

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The Portland International Jetport has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Portland International Jetport 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 Portland International Jetport has signed airport grant assurances that it will comply with 49 CFR Part 23.

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

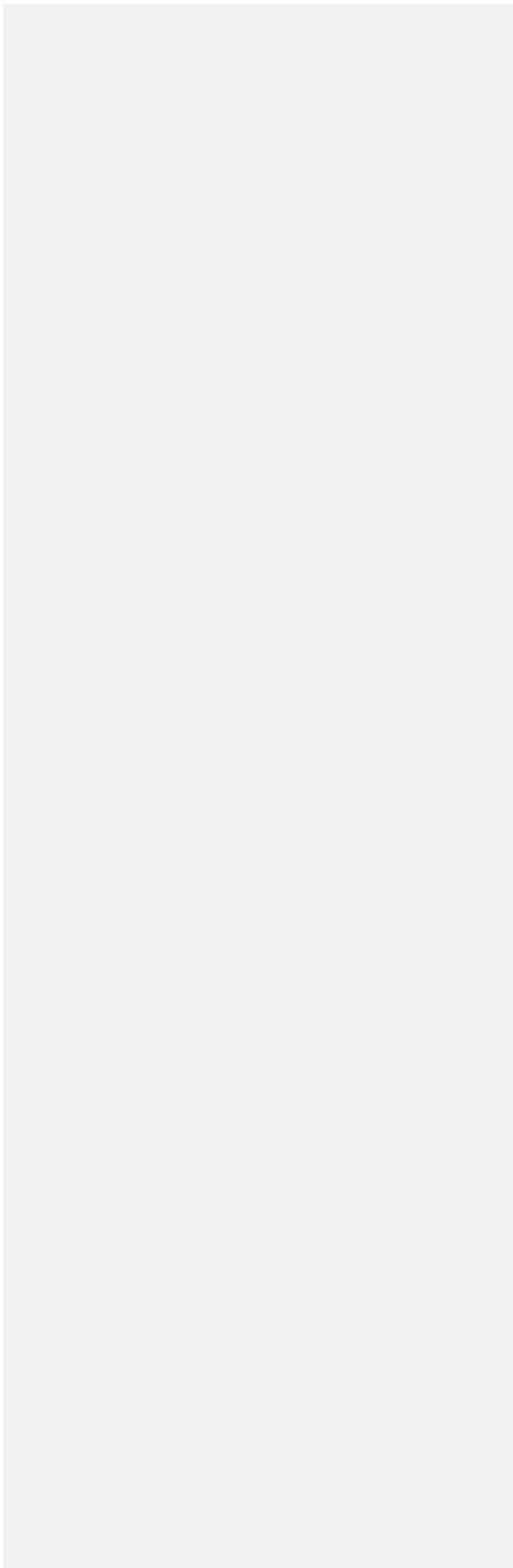
1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored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

Zachary R. Sundquist, Assistant Airport Director has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Zachary R. Sundquist 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 Portland International Jetport in its financial assistance agreements with the Department of Transportation.

Portland International Jetport has disseminated this policy statement to the Airport Director and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area via our website www.portlandjetport.org

Paul H. Bradbury, Airport Director

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

The Portland International Jetport 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 Portland International Jetport 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 Portland International Jetport 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 Portland International Jetports 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 Portland International Jetports ACDBE program:

- (a) 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.
- (b) 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.

(c) 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.

(d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the Portland International Jetport may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

The Portland International Jetport is a *small hub primary* airport 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 23.45(a) of this section.

Until the Portland International Jetports new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Portland International Jetport.

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 Portland International Jetport is committed to operating its ACDBE program in a nondiscriminatory manner.

The Portland International Jetports Policy Statement is elaborated on the first page of this program.

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

Zach R. Sundquist, A.A.E.
Assistant Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04102
207-756-8027
zrs@portlandmaine.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Portland International Jetport complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has no staff but coordinates closely with the City of Portland Purchasing Department, Legal Department, and consulting engineers to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes Portland International Jetports progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.

