

**AIRPORT CONCESSION
DISADVANTAGED BUSINESS ENTERPRISE PLAN**

**CITY OF PORTLAND, MAINE, dba
PORTLAND INTERNATIONAL JETPORT (PWM)**



**Goals - FAA
FISCAL YEAR 2015**

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U.S. Department of Transportation Federal Aviation Administration

Airport Concession Disadvantaged Business Enterprise Program -
49 CFR Part 23

City of Portland, Maine
for the Portland International Jetport

I. Objectives and Policy Statement (29 CFR Part 23.1)

The City of Portland, Maine (hereafter "the City"), on behalf of the Portland International Jetport, has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 23. The City has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the City has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to participate in Airport Concessions contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of Airport Concessions contracts;
2. To create a level playing field on which DBEs can compete fairly for Airport Concession contracts;
3. To ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
5. To help remove barriers to the participation of ACDBEs in Airport Concession contracts, and
6. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Mr. Zachary R. Sundquist, A.A.E., Deputy Director of Administration and Properties, Portland International Jetport, 1001 Westbrook St., Portland, ME 04102, (207) 874-8027 has been designated as the ACDBE Liaison Officer (ACDBELO).

Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred

by the City in its financial assistance agreements with the Federal Aviation Administration.

The City has disseminated this policy statement to the City Council members and all of the components of our organization. The City will publicize this statement to the DBE and non-DBE business communities that perform work for us on Concessions contracts in the following manner:

1. This policy statement will be prepared as a handout, and made available at pre-proposal conferences and/or outreach meetings conducted by the City.
2. Copies of the Policy statement will be mailed to all of the agencies/organizations consulted during the development of the ACDBE goal methodology. This will make the City's policy for the Portland International Jetport available to additional small, minority and women-owned business development agencies.

Paul H. Bradbury, Airport Director

Date

II. 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 City 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 City is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *t seq.* and therefore the Portland International Jetport is subject to part 23.

Section 23.9 Non-discrimination Requirements

The Portland International Jetport 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 DBE program, the Portland International Jetport 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 City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The City will include the following assurances, per 49 CFR Part 23.9, 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 26.11 Compliance and Enforcement

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

The City 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 City'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 City's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the City'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 City 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 City'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 Portland International Jetport's ACDBE program or otherwise violates applicable Federal statutes.

III SUBPART B - ACDBE Programs

Section 23.21 ACDBE Program Updates

Since the Portland International Jetport is a small hub primary airport, we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Portland International Jetport will submit its ACDBE program and overall goals to FAA according to the following schedule: Initial Program and Goal Due - October 1, 2015, with Subsequent Goals due - every 3 years on October 1.

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that was in effect October 1, 2010, except with respect to any provision that is contrary to 49 CFR Part 23.

When the Portland International Jetport 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 City is committed to operating its ACDBE program in a non-discriminatory manner. The Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our DBE Liaison Officer:

Zachary R. Sundquist, A.A.E.
Assistant Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04102
Telephone: (207) 756-8027
Fax: (207) 774-7740
zrs@portlandmaine.gov

In this capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Portland International Jetport complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director and the City concerning ACDBE program matters. An organization chart displaying the ACDBELO's position in the organization is found in Attachment 2 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The City believes that it has adequate staff and resources to administer its ACDBE program in compliance with the applicable regulations. The ACDBELO carries out the following responsibilities:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with the City Purchasing department to review third party contracts and purchase requisitions for compliance with this program.
3. Works with other City departments to set overall annual goals.
4. Works with the City Purchasing department to ensure that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Works with the City Purchasing department to identify contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.

6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City and the Jetport Director on ACDBE matters and achievement.
9. Works with legal counsel and senior staff to determine contractor compliance with good faith efforts.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Process in the State of Maine.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

Directory: The Maine Department of Transportation maintains a directory identifying all firms eligible to participate as DBEs. 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 a DBE. The Maine Department of Transportation revises the Directory annually. We make the Directory available as follows, also in Attachment 3:

Maine Department of Transportation
Sherry Tompkins, DBE Program Administrator
16 State House Station
Augusta, ME 04333-0016
(207) 624-3066
<http://www.maine.gov/mdot/civilrights/documents/WeeklyDBEVendorList.pdf>

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

Portland International Jetport will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a)):

1. The City 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)).
2. The City's overall goal methodology, and a description of the race-neutral measures it will take to meet the goals, is described in Section 23.25 and Attachments 6

and 7 of this plan. The goals are set consistent with the requirements of Subpart D (23.25(b), (d)).

3. If the City 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 Attachments 6 and 7 of this plan (23.25(e)).
4. The City 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.
5. The City will not use set-asides or quotas as a means of obtaining ACDBE participation (23.25 (f), (g)).

Section 23.27 Reporting Requirements

1. Reporting to USDOT-FAA

The City will submit annually the USDOT-FAA Uniform Report of ACDBE Participation.

