



**ALBANY COUNTY AIRPORT AUTHORITY**

**NEW YORK STATE MINORITY AND**

**WOMEN-OWNED BUSINESS ENTERPRISE**

**MASTER GOAL PLAN FOR NYS FISCAL YEAR 2024 – 2025**

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**ALBANY COUNTY AIRPORT AUTHORITY  
MASTER GOAL PLAN  
NYS FISCAL YEAR 2024-2025**

**1) AGENCY OVERVIEW**

The Albany County Airport Authority (Authority) is a body corporate and politic constituting a public benefit corporation established and existing pursuant to the Albany County Airport Authority Act, Title 32 of Article 8 of the New York Public Authorities Law. The State of New York (State) created the Authority in 1993 in order to promote the strengthening and improvement of the Airport, to facilitate the financing and construction of the Terminal Improvement Project (TIP) and subsequent capital improvement programs, and give the Authority the power to operate, maintain and improve the Airport.

The Authority is governed by seven members, with four members appointed by the majority leader of the County of Albany (County) Legislature and three members by the County Executive, all with approval of the County Legislature. The Authority members are appointed for a term of four years or until a successor is appointed, except that any person appointed to fill a vacancy will be appointed to serve only the unexpired term.

The Albany County Airport Authority has established a Disadvantaged Business Program in accordance with the regulation appropriated by the US Department of Transportation 49 CFR Part 26. The Authority has also established a Minority and Women owned Business in accordance with Article 15-A Rules and Regulations. The Authority's procurement practices conform with Article 15-A of the Executive Law.

The Albany County Airport Authority has entered into certain grant agreements with the Federal Aviation Administration (FAA) whereby the Authority has agreed to ensure that minority, women-owned and disadvantaged business, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal and non Federal funds. Furthermore, the Authority requires all entities entering into Airport contract to also agree to ensure that minority, woman-owned and disadvantaged business enterprises, have the maximum opportunity to compete for, and participate in the performance of Airport contracts and subcontracts financed in whole or part, with Federal, State and Airport funds. The Albany County Airport Authority and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Airport contracts.

The purpose of assisting minority and women owned Disadvantaged Business Enterprise is to achieve the objectives of the Albany County Airport Authority's policy as set forth above, of supporting the fullest possible participation for firms owned and controlled by minorities, women, and socially and economically disadvantage individuals. This includes assisting MWDBEs throughout the life of contracts in which they participate. The standards apply to all contracts for goods services or construction awarded by or on behalf of the Authority.

## **MISSION STATEMENT**

### **ALBANY COUNTY AIRPORT AUTHORITY MISSION STATEMENT AND PERFORMANCE MEASURES**

The Authority is responsible for the efficient planning, development, administration, operation and financial condition of the Airport. The Authority, as landlord, rents space and assesses fees and charges to the airlines and businesses providing goods and services to the traveling public and to the civilian, business, governmental and military users of the Airport. The Authority is responsible for assuring residents of the County, the Town of Colonie and the surrounding areas of minimal environmental impact from air navigation and transportation. In October of 2005 the Authority employed the services of Maquire-AvPorts, currently AFCO AvPorts Management LLC (“AFCO”) and Aviation Facilities Company, Inc. (“AFCO Parent”) to manage the daily operations and maintenance of the Airport and the services of REW Investments, Inc. (d/b/a Million Air) to manage the daily operations of the Fixed Base Operation (FBO).

## **2) POLICY STATEMENT/MWBE GOALS FOR CONTRACTS**

Per 7.1 of Albany County Airport Authority's Procurement Policy:

Purchases of goods and services below \$50,000 that are not deemed an emergency or an exigency shall be made in accordance with the chart shown in APPENDIX A, unless an award is made to a firm that is a currently Certified Minority or Woman owned Business Enterprise (MWBE) and which in the judgment of the CEO will be providing goods and services at a fair market value to the Authority and such purchase will assist the Authority in meeting its annual MWBE purchase goal adopted pursuant to Article 15A of the Executive Law.

APPENDIX A

**Albany County Airport Authority  
Procurement Approval Policy**

Procurement Thresholds	Phone Quotes	Written Quotes	Req.for Proposal/ Request for Bid	Approvals (1)		
				CFO	CEO (2)	ACAA Board
<b>Goods, Materials and Supplies</b>						
Petty Cash				√		
\$0 - \$999	1				√	
\$1,000 - \$4,999	1				√	
\$5,000 - \$24,999		3			√	
\$25,000 - \$50,000			√	√	√	
Over \$50,000			√	√	√	√
<b>Other Administrative Contracts</b>						
\$0 - \$999	1				√	
\$1,000 - \$4,999	1				√	
\$5,000 - \$24,999		3			√	
\$25,000 - \$50,000			√	√	√	
Over \$50,000			√	√	√	√
<b>Purchased Services</b>						
\$0 - \$4,999	1				√	
\$5,000 - \$24,999		3			√	
\$25,000 - \$50,000			√	√	√	
Over \$50,000			√	√	√	√
<b>Professional Services</b>					√	
\$0 - \$24,999					√	
\$25,000 - \$50,000			√	√	√	
Over \$50,000			√	√	√	√
<b>Construction Contracts (POs &amp; Contracts)</b>						
\$0 - \$29,999		3		√	√	
\$30,000 - \$50,000			√	√	√	
Over \$50,000			√	√	√	√
<b>Emergency Contracts</b>					* CEO Board Report Required	

- (1) All approvals are cumulative, except in cases of ACAA Board approvals which shall be controlling.  
(2) CEO shall be provided periodic reports for budget conformity for purchases greater than \$12,500.

### **3) DESCRIPTION OF PROCUREMENT STRATEGY**

#### **MWBE PROCUREMENT STRATEGY**

The Authority continues to evolve its solicitation, goal setting and monitoring efforts to improve MWBE participation. The Authority has established the amount of payments, the number of different MWBE firms used, and a number of firms used for the first time by the Authority.

The Authority will assist certified MWBE firms identify procurement opportunities and understand procurement processes, policies and procedures. The Authority seeks to increase the pool of available MWBE firms by encouraging uncertified firms that meet the criteria to get certified as MBE and/or WBE by applying for MWBE certification. The Authority will assist firms that may be eligible for certification understand the requirements and the advantages of becoming certified, and will assist firms meeting the criteria understand the certification requirements and navigate the application process.

The Authority will work closely with prime contractors to ensure that they comply with requirements to report payments to subcontractors and that they make good faith efforts to meet the utilization goals established for the contract. Assistance to prime contractors includes providing them with lists of certified MWBE's able to perform specific types of work that falls within the scope of the contract. This intensive effort maximizes the likelihood that the prime contractors will be able to meet the utilization goals.

#### **4) AGENCY SPECIFIC GOALS**

The Albany County Airport Authority has established MWBE goals of 30%, 15% MBE and 15% WBE. Each construction project is evaluated based on availability of MWBE's for all trades included in that project.



## **5) SELF DETERMINATION STATEMENT**

The Albany County Airport Authority has established a Disadvantaged Business Program in accordance with the regulation appropriated by the US Department of Transportation 49 CFR Part 26. The Authority has also established a Minority and Women owned Business in accordance with Article 15-A Rules and Regulations. The Authority's procurement practices conform with Article 15-A of the Executive Law.

The Albany County Airport Authority has entered into certain grant agreements with the Federal Aviation Administration (FAA) whereby the Authority has agreed to ensure that minority, women-owned and disadvantaged business, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal and non Federal funds. Furthermore, the Authority requires all entities entering into Airport contract to also agree to ensure that minority, woman-owned and disadvantaged business enterprises, have the maximum opportunity to compete for, and participate in the performance of Airport contracts and subcontracts financed in whole or part, with Federal, State and Airport funds. The Albany County Airport Authority and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Airport contracts.

## **6) COPY OF AGENCY RELATED LEGISLATION**

Albany county airport authority. 1. (a) There is hereby created the Albany county airport authority. The authority shall be a body corporate and politic constituting a public benefit corporation.