10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Unified Certification Program (UCP) in Maine.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the Portland International Jetports updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The Portland International Jetport through the Maine Unified Certification Program (UCP), 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 UCP 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 UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory weekly. We make the Directory available as follows: <http://www.maine.gov/mdot/civilrights/dbe/>. The Directory may be found in Attachment 2 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The Portland International Jetport 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 Portland International Jetports 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 Attachment 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

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

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

Section 23.27 Reporting

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

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

Section 23.29 Compliance and Enforcement Procedures

The Portland International Jetport will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities provided in attachment 3.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

The Portland International Jetport is the member of a Unified Certification Program (UCP) administered by MDOT. The UCP will meet all of the requirements of this section.

The UCPs directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. Our schedule for this review process will be: 30 Days

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

Section 23.35 The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

We recognize that Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (3) 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 (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

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

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

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

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

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

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

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

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 sponsor's circumstances. We will report any significant overall goal adjustments to the FAA.

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

The Recipient'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

No comments have been received.

Section 23.45 Overall Goals

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

October 1, 2024

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

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

The sponsor 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 to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in *Attachment 5* 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 4* 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 Attachment 4 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

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

The Portland International Jetport 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.

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the Portland International Jetport 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 Jetports concession specific goals. Specifically:

Section 26.53 Good Faith Efforts Procedures

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

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. Examples of good faith efforts are found in Appendix A to Part 26.

Zachary R. Sundquist, Assistant Airport Director, 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 Responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

In our solicitations for concession contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of ACDBE firms that will participate in the contract;
 - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each ACDBE firm participating;

- (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by Portland International Jetport that it is not responsible 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:

Paul Bradbury
Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04102

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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We 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.

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

The *Portland International Jetport* 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 ACDBE immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

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

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that 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 contractor;
- (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) We have determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us 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 we have 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 us 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 us, 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 us and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why we should not approve the prime concession's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

The Portland International Jetport will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the Portland International Jetport 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 .07 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

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57 (b) Goal shortfall accountability. If the awards and commitments on our 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, we 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 we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of longer than 5 years. We understand that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

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

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE/ACDBE Directory (or website link)
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 5 Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 6 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 7 Certification Application Forms
- Attachment 8 Procedures for Removal of ACDBEs Eligibility
- Attachment 9 State's UCP Agreement
- Attachment 10 Regulations: 49 CFR Part 23

Attachment 1

Organizational Chart

City Manager



Assistant City Manager



Airport Director



Assistant Airport Director
(ACDBE Liaison Officer)

Attachment 2

Maine DBE Directory
<http://www.maine.gov/mdot/civilrights/dbe/>

Attachment 3

Sample Monitoring and Enforcement Mechanisms

The Portland International Jetport has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to State of Maine 49 CFR Part 26

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The Portland International Jetport will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:
 - A. *DBE statement of compliance is required per the Department of Transportation for all ACDBE's participating in rental car concessions at airports.*
2. We will implement our compliance and monitoring procedures as follows:
 - A. *Annual collection of DBE statement of compliance reports.*

Attachment 4

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

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

Name of Recipient:

_City of Portland_____

Goal Period: *October 1, 2023 – September 30, 2027*

Overall Three-Year Goal:

0.04%, to be accomplished through 0.00% RC and 0.04% RN

The Portland International Jetport has determined that its market area is the State of Maine. The market area was determined by where the 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.

Base of Goal

To calculate the base of the goal Portland International Jetport considered the previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Gross Receipts for Previous 3 Years - Non-Car Rental Concessions

Fiscal Year	Concessions Revenue (Excluding Car Rental)
2021	\$6,782,864
2022	\$10,102,951
2023	\$11,803,602
Total	\$28,689,417
Average	\$ 9,563,139

The Portland International Jetport estimates that revenues to existing concessions will grow by 12% over the next four years due to increased passenger traffic.
 $\$9,563,139 \times 12\% = \$1,147,576$ $= \$10,710,716$ = base of goal.