2. Information to be retained

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 contracts. 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 City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. The City 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. The City will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Our legal authorities include the Maine Criminal Code, Title 17-A of the Revised Statutes, including but not limited to Chapters 15, 19, 25, 29, 31 and 37 which prohibit false, fraudulent and dishonest behavior and can be prosecuted through the State District Attorney's office or the State Attorney General's office.
 - a. 3. The City 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: Requiring quarterly ACDBE participation reports.
 - b. Performing on-site visits on a periodic basis to interview key employees on control, management and ownership of ACDBE concessions.
 - c. The ACDBELO will track and compare ACDBE accomplishments with Concession Program goals and contract provisions to determine compliance. If it is determined that a problem exists, then the City will work with the Concessionaire in resolving the issue.
3. 4. In our reports of ACDBE participation to DOT, the City will show both commitments and attainments, as required by the DOT reporting form.

IV. SUBPART C -CERTIFICATION AND ELIGIBILITY

Section 23.31 The City is a member of the Maine DOT Unified Certification Program. Maine DOT administers the Unified Certification Program (UCP) for the State of Maine, which will make certification decisions on behalf of the City of ACDBEs. The UCP 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.

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.

The UCP was to have reviewed the eligibility of currently certified ACDBEs to make sure that they will meet the standards

of Part 23. The UCP was to have completed these reviews by 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, the UCP was to have reviewed their eligibility at that time.

All currently certified ACDBEs to submit by April 21, 2006, a personal net worth statement, a certification of disadvantaged, and an affidavit of no change.

The UCP 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).

The UCP 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).

The UCP recognizes that the provisions of Part 26, sections 26.83(c) (2-6) do not apply to certificates 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)).

The UCP acknowledges 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)).

The UCP 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 PWM standard, and the firm in all other respects remains an eligible DBE, the UCP may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. The UCP 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)).

The UCP will use the Uniform Application Form found in Appendix F to Part 26 with additional instructions as stated in 23.39(g).

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The Portland International Jetport 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 City's circumstances. The City 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, the City 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, the City 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 Portland International Jetport's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation and Public Participation

Before establishing the overall goal each year, the City will consult with current concessionaires, small business development organizations and other community groups, without limiting consultation to these persons or groups, without limiting consultation to these persons or groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the City's efforts to establish a level playing field for the participation of ACDBEs.

Section 23.45 Overall Goals

The Portland International Jetport is a *small hub primary* airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule: The initial goal was due October 1, 2006; the second goal was due October 1, 2009; and subsequent goals due every 3 years on October 1st.

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 City will submit an appropriate adjustment to the overall goal to FAA for approval at least six months before executing the new concession agreement.

The City 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 City'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, or 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 6 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 7 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 6 and 7 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 (23.25 (c) (e) (1) (iv))

The City will use concession specific goals to meet any portion of the overall goals that 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 City will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. *(The City 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.)

The City 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 City 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 Portland International Jetport 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 Portland International Jetport concession specific goals.

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

The ACDBELO is 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.

The ACDBELO will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before the Airport commits to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

The City treats bidder/offeror's compliance with good faith effort requirements as a matter of 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 an 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 7 days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. The concessionaire should make this request in writing to the following reconsideration official:

Paul Bradbury
Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04102
Telephone: (207) 756-8877

Fax: (207) 774-7740
phb@portlandmaine.gov

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. The City 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 U.S. Department of Transportation.

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

The City 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, the City 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.

If the contractor fails or refuses to comply in the time specified, the City's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the 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 City 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, 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 firm 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.

D. Base goals for concessions other than car rentals (23.47)

The base of the City's "non-car rental" concession goal will be the projected total gross receipts of all non-car rental concessions except as otherwise stated in 23.47.

E. Base of goals for car rentals (23.49)

The base of the City's car rental concession goal will be the projected total gross receipts of all car rental concessions except where the City uses the alternative goal approach of 23.51 (c) (5) (iii).

F. Expression and calculation of goals (23.51)

The City, in developing its overall goals and methodology, utilized the suggested procedures contained in Part 23.51, i.e., using DBE directories and census data NAICS/SIC Codes to establish the Base Figure for Step 1. Additionally, the regulations require consideration of additional "Step 2" adjustment factors, including the possibility of information from disparity studies and/or "the current capacity of DBEs to

perform work in your concessions program, as measured by the volume of revenues DBEs have attained in recent years" were used as part of this methodology.

G. Counting ACDBE Participation for Car Rental Goals (23.53) The City will count ACDBE participation for car rentals in accordance with 49 CFR 23.53. Only participation from certified ACDBEs will be counted. Car rentals may count ACDBE participation in the following ways:

1. **Direct ownership arrangements**, which are not required by this program.
2. **Purchases or leases of vehicles**, the car rental company must submit to the City documentation of the good faith effort made to obtain ACDBE participation from other ACDBE providers of goods and services.
3. **Cost of repairing vehicles**, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services. The City will not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.
4. **Other goods and services**, count participation as provided in part 26, sections 26.55 and 23.55 of part 23. In the event of any conflict between these two sections, section 23.55 controls.

H. Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

The City count ACDBE participation toward overall goals for other than car rental as provided in 49 CFR 23.55. Only participation from certified ACDBEs who perform a commercially useful function will be counted. For the purpose of this program, "commercially useful function" has the same meaning as in part 26, section 26.55(c), except the requirements of section 26.66(c)(3) do not apply to concessions. Non-car rentals may count ACDBE participation in the following ways:

1. **Total value of gross receipts earned under a concession agreement**
2. **Total value of a management contract or subcontract.** If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, the City will not count any of the gross receipts earned by the non-ACDBE.
3. **Joint Ventures.** Count a portion of the gross receipts equal to the distinct, clearly defined portion of the work that the ACDBE performs with its own forces.

4. Services. Count entire amount of fees or commissions charged by an ACDBE that are reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Goods. Count 100% of the cost of goods obtained from an ACDBE manufacturer. Count entire amount of fees or commissions that are reasonable and not excessive compared with fees customarily allowed for similar goods. Count entire amount of fees or transportation charges for the delivery of goods required for a concession that are reasonable and not excessive as compared with fees customarily allowed for similar goods.

I. Section 23.61 Quotas or Set-asides

The City will not use quotas or set-asides in any way in the administration of this ACDBE program.

VI. SUBPART E - OTHER PROVISIONS

A. Section 23.71 Existing Concession Agreements

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

B. Section 23.73 Privately-owned or Leased Terminal Buildings

There are no privately owned or leased terminal buildings at the Portland International Jetport.

C. Section 23.75 Long-Term Exclusive Agreements

The City will not enter into a long-term exclusive agreement for concessions without prior approval from the FAA. 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 in to a long-term and exclusive agreement, we will submit detailed information to the FAA for review and approval.

D. Section 23.77 State and Local Law

In the event that the City discovers that a state or local law differs from part 23, the City will take steps to comply with part 23 and the actions required in 23.77.

Section 23.79 Geographic Preferences

The City will not use local geographic preferences in administering its ACDBE program.

ATTACHMENTS

- Attachment 1 Regulation: 49 CFR Part 23
- Attachment 2 Portland International Jetport Organizational Chart
- Attachment 3 State of Maine DBE Directory
- Attachment 4 State of Maine UCP
- Attachment 5 Signed UCP Agreement Form
- Attachment 6 Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race Conscious Participation
- Attachment 7 Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-neutral & Race Conscious Participation
- Attachment 8 Forms 1 & 2 for Demonstration of Good Faith Efforts or Good Faith Effort Plan
- Attachment 9 Portland International Jetport ACDBE Concession reporting form
- Attachment 10 Doors reporting form
- Attachment 11 Letter to Purchasing Office

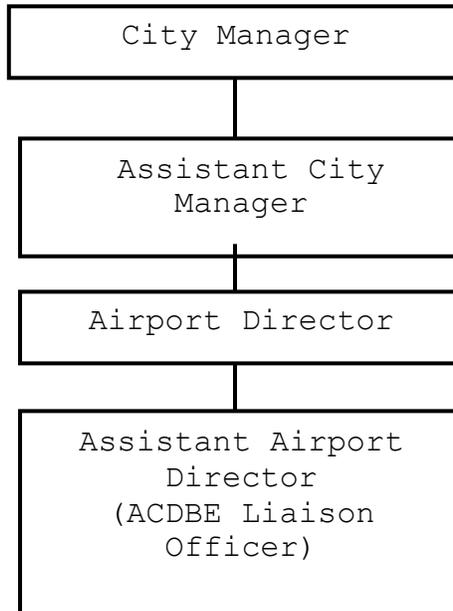
Attachment 1

Regulations: 49 CFR Part 23

http://www.access.gpo.gov/nara/cfr/waisidx_02/49cfr23_02.html

Attachment 2

Organizational Chart



Attachment 3

DBE Directory

<http://www.maine.gov/mdot/civilrights/documents/WeeklyDBEVendorList.pdf>

Attachment 4

State of Maine UCP

<http://www.maine.gov/mdot/civilrights/>

Attachment 5

Signed UCP Agreement Form

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PORTLAND JETPORT

PAGE 02

AGREEMENT

Between the

**MAINE DEPARTMENT OF TRANSPORTATION
OFFICE OF HUMAN RESOURCES**

And

CITY OF PORTLAND, PORTLAND JETPORT

This Agreement is made this 12th day of APRIL, 2002, by and between the **State of Maine**, through its **Department of Transportation (MDOT)**, with an address of 16 State House Station, Augusta, Maine, and PORTLAND INT'L JETPORT, with an address of 1001 WESTBANK ST PORTLAND, Maine.

