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Airport Concessions Disadvantaged Business Enterprise (ACDBE)

WAYNE COUNTY AIRPORT AUTHORITY
BUSINESS DIVERSITY UNIT (BDU)
11050 ROGELL DRIVE #602
DETROIT, MI 48242

WAYNE COUNTY AIRPORT AUTHORITY
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

TABLE OF CONTENTS

49 CFR SECTION	PAGE
OBJECTIVES/Policy Statement	1
SUBPART A – GENERAL REQUIREMENTS	2
Section 23.1 Objectives.....	2
Section 23.3 DEFINITIONS	2
Section 23.5 Applicability.....	2
Section 23.9 Non-discrimination Requirements	2
Section 23.11 Compliance and enforcement	3
SUBPART B - ADMINISTRATIVE REQUIREMENTS.....	5
Section 23.21 ACDBE Program Updates.....	5
Section 23.23 ADMINISTRATIVE PROVISIONS.....	5
Policy Statement 5	
ACDBE Liaison Officer (ACDBELO).....	5
Directory 6	
Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs	6
Section 23.27 Reporting.....	7
Section 23.29 Monitoring and Enforcement Mechanisms.....	7
SUBPART C – Certification & eligibility	10
Section 23.31 Certification Standards.....	10
SUBPART D – Goals, Good Faith Efforts, & Counting.....	11
Section 23.41 Basic Overall Goal rEQUIREMENT	11
Section 23.43 Consultation in Goal Setting.....	11
Section 23.45 Overall Goals	11
26.25 (e) (1)(iv) Concession Specific Goals	12
Section 23.25 Failure to meet Concession SpECIFIC goals.....	13
Section 26.53 Good Faith Efforts Procedures	13
26.53(a) & (c) Demonstration of good faith efforts.....	13
26.53(b) Information to be submitted	13
Section 23.53 Counting ACDBE Participation for Car Rental Goals	16
Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals	16
Section 23.61 Quotas or Set-asides.....	17
Section 23.71 Existing Agreements.....	18
Section 23.75 Long-Term Exclusive Agreements	18
Section 23.79 Geographic Preferences	18

OBJECTIVES/POLICY STATEMENT

The Wayne County Airport Authority (Airport Authority) has established an Airport Concessions Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Airport Authority 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 Airport Authority has signed airport grant assurances that it will comply with 49 CFR Part 23.

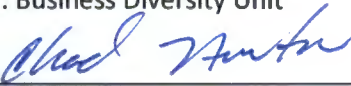
It is the policy of the Airport Authority to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concessions opportunities. It is also our policy:

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.

Malindia Westbrook, Deputy Director of Business Diversity, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Malindia Westbrook 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 Airport Authority in its financial assistance agreements with the Department of Transportation.

The Airport Authority has disseminated this policy statement to the Wayne County Airport Authority Board and all of the components of the organization. This statement has been Distributed to ACDBE and non-ACDBE concessionaire communities in our area, as it will be made available electronically to the public through the Wayne County Airport Authority website at www.metroairport.com or by requesting a copy using the following address:

DBE Program Policy Statement Request
Detroit Metro Airport, Wayne County Airport Authority
11050 Rogell Drive #602
Detroit, MI 48242
Attn.: Business Diversity Unit



Chad Newton
Wayne County Airport Authority
Chief Executive Officer

2-13-19
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

The Airport Authority 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

The Airport Authority 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

The Airport Authority 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 Airport Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

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

The Airport Authority will include the following assurances in all concession agreements and management contracts it executes with any firm:

1. "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or 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 Airport Authority will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200.

The Airport Authority 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.

2 C.F.R. Part 180, Government-wide Debarment and Suspension (Non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs and activities. 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

The Airport Authority 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.

