

**DEPARTMENT OF TRANSPORTATION
ACDBE PROGRAM – 49 CFR PART 23
SAMPLE AIRPORT CONCESSION DBE PROGRAM**

The Department of Transportation (*DOT*) has prepared this sample program to help sponsors comply with 49 CFR Part 23, the DOT Airport Concession Disadvantaged Business Enterprise (*ACDBE*) rule. We published Part 23 in the Federal Register on March 22, 2005 and it became effective April 21, 2005 (70 F.R. 14496). The new Part 23 makes extensive revisions to DOT's Airport Concession DBE Program.

This sample program supersedes guidance issued by the Office of Civil Rights under the former Part 23.

We are providing this sample ACDBE program for informational purposes, and sponsors are not required to use it or its format. However, sponsors may wish to use it as a guide in preparing their ACDBE program documents. Sponsors may customize the sample program to fit their circumstances.

At a number of points, the sample program refers to provisions of Part 23 and where applicable Part 26. Sponsors may quote referenced portions of the rule in their program if they wish, but they are not required to do so. The sample program also provides language for some documents that are part of the program (e.g. policy statements, contract clauses). Except where otherwise noted, sponsors are not required to use this language, and may use their own language as long as it meets regulatory requirements. Additionally, as provided in section 23.23, sponsors may combine certain stated provisions required under both Part 23 programs and Part 26 programs.

In the sample program, we have put instructions and notes in italics. Sponsors would not put this italicized material into their program documents.

You may obtain an electronic version of this document, the ACDBE regulations and other DOT guidance from DOT's website:

<http://osdbu.dot.gov/dbeprogram/index.cfm>

The General Counsel of the Department of Transportation has reviewed this sample program and approved it as consistent with the language and intent of 49 CFR Part 23.

SAMPLE ACDBE PROGRAM

POLICY STATEMENT

[Note: You may combine this policy statement with your Part 26 Policy statement]

Section 23.1, 23.23

Objectives/Policy Statement

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

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

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

[Name or title of appropriate person or office] has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, *[Name or title]* is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the [*Name Sponsor*] in its financial assistance agreements with the Department of Transportation.

[Name Sponsor] has disseminated this policy statement to the [*identify the governing board or officials of the sponsor*] and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area. [*Specify how this distribution is accomplished*]

[Signature of Sponsor's Chief Executive Officer]

Date _____

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions (*you may include all of the definitions here or make the following reference*)

The [Sponsor] will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

(If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you). The [sponsor] is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

(As a recipient, you must meet the non-discrimination requirements provided in Part 26, section 26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this part).

The [Sponsor] will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

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

The [Sponsor] acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The [Sponsor] will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

- (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Section 23.11 Compliance and Enforcement

The [*Sponsor*] will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The [*Sponsor*] will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

The [*Sponsor's*] compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Compliance reviews: The FAA may review the airport sponsor's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the [*Sponsor*] may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the [*Sponsor's*] ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (e) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the [*Sponsor's*] ACDBE program or otherwise violates applicable Federal statutes.

SUBPART B – ACDBE Programs

Section 23.21 ACDBE Program Updates

Since the [Sponsor] is a (*large hub primary, medium hub primary, small hub primary, nonhub primary*) airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the [Sponsor] will submit its ACDBE program and overall goals to FAA according to the following schedule:

Type of Airport	Initial Program and Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	
Nonhub Primary	October 1, 2007	October 1, 2010	

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that was in effect before April 21, 2005, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at [*List primary airports owned by the sponsor*]. However, if applicable, we will establish separate ACDBE goals at each location.

When [Sponsor] makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The [Sponsor] is committed to operating its ACDBE program in a nondiscriminatory manner. The [Sponsor]'s Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our ACDBELO: (*Note: This may be the same person that is the Part 26 DBELO*).

[*Provide the name, address, telephone number, and e-mail address*]

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the [Sponsor] complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the [*indicate chief executive officer of sponsor*] concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment __ to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of [*indicate the number of staff*] to assist in the administration of the program. The duties and responsibilities include the following

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes [*Name Sponsor*]'s progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in [*name of State*].
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the [*Sponsor*]'s updated directory on certified ACDBEs and distinguishes them from DBEs.