I. AGREEMENT

MDOT and the named party hereby agrees as follows:

1. The named party agrees that as a recipient of USDOT financial assistance it will cooperate fully with the Maine Department of Transportation in the certification of Disadvantaged Business Enterprises.
2. The named party agrees it shall utilize the MDOT Disadvantaged Business Enterprise Certification program.
3. The named party agrees to refer potential applicants for DBE Certification to MDOT.
4. The named party agrees to honor the decisions made by MDOT with respect to certification decisions made in accordance with 49 CFR Parts 23 and 26 Subpart E Certification Procedures.
5. MDOT will accept, review, and make determinations about DBE Certification for those entities referred to it by the named party.

II TERMS

This Agreement remains in place indefinitely.

SEEN AND AGREED TO BY:

MAINE DEPARTMENT OF TRANSPORTATION

Penny Plourde

By: Penny Plourde Manager, Small Business Programs

Jeffrey Scholtes
By: Jeffrey Scholtes

4/12/02
Title ACCOUNT MANAGER

Attachment 6

Section 23.45: Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race Conscious Participation

Name of Recipient: Portland International Jetport

Goal Period: FY-2015 – October 1, 2014 through September 30, 2016

DOT-assisted contract amount: **ACDBE Goal:** 0% percent
Total dollar amount to be expended on ACDBE's:

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

The Portland International Jetport's overall goal for car rental during the period beginning FY 2015 and ending FY 2017 is the following: 0% of the total gross receipts of car rental operations at the Portland International Jetport.

The concession opportunities anticipated during this goal period are based upon two (2) factors: 1) the number of enplaned passengers expected to come through the airport, and 2) the amount of revenue generated per enplaned passenger.

Table 1: Projected car-rental concessions revenue for FY 2015 – FY 2017

# of passengers	Amount of revenue generated per passenger	Projected revenue
2015 – 845,000	\$3.455	\$2,919,475
2016 – 852,000	\$3,208	\$2,733,216
2017 – 861,000	\$3.272	\$2,817,192
Total Revenue		\$8,469,883

The City of Portland projects that the base figure for car rental concessions revenue opportunities for the years 2015 – 2017 is **\$8,469,883**. 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, the Portland International Jetport 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)).

Market Area: The Portland International Jetport has determined that its market area is the Portland-South Portland Metropolitan Statistical Area (MSA). 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 would receive a substantial majority of concessions related revenues.

The Portland International Jetport believes that (although the car rental agencies currently doing business at the Jetport are located nationally), at least 80% of the car rental agencies suppliers of goods and services that are most likely to participate are local and regional firms. Therefore, the Portland International Jetport used the Portland-South Portland MSA as the market area in calculating the goal.

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchases of goods and services used in business conducted at the airport from ACDBEs of goods and services used in businesses conducted 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:

Option 1:

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

Table 2: Determination of Relative Availability of ACDBEs (Car Rental)

Concession Type	NAICS	Activity	ACDBE Firms	All Firms	% of ACDBE Firms Available
Car rental concessions (services)	8111	Automotive Repair and Maintenance Services	0	342	0%

ACDBE directories – The Maine Department of Transportation Disadvantaged Business Enterprise Directory (dated March 25, 2014) was used to identify any ACDBEs within the market area with the NAICS code of 8111 (Automotive Repair and Maintenance Services). NAICS code 8111 is defined as Automotive Repair and Maintenance Services. Using the US Census Bureau web site at (www.census.gov/epcd/cbp/view/cbpview.html) and searching the database using the Portland-South Portland Metropolitan Statistical Area (MSA), we found 342 firms listed. The numerator for our calculation is 342.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of: 0%.

The calculation is: 0/342 = 0%

Option 2: Disparity Study – There are no applicable disparity studies available for our use in developing an ACDBE goal. First, the recipient researched its market area for any disparity studies that may have been conducted in the last 7 years and found none. The Portland International Jetport contacted the Maine Department of Transportation and Supportive Services, Disadvantaged Business Enterprise, as well as searched Google using the search terms “disparity studies in Maine” and “Portland Maine disparity studies”, and found that there are no relevant disparity studies.

Option 3: Goal of another sponsor – there is not another sponsor in a substantially similar market whose goal we could use in developing our ACDBE goal.

Option 4: Alternative Methods – we will not use any other methods to determine the base figure.

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. The Portland International Jetport did not adjust the base figure.

