problems confronting W/MBEs and work diligently to arrive at acceptable solutions.
- F. Facilitate the receipt of timely progress payments to W/MBEs for work completed, following such request for payment.
- G. Encourage W/MBE attendance at pre-bid/pre-proposal meetings. Provide assistance to W/MBEs during the solicitation or bid period for any project, and assist with explanation of documents.
- H. Verify and monitor the eligibility of W/MBEs named by prime contractors in accordance with the criteria set by the Authority's W/MBE policy and program.
- I. Maintain a system of records and reports documenting:
 - 1. specific efforts made to identify and award contracts to W/MBEs;
 - 2. specific awards made to W/MBEs; and
 - 3. all contract advertising prepared in accordance with procedures established by the Authority.
- J. Conduct quarterly public meetings to review projects identified in the capital improvement program for the next two years.
- K. Conduct presentations with interested groups concerning the W/MBE program.

Section 4.5 Business and Supplier Registration Database

- A. The Authority's Database is a listing of those companies that are interested in bidding on Authority contracts as suppliers, primes and/or as subcontractors. The Database serves as a resource for identifying all interested companies, including W/MBEs currently registered with the Authority. The Database is posted on the Authority's website at www.TampaAirport.com, and can be used by prospective contractors wanting to identify W/MBEs with skills particular to their contracting and business needs. All companies registered in the Database receive automatic bid and proposal notices via email on all Authority bids and projects. There is no other mechanism for sending such notices to companies electronically.
- B. All entries in the Database are performed by the company or supplier and can be updated as often as necessary depending on company's need. Other than verifying W/MBE certification-related information, the Authority has no responsibility for entering or updating any information on a company in the Database.
- C. All company/supplier registrations include, at a minimum the following information:
 - 1. Company Name
 - 2. NIGP Code of Company

3. Name of W/MBE
4. Address of W/MBE
5. Work Phone Number
6. FAX Number
7. E-mail Address
8. W/MBE Status
9. License or certificate, if required
10. Services, products and materials supplied

- D. Companies are required to register in the Database prior to submitting a response to an invitation to bid; request for qualifications; request for proposal or request for quotes.

SECTION 5 – RACE-NEUTRAL MEASURES TO ENSURE EQUAL CONTRACTING OPPORTUNITITES

The Authority shall develop and use race- and gender-neutral measures to facilitate the participation of small business enterprises in non-federally funded contracting activities. These measures shall include, but are not limited to:

- A. Arranging solicitation times for the presentations of bids and proposals to facilitate the participation of interested contractors and subcontractors;
- B. Segmenting or unbundling elements of a project to facilitate the participation of W/MBEs;
- C. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
- D. Providing timely information programs on contracting procedures, bid preparation, and specific contracting opportunities;
- E. Encouraging attendance at pre-bid and pre-proposal conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
- F. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
- G. Adopting prompt payment procedures, including requiring that prime contractors pay subcontractors within specified days of receipt of payment from the Authority;
- H. Requiring payment of mobilization to subcontractors by the prime contractor, if mobilization is paid to the prime contractor;

- I. Reviewing bonding, insurance and retainage requirements to eliminate unnecessary barriers to and reduce the burdens of contracting with the Authority;
- J. Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;
- K. For contracts with an estimated value of under \$100,000, pre-qualifying contractors to bid on such contracts for a two year period;
- L. Collecting information from all prime contractors on Authority construction contracts detailing the bids received from all subcontractors for Authority construction contracts and the expenditures to subcontractors utilized by prime contractors on Authority construction contracts;
- M. Letting a representative sample of Authority construction and professional services contracts without goals, to determine MBE and WBE utilization in the absence of goals;
- N. Limiting the self-performance of prime contractors, where appropriate;
- O. Soliciting quotes from W/MBEs listed in the Authority's Database for the purchase of goods and services between \$15,000 and \$30,000;
- P. Investigate complaints of discrimination in the Authority's contracting activities or contracts.

SECTION 6 – W/MBE OPPORTUNITIES – GOODS AND SERVICES

A function of the W/MBE program is to identify opportunities for W/MBEs to participate as vendors and suppliers on non construction-related purchases of goods and services to ensure the participation of qualified W/MBEs who are ready, willing and able to provide such services.