The following enforcement actions apply to firms participating in the Airport Authority ACDBE program:

1. For a firm that does not meet the eligibility criteria of subpart D 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 2 CFR parts 180 and 1200.
2. For a firm that, in order to meet ACDBE goals or other AC/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 D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
3. 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.
4. 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 Airport Authority ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the Airport Authority's compliance with this part at any time, including but not limited to, reviews of paperwork, on site reviews, and review of the Airport Authority's

monitoring and enforcement mechanisms, 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 Airport Authority may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

SECTION 23.21 ACDBE PROGRAM UPDATES

Detroit Metropolitan Wayne County Airport (Detroit Metro Airport) is a large hub primary airport required to have an ACDBE Program.

As a condition of eligibility for FAA financial assistance, the Airport Authority will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

This ACDBE program document applies to Detroit Metro Airport, as required by 23.21(c); however, Willow Run Airport is also managed and operated by the Airport Authority. Willow Run Airport is a reliever airport to Detroit Metro Airport and is not subject to the ACDBE program requirements.

When the Airport Authority makes significant changes to its ACDBE program, it will provide the amended program to the FAA for approval prior to implementing the changes. Until the Airport Authority's new ACDBE program is submitted and approved, the Airport Authority will continue to implement the ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

SECTION 23.23 ADMINISTRATIVE PROVISIONS

Policy Statement

The Airport Authority will create The Policy Statement is elaborated on page 1 of this ACDBE Program.

ACDBE Liaison Officer (ACDBELO)

The Airport Authority has designated the following individual as the ACDBE Liaison Officer:

Malindia Westbrook, Procurement Deputy Director – Supplier Diversity

Detroit Metro Airport, Wayne County Airport Authority

11050 Rogell Drive #602

Detroit, MI 48242

Phone: (734) 942-3659 / Fax: (734) 955-5648

Malindia.westbook@wcaa.us

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Airport Authority complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the CEO, Chad Newton, concerning ACDBE program matters. An organization chart displaying the ACDBELO's position in the organization is found in Appendix 1: Exhibit B of this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program in coordination with other appropriate officials. The ACDBELO has primary responsibility over the administration of the program, however, duties may be conducted and/or delegated to any of the two (2) Business Diversity Unit (DBU) staff members who assist in the administration of the program. The ACDBELO's duties and responsibilities completed to ensure 49 CFR Part 23 compliance are as follows:

- Gather and report statistical data and other information as required by DOT;
- Identify contracts and procurements so that ACDBE goals are included in solicitations to ensure non-discrimination in the award and administration of concessions contract;
- Provide ACDBEs with information and assistance in preparing bids, obtaining bonding, insurance and other business needs;
- Act as liaison to the Uniform Certification Process in Michigan;
- Ensure that bid notices and requests for proposals are available to ACDBEs in a timely manner;
- Work with all departments to set overall three-year goals;
- Ensure that solicitations/contracts contain the clauses and goals required by this program;
- Analyze ACDBE goal attainment and review good faith efforts to identify ways to improve progress;
- Advise contractors on ACDBE matters and of available opportunities through outreach, pre-bid meetings, etc.;
- Plan and participate in ACDBE training seminars; and
- Advise the CEO and Board on ACDBE matters and achievement.

Directory

The Airport Authority, through the Michigan Unified Certification Program (MUCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The MUCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The MUCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The Directory is continuously updated by the certifying agencies each time an ACDBE becomes certified or decertified. The Directory may be found at <https://mdotcf.state.mi.us/public/docs/mucp/files/DBEUCPDirectory.pdf>.

SECTION 23.25 ENSURING NONDISCRIMINATORY PARTICIPATION OF ACDBES

The Airport Authority will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)). The Airport Authority 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 contract covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, the Airport Authority 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 Airport Authority 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 Airport Authority overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 and Exhibit F of this program. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the Airport Authority projects that race-neutral measures alone, are not sufficient to meet an overall goal, so it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Exhibit F of this program. (23.25(e))

The Airport Authority 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. (23.25(f))

The Airport Authority will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25(g)).

SECTION 23.27 REPORTING

The Airport Authority will retain sufficient information about the 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.

The Airport Authority will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the electronic version of the form in Appendix A of Part 23 via the dbE-Connect reporting system.