[*Note: List responsibilities of other personnel responsible for ACDBE Program implementation.*]

Directory: The [*Sponsor*] through the [*State*] Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP revises the Directory [*state interval; must be at least annually.*] We make the Directory available as follows: [*list address, phone number, website, or other means by which interested persons can obtain access to the Directory.*] The Directory may be found in Attachment ____ to this program document.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The [*Sponsor*] will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a) *You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.*

The [*Sponsor*] will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The [*Sponsor's*] overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and Attachment 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the [*Sponsor*] projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 4 and 5 of this plan. (23.25(e))

The [*Sponsor*] will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(g))

Section 23.27 Reporting

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Section 23.29 Compliance and Enforcement Procedures

The [*Sponsor*] will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. (*Identify the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means used to ensure compliance. Detail the level of effort and resources to be devoted to monitoring and enforcement. (23.29)*)

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment).
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by [*describe the mechanism and level of efforts and resources*].
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by [*Name*] and [*Name*] which will make certification decisions on behalf of the (sponsor) for ACDBEs.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

We will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of part 23. We will complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent

certification, whichever is later. Also, prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. Our schedule for this review process will be: *[Include milestones; e.g., our {number} most active firms by {date}, our {number} next most active firms by {date}, etc.]*

We directed all currently certified ACDBEs to submit by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000. We recognize that in calculating personal net worth, the following exclusions apply: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm, to a maximum of \$3 million. Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)).

[When a UCP is established in a state, the UCP rather than the sponsor certifies firms for the ACDBE concession program. 23.39(f)].

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

(Sponsor’s Name) will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor’s circumstances. The sponsor will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The sponsor’s overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

The sponsor consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

The sponsor is a *(large hub primary, medium hub primary, small hub primary, nonhub primary)* airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	
Nonhub Primary	October 1, 2007	October 1, 2010	

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

The sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in *Attachment* ____ to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in *Attachment* ____ to this program.

Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments ____ to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

Concession Specific Goals (Also include this language in the DBE goal attachment) (23.25(c)(e)(1)(iv))

The [*Sponsor*] will use concession specific goals to meet any portion of the overall goals [*Sponsor*] does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. *We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)*

We need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the [*Sponsor*] will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the [*Sponsor*] will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the [*Sponsor's*] concession specific goals. Specifically,

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

The following personnel are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as [*responsive or responsible*] [*Note: Sponsors can choose either approach*]¹.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

[*Sponsor*] treats bidder/offeror's compliance with good faith effort requirements as a matter of [*responsiveness*] or [*responsibility*].

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within ___ days of being informed by [*Sponsor*] that it is not [*responsive or responsible*] because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official: [*provide name, address, phone number, e-*

¹ When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder/offeror must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

mail address.] The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

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

[Note – If there are more detailed reconsideration procedures, the sponsor can include them here or in an attachment reference here.]

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

[Sponsor] will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

[Note: Include the administrative remedies you will use for noncompliance (see 26.53(f)(3)). The following two sentences are examples of such remedies]

If the concessionaire fails or refuses to comply in the time specified, our contracting office will (insert procedures) until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the *[Name of Sponsor]* to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of *(annual gross receipts; value of leases and/or purchases of goods and services)* has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The

dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

[Note: When a concession specific goal is established pursuant to the sponsor's ACDBE program, the sample proposal/bid specification can be used to notify concession firms of the requirements to make good faith efforts. The forms found at Attachment 6 can be used to collect information necessary to determine whether the concession firm has satisfied these requirements. A proposal/bid specification is required only when a concession specific is established.]

Section 23.53 Counting ACDBE Participation for Car Rental Goals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.73 Privately-Owned or Leased Terminal Buildings *(if applicable)*

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee (*other means – identify.*) We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23 and it is incorporated herein and submitted as Attachment _____.

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee (*other means – identify.*) We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23 and it is incorporated herein and submitted as Attachment _____.

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a "long-term" agreement is one having a term of longer than 5 years. We understand that an "exclusive" agreement is one in which an

entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., *your local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

[List and append; we recommend that a copy of part 23 be attached to the program so that public users to whom you send copies can have it handy]

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Regulations: 49 CFR Part 23
Attachment 10	Goals and Elements for Privately-Owned or Leased Terminal Buildings

Attachment 1

Sample Organizational Chart

Airport Board of Commissioners

Executive Director

Airport Director

Airport Operations Division

Airport Grant Administration

ACDBE Liaison Officer

Attachment 2

Sample ACDBE Directory

ABC Mechanical Services, Inc
123 Airport Drive
Anywhere, Anystate, 12345
(123) 555-1111

Sheet Metal

ABC Electrical
567 Plug Drive
Circuit City, Anystate, 12345
(123) 555-2222

Electrical

You must specify whether certified as a DBE or an ACDBE, or both.