The authority shall consist of seven members who shall be residents of Albany county. The members shall be appointed in the following manner: three shall be appointed by the county executive and four shall be appointed by the majority leader of the county legislature. All appointments must be confirmed by the county legislature within thirty days of the appointment. No more than four members may be enrolled members of the same political party. Of the members initially appointed by the county executive two each shall serve for a term ending December thirty-first, nineteen hundred ninety-six and one shall serve for a term ending December thirty-first, nineteen hundred ninety-seven. Of the members initially appointed by the majority leader of the county legislature, one shall serve for a term ending December thirty-first, nineteen hundred ninety-five; two each shall serve for a term ending December thirty-first, nineteen hundred ninety-six and one shall serve for a term ending December thirty-first, nineteen hundred ninety-seven. Each member shall serve a term of four years. The majority leader and county executive shall jointly designate one of the seven members to serve as the chairperson of the authority. The authority may provide for such officers as may be determined necessary and the same need not be members of the authority.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision the majority leader and county executive shall jointly submit to the county legislature the initial seven members of the authority. Within thirty days, the county legislature must approve or disapprove the appointment of the entire group of nominees but may not reject an individual member nor may it modify in any way the proposed group of members.

2. All members shall continue to hold office until their successors are appointed and qualify. Except as otherwise provided in subdivision three of this section, vacancies shall be filled in the manner provided for original appointment. Vacancies, occurring otherwise than by expiration of term of office, shall be filled for the unexpired terms. Members may be removed from office for the same reasons and in the same manner as may be provided by law for the removal of officers of the county. The members of the authority shall receive no compensation for their services but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title. The powers as set forth in the by-laws of the authority shall be established and vested in and be exercised by the members of the authority at an initial meeting duly called and held and five members shall constitute a quorum. No action shall be taken at the aforementioned initial meeting or any adjournment thereof except pursuant to the favorable vote of at least five members of the authority. Any amendment to the aforementioned powers as set forth in the by-laws shall only become effective upon the favorable vote of at least five members of the authority.

3. The authority shall have a regional advisory board consisting of not less than six non-voting members. The membership shall include, but not be limited to, the chairperson of the airline affairs committee of the Albany county airport and other members, one of whom shall be appointed by the legislative body of the county of Schenectady, one of whom shall be appointed by the legislative body of the county of Saratoga, one of whom

shall be appointed by the legislative body of the county of Rensselaer and two of whom shall be appointed by the legislative body of the town of Colonie.

4. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state or of any public corporation shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer or employee of the authority, nor shall service as such member, officer or employee be deemed incompatible or in conflict with such office, membership or employment.

5. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member, elected official or employee of the county of Albany shall be eligible to serve as a member of the authority.

6. All members of the authority will be required to comply with the Albany county code of ethics and to complete all disclosure forms required by said code of ethics.

7. The authority and its corporate existence shall continue until terminated by law, provided, however, that no such termination shall take effect so long as the authority shall have bonds or other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the authority, all of the rights and properties of the authority then remaining shall pass to and vest in the county of Albany in such a manner as prescribed by law.

8. Within thirty days from the establishment of the authority, the county and authority shall undertake an environmental audit ("the audit") of the airport and its facilities. The audit shall be prepared pursuant to an agreed upon scope of work between the county and the authority prior to its undertaking and shall be used to establish the existing environmental conditions of the airport and its facilities. As a minimum the audit shall include, but not be limited to, the examination and inspection of all property identified on the currently approved airport layout plan; all property adjacent to the airport layout plan or otherwise used directly by the county in support of airport operations which will continue to be made available to the authority for the same purposes in the future; all structures and facilities on said properties including facilities used for the storage and handling of aviation, jet, automotive, heating or other fuel, oil, petroleum products or solvents; all storm water drainage systems including oil/water separators and systems for the collection or diversion of airport and aircraft deicing agents. The results of the audit shall serve as a disclosure statement and will be taken into consideration in any negotiations for any agreement between the county and the authority regarding the future operation of the airport.

**7) BOILERPLATE LANGUAGE**

**FEDERAL LAW REQUIREMENTS FOR BID SOLICITATIONS**

**SECTION 100**

**100-01 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, AS AMENDED)**

A. The following is to be made a part of all solicitations for bids on all federally assisted construction contracts or subcontracts in excess of \$10,000.00.

B. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" (Section 100-04) and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (Section 100-06) set forth herein.

C. The goals for minority and female participation, expressed in percentage terms **FOR THE CONTRACTOR'S WORKFORCE** on all construction work in a covered area, are as follows:

Goals for minority  
Participation  
5%

Goals for female  
Participation  
4%

1. These goals are applicable to all the contractor's CONSTRUCTION WORKFORCE (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

2. The contractor's compliance with the executive order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project, for the sole purpose of meeting the contractor goals shall be a violation of the contract, the executive order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

D. The contractor shall provide written notification to the Director, OFCCP, within 10 working days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the contract is to be performed.

E. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Albany International Airport, County of Albany, New York.

F. The Department of Labor has eliminated all imposed EEO plans and the Philadelphia Plan as a means of complying with Executive Order 11246. Hometown Plans can still be used; however,

signatories are required to submit goals and timetables for the utilization of women to the Director, Office of Federal Contract Compliance Programs, Department of Labor, Washington, D.C.

**100-02 CERTIFICATION OF NONSEGREGATED FACILITIES:** All bidders will be required to submit with their bids a Certification of Nonsegregated Employee Facilities, including an agreement to get a similar certification from proposed subcontractors. These certifications will be required prior to award of contract.

**(SEE CERTIFICATION FORM ON NEXT PAGE)**

**CONTRACTOR’S CERTIFICATION OF NONSEGREGATED FACILITIES**

The federally assisted construction contractor certifies that it does not maintain or provide, for its employees, any segregated facilities at any of its establishments and that it does not permit employees to perform services at any location, under its control, where segregated facilities are maintained. The federally assisted construction contractor certifies that it will not maintain or provide, for its employees, segregated facilities at any of its establishments and that it will not permit its employees to perform services at any location, under its control where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or any other reason. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications for proposed subcontractors prior to the award of subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the equal opportunity clause and that he will retain such certifications in his files.

The information above is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name and Title (Please type)

\_\_\_\_\_  
Signature

Date \_\_\_\_\_

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## 100-03 REPORTS

**A. Contractors/Subcontractors with 50 or more employees and Contracts over \$50,000.00:** All contractors and subcontractors performing on federally assisted projects are required to file annually (on or before March 31) complete and accurate reports on SF 100 (Employee Information Report, EEO-1) to the Joint Reporting Committee. The first report is due within 30 days after award unless such report was filed within the preceding 12-month period.

Standard Form 100 is normally furnished based on a mailing list, but can be obtained from the Joint Reporting Committee, P.O. Box 2236, Norfolk, Virginia 20501.

**B. Contractors/Subcontractors with Contracts over \$10,000.00:** As indicated in paragraph E of the EEO Clause, monthly Employment Utilization Reports, CC 257 (previously SF 257) will be submitted to the OFCCP, at the following addresses:

For downstate New York and New Jersey:

Mr. Harold M. Busch  
District Director, OFCCP/ESA  
U.S. Department of Labor  
26 Federal Plaza, Rm. 36-116  
New York, N.Y. 10278

For upstate New York:

Mr. Garland Sweeney  
District Director, OFCCP/ESA  
U.S. Department of Labor  
Jackson Building, Rm. 609  
220 Delaware Avenue  
Buffalo, N.Y. 14202

**100-04 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:** The following is included IN ENTIRETY in all federally funded construction contracts over \$10,000.00

During the performance of this contract, the contractor agrees as follows:

A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other compensation; and selection for training, including apprenticeship. The contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices (Attached as 100-05) setting forth the provisions of this nondiscrimination clause.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

C. The contractor will send, to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice (Attached as 100-05) advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The contractor will comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

E. The contractor will furnish all information and reports required by Executive Order 11246, as amended, of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Comptroller General of the United States, Department of Transportation, FAA and the Secretary of Labor for purposes of Investigation to ascertain compliance with such rules, regulations and orders.

F. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise proved by law.