Prior to submittal of the Annual Report to the FAA, it will be reviewed for reasonableness by a person independent of the report creation process.

SECTION 23.29 MONITORING AND ENFORCEMENT MECHANISMS

The Airport Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. Airport Authority concessions contracts typically contain the following provisions germane to enforcement:

“Concessionaire understands that it is the policy of the Airport Authority that Airport Concessions Disadvantaged Business Enterprises (ACDBEs) that are certified by an authorized certifying entity should have the maximum practical opportunity to participate in the competitive process of supplying services and goods to the Airport Authority as owners, managers, and concessionaires of concessions at the Airport. Accordingly, at all times during the Term of this Agreement, Concessionaire hereby commits and agrees to ACDBE participation of ___% (based upon Concessionaire’s Proposal) of the Concession operations. ACDBE participation is intended to be active ACDBE business sales as a percentage of the Concession’s total Gross Sales, with commensurate risk of loss. Concessionaire hereby agrees, for the Term of this Agreement, to meet the above ACDBE commitment, or in the event that the commitment is not met, to document adequate good faith efforts Concessionaire makes to meet its commitment, including all necessary and reasonable steps Concessionaire takes to achieve the ACDBE commitment, as required in 49 CFR Parts 23 and 26, including any amendments thereto. Concessionaire’s failure

to meet the ACDBE commitment or to provide the Airport Authority with sufficient documentation of Concessionaire's adequate good faith efforts to meet the ACDBE commitment shall be sufficient cause for the Airport Authority to terminate this Agreement. Any waiver, inadvertent or otherwise, of this provision by the Airport Authority shall not be deemed to be a waiver for the remainder of the Term of this Agreement and shall not prohibit the Airport Authority from enforcing this Section with regard to subsequent defaults by the Concessionaire.

Concessionaire may neither terminate an ACDBE nor reduce the scope of the work to be performed by an ACDBE, nor decrease the payment to an ACDBE, without in each instance (i) having just cause (termination for convenience is not permissible); (ii) making good-faith efforts to find another ACDBE subcontractor to substitute for the original ACDBE (these good-faith efforts must be directed at finding another ACDBE to perform at least the same amount of work or service under the Agreement as the ACDBE that was terminated, to the extent needed to meet Concessionaire's ACDBE participation commitment); and (iii) receiving the prior written approval of the ACDBE Liaison Officer in all instances.

For purposes of this Agreement, an ACDBE is a business enterprise that meets the requirements of 49 CFR Part 23 and Part 26, and any amendments thereto.

AND

Concessionaire must submit to the Airport Authority, on or before the fifteenth (15th) day of each month during the Term of this Agreement, a duly certified monthly ACDBE progress report, on forms prescribed by the Airport Authority, showing all ACDBE participation in the Concession during the prior month of operation. The certification must be made by an official of the firm who is responsible for Concessionaire's financial records. ACDBE Progress Reports must be submitted to business.diversity@wcaa.us.

Additional monitoring and enforcement mechanisms are as follows:

(1) Monitoring of Vendor Conduct

- Notify the Department of Transportation of 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.
 - Implement similar action under the Airport Authority's legal authorities, including responsibility determinations in future contracts. Appendix 1: Exhibit E of this program lists the regulation, provisions, and contract remedies available in the event of non-compliance with the ACDBE regulation by a participant in the ACDBE Program.

(2) Monitoring of ACDBE Participation

- Verification that work committed to ACDBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the ACDBEs to which the work was committed.
 - Written certification that a review of contracting records, leases, joint venture agreements and other concession-related agreements. BDU staff will also conduct on-site visits as well as record audits to confirm that ACDBEs are genuinely participating on a contract in the commercially useful function and percentage anticipated.
- Use of a tracking mechanism that will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms and/or joint venture percentage), including a means of comparing these attainments to commitments. The annual Uniform Report of ACDBE participation to DOT will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION & ELIGIBILITY

SECTION 23.31 CERTIFICATION STANDARDS

While the Airport Authority is not a certifying agency, it does participate in the Michigan Unified Certification Program (MUCP) that has three certifying agencies in Michigan that use the certification standards of Subpart C of 49 CFR Part 23 to determine the eligibility of firms to participate as ACDBEs on concessions contracts. To be certified as a ACDBE, a firm must meet all certification eligibility standards. All certification decisions are based on the facts as a whole.