Attachment 3

Sample Monitoring and Enforcement Mechanisms

The [*Sponsor*] has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to [*State Code Section X*]; and
3. [*List the other laws, statutes, regulations, etc. that are available to enforce the ACDBE requirements.*]

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The [*Sponsor*] will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:
 - A. [*List enforcement mechanisms and other means you use to ensure compliance, including how you will verify that the work committed to ACDBEs is actually performed by the ACDBEs.*]
2. We will implement the following additional monitoring and compliance procedures:
 - A. [*List other mechanisms.*]
3. We will implement our compliance and monitoring procedures as follows:
 - A. [*Describe in detail the level of effort and resources (i.e. frequency of reviews of records, on-site reviews of concession workplaces, etc.) devoted to monitoring and enforcement.*]

Attachment 4

Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals

Amount of Goal (submit if gross receipts exceed \$200,000)

[Sponsor]'s overall goal for concessions other than car rental during the period beginning _____ and ending _____ is the following: ____% of the total gross receipts for concessions at [Airport name]. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession. [Note: if the sponsor owns more than one airport, a separate goal must be established for each airport 23.21(c).]

The concession opportunities anticipated during this goal period are: _____ with estimated gross receipts revenue of \$ _____. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, [sponsor] will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

[Sponsor] has determined that its market area is _____. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located. [Note: the market area may be different for different types of concessions].

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. [While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.]

Step 1: 23.51(c)

We determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows: *[the following are examples of methods you may use. You may use other methods or combinations of methods to determine the base figure, subject to FAA approval]*

Option 1:

$$\text{Base figure} = \frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area}}{\text{All ready, willing and able non-car rental concession firms in the market area}}$$

The data source or demonstrable evidence used to derive the numerator was: *[use either the DBE directory or an active participant list as outlined in 23.51(c)(2).]*

[ACDBE directories – identify which directories and which NAICS codes were used. You may also augment available ACDBEs with firms in local MBE/WBE directories or trade association lists. If you use these sources to augment the numerator, you must identify the sources used and the number of firms added to the numerator]

[Active Participant List – This represents the number of ACDBEs that have participated or attempted to participate in your concession program in previous years. You must identify where you obtained the information. It may come from past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions.]

The data source or demonstrable evidence used to derive the denominator was: *[use either Census Bureau Data or an Active Participant List as outlined in 23.51(c)(2).]*

[Census Bureau Data at www.census.gov/epcd/cbp/view/cbpview.html – identify NAICS codes were used]

[Active Participant List – This represents the number of ACDBEs that have participated or attempted to participate in your concession program in previous years. You must identify where you obtained the information. It may come from past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions.]

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: _____ %

Show the calculation here. *(You must show your work, provide data, calculations, assumptions, and reasoning used in establishing the goal.)*

Option 2: *Disparity Study – You may use a percentage figure derived from data in a valid, applicable disparity study. You must include information as to its validity and applicability.*

Option 3: *Goal of another sponsor – you may use the goal of another airport or DOT sponsor in the same, or substantially similar market if their overall goal is in compliance with 49 CFR part 23. You must include information as to why your airport concession opportunity has the same or substantially similar market.*

Option 4: Alternative Methods – you may use other methods to determine the base figure, however it must be based on demonstrable evidence of local market conditions and be designed arrive at a goal that is rationally related to the relative availability of ACDBEs in your market area.