G. The contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the FAA, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. Contractors and subcontractors may satisfy the requirements of Paragraph B of the referenced EEO clause by complying with any of the following:

1. Stating in the Invitations for bids that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, or

2. Including appropriate insignia in display or other advertising as prescribed by the Department of Labor, or

3. Using a single advertisement grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants will have equal consideration for employment without regard to race, color, religion, sex, or national origin, or

4. Using the phrase "an equal opportunity employer" in a single advertisement in clearly distinguishable type.



**SECTION 100-05 NOTICES TO BE POSTED  
PER PARAGRAPHS A AND C OF THE EEO CLAUSE**

**EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW - DISCRIMINATION IS PROHIBITED BY  
THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER NO. 11246**

**Title VI of the Civil Rights Act of 1964 - Administered by:**

**THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employees and labor organizations with 50 or more employees or members will be covered: after July 1, 1968, those with 25 or more will be covered.**

**ANY PERSON**

**Who believes he or she has been discriminated against**

**SHOULD CONTACT**

**THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
1800 G Street NY, Washington, D.C. 20506**

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**Executive Order No. 11246 - Administered by:**

**THE OFFICE OF FEDERAL CONTRACT COMPLIANCE**

**Prohibits discrimination because of Race, Color, Religion, Sex or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.**

**By all Federal Government Contracts and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.**

**ANY PERSON**

**Who believes he or she has been discriminated against**

**SHOULD CONTACT**

**THE OFFICE OF FEDERAL CONTRACT COMPLIANCE  
U.S. Department of Labor, Washington, D.C. 20210**

**100-06 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246, AS AMENDED)**

The following specifications are made a part of all federally assisted construction contracts or subcontracts over \$10,000.00 AND included in all invitations for bids:

A. As used in these specifications:

1. "Covered area" means the geographical area described in the solicitation for which this contract resulted;
2. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
3. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
4. "Minority" includes:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast, Asia, and the Indian subcontinent, or the Pacific Islands); and
  - (d) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

C. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in the compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan goals and timetables.

D. The contractor shall implement the specific affirmative action standards provided in paragraphs G.1 to G.16 of these specifications. The goals set forth in the solicitation from which this contract resulted are

expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply to the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any OFCCP office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

E. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, as amended, or the regulations promulgated pursuant thereto.

F. In order for the nonworking training hours of apprenticeship and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

G. The contractor shall take specific affirmative actions to ensure EEO. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain in a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its union have employment opportunities available, and maintain a record of the organizations' responses.
3. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
4. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under G.2 above.
6. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations;

by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractors and subcontractors with whom the contractor does or anticipates doing business.

9. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractors recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and test to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

11. Validate all test and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation, at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G.1 to G.16). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G.1 to G.16 of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive

impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractors and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

I. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide EEO and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the executive order if a particular group is employed in a substantially disparate number (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the executive order if a specific minority group of women is underutilized).

J. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

K. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended.

L. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and in its implementing regulations, by the OFCCP. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 12246, as amended.

M. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G or these specifications so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the executive order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

N. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development block Grant Program).

**100-07 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION:** During the performance of this contract, the contractor, for itself, its assigns and successors in interest (hereinafter referred to as the contractor) agrees as follows:

**A. Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, DOT) Title 49. Code of Federal Regulations, Part 21, as they may be amended from time to time (hereafter, Regulations), which are herein incorporated by reference and made a part of this contract.

**B. Nondiscrimination:** The contractor, with regard to the work performed by it during the contract shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the sponsor or the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the contractor under the contract until the contractor complies, and/or
2. Cancellation, termination, or suspension of the contract, in whole or in part.

**F. Incorporation of Provisions:** The contractor shall include the provisions of paragraphs A and E in every subcontract. Including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**G. Breach of Contract Terms - Sanctions:** Any violation or breach of the terms of this contract on the part of the contractor/subcontractor may result in the suspension or terminal of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement.

**100-08 STANDARD REQUIREMENTS FOR AIRPORT IMPROVEMENT PROGRAM CONTRACTS:** The following is included in all federally assisted construction contracts:

**A. AIP Project:** The work in this contract is included in AIP Grant Nos. 3-36-0001-xx-04 (Pending) which is being undertaken and accomplished by Albany County Airport Authority in accordance with the terms and conditions of a grant agreement between the Albany County Airport Authority, hereinafter referred to as the Sponsor, and the United States, under the Airport and Airway Improvement Act of 1982 (AAIA) (P.L. 97-248, 49 U.S.C. 2201 et seq) and Part 152 of the Federal Aviation Regulations (FAR) (14 CFR Part 152), or its

successor regulation, pursuant to which the United State has agreed to pay a certain percentage of the Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

**B. Consent to Assignment:** The contractor shall obtain the prior written consent of the sponsor to any proposed assignment of any interest in or part of this contract.

**C. Veteran=s Preference:** In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference may be given only when the individuals are available and qualified to perform the work to which the employment relates.

**D. FAA Inspection and Review:** The contractor shall allow any authorized representative of the FAA to inspect and review any work or material used in the performance of this contract.

**E. Inspection Records:** The contractor shall maintain an acceptable cost accounting system. The sponsor, the FAA, and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The contractor shall maintain all required records for three years after the sponsor makes final payment and all other pending matters are closed.

**F. Rights to Inventions - Materials:** All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the recipient of the Federal grant under which this contract is executed.

**G. Disadvantaged Business Enterprises:** It is the policy of the Department of Transportation that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of this contract.

1. The contractor agrees to ensure that disadvantaged business enterprises have the maximum opportunity to participate in the performance of subcontracts. In this regard the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subcontracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

**100-09 CLEAN AIR AND WATER POLLUTION CONTROL REQUIREMENTS:** Contractors and subcontractors must agree for any contract or subcontract exceeding \$100,000.00:

A. That any facility to be used in the performance of the contract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

B. That it will comply will all the requirements of Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, Environmental Protection Agency Regulation (40 CFR Part 15) and all regulations issued thereunder;

C. That it will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be utilized for performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities; and

D. That it will include or cause to be included in any contract or subcontract which exceeds \$100,000.00 the aforementioned criteria and requirements.

**100-10 BONDING/INSURANCE:** The following clauses are included in all federally assisted construction contracts for bids and/or contracts in excess of \$100,000.00;

A. The contractor agrees to furnish a performance bond for 100 percent of the contract price. This bond is one that is executed in connection with a contract to secure fulfillment of all contractors' obligations under such contract.

B. The contractor agrees to furnish a payment bond for 100 percent of the contract price. This bond is one that is executed in connection with a contract to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

**100-11 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS:** Disadvantaged Business Enterprises (DBE) requirements are applicable to each general aviation airport sponsor receiving grant funds in excess of \$250,000; each non-hub airport sponsor (including commuters) receiving grant funds in excess of \$400,000; each large, medium, small hub airport sponsor receiving a grant in excess of \$500,000.

Since the contract to be awarded under this advertised bid falls into the above category, the bid is subject to the following DBE requirements:

A. The successful bidder shall make a good faith effort to use DBE subcontractors and to replace a DBE subcontractor that is unable to perform successfully with another DBE subcontractor. There shall be no substitution of an subcontractors without the prior approval of the sponsor in order to ensure that the substitute firm is an eligible DBE.

**B. Definitions:**

1. **A. disadvantaged business enterprise** is a small business concern:

(a) Which is at least 51% owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly owned business, at least 52% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it.

2. **Small business concern** means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years.

3. **Socially and economically disadvantaged individuals** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act. Recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Recipients also may determine, on a case-by-case basis that individuals who are not a member of one of the following groups are socially and economically disadvantages:

(a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons who origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guan, the U.S. trust Territories of the Pacific, and the Northern Marianas; and

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.



**C. Bidding Requirements:** Each Bidder is required to submit DBE participation information and, as a condition of contract award, must meet the DBE goal or demonstrate to the Airport sponsor that it made a good faith effort to reach the goal.

The bidder shall make good faith efforts, as defined in Appendix A of 49 CFR Part 23, Regulations of the Office of the Secretary of Transportation, to subcontract 10% of the dollar value of the prime contract to small business concerns owned and controlled by socially and economically disadvantaged individuals (DBE). In the event that the bidder for this solicitation qualifies as a DBE, the contract goals shall be deemed to have been met. Individuals who are rebuttable presumed to be socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. Each Bidder will be required to submit within the bid information concerning the DBE's that will participate in this contract. The information will include: (1) the name and address of each DBE; (2) a description of the work to be performed by each named firm; (3) the dollar value of the contract; and (4) a copy of the DBE Certification. If the bidder fails to achieve the contract goal stated herein, it shall provide documentation with the bid demonstrating that it made good faith efforts in attempting to do so. A bid that fails to meet these requirements will be considered non-responsive.

**D. Procedures to Confirm Good Faith Efforts:** If the apparent low bidder, who is otherwise responsive and responsible, cannot meet the goal, he must show that he has made good faith efforts to this end through:

1. Attendance at the pre-bid meetings;
2. Copies of advertisement(s) in trade association newsletters and minority-owned media;
3. A report with a detailed statement of efforts made to locate and negotiate with DBE's, including information on:
  - (a) Efforts made to select portions of the work proposed to be performed by DBE's in order to increase the likelihood of achieving the stated goal;
  - (b) Each DBE contracted, but which the bidder considers to be unqualified to perform the work;
  - (c) Each DBE contracted, but which the bidder considers to be unavailable; and
  - (d) Which organizations that represent or provide assistance to subcontractors were contracted

The stated percentage goal may be waived if the aforementioned good faith efforts to reach the goal have been made. However, a bidder or proposer's failure to meet the goal or to show meaning good faith efforts to reach the goal may be grounds for finding the bid non-responsive.