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. The Portland International Jetport does not have any information available regarding past participation of ACDBEs in concessions at the airport.
- b. **Disparity study** – we have not conducted a disparity study and are not aware of any disparity studies that are available for the state of Maine that relate to concessions. We researched the market area for any disparity studies that may have been conducted in the last 7 years and found none. The Portland International Jetport contacted the Maine Department of Transportation and Supportive Services, Disadvantaged Business Enterprise, as well as searched Google using the search terms “disparity studies in Maine” and “Portland Maine disparity studies”, and found that there are no relevant disparity studies. We will continue to contact state and local agencies to determine when a disparity study becomes available.
- c. **Differences in Market Area and Concessions Program** – We did not consider differences in Market Area and Concessions Programs.
- d. **Available evidence from related fields that affect opportunities for ACDBEs to form, grow, and compete:**
 1. We could not find any available evidence of statistical disparities in the ability of ACDBEs to get financing, bonding, and insurance required to participate in our program.
 2. We could not find any available data on employment, self-employment, education, training, and union apprenticeship programs, that relates to opportunities for ACDBEs to perform in our program.

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, the Portland International Jetport consulted with the following stakeholders:

1. The Portland International Jetport met with the Maine Department of Transportation’s Civil Rights Office on April 16, 2010, and was told that the Maine Department of Transportation did not calculate or submit DBE goals regarding Federal Aviation Administration funding projects.
2. Lynn Boccio – Avis/Budget, 973-496-2174 agreed that our goals are reasonable.
3. Mike Malok – Hertz, 207-774-6391 agreed that our goals are reasonable.

In conclusion, all three factors were looked at and none of them warranted an adjustment to Step 1 calculation, so the final goal is 0 %.

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation, Section 23.51

The Portland International Jetport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Portland International Jetport uses the following race-neutral measures to increase ACDBE participation. We take the following steps:

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

We estimate that, in meeting our overall goal of 0%, we will obtain 0.0% from race-neutral participation and 0% through race-conscious measures.

The reason for this projected split is that there is no historical information on ACDBE participation at the airport to determine whether or not ACDBE goals in the past were met or underachieved. Therefore, the Portland International Jetport expects to meet its goal using race-conscious means.

In the future, the Portland International Jetport will project to meet its goal to the maximum feasible extent using race-neutral means. If the Portland International Jetport projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use the following race-conscious measures to meet the overall goal.

1. 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; and
3. With prior FAA approval, other methods that takes a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if the Portland International Jetport uses concession-specific goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and 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; and 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 in making the award.

The Portland International Jetport will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 7

Section 23.45: Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-neutral & Race Conscious Participation

Name of Recipient: Portland International Jetport

Goal Period: FY-2015 – October 1, 2014 through September 30, 2016

DOT-assisted contract amount: **ACDBE Goal:** .6 percent

Total dollar amount to be expended on ACDBE's:

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

The Portland International Jetport's overall goal for concessions other than car rental during the period beginning FY 2015 and ending FY 2017 is the following: .6% of the total gross receipts for concessions at the Portland International Jetport. 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.

When new concession opportunities arise prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Portland International Jetport 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)).

The Portland International Jetport has determined that its market area for non-car rental concessions is the state of Maine. 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.

The concession opportunities anticipated during this goal period are based upon two (2) factors: 1) the number of enplaned passengers expected to come through the airport, and 2) the amount of revenue generated per enplaned passenger.

Table 1: Projected non car-rental concessions revenue for FY 2015 – FY 2017

Fiscal year	# of passengers	Revenue generated/passenger	Total project revenue
2015	845,000	\$4.45	\$3,760,250
2016	852,000	\$4.24	\$3,612,480
2017	861,000	\$4.32	\$3,719,520
Total Revenue			\$11,092,250

The estimated gross receipts revenue for the projected goal period are **\$11,092,250**. 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, the Portland International Jetport 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)).

The market area is defined by 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 which receive the substantial majority of concessions-related revenues are located.

The Portland International Jetport believes that, although the non-car rental concessionaires that are currently doing business with the airport are located nationally, ACDBEs that would most likely participate would be local and regional, especially for the purchase of goods and services, or for doing business as sub concessionaires. Therefore, the Portland International Jetport proposes to use the entire state of Maine as the market area.

Methodology used to Calculate Overall Goal

Goods and Services

The City of Portland can meet the percentage goal by counting the purchase from ACDBEs of goods and services used in non-car rental concessions business conducted at the airport. The airport, and the non-car rental concessionaires at the airport, should 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

The City of Portland can meet the percentage goal by counting any non-car rental concessions operated through a management contract or subcontract with an ACDBE. The Portland International Jetport, and the concessionaires 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 concession activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While the Portland International jetport realizes that this appears to go against the normal rules and rationale for goal-setting, the City understands 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:

Option 1:

Ready, willing, and able non-car rental ACDBEs in the market area
 Base figure = _____

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 the DBE directory.

Table 3: Determination of Relative Availability of ACDBEs (Non-Car Rental)

Concession Type	NAICS	ACDBE Firms	All Firms	% of ACDBE Firms Available
Books	4512	1	14	7.1%
Gifts	45322	1	108	0.9%
Advertising	5418	7	96	7.3%
Food	7222	0	1,424	0
Telephone	812990	0	18	0
Carts	423860	1	4	25.0%

ATMs	5222	0	46	0
TOTAL FIRMS		10	1,988	.6%

ACDBE directories – The Maine Department of Transportation Disadvantaged Business Enterprise Directory (dated March 15, 2014) was used to identify any ACDBEs within the market area with the NAICS codes of 45, 52, 54, 72, and 81. We identified four firms in the Market Area that are ready, willing, and able non-car rental ACDBEs in the market area. The numerator for our calculation is 4.