Section 6.1 Annual Review of Goods and Services

On an annual basis the Purchasing Department will review all of the goods and services purchased during the past fiscal year and the W/MBEs that provided these goods and services. This analysis will look at both the dollars paid to W/MBEs and the number of purchase orders and contracts issued to W/MBEs compared to total dollars spent and total number of purchase orders and contracts issued. Based on past participation and anticipated expenditures for the upcoming fiscal year, the Purchasing Department, in coordination with the DBE Program Manager, will evaluate a full and fair level of W/MBE participation on expenditures for the upcoming fiscal year. Part of this evaluation will consider the availability of certified and capable W/MBEs to provide the desired goods and/or services. At the end of each fiscal year, the Purchasing Department will submit an annual report of past participation by W/MBEs as well as projected participation for the upcoming fiscal year to the DBE Program Manager.

Throughout the year, the Purchasing Department will report participation by W/MBEs on a quarterly basis. The DBE Program Manager as well as all contracting departments will encourage W/MBE companies and vendors to register on the Authority's Database to facilitate greater participation.

Section 6.2 Procurement Activities

The Purchasing Department will review all proposed purchases in order to identify opportunities for participation by W/MBEs. In addition to other race-neutral measures, when soliciting quotes for goods and services from \$15,000 to \$30,000, the Purchasing Manager will contact vendors listed in the Database and vendors presently certified as W/MBEs who are listed in the Database.

SECTION 7- W/MBE OPPORTUNITIES - CAPITAL PROJECTS

A function of the W/MBE program is to identify opportunities for W/MBEs to participate as prime contractors as well as subcontractors on projects that are not federally-funded; to ensure the participation of qualified W/MBEs who are ready, willing and able to provide services on such projects; and to measure the success of the program based on past participation.

Section 7.1 W/MBE Contract Expectancies

- A. Opportunities for participation by W/MBEs will be identified when the project scope is developed. Both race-neutral and race-conscious measures will be utilized to achieve W/MBE participation.
- B. Contract expectancies will be based upon the availability of W/MBEs and the anticipated subcontractable elements of the project. Wherever possible, race-neutral means will be utilized to facilitate W/MBE participation.
- C. To estimate contract expectancies, the DBE Program Manager will review proposed contracts and identify opportunities for participation by W/MBEs on contracts for construction, engineering, architecture and other construction-related professional services contracts. The level of participation will be determined on the basis of W/MBE participation on previous projects, the type of work involved and the availability of W/MBEs for the work of the particular project.
- D. The Authority will express a contract expectancy as a percentage of the total dollar amount of the contract.
- E. The Authority will establish contract expectancies only on those projects that have subcontracting possibilities. The Authority may not establish a contract expectancy on every contract, and the size of contract expectancies will be adapted to the circumstances of each such contract, such as the location of the work and the availability of W/MBEs to perform the particular type of work.

Section 7.2 Small Projects Contracting – under \$100K

In an effort to expedite small projects and repairs, the Authority has implemented a program to pre-qualify contractors in several contracting categories who are eligible to bid on certain small projects for a two year period. Once qualified, contractors are asked to bid on projects as they come up over a 2 year period. The volume of work varies and there is no guarantee that all contractors will perform work for the Authority even if they are on the qualified list. Qualification criteria are geared toward smaller contractors, but larger firms are not precluded from participating. Due to the reduced contracting requirements including the elimination of bonding, there are increased opportunities for smaller contractors including W/MBEs to participate as primes. In the current program, the Authority has pre-qualified contractors for electrical, plumbing, fire protection, HVAC and roofing. The Authority could expand this program to other contracting categories in the future.