E. To insure that any substitute firm is an eligible DBE, the contractor shall not substitute subcontractors without the prior approval of the Owner.

F. The Contractor shall establish and maintain records and submit reports, as required and requested, which will identify the efforts and achievements made to meet DBE subcontract goals and other DBE affirmative action efforts.

## **100-12 FOREIGN TRADE RESTRICTIONS**

This clause is included in all solicitations, contracts, and subcontract resulting from projects funded under the AIP.

The Contractor or subcontractor, by submission of a bid and/or executive of a contract, certifies that it:

a. Is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. Has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.

c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontractors for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontractors. The contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United State of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

## **100-13 SECRETARY OF LABOR REQUIREMENTS**

### **A (1) Minimum Wages**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(IV) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the

classification of work actually performed, without regard to skill, except as provided in subparagraphs 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provide, that the employers payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore, only when the following criteria have been met:

- (1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rate contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(ii) (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii) (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer within the 30-day period that additional time is necessary.

(ii) (D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (B) or (C) of this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **A (2) Withholding**

The Federal Aviation Administration shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the contractor or any subcontractor for the full amount of wages required by the contracts. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employer or working on the site of the work all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **A (3) Payrolls and Basic Records**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including) rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of labor has found under 29 CFR 5.5(a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b) (2) (CB) of the Davis-Bacon Act. The contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Albany County Airport Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph 5.5 (a) (3) (i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii) (B) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under subparagraph 5.5 (2) (3) (i) of Regulations, 29 CFR Part 5 and that such information is correct and complete:

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determinations.

(ii) (C) The weekly submission of a properly executed certification set forth on the reversed side of Optional Form WH-347 shall satisfy the requirement for submission of the AStatement of Compliance required by paragraph (a) (3) (ii) (B) of this section.

(ii) (D) The falsification of any of the above certifications may subject the contractor subcontractor to civil or criminal prosecution under Section 1001 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a) (3) (i) of this section available for inspection, copying of transcription by authorized representatives of the Department of Transportation, Federal Aviation Administration, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal Aviation Administration may, after written notice to the contractor, sponsor, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **A (4) Apprentices, Trainees and Helpers**

(i) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for applicable classification. If the Administrator determines that the different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau, withdraws approval, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees, except as provided in 29 CFR 5.16, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment

and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

(iv) Helpers. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in subparagraph 5.5(a) (1) (ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 2.5 (n) (4), shall be paid not less than the applicable wage rate on the wage determination for classification of work actually performed. In addition, any helper performing work on the job site in excess of the ration permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

**A (5) Compliance with Copeland Act Requirements:** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**A (6) Subcontractors:** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the Federal Aviation Administration may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**A (7) Contract Termination: debarment:** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**A (8) Compliance with Davis-Bacon and Related Act Requirements:** All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**A (9) Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, & 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**A (10) Certification of Eligibility:**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section (3)(a) of the Davis-Bacon Act or 29 CFR 5.12 (A)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3 (a) of the Davis Bacon Act or 29 CFR 5.12(A) (1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 19 U.S.C. 1001.

**See Certification Form Next Page**

**CONTRACTOR'S CERTIFICATION OF ELIGIBILITY**

The bidder certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this bid that it will include this clause without modification in all lower tier transactions, solicitations, bids, proposals, contracts, and subcontracts. Where the bidder/offer/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

That the information above is true and complete to the best of my knowledge.

Name and Title (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: The penalty for making false statements in offers is prescribed in 19 U.S.C. 1001.

## **B (1) Contract Work Hours and Safety Standards Act**

(i) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; Liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (i) of this clause, the contractor and subcontractor responsible therefore, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (i) of this paragraph, in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of overtime wages required by the clause set forth in subparagraph (i) of this clause.

(iii) Withholding for unpaid wages and liquidated damages. The Albany County Airport Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (ii) of this paragraph.

(iv) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (i) through (iv) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier contracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraph (i) through (iv) of this paragraph.

## **B (2) Contracts Subject Only to Contract Work Hours and Safety Standards Act**

(i) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(ii) The records to be maintained under paragraph (i) above shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Transportation, Federal Aviation Administration and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### **100-14 BUY AMERICAN - STEEL AND MANUFACTURED PRODUCTS FOR CONSTRUCTION CONTRACTS (Jan 1991)**

A. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to grant issued under the Airport Improvement Program. The following terms apply:

**1. Steel and Manufactured Products:** As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of all its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.



Components of foreign origin of the same class or kind as the products referred to in subparagraphs B.1 or B.2 shall be treated as domestic.

**2. Components:** As used in this clause, components mean those articles, materials, and supplies incorporated directly into steel and manufactured products.

**3. Cost of Components:** This means the costs for production of the components, exclusive of final assembly labor costs.

B. The successful bidder will be required to assure that only domestic steel manufactured products will be used by the contractor, subcontractors, material men, and suppliers in the performance of this contract, except those:

1. That the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

2. That the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or

3. That inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

C. The Contractor shall deliver only domestic steel and manufactured products under this contract as defined below:

**1. Steel and Manufactured Products:** As used in this clause, steel and manufactured products include (1) those produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.

**2. Components:** As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

**3. Cost of Components:** This means the costs for production of the components, exclusive of final assembly labor costs.

D. The Contractor agrees that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and supplies in the performance of this contract, as defined below:

**1. Steel and Manufactured Products:** As used in this clause, steel and manufactured products include (1) those produced in the United States or (2) a manufactured product produced in the United States if this cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.

**2. Components:** As used in this clause, components mean those articles, materials, and supplies incorporated directly into steel and manufactured products.

**3. Cost of Components:** This means the costs of production of the components, exclusive of final assembly labor costs.

E. List of Supplies/Materials That The U.S. Government Has Determined Are Not Produced In The United States In Sufficient And Reasonably Available Quantities And Of Sufficient Quality (Jan. 1991).

Acetylene, black	Fibers of the following types: abaca, abaca,
Agar, bulk	agave, coir, flax, jute, jute burlap, Palmyra
Anise	Silk raw and unmanufactured
Antimony, as metal or oxide	Goat and kidskin
Asbestos, amosite, chrysolite, and	Graphic, natural, crystalline, crucible grade
crocidolite	Hand sewing needles
Bananas	Hemp yarn
Bauxite	Hog bristles for brushes
Beef, corned, canned	Hyoscine, bulk
Beef extract	Ipecac, root
Bephenium Hydroxynapthoate	Iodine, crude
Bismuth	Kaurigum
Books, trade, text, technical, or scientific;	Lac
newspapers, pamphlets; magazines;	Leather, sheepskin, hair type
Periodicals; printed briefs and films; not	Lavender oil
printed in the United States and for which	Manganese
domestic editions are not available	Menthol, natural bulk
Brazil nuts, unroasted	Mica
Cadmium, ores and flue dues	Microprocessor chips (brought onto a
Calcium Cyanamide	construction site as separate units for
Capers	incorporation into building systems during
Cashew nuts	construction or repair and alteration of real
Castor beans and castor oil	Nickel, primary, in ingots, pigs, shots,
Chalk, English	cathodes, or similar forms; nickel oxide and
Chestnuts	nickel salts
Chicle	Nitro guanidine (also known as picrite)
Chrome ore or chromite	Nux vomica, crude
Cinchona bark	Oiticica oil
Cobalt, in cathodes, rondelles, or other	Olive Oil
primary ore and metal forms	Olives (green), pitted or unpitted, or stuffed,
Cocoa beans	in bulk
Coconut and coconut meat, unsweetened, in	Opium, crude
shredded desiccated or similarly prepared	Oranges, mandarin, canned
form	Petroleum, crude oil, unfinished oils, and
Coffee, raw or green bean	finished products (see definitions below)
Colchicine alkaloid, raw	Pine needle oil
Copra	Platinum and related group metals, refined,
Cork, wood or bark and waste	as sponge, powder, ingots, or cast bars
Cover glass, microscope slide	Pyrethrum flowers
Cryolite, natural	Quartz crystals
Dammar gum	Quebracho
Diamonds, industrial, stones and abrasives	Quinidine
Emetine, bulk	Quinine
Ergot, crude	Rabbit fur felt
Erthrityl tetra nitrate	Radium salts, source and special nuclear
Fair linen, alter	materials
	Rosettes

Rubber, crude and latex	Triprolidine hydrochloride
Rutile	Tungsten
Santonin, crude	Vanilla Beans
Secretin	Venom, cobra
Shellac	Wax, camauba
Swords and scabbards	Woods, logs, veneer, and lumber of the following species: Alaskan yellow cedar, Angelique, balsa, ekki, greenheart, lignum vital, mahogany, and teak
Talc, block, steatite	Yarn, 50 Denier rayon
Tapioca flour and cassava	
Tatar, crude; tartaric acid and cream of tartar in bulk	
Tea, in bulk	
Thread, metallic (gold)	Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available
Thyme oil	
Tin in bars, blocks, and pigs	

**Petroleum Terms are Used as Follows:**

“Crude oil” means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

“Finished products” means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

**(A) “Asphalt”** - a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumen’s as its predominating constituents, and (3) is obtained in refining crude oil.