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by ___%. Our overall goal for non-car rental concessions is ____%

The data used to determine the adjustment to the base figure was:

- a. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past. *[Provide the details of this past participation and how you used it to adjust the goal up or down.]*
- b. **Disparity study** – *[If there is a disparity study in your jurisdiction, then provide information on it and whether or not you will use it to adjust the goal and why. If there is not one in the state, then say “There are no disparity studies conducted within our jurisdiction that relate to concessions. We will continue to contact state and local agencies to determine when a disparity study becomes available.” If you used a disparity study to arrive at the Step 1 goal, you should not use it here to adjust the goal.]*
- c. **Differences in Market Area and Concessions Program** – *[If you used the goal of another sponsor in Step 1, you must adjust the goal for differences in your market area and concessions program. Describe those differences and how you adjusted the goal.]*.
- d. **Available evidence from related fields that affect opportunities for ACDBEs to form, grow, and compete:**
 - a. *Statistical Disparities in the ability of ACDBEs to get financing, bonding, and insurance required to participate in your program*
 - b. *Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent you can relate it to opportunities for ACDBEs to perform in your program.*

The reason we chose to adjust our figure using this data was because:

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, *[Sponsor]* consulted with the following stakeholders: *[List the stakeholders you consulted with. Stakeholders must include, but not be limited to, minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsor’s efforts to increase participation of ACDBEs.]*

A summary of the information these stakeholders provided follows:

Breakout of Estimated Race-Neutral & Race Conscious Participation
Section 23.51

[Sponsor] will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The [Sponsor] uses the following race-neutral measures to increase ACDBE participation. *[List the things that you actually do – some examples are below as stated in 23.25]* We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;*
5. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
6. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*
7. *Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

We estimate that, in meeting our overall goal of __%, we will obtain __% from race-neutral participation and __% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation: *Summarize how the estimate was derived. This may include:*

1. *The extent that you've exceeded your ACDBE goals in the past;*
2. *ACDBE participation on concession leases that did not have ACDBE requirements;*
3. *Data from private sector MBE/WBE participation;*
4. *ACDBE participation in local programs in which there are no ACDBE concession specific goals;*
5. *Extent of your race-neutral business assistance efforts;*
6. *Information you obtained through consultation with stakeholders;*
7. *ACDBE participation on other city or county concession activity; and*
8. *Other Airport Concessions: If there is an airport that shares your market area and has had similar concession opportunities, then consider what that airport's ACDBE race neutral and race-conscious participation was on the similar concession.*

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal: *List what you will use (examples as stated in 23.25(e)):*

1. *We will establish concession-specific goals for particular concession opportunities.*
2. *Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.*
3. *With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.*

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-

neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

Amount of Goal (submit if gross receipts exceed \$200,000)

[Sponsor]'s overall goal for car rentals during the period beginning _____ and ending _____ is the following: ____% of the total gross receipts of car rental operations at [Airport name] [Note: if the sponsor owns more than one airport, a separate goal must be established for each airport 23.21(c).]

The concession opportunities anticipated during this goal period are: _____. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, [sponsor] will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

[Sponsor] has determined that its market area is _____. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located. [Note: the market area may be different for different types of concessions].

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses at the airport. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

Step 1: 23.51(c)

We determined the base figure for the relative availability of car rental ACDBEs. The base figure was calculated as follows: [the following are examples of methods you may use. You may use other methods or combinations of methods to determine the base figure, subject to FAA approval]

Option 1:

$$\text{Base figure} = \frac{\text{Ready, willing, and able car rental ACDBEs in the market area}}{\text{All ready, willing and able car rental firms in the market area}}$$

The data source or demonstrable evidence used to derive the numerator was: [use either the DBE directory or an active participant list as outlined in 23.51(c)(2).]

[ACDBE directories – identify which directories and which NAICS codes were used. You may also augment available ACDBEs with firms in local MBE/WBE directories or trade

association lists. If you use these sources to augment the numerator, you must identify the sources used and the number of firms added to the numerator]

[Active Participant List – This represents the number of ACDBEs that have participated or attempted to participate in your airport car rental concession program in previous years. You must identify where you obtained the information. It may come from past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions.]

The data source or demonstrable evidence used to derive the denominator was: *[use either Census Bureau Data or an Active Participant List as outlined in 23.51(c)(2).]*

[Census Bureau Data at www.census.gov/epcd/cbp/view/cbpview.html – identify NAICS codes were used]

[Active Participant List – This represents the number of ACDBEs that have participated or attempted to participate in your airport car rental concession program in previous years. You must identify where you obtained the information. It may come from past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions.]