- NAICS code 4512 is defined as Books, Periodicals, & Gifts. The MaineDOT directory identified one firm with this NAICS code.
- NAICS code 45322 is defined as Gift, Novelty, & Souvenirs. The MaineDOT directory identified one firm under this NAICS code. NAICS code 5418 is defined as Advertising, Public Relations, & Related Services. The MaineDOT showed seven firms identified under the NAICS code of 5418.
- NAICS code 7222 is defined as Limited Service Eating Places. The MaineDOT directory did not list any firms with this NAICS code.
- NAICS code 812990 is defined as Pay Telephone. The MaineDOT directory did not list any firms with this NAICS code.
- NAICS code 423860 is defined as Carts. The MaineDOT directory identified one firm with this NAICS code.
- NAICS code 5222 is defined as Depository Credit Intermediation. The MaineDOT directory did not list any firms with this NAICS code.

Using the US Census Bureau web site at (www.census.gov/epcd/cbp/view/cbpview.html) and searching the database using the State of Maine, we found 1,988 firms listed. The denominator for our calculation is 1,710.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: .6%.

The calculation is: 10/1,710 = .6%

Option 2: Disparity Study – There are no applicable disparity studies available for our use in developing an ACDBE goal. First, the recipient researched its market area for any disparity studies that may have been conducted in the last 7 years and found none. The Portland International Jetport contacted the Maine Department of Transportation and Supportive Services, Disadvantaged Business Enterprise, as well as searched Google using the search terms “disparity studies in Maine” and “Portland Maine disparity studies”, and found that there are no relevant disparity studies.

Option 3: Goal of another sponsor – there is not another sponsor in a substantially similar market whose goal we could use in developing our ACDBE goal.

Option 4: Alternative Methods – we will not use any other methods to determine the base figure.

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. The Portland International Jetport did not adjust the base figure.

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 concessions program by measuring the volume of work ACDBEs have performed in the past. The Portland International Jetport does not have any information available regarding past participation of ACDBEs in concessions at the airport.
- f. **Disparity study** – we have not conducted a disparity study and are not aware of any disparity studies that are available for the state of Maine that relate to concessions. We researched the market area for any disparity studies that may have been conducted in the last 7 years and found none. The Portland International Jetport contacted the Maine Department of Transportation and Supportive Services, Disadvantaged Business Enterprise, as well as searched Google using the search terms “disparity studies in Maine” and “Portland Maine disparity studies”, and found that there are no relevant disparity studies. We will continue to contact state and local agencies to determine when a disparity study becomes available.
- g. **Differences in Market Area and Concessions Program** – We did not consider differences in Market Area and Concessions Programs.
- h. **Available evidence from related fields that affect opportunities for ACDBEs to form, grow, and compete:**
 1. We could not find any available evidence of statistical disparities in the ability of ACDBEs to get financing, bonding, and insurance required to participate in our program.
 2. We could not find any available data on employment, self-employment, education, training, and union apprenticeship programs, that relates to opportunities for ACDBEs to perform in our program.

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, the Portland International Jetport consulted with the following stakeholders:

1. The Portland International Jetport met with the Maine Department of Transportation’s Civil Rights Office on April 16, 2010, and was told that the Maine Department of Transportation did not calculate or submit DBE goals regarding Federal Aviation Administration funding projects.
2. Greg Fluckiger – Paradies Shops, 973-496-2174 agreed that our goals are reasonable.
3. Joe Faria – Host, 207-774-6372 agreed that our goals are reasonable.

In conclusion, all three factors were looked at and none of them warranted an adjustment to Step 1 calculation, so the final goal is .6%.

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation, Section 23.51

The Portland International Jetport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Portland International Jetport uses the following race-neutral measures to increase ACDBE participation. We take the following steps:

7. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR part 23;
8. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

9. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
10. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
11. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
12. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

We estimate that, in meeting our overall goal of .6%, we will obtain .6% from race-neutral participation and 0% through race-conscious measures.

The reason for this projected split is that there is no historical information on ACDBE participation at the airport to determine whether or not ACDBE goals in the past were met or underachieved. Therefore, the Portland International Jetport expects to meet its goal using race-conscious means.

In the future, the Portland International Jetport will project to meet its goal to the maximum feasible extent using race-neutral means. If the Portland International Jetport projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use the following race-conscious measures to meet the overall goal.

4. Establish concession-specific goals for particular concession opportunities;
5. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession; and
6. With prior FAA approval, other methods that takes a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if the Portland International Jetport uses concession-specific goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and 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; and 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 in making the award.