**(B) “Fuel Oil”** - a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

**(C) “Gasoline”** - a refined petroleum distillate that, by its consumption, is suitable for use as a carburant in internal combustion engines.

**(D) “Jet Fuel”** - a refined petroleum distillate used to fuel jet propulsion engines.

**(E) “Liquefied Gases”** - hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

**(F) “Lubricating Oil”** - a refined petroleum distillate or specially treated petroleum residue used to lesson friction between surfaces.

**(G) “Naphtha”** - a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosene.

**(H) “Natural Gas Products”** - liquids (under atmospheric conditions) including natural gasoline, that:

- (1) are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir, and

(2) when recovered and without processing in a refinery, definitions of products contained in subdivision (B), (C), and (G) above.

**(I) “Residual Fuel Oil”** - a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of MILSPEC Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

**“Unfinished Oils”** means one or more of the petroleum oils listed under “Finished products” above, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

**BUY AMERICAN CERTIFICATE (JAN 1991)**

By submitting a bid under this solicitation, except for those items listed by the offeror below or on a separate and clearly identified attachment to this bid, the offeror certifies that steel and each manufactured product, is produced in the United States (as defined in the clause Buy American - Steel and Manufactured Products for Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Lists of articles, materials, and supplies excepted from this provision are included in Section 100-14E.

PRODUCT

COUNTRY OF ORIGIN

# **ALBANY COUNTY AIRPORT AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

## **I. POLICY**

- A. It is the policy of the Albany County Airport Authority that minority, woman-owned and disadvantaged business enterprises defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in part, with Federal or Airport funds. Consequently, the DBE requirements of 49 CFR Part 26 shall apply to all Airport contracts.
  
- B. DBE Obligation: The Albany County Airport Authority has entered into certain grant agreements with the Federal Aviation Administration (“FAA”) whereby the Authority has agreed to ensure that minority, woman-owned and disadvantaged business enterprises, as defined in 49 CFR part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal funds. Furthermore, as a result of the FAA grant agreements, the Authority must require all entities entering into Airport contracts to also agree to ensure that minority, woman-owned and disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal funds. In this regard, all contractors shall take all necessary and reasonable steps, in accordance with 49 CFR Part 26, to ensure that minority, woman-owned and disadvantaged business enterprises have the maximum opportunity to compete for, and perform, Airport contracts. The Albany County Airport Authority and its contractors shall not discriminate on the basis or race, color, national origin, or sex in the award and performance of Airport contracts.

## **II. PURPOSE AND APPLICATION**

- A. The purpose of this Disadvantaged Business Enterprise Program is to achieve the objectives of the Albany County Airport Authority’s policy, as set forth above, of supporting the fullest possible participation of firms owned and controlled by minorities, women, and socially and economically disadvantaged individuals. This includes assisting DBEs throughout the life of contracts in which they participate. The standards in this Program apply to all contracts for goods, services or construction awarded by or on behalf of the Authority.
  
- B. The goals of this Disadvantaged Business Enterprise Program have been established by the Albany County Airport Authority and shall be at least six point two percent (6.2%).

## **III. DEFINITION**

For purposes of this program, the following definitions shall apply:

- A. “Administering Agency” means the Albany County Airport Authority.
- B. DBE Liaison Officer” means the Albany County Airport Authority’s Disadvantaged Business Enterprise Officer or other Authority employee as designated by the Albany

County Airport Authority's Chief Executive Officer ("CEO").

- C. "Disadvantaged Business Enterprise" or "DBE" means a small business concern: (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- D. "Small Business Enterprise" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual gross receipts in excess of \$16.6 million (or such amount as the U.S. Secretary of Transportation may adjust this figure to from time to time for inflation) over the previous three fiscal years.
- E. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is
  - 1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case by case basis
  - 2. Whose management and daily business operations are controlled by one or more such individuals
    - (1) Recipient finds to be a socially and economically disadvantaged individual on a case by case basis
    - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
      - a. "Black Americans," which includes person having origins in any of the Black racial groups of Africa;
      - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
      - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
      - d. "Asian-Pacific American,:" which includes persons whose origins are form Japan China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guan, the U.S. Trust Territories of the Pacific Island (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of the Micronesia, or Hong Kong;
      - e. "Subcontinent Asian Americans," which includes persons whose origins are form India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
      - f. Women;

- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- F. "State" means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.
- G. "Subcontractor" means a firm which provides materials, supplies or equipment for a project and applies, erects or installs those materials, supplies or equipment with its own work force.

Should these Definitions conflict with Part 26, Part 26 controls.

#### **IV. ADMINISTRATIVE RESPONSIBILITY**

- A. The DBE Liaison Officer shall report directly to the Albany County Airport Authority's CEO and shall be responsible for developing, managing, and implementing this Disadvantaged Business Enterprise Program on a day-to-day basis; for carrying out technical assistance activities for DBEs; and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Airport contracts. The DBE Liaison Officer shall develop and use affirmative action techniques to facilitate DBE participation in contracting activities. These techniques shall include, but not be limited to:
  - 1. Assisting the Authority in arranging solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of DBEs.
  - 2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.
  - 3. Carrying out information and communication programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.
  - 4. Assisting the Authority's Chief Financial Officer in thoroughly investigating the full extent of services offered by banks owned by minorities or women in the Albany area to allow the Authority to make the greatest feasible use of these banks.
  - 5. Encouraging the Authority's contractors to use the services of banks owned and controlled by minorities or women.
  - 6. Maintaining and making available directories or source lists to facilitate identifying DBEs with capabilities relevant to the Authority's general contracting requirements and to particular solicitations. The DBE Liaison Officer shall make the directories available to bidders and proposers in their efforts to meet DBE requirements. The directories shall specify which firms have been certified as a DBE pursuant to the procedures of 49 CFR Part 26 by another United States Department of Transportation grant recipient. These directories shall be compiled and updated annually. The directories shall include the address of the listed firms.



7. Assisting in the coordination of plans, programs, and operations of the Authority which affect or may contribute to the establishment, preservation, and strengthening of DBEs.
  8. Promoting the mobilization of activities and resources of local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of DBEs, and facilitate the coordination of the efforts of these groups with those of the Albany County Airport Authority.
  9. Assisting the organization, development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Capital District in undertaking or promoting the establishment and successful operation of DBEs.
  10. Within constraints of law and appropriations, provide assistance to public and private organizations so that they may render technical and management assistance to DBEs and assist pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of and DBEs or otherwise to further the purposes of this Program.
- B. As the Authority's CEO deems necessary or appropriate to enable the DBE Liaison Officer to better fulfill the responsibilities set forth in paragraph A above, the DBE Liaison Officer shall:
1. With the participation of other Authority representatives, consultants and agencies as appropriate, develop comprehensive plans and specific program goals for this Disadvantage Business Enterprise Program (which shall be subject to the review and approval of the Authority); establish regular performance, monitoring and reporting system to determine if the goals are being achieved; and evaluate the impact of Authority support in achieving the objectives established by the Policy;
  2. For purposes of coordination, conduct meetings of consultants and contractors whose programs and activities may affect or contribute to the purposes of the Policy;
  3. Conduct meetings of business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of DBEs or who could contribute to their development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this Program;
  4. Confer with Federal, State and local government officials;
  5. Provide the managerial and organizational framework through which joint or collaborative undertakings with Albany County Airport Authority and private organizations can be planned and implemented;
  6. Recommend appropriate administrative and executive actions to the Authority's CEO;
  7. Explain the DBE participation requirements at pre-bid conferences;
  8. Maintain a file of bid documents from past procurement and permit DBEs to review and evaluate these documents;
  9. Conduct debriefing sessions to explain why certain bids were unsuccessful;
  10. Provide DBE firms with information on future procurement and contracting schedules;