SECTION 8 - PROCEDURES TO ENSURE GOOD FAITH EFFORTS

Section 8.1 Bid/Proposal Information

- A. On all contracts with contract expectancies, the Authority will encourage all bidders and proposers to utilize the W/MBE Subcontractor Bid/Proposal Solicitation Worksheet, which is attached as Exhibit A to document the efforts taken by the bidder or proposer to obtain sufficient W/MBE participation to meet the expectancy or verify the good faith efforts made to meet the expectancy. Pertinent information regarding skills and services of W/MBEs will be available to bidders and proposers via the Database which is on the Authority's website, but will, in no way, relieve bidders or proposers of their responsibility to use any and all sources of information available to them in locating W/MBEs.
- B. Failure of a bidder or proposer to submit the W/MBE information stated below in its bid or proposal may render the bid or proposal non-responsive:
 - 1. The names and addresses of W/MBE firms that will participate in the contract;
 - 2. A description of the work each named W/MBE firm will perform;
 - 3. The dollar amount of participation by each named W/MBE firm;
 - 4. Written confirmation in the form of a letter of intent for each W/MBE firm proposed to be utilized to meet the contract expectancy indicating a commitment to participate in the prime's bid or proposal; and
 - 5. A copy of each named W/MBEs certification letter from the certifying agency.

Section 8.2 Good Faith Efforts

- A In all Authority contracts, the apparent successful bidder or proposer will satisfy the Authority that it has made good faith efforts to utilize W/MBEs in meeting the established W/MBE expectancy. Bidders or proposers will be required to submit the W/MBE Subcontractor Bid/Proposal Solicitation Worksheet with their bid if they fail to meet the expectancy.
- B. The DBE Program Manager will evaluate the good faith efforts of the apparent successful bidder or proposer within 48 hours following receipt of bids or proposals. In determining whether or not the apparent successful contractor has made such good faith efforts, the Authority may also request a copy of the W/MBE Subcontractor Bid/Proposal Solicitation Worksheet to review and will consider some of the following factors:
1. Whether the bidder or proposer advertised in newspapers of general circulation, websites, trade associations, and minority-focus media concerning subcontracting opportunities prior to the bid or proposal submission date.
 2. Whether the bidder or proposer provided written notice via mail, facsimile or electronic mail prior to the bid or proposal submission date to a reasonable number of W/MBEs that their interest in the contract was being solicited and giving W/MBEs sufficient time to prepare a response to the request.
 3. Whether the bidder or proposer followed up initial solicitations of interest by contacting W/MBEs to determine with certainty whether the W/MBEs were interested.
 4. Whether the bidder or proposer selected portions of the work to be performed by W/MBEs in order to increase the likelihood of meeting the W/MBE expectancy including, where appropriate, breaking down contracts into economically feasible units to facilitate W/MBE participation.
 5. Whether the bidder or proposer provided interested W/MBEs with adequate information about the plans, specifications or requirements of the contract.
 6. Whether the bidder or proposer negotiated in good faith with interested W/MBEs, not rejecting W/MBEs as unqualified without sound reasons after a thorough investigation of their capabilities.
 7. Whether the bidder or proposer made efforts to assist interested W/MBEs in obtaining bonding, lines of credit, or insurance required by the Authority or the bidder or proposer.

8. Whether the bidder or proposer effectively used the services of available minority community organizations; minority trade or business groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of W/MBEs.
 9. Whether the scope of work submitted by the bidder or proposer to any W/MBE subcontractor, W/MBE sub-subcontractor, W/MBE supplier, W/MBE sub-supplier and so on, either directly or indirectly, was intended to achieve, in whole or in part, the specified W/MBE participation.
 10. Whether the replies or quotes from W/MBEs submitted in response to a scope of work provided to them by a bidder or proposer, either directly or indirectly, were fair and responsive.
 11. Whether the bidder or proposer fairly represented the W/MBE quotations in the formulation of its bid or proposal as shown on the bid tabulation or other work documents to support the bid or proposal.
 12. Whether all other bidders or proposers met the W/MBE expectancy but the apparent low bidder or most qualified proposer did not.
 13. Whether the bidder or proposer contacted the Authority's DBE Program Manager for assistance in meeting the Authority's W/MBE project expectancy.
- B. Bidders or proposers who fail to meet the W/MBE contract expectancy or good faith efforts will be determined non-responsive. Failure to make good faith efforts will be grounds for refusing to award the contract to the bidder or proposer if, upon investigation by the Authority, such investigation shows the bidder or proposer failed to make a good faith effort to meet the expectancy, or that failure was due to discrimination. Any bidder or proposer found to be non-responsive by the Authority will be entitled, at their option, to the administrative reconsideration process.
- C. The Authority reserves the right to request any additional and supplemental information it deems necessary for the purpose of clarifying the W/MBE information submitted. The individual responsible for making initial good faith effort determinations for the Authority will be the:

DBE Program Manager
Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622-2287
Telephone (813) 870-8738
FAX (813) 875-6670

Section 8.3 Contractor's Bids or Proposal Documents

- A. All invitations to bid, RFPs, or RFQs for non-federally funded projects for construction, engineering, architectural, professional services and management contracts, prepared by contractors and/or subcontractors on Authority projects having established expectancies for W/MBE participation will comply with the W/MBE requirements of the Authority's W/MBE policy and program.
- B. All invitations to bid, RFPs or RFQs for non-federally funded projects will state that...“Failure to comply with the requirements for participation by W/MBEs may disqualify the contractor from award of the contract.” Any precondition applicable to the project will be fully explained in the bid specifications, RFP, or RFQ.

Section 8.4 Re-consideration of Lack of Good Faith Efforts

Within five days of being informed by the DBE Program Manager that the bidder or proposer is found to be non-responsive because it has not documented sufficient good faith efforts, the bidder or proposer may request administrative reconsideration. The bidder or proposer must make this request in writing to the following Reconsideration Official:

Deputy Executive Director
Hillsborough County Aviation Authority
Tampa International Airport
P. O. Box 22287
Tampa, Florida 33622
Telephone (813) 870-8761
FAX (813) 875-6670

The Reconsideration Official will not have a role in the original determination that a bidder or proposer failed to meet the W/MBE expectancy or to document good faith efforts.

As part of the reconsideration, the bidder or proposer will provide written documentation supporting whether it met the W/MBE expectancy or its good faith efforts to do so. The bidder or proposer may be asked to meet with the Reconsideration Official to discuss its documentation. The Reconsideration Official will send the bidder or proposer a written decision on reconsideration no later than seven days prior to the award of the contract. In the event a bidder or proposer protests the decision of the Reconsideration Official, the bidder or proposer must submit a formal bid protest in accordance with the Authority's Policy No. P512 Bid Protest which is available on the Authority's website.

SECTION 9 – CONTRACTOR AND SUPPLIER/VENDOR COMPLIANCE REQUIREMENTS

Section 9.1 Required Contract Provisions

The Authority will ensure that the elements of the W/MBE policy and program are implemented and monitored on each non-federally funded contract and purchase order as indicated.

- A. Bidder's, Contractor's or Supplier/Vendor's or Subcontractor's Duty to Comply with Authority's W/MBE Policy and Program. In all Authority contracts and purchase orders signed by a bidder or proposer and each subcontract signed with a subcontractor, the bidder or proposer must assure the Authority that:

"The bidder/proposer, contractor, supplier/vendor and subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder/proposer, contractor, supplier/vendor or subcontractor will carry out applicable requirements of the Authority's W/M/DBE policies and programs in the award and administration of Authority contracts. Failure by the bidder/proposer, contractor, supplier/vendor or subcontractor 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 Authority deems appropriate".

- B. Authority Payment Mechanism. In accordance with the Authority's W/MBE policy and program, all contractors must promptly pay their sub-contractors who have submitted invoices for work already performed within 10 calendar days of being paid by the Authority. The following prompt payment clause is required in each Authority contract and the contractor will require all subcontractors to have this clause in their subcontracts:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from the receipt of each payment the contractor receives from the Authority. The contractor agrees further to release retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written notice to the Authority. This clause applies to both W/M/DBE and non-W/M/DBE subcontractors."

- C. Retainage. In addition to promptly paying all sub-contractors within 10 calendar days, contractors must also release their retainage to those sub-contractors who have submitted an invoice for completed work accepted by the contractor and the Authority within 10 calendar days.

- D. Prompt Payment of Retainage. On Authority contracts, prompt payment and prompt payment of retainage requirements apply to all sub-contractors on the prime contract, whether W/MBE or non-W/MBE.