The Portland International Jetport will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 8

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 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 should submit 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 DBE 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 9

PWM ACDBE Concession Reporting Form

PORTLAND INTERNATIONAL JETPORT (PWM)

ACDBE REPORTING FORM

FY10: October 1, 2009 – September 30, 2010

Deadline: January 12, 2011

The U.S. Department of Transportation 49 Code of Federal Regulations Part 23.27 requires PWM to annually (March 1) report Airport Concession Disadvantaged Business Enterprise (ACDBE) participation because PWM has received federal financial assistance.

Car Rental Overall Goal: 0% Non-Car Rental Overall Goal: 2%

RN Goal (car rental): 0%

RC Goal (car rental): 0%

RN Goal (non-car rental): 2%

RC Goal (non-car rental): 0%

The Race Neutral (RN) goal portion should include programs that, while benefitting ACDBEs, are not solely focused on ACDBE firms.

The Race Conscious (RC) goal portion should be based on programs that focus on and provide benefits only for ACDBEs.

A. List the Prime concession - has a direct relationship with the airport; or list the Management contractor - has an agreement with the airport to manage a portion of the airport's facilities or operations:

1. _____ 2. _____
Prime Concessionaire (or management contractor) Type of Work and NAICS

3. _____
Prime Concessionaire Address

4. _____
Prime Concessionaire City, State, and Zip

5. _____
Prime Concessionaire ACDBE Contact Name

6. _____
Prime Concessionaire E-mail

7. _____
Prime Concessionaire Telephone

8. \$ _____
Total \$ of concession gross revenues at the airport

9. \$ _____
Total \$ amount of #8 awarded to ACDBE firm

10. _____
Total \$ amount in #9 actual payment complete

10. List the \$ amount of #9 that has been awarded to ACDBE firms. Breakdown by ethnicity & gender:

- | | | | |
|---------------------------|----------|---|----------|
| a. Black American | \$ _____ | e. Native American | \$ _____ |
| b. Hispanic American | \$ _____ | f. Non-Minority Women | \$ _____ |
| c. Asian Pacific American | \$ _____ | g. Other (i.e. not any other group listed here) | \$ _____ |
| d. Asian Indian American | \$ _____ | | |

PORTLAND INTERNATIONAL JETPORT (PWM)

ACDBE REPORTING FORM

FY10: October 1, 2009 – September 30, 2010

Deadline: January 12, 2011

B. List Goods and Services - goods and services purchased by the airport itself or by concessionaires and management contractors from certified ACDBEs. (Use additional sheets if needed)

1. \$ _____
Total amount of goods and services purchased at the airport

2. \$ _____
Total amount of goods and services purchased at the airport from ACDBE firms

FIRM 1:

3. _____ **4.** _____
Name of ACDBE firm providing goods and services Type of Work and NAICS

5. \$ _____
Total amount of goods and services purchased at the airport from the ACDBE firm

6. List the amount of goods and services purchased from an ACDBE firm breakdown by ethnicity & gender:

- | | | | |
|---------------------------|----------|---|----------|
| a. Black American | \$ _____ | e. Native American | \$ _____ |
| b. Hispanic American | \$ _____ | f. Non-Minority Women | \$ _____ |
| c. Asian Pacific American | \$ _____ | g. Other (i.e. not any other group listed here) | \$ _____ |
| d. Asian Indian American | \$ _____ | | |

FIRM 2:

3. _____ **4.** _____
Name of ACDBE firm providing goods and services Type of Work and NAICS

5. \$ _____
Total amount of goods and services purchased at the airport from the ACDBE firm

6. List the amount of goods and services purchased from an ACDBE firm. Breakdown by ethnicity & gender:

- | | | | |
|---------------------------|----------|---|----------|
| a. Black American | \$ _____ | e. Native American | \$ _____ |
| b. Hispanic American | \$ _____ | f. Non-Minority Women | \$ _____ |
| c. Asian Pacific American | \$ _____ | g. Other (i.e. not any other group listed here) | \$ _____ |
| d. Asian Indian American | \$ _____ | | |

PORTLAND INTERNATIONAL JETPORT (PWM)

ACDBE REPORTING FORM

FY10: October 1, 2009 – September 30, 2010

Deadline: January 12, 2011

C. List Sub Concessionaires (has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession). (Use additional sheets if needed)

1. \$ _____
Total amount of concession gross revenues awarded to sub concessionaires