The concession opportunities anticipated during this goal period are:

Food and Beverage, Advertising, News and Gifts, with estimated gross receipts of \$10,710,716.

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.

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 to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

Methodology used to Calculate Overall Goal

Goods and Services

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

Management Contract or Subcontract

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

Step 1: 23.51(c)

We determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

Numerator: Ready, willing, and able non-car rental ACDBEs in the market area

_____1,798_____ divided by _____ 8 _____

Denominator: All ready, willing and able non-car rental concession firms in the market area

Type of Concession	NAICS Codes	Total ACDBE's Market Area	Total All Firms from Census
News/Gifts	453220	2	216
Vending Machines	454210	1	8
Advertising	541810	2	43
Food/Beverage	722515, 722513	2	1,495
ATMs	522320	1	27
Massage Chairs	488119	0	9
Total		8	1,798
Step 1 =		0.04%	

Commented [RHKL(1)]: Revise the NAICS Codes to reflect the type of concession.
 Books - 424920
 Gifts/news - 459420
 Advertising - 541870
 Food/beverage - 722515, 722513
 ATMs - 522320
 Luggage Carts - 488119

The data source or demonstrable evidence used to derive the **numerator** was:

Maine DOT DBE/ACDBE Vendor List on 3/25/2024
<https://www.maine.gov/mdot/civilrights/dbe/>

The data source or demonstrable evidence used to derive the **denominator** was:

US Census Bureau
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>
When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of: 0.04%

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 Step 1 base figure in order to arrive at the overall goal. The Portland International Jetport did not adjust the base figure.

PUBLIC PARTICIPATION

Consultation: Section 23.43.

No comments have been received as of the date of this goal.

Commented [RHKL(2)]: Consultation with Stakeholders consultation meeting. The meeting attendees?

Commented [AD3R2]: Unknown attendees at this time. RFP will be issued next week and closes the end of May

Commented [AD4R2]:

Breakout of Estimated Race-Neutral & Race Conscious 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.

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
5. *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 0.04%, we will obtain 0.04% from race-neutral participation and 0% through race-conscious measures.

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

1. *We will establish concession-specific goals for particular concession opportunities.*
2. *We will negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.*

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a

prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

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

Name of Recipient:

___City of Portland_____

Goal Period: *October 1, 2023 – September 30, 2027*

Overall Three-Year (Goal): 0%

___0___%, to be accomplished through 0% RC and ___0___ RN

The Portland International Jetport has determined that its market area is ___0
companies_____.

Commented [RHKL(5): what is the car rental goal

Commented [RHKL(6): Please review the resources that we have available in Civil Right Connect. ACDBE Goal Setting Tips, Goal Setting Guidance & Training (Video) & Presentations.

The Portland International Jetport has determined the market area is as follows:

The State of Maine was determined to be the market area due to it being 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.

Base of Car Rental Goal

To calculate the base of the goal Portland International Jetport considered the previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Gross Receipts (Revenue) for Previous 3 Years - Car Rental Concessions

Fiscal Year	Concessions Revenue (Car Rental)
2021	\$21,958,171
2022	\$59,283,273
2023	\$59,806,808
Total	\$141,048,252

Average	\$47,016,084
----------------	---------------------

The Portland International Jetport estimates that revenues to existing concessions will grow by 2% over the next three years due to *increased passengers*. *We also feel the artificially low 2021 data should not be considered and propose a 2% growth from the 2023 baseline.* $\$59,806,808 \times 2\% = \$1,196,136 = \$61,002,944$ base of goal.

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 to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. 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 Step 1 base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

Numerator: Ready, willing, and able non-car rental ACDBEs in the market area
 _____ 0 _____ divided by _____ 30 _____

Denominator: All ready, willing and able non-car rental concession firms in the State of Maine

Type of Concession	NAICS	Total ACDBE's in Maine	Total All Firms from Census
Passenger car rental	532111	0	30
Total		0	30
Step 1 =	0%		

The data source or demonstrable evidence used to derive the **numerator** was:

Maine DOT <https://www.maine.gov/mdot/civilrights/dbe/>

The data source or demonstrable evidence used to derive the **denominator** was:

US Census Bureau <https://data.census.gov/>

When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of: 0%

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 Step 1 base figure in order to arrive at the overall goal. The Portland International Jetport did not adjust the base figure.