Section 9.2 Sanctions for Non-Compliance

In the event of the contractor's non-compliance with the Authority's W/MBE policy and program the Authority, after due process, will impose such contract sanctions as the Authority may determine to be appropriate, including but not limited to:

- A. Withholding of payments to the contractor under the contract until the contractor complies; and/or
- B. Cancellation, termination or suspension of the contract in whole or in part; and/or
- C. Suspension or debarment of contractor from eligibility to contract with the Authority in the future or to receive bid packages or Request for Proposal (RFP)/Request for Qualifications (RFQ) packages.

Section 9.3 Counting W/MBE Participation Toward Expectancies

- A. The Authority will count W/MBE participation toward overall and contract expectancies, as provided in the Authority's W/MBE policy and program. The Authority will count only the value of the work actually performed by the W/MBE toward W/MBE expectancies on a contract in accordance with the following:
 - 1. One hundred percent of that portion of a construction contract that is performed by the W/MBE's own forces, including the cost of supplies and materials obtained by the W/MBE for the work of the contract, including supplies purchased or equipment leased by the W/MBE, except supplies and equipment the W/MBE subcontractor purchases or leases from the contractor or its affiliate.
 - 2. One hundred percent of the value of the work subcontracted by one W/MBE subcontractor to another W/MBE subcontractor. Work that a W/MBE subcontracts to a non-W/MBE firm does not count toward W/MBE expectancies.
 - 3. One hundred percent of fees or commissions charged by a W/MBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of an Authority contract, toward W/MBE expectancies, provided the Authority determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- B. Expenditures by a W/MBE contractor will count toward W/MBE expectancies only if the W/MBE is performing a commercially useful function on that contract. The following factors are considered in determining commercially useful function:

1. A W/MBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. With respect to materials and supplies used on a contract, the W/MBE must also be responsible, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether a W/MBE is performing a commercially useful function, the Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, the W/MBE credit claimed for its performance of the work, and other relevant factors.
 2. A W/MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of W/MBE participation. In determining whether a W/MBE is such an extra participant, the Authority will examine similar transactions, particularly those in which W/MBEs do not participate.
 3. If a W/MBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the W/MBE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice for the type of work involved, the Authority will presume that it is not performing a commercially useful function.
 4. When a W/MBE is presumed not to be performing a commercially useful function, the W/MBE may present evidence to rebut this presumption. The Authority may determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 5. The Authority's decisions on commercially useful function matters are administratively final.
- C. Expenditures with W/MBE manufacturers or regular dealers for materials or supplies will be counted at 100 percent toward W/MBE expectancies.
1. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 2. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- D. How to determine if a firm is a regular dealer.
1. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 2. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 3. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
- E. With respect to materials or supplies purchased from a W/MBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward W/MBE expectancies, provided the Authority determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward W/MBE expectancies, however.
- F. If a firm is not a W/MBE in accordance with the Authority's W/MBE policy and program at the time a bid or proposal is submitted, the Authority will not count the firm's participation toward any W/MBE expectancies.
- G. The Authority will not count the participation of a W/MBE subcontractor toward the prime contractor's W/MBE expectancy until the amount being counted toward the expectancy has been paid to the W/MBE.

Section 9.4 Procedures Relating to W/MBE Terminations or Changes during a Contract

- A. Should the prime contractor, or any of its subcontractors or suppliers desire to alter or change the scope of work of a W/MBE subcontractor or supplier, or if the W/MBE subcontractor is unable to perform the work on a non-federally funded project, the prime contractor will immediately notify the Authority, prior to taking any action and request written approval for the remedial steps which the contractor proposes to take to comply with the W/MBE expectancy.
- B. A prime contractor will be prohibited from terminating for convenience a W/MBE subcontractor listed in the contractor's letter of intent submitted to the Authority, or an approved substitute W/MBE firm, and then perform the work of the terminated

subcontractor with its own forces or those of an affiliate, without the Authority's prior written consent.