11. Provide information on certification procedures, subcontracting, and bonding requirements;
12. Develop mailing lists for newsletters that include DBE's and their associations;
13. Send bid notices to DBE trade associations, technical assistance agencies, DBE economic development groups, and to DBEs with capabilities relevant to the bid notice, as identified by the DBE Directory; and
14. Support the efforts of DBE support and technical assistance organizations including, but not limited to Albany/Colonie Business Maintenance Organization, the Capital District Minority Contractors Association (CDMCA), and the National Association of Women in Construction (NAWIC);

## **V. RESPONSIBILITY OF OTHER PARTIES**

A. The Authority's consultants and contractors shall cooperate with the DBE Liaison Officer to ensure maximum opportunity for DBEs participation. Such cooperation shall include, but not be limited to:

1. Providing information on contracting and leasing opportunities, together with a breakdown of subcontracting opportunities;
2. Consulting with the DBE Liaison Officer in establishing, design, number, size and content of bid packages;
3. Furnishing information, assistance, and reports to, and otherwise cooperating with, the DBE Liaison Officer in the performance of duties assigned to the DBE Liaison Officer hereunder;
4. When so requested by the DBE Liaison Officer, shall have primary and continuing responsibility for the participation and cooperation of that agency, consultant or contractor in matters concerning DBEs;
5. Review and report to the DBE Liaison Officer on the policies and programs effecting the Disadvantaged Business Enterprise Program, and keep the DBE Liaison Officer informed of all proposed budgets, plans and programs of that consultant or contractor affecting this Disadvantaged Business Enterprises Program;
6. To the extent required by contractor's agreement with the Authority, report to the DBE Liaison Officer on any activity that falls within the scope of this Disadvantaged Business Enterprise Program; and
7. Within constraints of law and funding, continue and expand current efforts to foster and promote DBEs, support the Program herein set forth, and cooperate with the DBE Liaison Officer in increasing the total DBE effort.

B. Albany County Airport Authority Purchasing Department shall:

1. Arrange solicitations on requests for proposals, times for presenting bids on proposals, quantities, specifications and delivery schedules so as to facilitate DBEs participation;
2. Consult with the DBE Liaison Officer on procurement policies, including bonding, licenses and other requirements;
3. Insure that solicitations contain all clauses and goals required by this Program;
4. Provide information to DBE firms about the Albany County Airport Authority's organization, functions, and full range of contractual needs;

5. Offer instructions and clarification on bid specifications, the Authority's procurement policy, procedures, and general bidding requirements;
  6. Place bid notices in the Dodge Bulletin, DBE trade association newsletters, major local newspapers, as well as periodicals of interest to the disadvantaged community;
  7. Make bid specifications available to DBEs contractor associations and technical assistance agencies;
  8. Provide DBE organizations with lists of plan holders and majority firms expected to bid as prime contractors; and
  9. Allow a lead time of at least twenty (20) days, when possible, for advertisement of all invitations for bid so that all firms have ample time to develop a complete bid package or proposal and secure necessary assistance.
- C. Albany County Airport Authority's Counsel shall:
1. Review contracts clauses for legal sufficiency; and
  2. Provide legal support as appropriate.
- D. Albany County Airport Authority's Chief Financial Officer shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in the Albany area and make the greatest feasible use of these banks.

## **VI. PROCEDURES TO ASCERTAIN THE ELIGIBILITY OF DBES**

- A. In order to be eligible as a DBE for purposes of this Program, a DBE must be certified by a governmental agency that has a certification program meeting the requirements of 49 CFR 26 (and is subject to the requirements of subpart D thereto). Such governmental agencies include, but are not limited to, the FAA and the New York State Department of Transportation ("NYSDOT"). The Albany County Airport Authority will not undertake the certification of DBEs directly, but will assist DBEs in obtaining the needed certification from other qualified governmental agencies. To insure that the this Program benefits only firms owned and controlled by minorities, women or other individuals qualified under 49 CFR part 26, the DBE Liaison Officer will verify the eligibility and certification of all DBEs, and joint ventures involving DBEs, that are named by the competitors for contracts to be let by the Authority by obtaining a copy of the DBE firm's certification by a qualified certifying governmental agency. The DBE Liaison Officer will accept, subject to possible further verification and challenge at the direction of the Authority's CEO, the DBE certifications made by such other qualified government agencies.
1. Any firm not already certified as an eligible DBE, that desires to participate as a DBE for purposes of this Program, will be required to complete and submit an Application for Disadvantaged Business Enterprise Certification to the NYSDOT or other governmental agency meeting the requirements of 49 CFR 26.
  2. Any firms that desire to participate as a joint venture DBE will, in addition, be required to complete a joint venture application. The joint venture application must be signed and notarized by an authorized representative of the firms.
  3. A copy of the required application(s) must accompany the DBE participation information submitted to the Albany County Airport Authority by applicants.

4. A firm holding a certification as a DBE may be required to submit to the Authority additional information, including a copy of its original application to the certifying governmental agency, if either of the following applies:
5. The DBE contractor states in writing that it has submitted the same information to and has certified by another DOT recipient, or other Federal agency that uses essentially the same definition and ownership and control criteria as the Authority. In the case, the potential DBE must obtain the information and certification (if made) from the other agency and submit it to the Authority; or
6. The potential DBE contractor has been determined by the Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under Section 8(a) of the Small Business Act, as amended.

## **VII. CHALLENGE PROCEDURES**

- A. Any third party may present evidence challenging whether a firm's owners who are presumed to be socially and economically disadvantaged are truly disadvantaged. Individuals certified under Section 8(a) of the Small Business Act, as amended, however, are not subject to these challenges. If a challenge is made to the owners of a Section 8(a) firm, the Albany County Airport Authority will refer the information or question to the SBA for resolution.
- B. When the Albany County Airport Authority receives a written challenge to the disadvantaged status of a business owner that is certified or seeking certification, the Authority will make a determination of social and economic disadvantage. The Authority itself may also initiate an inquiry.
- C. The guidelines in 49 CFR 26.69 and Appendix C will be used for these actions. Following determination by the DBE Liaison Officer, the DBE shall have ten days to appeal the decision to the CEO of the Albany County Airport Authority. Both sides in the dispute shall have an opportunity to be heard at a meeting conducted by the CEO to be held within twenty-one days of the receipt of an appeal, and the CEO shall send the decision to both sides within ten days by registered mail. The procedures are informal; strict rules of evidence do not apply.
- D. While a challenge is in progress, the presumption of social and economic disadvantage continues, and the firm will continue to be eligible as a DBE.

## **VIII. GOOD FAITH EFFORTS TO MEET THE DBE GOAL**

- A. Whenever the Albany County Airport Authority issues a solicitation for bids for a contract, the solicitation will contain the DBE contract goal. The Authority will follow this procedure for non-construction as well as construction projects. Thus, the appropriate goal will be included in all Invitations for Bid (IFB) for construction work and in Requests for Proposals (RFP) or Requests for Qualifications (RFQ) for architectural, engineering, and other professional services.
  1. The solicitation will include a statement that the apparent successful bidder will be required to submit DBE participation information and that as a condition of receiving the contract; the competitor must meet the DBE goal or demonstrate to

- the Authority that it made good faith efforts.
2. The DBE participation information will be required prior to award of contract by the Authority. A bidder may not meet the requirements of the bid specification by stating that it will accomplish all work of the contract using its own employees. It, first, must demonstrate to the Authority's satisfaction, that it made good faith efforts to meet the goal, and despite those efforts, was unable to subcontract any portion sufficient to meet the goals, to DBE's
- B. If the contract goal specified in the Contract Documents is not met, the apparent successful Bidder will be required to submit documentation of the efforts it has made to achieve the goal. The Authority will then determine whether these are "good faith efforts". The following criteria will be used:
1. Whether the Bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBE's of contracting and subcontracting opportunities;
  2. Whether the Bidder advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
  3. Whether the Bidder provided written notice to a reasonable number of specific DBE's that their interest in the contract was being solicited, in sufficient time to allow the DBE's to participate effectively;
  4. Whether the Bidder followed up initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's were interested;
  5. Whether the Bidder selected portions of the work to be performed by DBE's in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
  6. Whether the Bidder provided interested DBE's with adequate information about the plans, specifications, and requirements of the contract;
  7. Whether the Bidder negotiated in good faith with interested DBE's, not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of the DBE capabilities;
  8. Whether the Bidder made efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by the Authority or contractor; and
  9. Whether the Bidder effectively used the services of available minority community organizations, minority contractors groups; local, state, and Federal minority and women business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE's
- C. The following points also apply to good faith effort determinations by the Authority:
1. The above list of nine efforts is recommended by the Authority as ones that bidders may make to obtain DBE participation. It does not represent a mandatory checklist of required actions; no one or combination is required in all cases.
  2. The list above is not intended to be exhaustive; other factors or efforts may be relevant in appropriate instances.
  3. Good faith efforts are those that could reasonably be expected to result in goal attainment by a bidder who aggressively and actively seeks to obtain DBE participation
  4. The Albany County Airport Authority will examine the quantity and intensity of

the efforts as well as the type of actions taken. Efforts that are merely pro forma are not sufficient, even though they may be sincerely motivated.