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of: _____ %

Show the calculation here. *(You must show your work, provide data, calculations, assumptions, and reasoning used in establishing the goal.)*

Option 2: Disparity Study – *You may use a percentage figure derived from data in a valid, applicable disparity study. You must include information as to its validity and applicability.*

Option 3: Goal of another sponsor – *you may use the goal of another airport or DOT sponsor in the same or substantially similar market if their overall goal is in compliance with 49 CFR part 23. You must include information as to why your airport concession opportunity has the same or substantially similar market.*

Option 4: Alternative Methods – *you may use other methods to determine the base figure, however it must be based on demonstrable evidence of local market conditions and be designed arrive at a goal that is rationally related to the relative availability of ACDBEs in your market area.*

Car Rental Alternative: *If all or most of your goal is likely to be met through vehicle or other goods and services purchases from ACDBE car rental companies, you may structure the goal in terms of goods and services purchases. You must calculate the goal by dividing the estimated dollar value of the purchases from ACDBEs by the total estimated dollar value of all such purchases by car rental companies. 23.51(c)(5)(ii).*

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by ___%. Our overall goal for car rental concessions is _____%

The data used to determine the adjustment to the base figure was:

- e. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our car rental concessions program by measuring the volume of work ACDBEs have performed in the past. *[Provide the details of this past participation and how you used it to adjust the goal up or down.]*
- f. **Disparity study** – *[If there is a disparity study in your jurisdiction, then provide information on it and whether or not you will use it to adjust the goal and why. If there is not one in the state, then say “There are no disparity studies conducted within our jurisdiction that relate to concessions. We will continue to contact state and local agencies to determine when a disparity study becomes available.” If you used a disparity study to arrive at the Step 1 goal, you should not use it here to adjust the goal.]*
- g. **Differences in Market Area and Concessions Program** – *[If you used the goal of another sponsor in Step 1, you must adjust the goal for differences in your market area and concessions program. Describe those differences and how you adjusted the goal.]*
- h. **Available evidence from related fields that affect opportunities for ACDBEs to form, grow, and compete:**
 - a. *Statistical Disparities in the ability of ACDBEs to get financing, bonding, and insurance required to participate in your program*
 - b. *Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent you can relate it to opportunities for ACDBEs to perform in your program.*

The reason we chose to adjust our figure using this data was because:

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, [Sponsor] consulted with the following stakeholders: *[List the stakeholders you consulted with. Stakeholders must include, but not be limited to, minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsor’s efforts to increase participation of ACDBEs.]*

A summary of the information these stakeholders provided follows:

Breakout of Estimated Race-Neutral & Race Conscious Participation
Section 23.51

[Sponsor] will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The [Sponsor] uses the following race-neutral means to increase ACDBE participation: *[List the things that you actually do – some examples are below]*

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;*
5. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
6. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*
7. *Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

We estimate that, in meeting our overall goal of __%, we will obtain __% from race-neutral participation and __% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation: *Summarize how the estimate was derived. This may include:*

1. *The extent that you've exceeded your ACDBE goals in the past;*
2. *ACDBE participation on concession leases that did not have ACDBE requirements;*
3. *Data from private sector MBE/WBE participation,*
4. *ACDBE participation in local programs in which there are no ACDBE concession specific goals,*
5. *Extent of your race-neutral business assistance efforts.*
6. *Information you obtained through consultation with stakeholders*
7. *ACDBE participation on other city or county concession activity;*
8. *Other Airport Concessions: If there is an airport that shares your market area and has had similar concession opportunities, then consider what that airport's ACDBE race neutral and race-conscious participation was on the similar concession.*

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal: *List what you will use:*

1. We will establish concession-specific goals for particular concession opportunities
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited

to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % ACDBE utilization on this contract.

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

.....
.....
.....
.....

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

Affirmation

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each ACDBE subcontractor.)

Attachment 7

Certification Application Forms

[Include in this attachment a copy of the certification forms that you require the ACDBE to fill out. Also make sure to include the affidavit of personal net worth.]

Attachment 8

Procedures for Removal of ACDBEs Eligibility

[Set out the procedures in 26.87 for the removal of ACDBEs eligibility in this attachment.]

Attachment 9

Regulations: 49 CFR Part 23

[We recommend that you attach a copy of the regulations to your program so that the public users to whom you send copies can have it handy.]

[You may attach other documents as you deem necessary to make your program as complete as possible. The current list of attachments is an example and can be modified at your convenience.]

Attachment 10

Goals and Elements for Privately-Owned or Leased Terminal Buildings