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

Detroit Department of Transportation (DDOT)
Alicia Miller
DER/DBE Manager
1301 E. Warren
Detroit, MI 48207
Phone: (313) 833-3658 / Fax: (313) 833-3542
alimil@detroitmi.gov

Wayne County Human Relations Division
Dawn Lee - Cotton
500 Griswold – 15th Floor
Detroit, MI 48226
Phone: (313) 224-5021 / Fax: (313) 224-6932
dleecotton@waynecounty.com

Michigan Department of Transportation (MDOT)
Lisa Thompson, Administrator
425 W. Ottawa
PO Box 30050
Lansing, MI 48909
Phone: (866) 323-1264 / Fax: (517) 335-0945
mdot-dbe@michigan.gov

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, the Airport Authority will review the firm's eligibility at that time of solicitation review rather than waiting until the latest date allowed under Part 23.

The MUCP certification application forms and documentation requirements are found in Appendix 1: Exhibit H of this program.

SUBPART D – GOALS, GOOD FAITH EFFORTS, & COUNTING

SECTION 23.41 BASIC OVERALL GOAL REQUIREMENT

The Airport Authority 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 Airport Authority will review the goals annually to make sure the goal continues to fit the Airport Authority’s circumstances. Any significant overall goal adjustments will be reported to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, the Airport Authority will 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, the Airport Authority will not submit an overall goal for concessions other than car rentals. The Airport Authority understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The Airport Authority’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 Airport Authority consults with stakeholders before submitting the overall goals to the FAA. Stakeholders include, but are not 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 overall goals, the Airport Authority will identify the stakeholders that were consulted with and provide a summary of the information obtained from the stakeholders.

SECTION 23.45 OVERALL GOALS

The Airport Authority is a large hub primary airport. As a condition of eligibility for FAA financial assistance, the Airport Authority will establish an overall ACDBE goal covering three federal fiscal year periods which will be submitted its Overall Three-Year ACDBE Goal to the FAA by October 1 as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All	10/1/19 (2020/2021/2022)	10/1/22 (2023/2024/2025)

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 Airport Authority will submit an appropriate overall goal adjustment to the FAA for approval, no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

The Airport Authority 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)

The Airport Authority will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

A description of the methodology used to calculate the overall goal for both concessions other than car rentals, and car rentals, in addition to the goal calculations, and the data relied on can be found in Exhibit F to this program.

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

26.25 (e) (1)(iv) Concession Specific Goals

The Airport Authority will use concession specific goals to meet any portion of the overall goals it 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.

The Airport Authority will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. Businesses subject to ACDBE goals at the airport (except car rental companies) will be required 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, the goal will be structures entirely in terms of purchases of goods and services.

A concession specific goal will not necessarily be established on every such concession, as each concession will be analyzed on a case-by-case basis for applicability. The objective of the concession specific goals on non-car rentals is to obtain ACDBE participation through direct ownership with an ACDBE, and will be calculated as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

For car rental concession specific goals which apply to purchases and/or leases of goods and services, the Airport Authority 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))

SECTION 23.25 FAILURE TO MEET CONCESSION SPECIFIC GOALS

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 concession specific goals.

SECTION 26.53 GOOD FAITH EFFORTS PROCEDURES

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The ACDBELO or its representative is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive. Prior to contract award, the Airport Authority will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts to meet the goal.

26.53(b) Information to be submitted

The Airport Authority treats bidder/offerors' compliance with good faith effort requirements as a matter of responsiveness. As a result, each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information by bid deadline and verified before the contract is executed:

- (1) The names and addresses of ACDBE firms that will participate in the contract;
- (2) A description of the work that each ACDBE will perform (In order to be counted toward meeting the goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract)
- (3) The dollar amount of the participation of each ACDBE firm participating;
- (4) Written and signed documentation of commitment to use a ACDBE sub-concession whose participation it submits to meet a contract goal; and
- (5) Written and signed confirmation from each listed ACDBE that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
- (6) If the contract goal is not met, evidence of adequate good faith efforts.

26.53 (d) Administrative reconsideration

Within 7 business days of being informed by the Airport Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

June Lee
Chief Operating Officer
Wayne County Airport Authority
11050 Rogell Drive #602
Detroit, MI 48242

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

26.53 (f) Good Faith Efforts when an ACDBE is Replaced on a Concession

The Airport Authority 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. The concessionaire must notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

The ACDBELO will provide such written consent only if the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime concessionaire;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements;

- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The Airport Authority has determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides the Airport Authority with written notice of its withdrawal;
- (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that the Airport Authority has determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

Before transmitting to the Airport Authority its request to terminate and/or substitute an ACDBE sub-concession, the prime concession must give notice in writing to the ACDBE sub-concession, with a copy to the Airport Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concession must give the ACDBE five days to respond to the prime concession's notice and advise the Airport Authority and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why the Airport Authority should not approve the prime concession's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Airport Authority may provide a response period shorter than five days.

In accordance with 29 CFR 26.53(f)(2) the Airport Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. In this instance, the Airport Authority will require the prime contractor to make available upon request, a copy of all new, amended DBE subcontracts or good faith efforts.

If the contractor fails or refuses to comply in the time specified, the Airport Authority's CEO or designee will assess penalties until satisfactory action has been taken up to and including: stop payment; liquidated damages; fines; and debarment. If the contractor still fails to comply, the contracting officer may issue a contract termination for default proceeding.

Forms that are used to collect the information necessary to determine whether a bidder/offeree has satisfied the bid specifications can be found in Appendix 1: Exhibit H of this program.

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 Airport Authority 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.

SECTION 23.53 COUNTING ACDBE PARTICIPATION FOR CAR RENTAL GOALS

The Airport Authority will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 3.53.

SECTION 23.55 COUNTING ACDBE PARTICIPATION FOR CONCESSIONS OTHER THAN CAR RENTALS

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

SECTION 23.57 (B) GOAL SHORTFALL ACCOUNTABILITY.

If the awards and commitments the Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, within 90 days of the end of the fiscal year, the Airport Authority will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis in order to fully meet the goal for the new fiscal year;
- (3) Submit the analysis and corrective actions to the FAA for approval.

The Airport Authority understands that the FAA may impose conditions as part of its approval of analysis and corrective actions including, but not limited to, modifications to the overall goal methodology, changes in the race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

The Airport Authority also understands that it may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- (1) The analysis and corrective actions are not submitted to the FAA in a timely manner as required under paragraph (b)(3) of this section;
- (2) FAA disapproves of the analysis or corrective actions; or
- (3) The Airport Authority does not fully implement:
 - a. The corrective actions, or
 - b. Conditions that FAA has imposed following review of analysis and corrective actions.

If information coming to the attention of FAA demonstrates that current trends make it unlikely that the Airport Authority, will achieve ACDBE awards and commitments that would be necessary to meet the overall goal at the end of the fiscal year, the FAA may require further good faith efforts, such as modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

SECTION 23.61 QUOTAS OR SET-ASIDES

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

SUBPART E – OTHER PROVISIONS

SECTION 23.71 EXISTING AGREEMENTS

The Airport Authority 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 and will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

SECTION 23.75 LONG-TERM EXCLUSIVE AGREEMENTS

The Airport Authority will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. The Airport Authority understands that a “long-term” agreement is one having a term of longer than 5 years and 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, detailed information will be submitted to the FAA Regional Civil Rights Office for review and approval.

SECTION 23.79 GEOGRAPHIC PREFERENCES

The Airport Authority will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., Southeast Michigan) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at Detroit Metro Airport.