- D. Alternative Requirements: The DBE Liaison Officer may recommend to the apparent successful Bidder other requirements of equal or greater effectiveness, in addition to the good faith efforts set forth above, when the total amount of DBE, participation has not reached the goals of this Program. Such requirement will include only such actions as is determined to be legally permissible.

## **IX. CONTRACTOR'S DBE REPORTING REQUIREMENTS**

- A. The Authority requires prime contractors to submit information on proposed subcontract and/or supplier awards to be made to DBE's. The information must be submitted within 120 hours (week-ends and holidays, not included) of the receipt of Bids by the Authority and include:
  - 1. the name and address of each DBE;
  - 2. whether the firm is a MBE or WBE;
  - 3. a description of the work to be performed by each named firm; and
  - 4. The dollar value of the work of the work to be performed or materials and supplies to be provided.
- B. Prior to the award of contract, verification from the each DBE firm of their intent to perform the scope of work or provide the materials and/or supplies and the dollar value.
- C. Records of all progress payments made by prime contracts are required on a monthly basis. Prime contractors must also report to the Authority when a DBE is terminated for any reason. In that instance, every reasonable effort must be made to replace the firm with another DBE. These records are periodically verified by obtaining certified statements from DBE subcontractors.
- D. Other appropriate actions will be taken to ensure that prime contractors and subcontractors comply with the DBE provisions. These actions will include:
  - 1. Desk audits to review all material and information concerning the contractor's compliance with the requirements of this Program.
  - 2. On-site reviews that include interviews, visits to project locations, and inspection of documents and/or information not available at the desk audit that pertains to the contractor compliance with its obligation under this Program.
  - 3. Any additional investigation that may be called for by a lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBE's to cooperate; visible evidence of unsatisfactory performance; and any other evidence as may warrant further investigation.
- E. The Authority's CEO, upon advice of the DBE Liaison Officer, will make prompt determinations regarding contractors' compliance with this Program. Documentation of noncompliance will include the specific areas in which the contractor failed to comply. In these instances, appropriate actions consistent with the DBE Program and other contract provisions will be taken, and may include withholding future payments,

suspension of the contract, notification to stop contract work until the contractor comes into compliance, refusal to award the contract or cancellation of the contract and declaration of forfeiture of the performance bond.

- F. A decision by the Authority's CEO to invoke the above sanctions shall be issued in writing by registered mail. The contractor shall have ten days from receipt of the decision to appeal the CEO's decision to the Operations Committee of the Albany County Airport Authority. Both sides of the dispute shall have the opportunity to be heard at a meeting of the Operations Committee to be held within twenty-one days of the receipt of an appeal, and the Committee shall send a final decision to both sides within ten days by registered mail (or hand delivery in the case of the DBE Liaison Officer's copy).

## **X. COUNTING DBE PARTICIPATION TOWARD MEETING THE GOALS**

- A. The Albany County Airport Authority will count DBE participation toward the contract goals in accordance with the guidelines outlined below. Although the language may suggest otherwise, when the contract is federally funded or federally assisted, only the federal share of the contract amounts is counted toward the federal goal.
1. Once a firm is determined to be a certified DBE the total dollar value of the contract awarded to the DBE is counted toward the DBE goal.
  2. The Albany County Airport Authority and its contractors will count toward the DBE goals a portion of the total dollar value of a contract with a certified joint venture equal to the percentage of ownership and control of the DBE partner in the joint future.
  3. The Authority and its contractors will count toward the DBE goals the total dollar value of a contract with a firm owned and controlled by two or more socially and economically disadvantaged individuals, who combined own 100 % interest in the firm.
  4. Only expenditures to DBEs that perform a commercially useful function in the work of a contract will be counted toward the DBE goals. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Authority and its contractors will evaluate the amount of work sub-contracted, industry practices, and other relevant factors.
  5. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The contractor and/or the DBE may present evidence to the Albany County Airport Authority to rebut this presumption.
  6. The Albany County Airport Authority and its contractors will count toward the DBE goals 60% of expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer, and 100 % of such expenditure obtained from a DBE manufacturer.

- (1) For purposes of this DBE Program, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Authority or a contractor.
- (2) For purposes of this DBE Program, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are brought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers will not be regarded as manufacturers or regular dealers under this DBE Program.

7. The Authority and its contractors may count toward the DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers.
  1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the contract, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery services are not also the manufacturer of, or a regular dealer in, the materials and supplies, provided the fees are determined by the Authority to be reasonable and not excessive as compared with the fees customarily allowed for similar services.
  3. The fees or commissions charged for providing any bonds or insurance required for the performance of the contract, providing that the fees or commissions are determined by the Authority to be reasonable and not excessive as compared with the fees customarily allowed for similar services.



8) **ORGANIZATIONAL CHART**

**Organizational Chart**

Albany County Airport Authority Board Members

Samuel A. Fresina, Chairman  
Kevin Hicks, Sr., Member  
Steven Heider, Member  
Sari O'Connor, Member  
Thomas A. Nardacci, Member  
John-Raphael Pichardo, Member  
Janet M. Thayer, Esq., Member

Albany County Airport Authority Office Staff

Philip F. Calderone, Esq., Chief Executive Officer  
Michael F. Zonsius, Chief Financial Officer  
Christine C. Quinn, Esq., Authority Counsel  
Bobbi Matthews, Purchasing Agent  
Jenn Munger, DMWBE Liaison Officer

#### **4.1) CONTRACTING OR PROCUREMENT UNIT'S RESPONSIBILITIES**

##### **ADMINISTRATIVE RESPONSIBILITY**

A. The DBE Liaison Officer shall report directly to the Albany County Airport Authority's CEO and shall be responsible for developing, managing, and implementing this DMWBE on a day-to-day basis; for carrying out technical assistance activities for MWDBEs; and for disseminating information on available business opportunities so that MWDBEs are provided an equitable opportunity to bid on Airport contracts. The DBE Liaison Officer shall develop and use affirmative action techniques to facilitate MWDBE participation in contracting activities. These techniques shall include, but not be limited to:

1. Gathers and reports statistical data and other information as required;
2. Reviews third party contracts and purchase requisitions for compliance;
3. Works with all departments to set overall annual goals;
4. Ensures that bid notices and request for proposals are available to MWDBE's in a timely manner;
5. Identifies contracts and procurements so that MWDBE's are included in solicitation;
6. Analyzes the Authority's progress toward goal attainment and identifies way to improve progress;
7. Participates in pre-bid meetings;
8. Advises the CEO on MWDBEs matters and achievements;
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts;
10. Works with the Purchasing Department to ensure Vendor files reflect current WMDBE certification status;
11. Works with purchasing to ensure Vendor interest files are periodically updated to include newly certified WMDBEs;
12. Acts as liaison to NYSDOT and Empire State Development Certification Programs.

##### **RESPONSIBILITY OF OTHER PARTIES**

B. The Authority's consultants and contractors shall cooperate with the DBE Liaison Officer to ensure maximum opportunity for MWBE participation. Such cooperation shall include, but not be limited to:

1. Providing information on contracting and leasing opportunities, together with a breakdown of subcontracting opportunities;
2. Consulting with the DBE Liaison Officer in establishing, design, number, size and content of bid packages;
3. Furnishing information, assistance, and reports to, and otherwise cooperating with, the DBE Liaison Officer in the performance of duties assigned to the DBE Liaison Officer hereunder;
4. When so requested by the DBE Liaison Officer, shall have primary and continuing responsibility for the participation and cooperation of that agency, consultant or contractor in matters concerning WMDBEs;
5. Review and report to the DBE Liaison Officer on the policies and programs effecting the WMDBE Program, and keep the DBE Liaison Officer informed of

all proposed budgets, plans and programs of that consultant or contractor affecting this WMDBE Program;

6. To the extent required by contractor's agreement with the Authority, report to the DBE Liaison Officer on any activity that falls within the scope of this WMDBE Program; and
7. Within constraints of law and funding, continue and expand current efforts to foster and promote DBEs, support the Program herein set forth, and cooperate with the DBE Liaison Officer in increasing the total WMDBE effort.