2. \$ _____
Total \$ amount of #1 awarded to ACDBE firms

3. _____
Sub Concessionaire

4. _____
Type of Work and NAICS

5. _____
Sub Concessionaire Address

6. _____
Sub Concessionaire City, State, and Zip

7. _____
Sub Concessionaire ACDBE Contact Name

8. _____
Sub Concessionaire E-mail

9. _____
Sub Concessionaire Telephone

10. \$ _____
Total \$ amount for Sub Concessionaire

11. \$ _____
Total \$ amount of #8 received by ACDBE firm

12. List the amount of Sub Concessionaire received by the ACDBE firm. Breakdown by ethnicity & gender:

a. Black American \$ _____

e. Native American \$ _____

b. Hispanic American \$ _____

f. Non-Minority Women \$ _____

c. Asian Pacific American \$ _____

e. Other (i.e. not any other group listed here)
\$ _____

d. Asian Indian American \$ _____

Submitted by (Signature)

Date

Title

Attachment 10

Doors Reporting Form

UNIFORM REPORT OF ACDBE PARTICIPATION									
Please refer to the Instructions sheet for directions on filling out this form									
1. Name of Recipient: AIP Numbers		Portland International Jetport 1001 Westbrook Street, Portland, ME 04102							
2. Contact Information: Preparer's Name:		Jennifer O'Bryon		Phone No. 207-756-8027		Fax No. 207-774-7740		email address: jio@portlandmaine.gov	
3a. Federal fiscal year in which reporting period falls:		FY 09 (Oct. 1, 2008 to Sep. 30, 2009)		3b. Date This Report Submitted: September 2010					
4. Current Non-Car Rental ACDBE Goal		Race Conscious Goal: 3.00%		Race Neutral Goal: 0.00%		ACDBE OVERALL Goal: 3.00%			
5. NON-CAR RENTAL CUMULATIVE ACDBE PARTICIPATION		A	B	C	D	E	F	G	
		Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [G/A]	
Prime Concessions		\$6,925,855	5	\$0	0	\$0	\$0	0.00%	
Subconcessions		\$0	0	\$0	0	\$0	\$0	0.00%	
Management Contracts				\$0	0	\$0	\$0		
Goods and Services		\$1,799,742	5	\$0	0	\$0	\$0	0.00%	
TOTAL CUMULATIVE NON-CAR RENTAL ACDBE PARTICIPATION		\$8,725,597	10	\$0	0	\$0	\$0	0.00%	
6. NON-CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD		A	B	C	D	E	F	G	
		Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [G/A]	
Prime Concessions		\$0	0	\$0	0	\$0	\$0	0.00%	
Subconcessions		\$0	0	\$0	0	\$0	\$0	0.00%	
Management Contracts				\$0	0	\$0	\$0		
Goods and Services		\$0	0	\$0	0	\$0	\$0	0.00%	
Total Non-Car Rental New ACDBE Participation		\$0	0	\$0	0	\$0	\$0	0.00%	
7. Current Car Rental ACDBE Goal:		Race Conscious Goal 0.0%		Race Neutral Goal 0.0%		ACDBE OVERALL Goal 0.0%			
8. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION		A	B	C	D	E	F	G	
		Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [G/A]	
Prime Concessions		\$27,038,238	5	\$0	0	\$0	\$0	0.00%	
Subconcessions		\$0	0	\$0	0	\$0	\$0	0.00%	
Goods and Services		\$4,054,258	5	\$164,619	0	\$164,619	\$0	4.06%	
Total Cumulative Car Rental ACDBE Participation		\$31,092,496	10	\$164,619	0	\$164,619	\$0	4.06%	

	A		B		C		D		E		F		G	
	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E-F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [G/A]							
9. CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD														
Prime Concessions	\$0	0	\$0	0	\$0	\$0	0.00%							
Subconcessions	\$0	0	\$0	0	\$0	\$0	0.00%							
Goods and Services	\$0	0	\$0	0	\$0	\$0	0.00%							
Total Cumulative Car Rental New ACDBE Participation	\$0	0	\$0	0	\$0	\$0	0.00%							

	A		B		C		D		E		F		G		H	
	Black Americans (numbers & dollars)	Hispanic Americans (numbers & dollars)	Asian-Pacific Americans (numbers & dollars)	Asian - Indian Americans (numbers & dollars)	Native Americans (numbers & dollars)	Non-Minority Women (numbers & dollars)	Other (i.e. not of any other group listed here) (numbers & dollars)	TOTALS [A+B+C+D+E+F+G] (numbers & dollars)								
10. CUMULATIVE ACDBE PARTICIPATION BY RACE/GENDER																
Car Rental	1	2	2	0	0	15	0	\$0	\$0	\$337,024	0	\$0	\$0	\$0	\$0	\$364,061
Non-Car Rental	0	0	0	0	0	0	0	\$0	\$0	\$0	0	\$0	\$0	\$0	\$0	\$0
Total Cumulative Race/Gender ACDBE Participation	1	2	2	0	0	15	0	\$9,904	\$0	\$337,024	0	\$0	\$0	\$0	\$0	\$364,061

11. For each ACDBE firm that is participating, please fill out the attached Report of Certified ACDBE Firm or list the following information for each ACDBE firm participating in your program during this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); and (5) Estimate gross receipts for the firm during this