- C. When a W/MBE subcontractor is terminated, or fails to complete its work on a non-federally funded contract for any reason, the Authority will require the prime contractor to make good faith efforts to find another W/MBE subcontractor to substitute for the original W/MBE. These good faith efforts will be directed at finding another W/MBE to perform at least the same amount of work under the contract as the W/MBE that was terminated, to the extent needed to meet the contract expectancy the Authority established for the contract.
- D. The Authority will include in each non-federally funded contract a provision for appropriate administrative remedies that it will invoke if the contractor fails to comply with the requirements of this section. Failure to comply with the procedure relating to W/MBE terminations or changes during the contract will be a material violation of the contract and will invoke the sanctions for non-compliance specified in this policy and program.

SECTION 10 – SUPPLIER/VENDOR COMPLIANCE REQUIREMENTS

The Authority, through its Purchasing Department, will ensure that the elements of the W/MBE policy and program are implemented and monitored on each supplier or vendor contract or purchase order for goods or services, as indicated.

- A. Suppliers/Vendors Duty to Comply with Authority's W/MBE Policy and Program. In all supplier or vendor contracts and purchase orders issued by the Purchasing Department, the supplier or vendor must assure the Authority that:

"The supplier/vendor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The supplier/vendor will carry out applicable requirements of the Authority's W/M/DBE policies and programs in the award and administration of Authority contracts. Failure by the supplier/vendor to carry out these requirements is a material breach of this contract or purchase order, which may result in the termination of this contract or purchase order or such other remedy as the Authority deems appropriate".

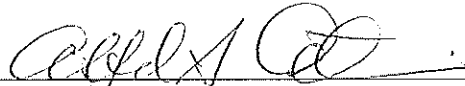
- B. Authority Payment Mechanism. In accordance with the Authority's W/MBE policy and program, all suppliers and vendors must pay their suppliers who have submitted invoices for accepted materials or services provided within 10 calendar days of being paid by the Authority.

- C. Prompt Payment. A supplier or vendor who is issued a contract or purchase order with the Authority agrees to pay each of its suppliers for satisfactory performance of the supplier's contract no later than 10 calendar days from the receipt of each payment the supplier or vendor receives from the Authority.

SECTION 11 – NOTICE OF INELIGIBILITY AND MISREPRESENTATION

- A. If, based on information that comes to the Authority's attention, there is reasonable cause to believe that a currently certified firm is no longer eligible to participate as a W/MBE, the Authority will request written verification from the certifying agency confirming company's status and the reasons for the proposed determination. The Authority always reserves the right to make its own decision whether to recognize or not recognize a company as a W/MBE.
- B. When a company's W/MBE eligibility is removed, the Authority will take the following action:
1. If a prime contractor has made a commitment to using the ineligible firm, but a subcontract has not been executed at the time the Authority notifies the company of its ineligibility, the ineligible company will not count toward the contract expectancy or overall expectancy. The Authority will direct the prime contractor to meet the contract expectancy with an eligible W/MBE firm or demonstrate to the Authority that it has made a good faith effort to do so.
 2. If a prime contractor has executed a subcontract with the firm before the Authority has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its W/MBE expectancy for the firm's work. In this case, or in a case where the Authority has let a prime contract to the W/MBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Authority issued the notice of its ineligibility will not count toward the Authority's overall expectancy, but may count toward the contract expectancy.
 3. Exception: If the W/MBE's ineligibility is caused solely by having exceeded the size standard during the performance of the contract, the Authority may continue to count its participation on that contract toward overall and contract expectancies.
- C. If a W/MBE company no longer meets the eligibility criteria and has been determined ineligible by the certifying agency, and attempts to participate in the Authority's W/MBE program as a W/MBE on the basis of false, fraudulent, or deceitful statements or misrepresentations or otherwise demonstrates a serious lack of business integrity or honesty, the Authority may suspend doing any further business with the company.

- D. If a prime, in order to meet W/MBE contract expectancies or other W/MBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or misrepresentations, another company that does not meet the eligibility criteria of the Authority's W/MBE policy and program, or otherwise demonstrates a serious lack of business integrity or honesty in meeting the requirements of the Authority's W/MBE policy and program, the Authority may suspend doing any further business with the company.



Alfred S. Austin
Chairman, Hillsborough County Aviation Authority

10/7/10

Date