C. Albany County Airport Authority Purchasing Department shall:

1. Arrange solicitations on requests for proposals, times for presenting bids on proposals, quantities, specifications and delivery schedules so as to facilitate MWDBEs participation;
2. Consult with the DBE Liaison Officer on procurement policies, including bonding, licenses and other requirements;
3. Insure that solicitations contain all clauses and goals required by this Program;
4. Provide information to MWDBE firms about the Albany County Airport Authority's organization, functions, and full range of contractual needs;
5. Offer instructions and clarification on bid specifications, the Authority's procurement policy, procedures, and general bidding requirements;
6. Place bid notices in the Dodge Bulletin, DBE trade association newsletters, major local newspapers, as well as periodicals of interest to the disadvantaged community;
7. Make bid specifications available to MWDBEs contractor associations and technical assistance agencies;
8. Provide MWDBE organizations with lists of plan holders and majority firms expected to bid as prime contractors; and
9. Allow a lead time of at least twenty (20) days, when possible, for advertisement of all invitations for bid so that all firms have ample time to develop a complete bid package or proposal and secure necessary assistance;
10. The Purchasing Department will periodically update the "Lists of Interested Vendors" to include newly certified MWBEs found in the State MWBE Directory as updated from time to time.

D. Albany County Airport Authority's Counsel shall:

1. Review contracts clauses for legal sufficiency; and
2. Provide legal support as appropriate.

E. Albany County Airport Authority's Chief Financial Officer shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in the Albany area and make the greatest feasible use of these banks. The Chief Financial Officer will refer to the Recommendations in the Governor's Executive Order regarding Best Practices in Financial Services: Accounting Services; Broker-Dealers; Certificates of Deposit and Money Market Fund Investments; Financial Advisory Services; Risk Management and Insurance Brokerage Services and seek to implement as feasible under the circumstance.

#### 4.2) **CONTRACT COMPLIANCE UNIT'S RESPONSIBILITIES**

##### **Administrative and Contract Compliance Units Responsibilities**

The Albany County Purchasing Agent is responsible for sending out Request for Bids, Proposals and Request for Quotations for services and construction contracts. Notification is sent to Affirmation Action offices and agencies listed in the outreach section for all service and construction contracts, RFP's and RFQ's.

##### **1. Service Contracts:**

- Are procured in accordance with the Authority's Procurement Guidelines.
- The Purchasing Agent, along with evaluation committee, evaluates Proposals/Bids and makes their recommendations to the Chief Financial Officer who advances it to the Chief Executive Officer, and the board if required by the Procurement Guidelines.
- The Department Head and Purchasing Agent are responsible for overseeing all aspects of contract compliance.

##### **2. Construction Contracts:**

- Construction Contracts are developed by the Airport Authority, Engineering Department and Engineer/Architect.
- Selection committee negotiates and evaluates proposals.
- Pre-Award Submittals - Construction managers letter of recommendations, including DBE Compliance & Form A, insurance certification, schedule of values, schedule of compliance submittals and work schedule.
- The Albany County Airport Authority Board reviews and approves all contracts over \$50,000.
- A written Notice of Award is issued by the Authority to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, Authority will sign and deliver the Agreement to be followed by the written Notice to Proceed authorized by the Authority to Contractor.
- The Engineer/Architects status during construction is to act as the Authority's Representative - monitoring of compliance, work performance, scheduling and payment schedule.
- Application for Payments and supporting documentation is forwarded to the Airport Authority Engineer for review and approval. DBE information is verified and the application is forwarded to the Chief Executive Officer and Chief Financial Officer for approval for payment.

#### **4.3) INTERNAL REPORTING MECHANISMS AND RESPONSIBILITIES**

##### **Internal Reporting Mechanisms**

Quarterly reports due to the DMWBD on April 15, July 15, October 15 and January 15 of each fiscal year are the responsibility of the DMWBE Liaison. Statistical data for quarterly payments is obtained from the Finance Department. MWDBE utilization and payment information is submitted on the Disadvantaged Business Enterprise Form – C monthly or with each Voucher/Payment request.

**9) PROCEDURES FOR RESOLUTIONS OF CONTRACTOR ISSUES**

Should the Albany County Airport Authority discover any issues presented by contractors, any efforts to resolve said issues would involve discussion with Authority Counsel, Chief Airport Engineer as well as the Chief Executive Officer. Non-compliance that cannot be resolved within the agency will be referred to the Division.

## **10) OUTREACH EFFORTS**

### **Outreach Efforts**

It is the policy of the Authority to place bid notices in the Dodge Bulletin, DBE trade associated newsletters, major local newspapers, as well as periodicals of interest to the disadvantaged Community;

- ◆ Airport
- ◆ Business Review
- ◆ Times Union Newspaper
- ◆ Minority Commerce Weekly
- ◆ Rensselaer County Affirmative Action
- ◆ Albany County Affirmative Action
- ◆ Saratoga County Affirmative Action
- ◆ Schenectady County Affirmative Action
- ◆ ACAA Website

In addition to posting notices, a letter is sent to certified MWDBEs informing them of Request for Proposal or Invitation to Bid Notice issued for upcoming projects or procurements.

### **Agency Specific Program Accomplishments**

To increase MWBE utilization, the NYS UCP Directory is used to identify companies whose services are necessary for upcoming construction contracts (all aspects of work, construction companies, trucking, fencing, paving, etc.) or purchasing of products. Letters of **Request for Proposal** or **Invitation for Bid** along with the ACAA notice is mailed to each company. The MWBE requirements are explained and emphasized at pre-bid meetings. Through this process we have MWBE companies who bid on construction contracts or contacted the low bidder to be subs, and this effort has increased response in the purchasing of goods and services.

### **Initiatives That Are Planned For 2024 To Better Outreach The MWBE Community and Increase Utilization Include:**

The Airport Authority will meet with the Greater Capital District Minority Association in an effort to increasing minority participation in Airport Projects. The list of their members will be reviewed once supplied to the Authority and any uncertified company will be contacted and provided information on certification process.

## **11) AGENCY INITIATIVES/DETERMINATION FOR AREAS OF BUSINESS DEVELOPMENT**

The Albany County Airport Authority (ACAA) is always striving to increase MWBE utilization. We have had success when able to contract with certified MWBE vendors on construction projects where they are the prime contractor and we are able to obtain 100% utilization. An example of this is Contract No. 1145 with Titan Roofing, Inc. (MBE) for Roofing Repair and Replacement as well as Contract No. SC-1152 for New York State Police Roof. We also have a contract with Fennick McCredie (WBE) Contract No. S-1127 for design of Concourse A Rehabilitation.

The area where ACAA struggles is trades lacking MWBE participation availability which include elevators, escalators, jet bridges and aviation/diesel fuel.



## 12) PREVIOUSLY EXCLUDED CONTRACTS

Airport Management Services  
Term: 11/5/22 to 12/31/24  
\$700,000 management fee annually

Million Air Management Operating Agreement  
Term: 8/31/23 through 8/31/24  
\$190,000 management fee annually

De-icer/Glycol – Quote/Purchase Order  
Ascent  
Term: 9/1/23 to 5/31/24  
\$1,133,308

Elevator Service Agreement  
Term: 8/1/23 to 7/31/25  
\$118,500

Passenger Information Services  
Term: 1/1/24 to 12/31/24  
\$132,000

CDTA Shuttle Services  
1/1/24 to 12/31/24  
\$12,502

Bank & Paying Agent  
Wilmington Trust  
Term: 1/1/24 to 13/21/24  
\$12,000

Armored Car  
Term: 1/1/24 to 12/31/24  
\$4,356

Payroll Services  
ADP  
Term: 1/1/24 to 12/31/24

Waste Management Services  
1/1/24 to 12/31/24  
\$84,465

2 Runway Brooms  
Purchase Order  
\$1,100,000

Aviation Fuels  
Purchase Order  
\$4,584,850

Diesel/Gas Vehicles  
NYS Contract  
\$397,000

**13) STANDARDIZED FORMS**

- 1. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE FORM - A**
- 2. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE FORM - B**
- 3. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE FORM - C**
- 4. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE FORM - D**