Past History Participation

The Jetport does not have any information available regarding past participation of ACDBE's in concessions at the airport.

There is no historical ACDBE data to reference to make an adjustment to the Step 1 base figure therefore the Portland International Jetport is adopting its Step 1 base figure as its overall goal for this 3-year goal period.

There are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.

PUBLIC PARTICIPATION

Consultation: Section 23.43.

No comments have been received.

Breakout of Estimated Race-Neutral & Race Conscious 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.

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
5. *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 % from race-neutral participation and 0 % through race-conscious measures.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

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

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

Attachment 7

ACDBE Certification Application Form

<https://www.maine.gov/mdot/civilrights/docs/dbe/2022/Uniform%20Certification%20Application.pdf>

Attachment 8

Procedures for Removal of ACDBEs Eligibility

Removal of DBE Eligibility ~ 49 CFR §26.87 Removal or Decertification as DBE: any firm may remove itself from the program at any time by sending a notarized letter or by failure to respond to renewal obligations. If written notification is received MaineDOT will acknowledge that request in writing. Once a DBE has removed itself from the Directory, it will be required to reapply for the program if it wishes to be reinstated as a DBE after one year of being removed from the program. When MaineDOT intends to remove a Maine-based DBE's certification, MaineDOT will advise the DBE in writing, which will outline reasons for the action. DBEs are afforded an opportunity to present to MaineDOT, written/oral arguments as to why they should not be decertified. Regardless of a DBE firm's desire to be heard, MaineDOT will schedule and conduct a review of the facts. Accordingly, the DBE will be advised of the date, time and place of the review. DBEs may be represented by Financial, Legal or business advocate. However, the DBE owner must be present at the fact review session, or when unable, a duly notarized statement reflecting actual reasons for absence must be provided upon commencing the fact review session. The DBE and MaineDOT will have one 30-minute period in which to present arguments. Written evidence followed by personal interviews is acceptable. Following initial arguments, each party will have a 10-minute rebuttal period. No fact(s) other than those cited in the initial review are admissible, and only those matters applicable to and contained in MaineDOT's initial written letter will be allowed. The presiding officer is the MaineDOT Chief Counsel or designee and will be someone who is independent of the investigation to this point. The presiding officer will issue a finding no later than 15 business days from the date the facts were heard. The DBE will be removed from the Directory if the presiding officer determines that the firm does not meet the requirements of a DBE. The DBE may appeal this decision to the USDOT at the above address. DBE firms failing to respond to annual renewal obligations will not be reminded of their obligation. The obligation to satisfy annual renewal requirements is wholly the responsibility of the DBE firm. In the event MaineDOT proposes to remove a DBE's certification, we will follow procedures consistent with §26.87.

ATTACHMENT 9

State's UCP Agreement

**AGREEMENT BETWEEN THE
MAINE DEPARTMENT OF TRANSPORTATION
AND**

THIS AGREEMENT is made this ____ day of _____, 20__, by and between the **State of Maine**, through the **Department of Transportation (MaineDOT)**, with an address of 16 State House Station, Augusta, Maine and _____, with an address of _____, Maine.

I. AGREEMENT

MaineDOT and the named party hereby agree as follows:

1. The named party agrees that as a recipient of the 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 that it shall utilize the MaineDOT Disadvantaged Business Enterprise Certification Program.
3. The named party agrees to refer potential applicants for DBE Certification to MaineDOT.
4. The named party agrees to honor the decisions made by MaineDOT with respect to certification decisions made in accordance with 49 CFR Parts 23 and 26 Subpart E, Certification Procedures
5. MaineDot 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**

By: Sherry Y. Tompkins Date
Its: Director, Civil Rights Office

By: Date
Its:

Attachment 10

Regulations: 49 CFR Part 23

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl