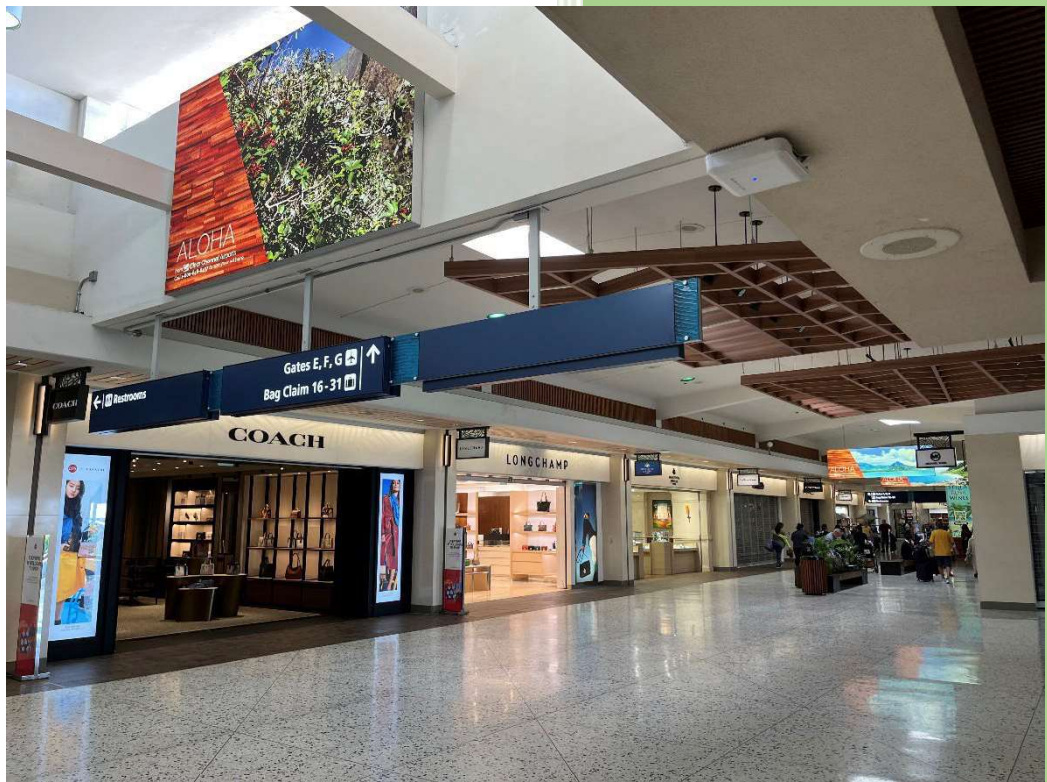


2023

State of Hawaii - Department of Transportation Airport Concession Disadvantaged Business Enterprise Program Plan



State of Hawaii
Department of Transportation
AIRPORTS DIVISION
400 Rodgers Blvd., Suite 700
Honolulu, HI 96819

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

The State of Hawaii, Department of Transportation, herein referred to as HDOT, 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, implemented as The State of Hawaii, Department of Transportation, Airports Division (HDOT). The following ACDBE program plan covers the following HDOT:

Daniel K. Inouye International Airport (HNL)
Kahului Airport (OGG)
Ellison Onizuka Kona International Airport at Keahole (KOA)
Hilo International Airport (ITO)
Lihue Airport (LIH)
Molokai Airport (MKK)

HDOT has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). HDOT has signed airport grant assurances that it will comply with 49 CFR Part 23.

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

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

The HDOT Civil Rights Specialist has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the ACDBELO 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 HDOT in its financial assistance agreements with the Department of Transportation. This program plan will be available for public access on the State of Hawaii, Department of Transportation, Office of Civil Rights website (<https://hidot.hawaii.gov/administration/ocr/>).



EDWIN H. SNIFFEN
Director of Transportation

Jan 27, 2023

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

HDOT 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

HDOT is the primary sponsor to the airports listed above (Section 23.1 and 23.23 Objectives/Policy Statement) and is the recipient 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

HDOT 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, HDOT 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.

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

HDOT 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

HDOT 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.

HDOT 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.

HDOT will comply with the requirement of Title 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. 2C.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.

HDOT'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.

The following enforcement actions apply to firms participating in HDOT's 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 ACDBE 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 HDOT's ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by HDOT 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

HDOT is the primary sponsor to the airports listed above (Section 23.1 and 23.23 Objectives/Policy Statement). HDOT is required to have an ACDBE program for the following airports:

Daniel K. Inouye International Airport (HNL) – Large Hub Primary Airport
Kahului Airport (OGG) – Medium Hub Primary Airport
Ellison Onizuka Kona International Airport at Keahole (KOA) – Small Hub Primary Airport
Hilo International Airport (ITO) – Small Hub Primary Airport
Lihue Airport (LIH) – Non-hub Primary Airport
Molokai Airport (MKK) – Non-hub Primary Airport

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

Until HDOT's new ACDBE program is submitted and approved, HDOT 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:

Daniel K. Inouye International Airport (HNL)
Kahului Airport (OGG)
Ellison Onizuka Kona International Airport at Keahole (KOA)
Hilo International Airport (ITO)
Lihue Airport (LIH)
Molokai Airport (MKK)

This program document applies to all of the above Airports, as required by 23.21(c), and HDOT has established separate ACDBE goals for each primary airport (Attachment 4 and Attachment 5).

When HDOT makes significant changes to its ACDBE program, HDOT will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: HDOT is committed to operating its ACDBE program in a nondiscriminatory manner.

HDOT's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): HDOT has designated the following individual as our ACDBELO:

Daryl Fujita, Civil Rights Specialist
State of Hawaii, Department of Transportation – Airports Division
400 Rodgers Blvd., Suite 700
Honolulu, Hawaii 96819
(808) 838-8884
daryl.a.fujita@hawaii.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that HDOT complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Deputy Director of the Airports Division 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 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 HDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.

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

Directory: HDOT through the Hawaii 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 on an on-going basis through an online portal. The Directory link can be found in Attachment 2 of this program document, and at: <https://hdot.dbesystem.com/>.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

HDOT will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)) – see Section 23.9

HDOT 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))

HDOT's 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 and Attachment 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If HDOT 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 Attachment 5 of this plan. (23.25(e))

HDOT 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))

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

Section 23.27**Reporting**

HDOT 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 three (3) years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, HDOT 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**

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

1. HDOT 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. HDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. HDOT has listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 6). (26.37)

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 HDOT 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.

HDOT is the member of a Unified Certification Program (UCP) administered by the State of Hawaii. The UCP will meet all of the requirements of this section.

The UCP's 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, HDOT will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

HDOT 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 (3) 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.

HDOT recognizes that Personal Net Worth (PNW) 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 three (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)

HDOT 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, HDOT 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. HDOT is 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).

HDOT recognizes that the provisions of Part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of Part 23. HDOT will follow the provisions of 23.39 (a) through (i). HDOT will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. HDOT will analyze the ownership of stock of the firm if it is a corporation. HDOT will analyze the bonding and financial capacity of the firm. HDOT will determine the work history of the firm, including any concession contracts or other contracts it may have received. HDOT 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. HDOT 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. HDOT will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

HDOT 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. HDOT recognizes 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)).

HDOT 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, HDOT may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. HDOT 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))

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

Section 26.83 Procedures for Certification Decisions

HDOT is the certifying agency and will use the certification standards of Subpart C of Part 23 and Subpart D of Part 26 to determine the eligibility of firms to participate as ACDBEs. HDOT will make all certification decisions based on the facts taken as whole.

Section 26.61 and 26.63 Burden of Proof and Group Membership

HDOT shall not require ACDBE applicants to provide evidence of social disadvantage such as a birth certificate, unless there is reason to believe that the applicant does not belong to the identified presumptively disadvantaged group. For example, if a Caucasian male indicates that he is Native Hawaiian but physically appears to be Caucasian, HDOT staff will ask for the applicant's birth certificate. When Native Americans claim tribal affiliation, HDOT shall request evidence of enrollment in a federal or state-recognized Indian tribe.

When HDOT determines that a ACDBE applicant does not belong to a group presumed to be disadvantaged (i.e., Asian Pacific American, Subcontinent Asian American, African American, Hispanic American, Native American, and Women), such applicants must provide evidence of individual disadvantage. HDOT shall utilize the DBE regulations, Appendix E, Individual Determinations of Social and Economic Disadvantage to assess, on a case-by-case basis, whether or not the ACDBE applicant is disadvantaged on an individual basis.

Business Size

Section 26.65

HDOT shall certify firms that are existing small businesses, as defined by the Small Business Administration (SBA) standards. Even if eligible firms certified for purposes of working on FHWA and FTA funded contracts meet the requirements of 26.65 (a), HDOT will not certify a firm (including its affiliates), in any given Federal fiscal year, whose average gross receipts over the firm's previous three (3) fiscal years, exceed \$28.48 million.

FAA Business Size Standard:

The \$28.48 million business size standard does not apply to FAA-assisted projects. DBE firms participating in FAA-assisted projects must meet the size standard appropriate to the type of work, based solely on the applicable NAICS code size standard for that work. Unified Certification Program (UCP) directories must clearly indicate which firms are only eligible for counting on FAA-assisted work.

HDOT shall use the SBA's definition of affiliation found in 13 CFR, Part 121 when calculating an ACDBE firm's and its affiliates' gross receipts.

Section 26.67

Social and Economic Disadvantage

To determine economic disadvantage, HDOT shall accept the USDOT's Personal Net Worth (PNW) form without modification. HDOT shall require all ACDBE applicants whose ownership and control of the firm are relied upon for ACDBE certification to complete the PNW form. Such individuals must certify that their PNW does not exceed \$1.32 million and must submit a notarized statement with appropriate supporting documents.

When analyzing the PNW form and supporting documents, HDOT shall only calculate the individual's share of assets and liabilities. HDOT may ask for additional information on a case- by-case basis, in situations such as, but not limited to, when assets have been transferred to a spouse, a non-disadvantaged spouse is still involved in the firm, or HDOT deems the additional information necessary to analyze the accumulation of substantial wealth.

When determining the PNW of an individual owner, HDOT shall:

1. Exclude an individual's ownership interest in the applicant firm;
2. Exclude the individual's equity in his or her primary residence; and
3. Exclude taxes and penalties of retirement plans that would accrue if the asset were distributed at the present time.

Section 26.69

Ownership

For a firm to be certified as an ACDBE, the firm must be fifty-one (51) percent owned by socially and economically disadvantaged individuals. For a firm to be certified as an ACDBE, the firm must be fifty-one (51) percent owned by economically disadvantaged individuals. HDOT will review the business structure of each firm to determine ownership by socially and/or economically disadvantaged individuals as follows:

1. **Corporation** – Must own at least fifty-one (51) percent of each class of voting stock outstanding and fifty-one (51) percent of the aggregate of all stock outstanding.
2. **Partnership** – Must own fifty-one (51) percent of each class of partnership interest. Such ownership must be reflected in the firm's Partnership Agreement.
3. **Limited Liability Company** – Must own at least fifty-one (51) percent of each class of member interest.

All firms will be required to provide evidence of contributions of capital, such as canceled checks and other bank records. Documents to be submitted for review will vary depending on the business structure, and will include, but shall not be limited to, Articles of Incorporation, Bylaws, stock certificates, stock ledgers, Partnership Agreements, and Operating Agreements.

Section 26.71 Control

In addition to owning at least fifty-one (51) percent of the ACDBE firm, socially and economically disadvantaged individuals must also demonstrate control of the firm, and must be the highest-ranking officer, such as the Chief Executive Officer or President of the company.

In addition to owning at least fifty-one (51) percent of the ACDBE firm, economically disadvantaged individuals must also demonstrate control of the firm, and must be the highest-ranking officer, such as the Chief Executive Officer or President of the company.

ACDBE firms must be an independent business and may not be reliant upon other non-ACDBE businesses to be viable. HDOT shall scrutinize a firm's relationships with non-ACDBE firms with respect to recent employee/employer relationships, personnel, facilities, equipment, and bonding/financial support, to ensure that ACDBEs are independent.

Evidence to determine control will depend on the business structure of the ACDBE firm. HDOT shall review documents, including, but not limited to, Articles of Incorporation, Corporate Bylaws, Operating Agreements, Shareholder Agreements, Partnership Agreements, Employee/Employer Agreements, resumes, minutes from meetings of the board of directors, bank signature cards, and schedule of salaries.

HDOT shall review the application, and conduct an on-site visit to determine, among other things, who manages the day-to-day operations, makes managerial and financial decisions that impact the firm, negotiates contracts, markets the firm, hires and fires personnel, and controls the board of directors.

The State of Hawaii does not require a business owner to hold a professional or vocational license to own a firm. However, DBE firms must employ a licensed individual to work on HDOT prime contracts, and subcontracts when appropriate.

Section 26.71(n)(1) NAICS Codes

HDOT shall review the ACDBE application for new firms to determine the most narrowly defined NAICS codes for the firm. In addition, HDOT shall review capability statements, company websites, resumes, licenses, certifications, and other evidence to determine the most appropriate NAICS codes to use.

When a certified ACDBE requests to add NAICS codes, HDOT shall request evidence that supports the request for additional codes, such as licenses, letters of reference from prime contractors, and list of completed projects.

Section 26.73(a-h) Other Rules Affecting Certification

HDOT shall utilize the certification standards outlined in Subpart D of the DBE regulations and shall not base its certification eligibility determinations on whether a firm performs a CUF, or whether it meets the definition of a regular dealer. Moreover, HDOT shall base certification decision on present circumstances and shall not refuse to certify a firm based solely on historical information that may disqualify the firm, such as lack of ownership or control.

Additionally, ACDBE applicant firms may be a newly formed business with no profits and need not pre-qualify to work on federal aid projects as a criterion for certification.

Section 26.81 Certification Procedures - Unified Certification Program

HDOT is a participant of the State of Hawaii Unified Certification Program (UCP) and performs all DBE certifications for the Hawaii UCP. HDOT is responsible for meeting all the requirements of this section. Other participants of the UCP, which include HDOT's subrecipients, and other direct recipients of USDOT funds, such as the City and County of Honolulu, and the Honolulu Authority for Rapid Transportation, utilize the DBE Directory created and maintained by HDOT for their respective DBE programs.

Section 26.83 Uniform Certification Application (UCA)

HDOT purchased B2GNow software in April 2016 to maintain a certification management system, and to accept online applications. The online version of the UCA elicits the same information as the hard copy of the UCA in the DBE regulations. All applications, Annual Affidavits of No Change, and supporting documents, including PNW statements will be accepted electronically.

Information submitted by a firm in the application package is provided under penalty of perjury of the laws of the United States and shall be accurate as of the application date. Firms may be terminated from the program or a contract if any misrepresentations in the application package are discovered. The applicant may also be subject to prosecution under Federal and/or state perjury laws.

HDOT will review the application package for completeness and may request other pertinent data. The applicant shall provide the data within thirty (30) days and may request an extension of this thirty (30) daytime period, either orally or in writing.

HDOT will make a certification decision based on the facts taken as a whole. HDOT shall determine an applicant firm's eligibility based on the available information provided by the firm, within ninety (90) days of receipt of all pertinent data. This period may be extended for good cause.

Section 26.83(c) On-Site Visit

Except as otherwise provided, an on-site visit (virtual or in-person) shall be conducted for all firms applying for certification. The DBE Program Certifier, or other designated personnel, will conduct the on-site visit (virtual or in-person).

The on-site visit will assist in establishing the accuracy of the statements provided in the UCA and will help to verify that the firm possesses the equipment and expertise necessary to operate the business. In this regard, HDOT will obtain a list of equipment owned or available to the firm and verify possession of any licenses held by the firm or its key personnel to perform the required work. The DBE Program Certifier or designated staff will interview the owner of the firm, who should be the highest-ranking officer, review the resumes of the relevant officers and in the case of corporations, analyze stock ownership.

An on-site visit shall be scheduled following a desk review of the ACDBE application package. The on-site visit will be conducted at the firm's principal place of business, and/or job site(s) that the firm may be working on at the time of the eligibility review. On-site visits shall not be conducted for out-of-state firms. HDOT shall request the on-site reports from the ACDBE's home state.

Section 26.83 Notice of Certification

The DBE Program Certifier or designated staff shall determine the eligibility of the ACDBE applicant firm. HDOT will provide written notification of this determination to the applicant. The ACDBE will receive a certificate and a letter which lists the type of work the firm has been certified to perform, applicable NAICS codes, and information on annual updates. The letter also outlines the firm's responsibility to immediately report any changes that may impact its ACDBE eligibility.

Section 26.83(a)(b)(c) Certification Reviews

HDOT shall not require firms to reapply for certification if the ACDBE continues to meet the eligibility requirements to remain certified. HDOT shall conduct a certification review, including an on-site visit of the firm, if there is a significant change in the firm's disadvantaged or business status, business size, ownership or control that may impact a firm's continued eligibility.

When a certification review is warranted the UCP shall make a determination of eligibility within ninety (90) days after receipt of the documents required to conduct a certification review. This time period may be extended for good cause. The firm shall receive written notification of eligibility similar to that received during initial certification. The certification will remain in effect until such time that it is determined that the firm no longer meets the requirements to be certified as an ACDBE.

Section 26.83(j)**Annual Affidavit of No Change**

HDOT requires all ACDBEs to provide an Annual Affidavit of No Change in which the ACDBE business owner declares under penalty of perjury that no changes have occurred in the firm's circumstances that affect business size, disadvantaged status, ownership, or control and that their firm continues to meet the business size standards to remain eligible. To determine the business size, HDOT shall request federal corporate tax returns to calculate the gross receipts of the ACDBE firm to ensure that the three-year average of gross receipts does not exceed the business size cap for the type of work that the ACDBE performs.

ACDBEs are required to report any change in circumstances affecting its ability to meet business size standards, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes to the information provided to HDOT within thirty (30) days of the change.

Section 26.85**Interstate Certification**

HDOT strives to alleviate the certification burden of ACDBEs certified in another state. Out-of-state firms will be required to submit the application package provided and approved by their home state and sign an affidavit attesting that the application is accurate. HDOT shall also request any Affidavits of No Change, and certification reviews conducted subsequent to the firm's initial certification. The home state's on-site report will be requested and reviewed with the complete application package. If the on-site report is older than three (3) years, HDOT will request that the firm confirm that the on-site report remains true and correct.

When an out-of-state firm applies for ACDBE certification with HDOT through the online Certification and Contract Compliance Management System, HDOT shall request a copy of the on-site report, any updates to the on-site review, and any evaluation of the firm based on the site visit within seven (7) days of receipt of the application. If another state UCP requests an on-site report from HDOT for Hawaii-based firms seeking certification in another state, HDOT will provide the report within seven (7) days of the request.

HDOT shall review the application, on-site report and any supporting documents then make an eligibility determination no later than sixty (60) days following the receipt of all of the information from the firm necessary to make an eligibility determination. If eligible for certification, HDOT shall notify the firm that it is certified, and will be placed in HDOT's DBE Directory.

HDOT shall follow the DBE regulations in §26.88 when HDOT determines that there is good cause to believe that the firm is not eligible either due to an erroneous determination by the home state UCP, or for other reasons, such as state laws, rules or requirements. HDOT shall notify the firm of the reasons for this determination within sixty (60) days from receipt of all information from the firm necessary to make this determination. If the ACDBE applicant firm does not agree with HDOT's determination of ineligibility, the firm may request a meeting with HDOT's decision maker. HDOT shall schedule the meeting within thirty (30) days of receiving the request.

The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements with respect to the particularized issues raised by HDOT's denial notice. The firm is not otherwise responsible for further demonstrating its eligibility to HDOT.

HDOT shall issue a written decision within thirty (30) days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. The firm may appeal the decision to the USDOT, Office of Civil Rights pursuant to §26.89.

If HDOT does not receive a copy of the site visit review report from a state UCP by a date fourteen (14) days after HDOT made a timely request for it, HDOT will not take action on the application and will hold the application in abeyance pending receipt of the site visit review report. HDOT shall notify the firm in writing of the delay in the process and the reason for it, no later than thirty (30) days from the date HDOT received from an applicant firm all the information required.

Section 26.86 Denial of Initial Requests for Certification

If a ACDBE applicant firm does not meet the eligibility requirements to be certified as an ACDBE, HDOT shall issue a denial letter, stating the reasons for the denial, applicable regulations, and information on appeal rights. Applicant firms may reapply after one (1) year from the date of the denial letter.

If an applicant firm decides to withdraw its application, it may do so at any time during the application process. The firm may reapply at any time.

Section 26.87 Removal of a DBE's Eligibility

The following procedures shall also apply to ACDBE certified firms.

In the event HDOT proposes to remove an ACDBE's certification, HDOT will follow procedures consistent with 49 CFR Section 26.87. Informal hearing procedures are outlined in Attachment 11. To ensure separation of functions in a de-certification, HDOT has determined that the CRC or his/her designee will serve as the decision-maker in de-certification proceedings. HDOT has established an administrative "firewall" to ensure that the CRC will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding). If it is determined that the CRC was involved in discussions regarding the firm's eligibility, a neutral third-party from another state UCP will oversee the de-certification proceedings.

Firms that have their eligibility removed in accordance with Section 26.87 proceedings, shall not be eligible to reapply for one (1) year following the de-certification notice.

Section 26.88

Summary Suspension of DBE Certification

Summary suspension procedures for DBE certification shall also apply to ACDBE firms.

HDOT must immediately suspend the ACDBE certification of the firm when the disadvantaged owner dies or is incarcerated.

HDOT may suspend an ACDBE immediately without adhering to Section 26.87 under the following conditions:

1. There is adequate evidence of material change;
2. ACDBE fails to notify HDOT of a material change; or
3. HDOT is directed by the operating administration to suspend the ACDBE.

When a firm is suspended, HDOT shall immediately notify the ACDBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the ACDBE. The suspension takes effect when the ACDBE receives the Notice of Suspension.

While suspended, a prime contractor may not receive credit to meet a contract goal on a new contract, and any work the ACDBE does on a contract received during the suspension shall not be counted toward HDOT's overall goal. The ACDBE may continue to perform under an existing contract executed before the ACDBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension if the ACDBE is performing a CUF under the existing contract.

Following receipt of the Notice of Suspension, if the ACDBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the ACDBE believes that its eligibility should be reinstated, it must provide to HDOT information demonstrating that it is eligible notwithstanding its changed circumstances. Within thirty (30) days of receiving this information, HDOT will either lift the suspension and reinstate the firm's certification or commence a decertification action under Section 26.87. If HDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

Section 26.89

Certification Appeals

Any ACDBE firm or ACDBE complainant may appeal HDOT's decision in a certification matter within ninety (90) days of HDOT's final decision to USDOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754 TTY: (202) 366-9696
Fax: (202) 366-5575

HDOT will promptly implement any USDOT certification appeal decision affecting the eligibility of DBEs for USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that HDOT's denial of its application was erroneous).

Applicant firms that have filed an appeal with the USDOT may reapply for certification after the waiting period of one (1) year has elapsed, even if USDOT has not rendered an appeal decision.

Requests for Information

Requests for information about the certification procedures contained in this Program Plan may be made to the DBE Program Certifier. Interested persons may contact the DBE Program Certifier at HDOT-DBE@hawaii.gov or at (808) 831-7914.

Section 26.109 Monitoring and Enforcement - Information, Confidentiality, Cooperation

HDOT shall safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. This includes disclosure of confidential business or personal information prohibited by Section 92F- 13 of the Hawaii Revised Statutes.

Notwithstanding any contrary provisions of state or local law, HDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

"No Change" Affidavits and Notices of Change (26.83(j))

The HDOT requires all ACDBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with HDOT's application for certification.

The HDOT also requires all ACDBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of ACDBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 23. There have been no material changes in the information provided with [*name of ACDBE*]'s application for certification, except for any changes about which you have provided written notice to the HDOT under 26.83(j).

The HDOT requires ACDBEs to submit with this affidavit documentation of the firm's size and gross receipts.

HDOT will notify all currently certified ACDBE firms of these obligations via the B2G Now system. Notifications are generated and distributed ninety (90) days, sixty (60) days, and thirty (30) days before their certification renewal date. This notification will inform ACDBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 23/26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 23/26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for ACDBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until twelve (12) months have passed from our action.

Section 26.87 Removal of a DBE’s Eligibility

In the event HDOT proposes to remove a ACDBE's certification, HDOT will follow procedures consistent with 49 CFR Section 26.87. Informal hearing procedures are outlined in Attachment 11. To ensure separation of functions in a de-certification, HDOT has determined that the CRC or his/her designee will serve as the decision-maker in de-certification proceedings. HDOT has established an administrative "firewall" to ensure that the CRC will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding). If it is determined that the CRC was involved in discussions regarding the firm’s eligibility, a neutral third-party from another state UCP will oversee the de-certification proceedings.

Firms that have their eligibility removed in accordance with Section 26.87 proceedings, shall not be eligible to reapply for one (1) year following the de-certification notice.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

HDOT will promptly implement any USDOT certification appeal decisions affecting the eligibility of ACDBEs (e.g., certify a firm if USDOT has determined that our denial of its application was erroneous).

Applicant firms that have filed an appeal with the USDOT may reapply for certification after the waiting period of one (1) year has elapsed, even if USDOT has not rendered an appeal decision.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

HDOT 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 three (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 three (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

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

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

Section 23.45 Overall Goals

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

| Primary Airport Size | Region | Date Due | Period Covered | Next Goal Due |
|-----------------------------|--------------------|------------------------|-----------------------|---|
| Large/Medium Hubs | All regions | October 1, 2020 | 2021/2022/2023 | October 1, 2023 (2024/2025/2026) |
| Small Hubs | All regions | October 1, 2021 | 2022/2023/2024 | October 1, 2024 (2025/2026/2027) |
| Non-Hubs | All regions | October 1, 2022 | 2023/2024/2025 | October 1, 2025 (2026/2027/2028) |

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

HDOT 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 HDOT’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 HDOT 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, data on employment, self-employment, education, training, and union apprenticeship)

HDOT 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 concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program.

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.

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 and Attachment 5 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))

HDOT 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 using race-neutral means.

HDOT will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. HDOT 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)). 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.)

HDOT 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, HDOT 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, HDOT 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 HDOT's concession specific goals as follows:

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.

The ACDBELO 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.

HDOT 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 HDOTs 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) HDOT will require that the bidder/offeror present the information required by paragraph (b)(2) of this section, no later than five (5) working 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 of Good Faith Efforts (26.53(d))

Within five (5) working days of being informed by HDOT 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:

Director of Transportation
Hawaii Department of Transportation
869 Punchbowl Street, Room 509
Honolulu, Hawaii 96813

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

- A. Within five (5) working days of being informed in writing by the Department that the bidder/offeror has not documented sufficient GFE, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following official:

Director of Transportation
Hawaii Department of Transportation
869 Punchbowl Street, Room 509
Honolulu, Hawaii 96813

- B. The reconsideration official, or his or her designee (referred to as "reconsideration official"), shall not have played any role in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
- C. 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 GFE to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate GFE to do so.
- D. In an administrative reconsideration, the reconsideration official will review all previously submitted documents, oral and written arguments, and other evidence presented in the reconsideration, in making the decision.
- E. The Department shall inform the bidder/offeror of the decision within thirty (30) days of the proceeding. The decision will state the Department's findings, and explain the basis of those findings, with respect to whether the bidder/offeror met the contract goal, or whether or not the bidder/offeror made adequate GFE to achieve the contract goal.
- F. The reconsideration decision is not administratively appealable to USDOT but is appealable under HRS 103D-709.

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

HDOT 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. HDOT will require the concessionaire to notify the ACDBELO immediately of the ACDBEs

inability or unwillingness to perform and provide reasonable documentation.

In this situation, HDOT 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.

HDOT 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 (5) 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.

HDOT 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 seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether good faith efforts have been demonstrated.

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 HDOT 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 concession's firms and suppliers, including those who qualify as an ACDBE. ACDBE concession specific goals can be provided upon request. Please contact the ACDBELO.

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**

HDOT 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**

HDOT 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;

For HNL only:

3. (i) CORE 30 or other Airport designated by FAA: We will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, we will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.
4. We understand the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
5. We understand we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:
 - (i) We do not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;
 - (ii) FAA disapproves our analysis or corrective actions; or

(iii) We do not fully implement:

- (A) The corrective actions to which we have committed, or
- (B) Conditions that FAA has imposed following review of our analysis and corrective actions.
- (C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set Asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

HDOT 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. HDOT 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

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

Section 23.79 Geographic Preferences

HDOT will not use a “local geographic preference” that gives an ACDBE located in our local area an advantage over ACDBEs from other geographical areas in obtaining business as, or with, a concession at one of our Hawaii airports.

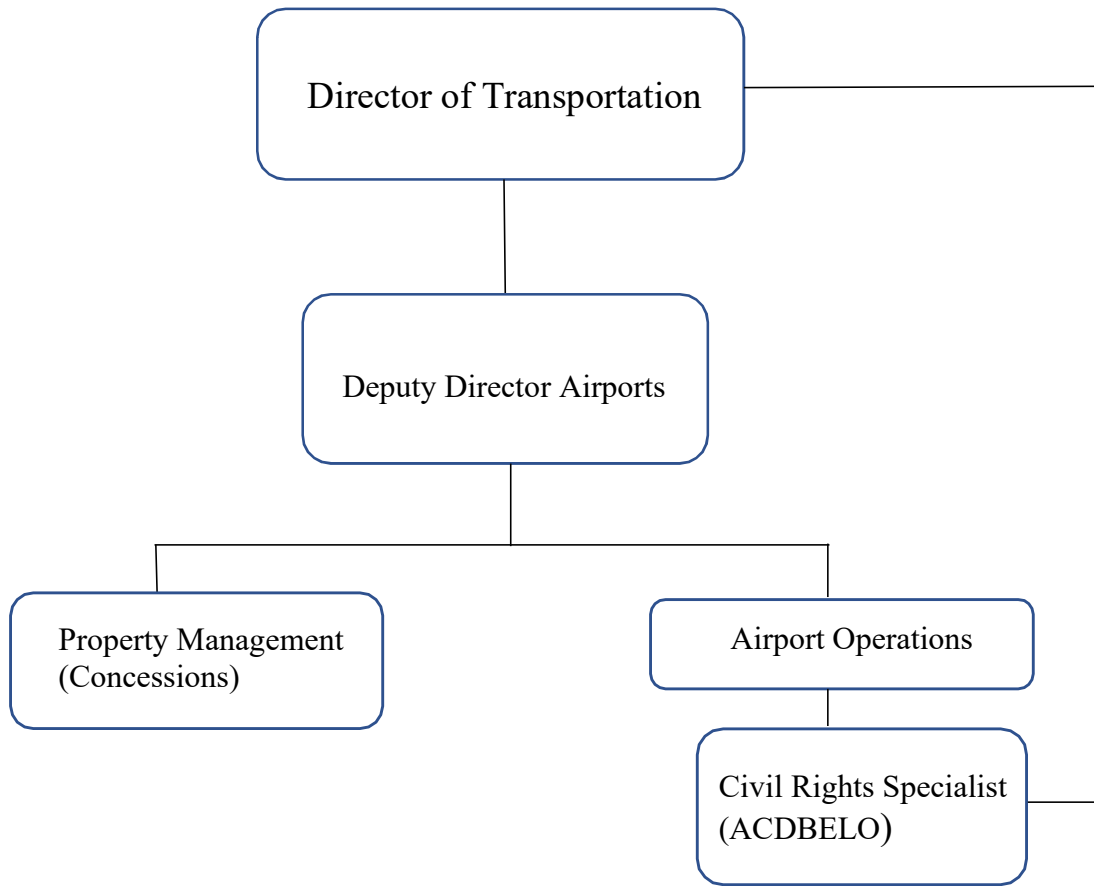
ATTACHMENTS

| | |
|---------------|--|
| Attachment 1 | Organizational Chart |
| Attachment 2 | DBE/ACDBE Directory (website) |
| 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 *Please contact the ACDBELO for individual airport goals |
| Attachment 5* | Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation *Please contact the ACDBELO for individual airport goals |
| Attachment 6 | Form 1 & 2 for Demonstration of Good Faith Efforts |
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ATTACHMENT

1

Attachment 1



The ACDBELO has direct access to the Director of Transportation.

ATTACHMENT

2

Hawaii DBE Directory

Please visit:

<https://hdot.dbesystem.com/>

ATTACHMENT

3

Monitoring and Enforcement Mechanisms

1. HDOT will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program so that USDOT can take the steps (e.g., referral to the Department of Justice for a criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109;
2. HDOT will adopt monitoring and enforcement mechanisms to verify that work committed to ACDBEs at contract award is actually performed by ACDBEs. Bidders will sign the bid proposal that includes language stating that bidders shall utilize ACDBEs listed in their bid/proposal;
3. Pre-bid meetings with the prime contractor shall be required to discuss the scope of work and performance expectations on contracts and subcontracts, and to confirm that work committed to ACDBEs shall be subcontracted to such ACDBEs;
4. An on-site review shall be conducted on every ACDBE in establishing the validity of the statements provided on the application and verifying that a firm actually possess the equipment, and expertise to perform the required work.
5. On an annual basis, HDOT shall review the DBE policies and practices of its subrecipients to ensure that they are in compliance with 49 CFR, Part 26; and
6. HDOT DBE program staff shall provide training to its line staff and sub-recipients when significant changes occur to the Program Plan which may affect the monitoring and enforcement mechanisms described in this section and other ACDBE program requirements.
7. In an effort to decrease fraud and abuse in the ACDBE Program, HDOT has implemented a ACDBE complaint procedure (Attachment 10). All complaints can be anonymous; however, if an individual provides contact information, HDOT can handle the complaint more thoroughly. HDOT will not investigate vague, ambiguous, or elusive complaints. HDOT will not investigate complaints where it is the respondent of the complaint. These complaints will be forwarded to the appropriate USDOT operating administration for investigation.

ATTACHMENT

4

Please contact the ACDBELO for individual airport goals or visit the following website:

<https://hidot.hawaii.gov/administration/ocr/dbe/dbe-goals/>

ATTACHMENT

5

Please contact the ACDBELO for individual airport goals or visit the following website:

<https://hidot.hawaii.gov/administration/ocr/dbe/dbe-goals/>

ATTACHMENT

6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

HDOT has an online application system for ACDBE firms seeking certification at the following website:

<https://hidot.hawaii.gov/administration/ocr/dbe/dbe-application/>

ATTACHMENT

8

Procedures for Removal of ACDBEs Eligibility

The following procedures shall apply to ACDBE certified firms when The State of Hawaii, Department of Transportation (HDOT) proposes to remove ACDBE certification. HDOT will follow procedures consistent with 49 CFR Section 26.87 as well as the HDOT DBE Program Plan.

In the event HDOT proposes to remove a DBE's certification, HDOT will follow procedures consistent with 49 CFR Section 26.87. Informal hearing procedures are outlined in Attachment F. To ensure separation of functions in a de-certification, HDOT has determined that the CRC or his/her designee will serve as the decision-maker in de-certification proceedings. HDOT has established an administrative "firewall" to ensure that the CRC will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding). If it is determined that the CRC was involved in discussions regarding the firm's eligibility, a neutral third-party from another state UCP will oversee the de-certification proceedings.

Firms that have their eligibility removed in accordance with Section 26.87 proceedings, shall not be eligible to reapply for one (1) year following the de-certification notice.

Section 26.88 Summary Suspension of DBE Certification

Summary suspension procedures for DBE certification shall also apply to ACDBE firms.

HDOT must immediately suspend the ACDBE certification of the firm when the disadvantaged owner dies or is incarcerated.

HDOT may suspend a ACDBE immediately without adhering to Section 26.87 under the following conditions:

1. There is adequate evidence of material change;
2. ACDBE fails to notify HDOT of a material change; or
3. HDOT is directed by the operating administration to suspend the ACDBE.

When a firm is suspended, HDOT shall immediately notify the ACDBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. The suspension takes effect when the ACDBE receives the Notice of Suspension.

While suspended, a prime contractor may not receive credit to meet a contract goal on a new contract, and any work the ACDBE does on a contract received during the suspension shall not be counted toward HDOT's overall goal. The ACDBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a CUF under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to HDOT information demonstrating that it is eligible notwithstanding its changed circumstances. Within thirty (30) 43 rev 1.20.22 days of receiving this information, HDOT will either lift the suspension and reinstate the firm's certification or commence a decertification action under Section 26.87. If HDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

Section 26.89 Certification Appeals

Any DBE firm or DBE complainant may appeal HDOT's decision in a certification matter within 90 days of HDOT's final decision to USDOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754 TTY: (202) 366-9696
Fax: (202) 366-5575

HDOT will promptly implement any USDOT certification appeal decision affecting the eligibility of DBEs for USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that HDOT's denial of its application was erroneous).

Applicant firms that have filed an appeal with the USDOT may reapply for certification after the waiting period of one (1) year has elapsed, even if USDOT has not rendered an appeal decision.

Requests for Information

Requests for information about the certification procedures contained in this Program Plan may be made to the DBE Program Certifier. Interested persons may contact the DBE Program Certifier at HDOT-DBE@hawaii.gov or at (808) 831-7914.

ATTACHMENT

9

MEMORANDUM OF UNDERSTANDING

Between

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION

And

CITY AND COUNTY OF HONOLULU, DEPARTMENT OF TRANSPORTATION SERVICES; CITY AND COUNTY OF HONOLULU, HONOLULU AUTHORITY FOR RAPID TRANSPORTATION; HAWAII COUNTY, DEPARTMENT OF PUBLIC WORKS; MAUI COUNTY, DEPARTMENT OF PUBLIC WORKS; KAUAI COUNTY, DEPARTMENT OF PUBLIC WORKS; AND THE OFFICE OF HAWAIIAN AFFAIRS

I. PURPOSE:

To establish and operate a Unified Certification Program (UCP) for the State of Hawaii whereby the State of Hawaii, Department of Transportation (HDOT) Office of Civil Rights will provide state-wide certification, renewal of certification, and de-certification for the HDOT Disadvantaged Business Enterprise (DBE) Program. The HDOT's Airport, Harbor and Highway Divisions, the Statewide Transportation Planning Office and the Oahu Metropolitan Planning Organization are direct recipients of funds from the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and/or the Federal Transit Administration (FTA) and are located within HDOT's organizational structure.

II. CERTIFYING AGENCY:

Hawaii Department of Transportation

III. PARTICIPANTS:

HDOT; City & County of Honolulu, Department of Transportation Services (DTS); City and County of Honolulu, Honolulu Authority for Rapid transportation (HART); Hawaii County, Department of Public Works (DPW-H); Maui County, Department of Public Works (DPW-M); Kauai County, Department of Public Works (DPW-K); and the Office of Hawaiian Affairs ("OHA"). DTS, DPW-H, DPW-M, DPW-K, and OHA are hereinafter collectively referred to as "PARTICIPANTS."

IV. AUTHORITY:

Title 49 Code of Federal Regulations (CFR), Section 26.81, requires that all United States Department of Transportation (USDOT) recipients in Hawaii participate in a UCP. 49 CFR 26.81 further requires that the Unified Certification Program follow all the Certification Standards of 49 CFR, Part 26, Subpart D, and the Certification Procedures in 49 CFR, Part 26, Subpart E.

V. RESPONSIBILITIES

1. HDOT agrees that it has been and will continue to act as the sole certifying agency for the USDOT DBE Program in the State of Hawaii. All applicants that are seeking DBE certification or renewal of certification will be directed to the HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.
2. The DBE Program Certifier shall be responsible for investigating, reviewing, and making a determination regarding the initial certification application of a firm that is interested in participating in the DBE Program, as well as the determination regarding the renewal or decertification of an existing DBE firm.
3. The Civil Rights Coordinator shall process and hear appeals made by DBE firms that have been de-certified. As stated in the HDOT's DBE Program Plan, the Civil Rights Coordinator shall not be involved in the initial de-certification review and determination. The Civil Rights Coordinator shall also be responsible for providing the USDOT with information requested by the USDOT which pertains to the denial of a firm's initial application for DBE certification.
4. HDOT's DBE Program Plan was approved by the USDOT in February 2005 and adopted by the PARTICIPANTS. It specified the responsibilities of the HDOT DBE Liaison Officer (DBELO) and each HDOT DBELO division, planning office and sub-recipient.
5. HDOT agrees that it will undertake certification and renewal of certification reviews in accordance with the certification standards that are included in 49 CFR, Subpart D, 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, and the certification procedures of 49 CFR, Subpart E, 26.81, 26.83, 26.86, 26.87, 26.89, and 26.91, as may be amended, and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
6. HDOT agrees that it will not process an application for certification from a firm having its principal place of business outside the State of Hawaii if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The HDOT will share its information and documents concerning the firm with other UCPs that are considering the firm's application.
7. HDOT agrees that it will cooperate fully with the oversight, review, and monitoring activities of the USDOT, and will implement USDOT's directives and guidance concerning certification matters.

8. HDOT agrees that it will compile, maintain, and make available on its website a DBE Directory consisting of all eligible DBEs. The DBE Directory will include the firm's name, address, type of work that the firm has been certified to perform, and the date of the most recent certification. The DBE Directory shall be updated weekly and posted on HDOT's website.
9. HDOT also agrees that it will accept from the PARTICIPANTS, referrals relating to complaints concerning DBE eligibility, and will review complaints in accordance with the provisions of 49 CFR Subpart D, 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, 49 CFR Subpart E, 26.81, 26.83, 26.85, 26.87, 26.89, and 26.91, as may be amended, and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
10. The PARTICIPANTS agree to refer all complaints that may be filed by any individual, firm, or agency regarding the eligibility of a DBE firm to HDOT, and HDOT agrees to investigate and issue a written decision on such complaints.
11. HDOT shall advise all new applicants that have been denied certification of their right to appeal the HDOT's denial of their certification application to the USDOT, provided that the appeal is filed within 90 days from the date of the applicant's receipt of the written notification of denial from HDOT. The appeal must be filed with the USDOT, Office of Civil Rights, 1200 New Jersey Ave., S.E. Washington D.C. , 20590.
12. HDOT shall advise all firms that have been decertified by the HDOT (hereinafter "Decertified Firm") of their right to an administrative hearing before a neutral third party. HDOT agrees to provide a neutral third party to conduct the hearing challenging the HDOT's decision to decertify a firm for failure to meet the DBE eligibility criteria. As provided in the DOT DBE Program Plan, the HDOT Civil Rights Coordinator or a designated representative, who has not participated in the initial fact-finding, review, or decertification decision, shall conduct the hearing (hereinafter "Hearings Officer"). The Hearings Officer shall be knowledgeable in the DBE Program and Plan. If the Decertified Firm is not satisfied with the decision of the Hearings Officer, the Decertified Firm may file an appeal of the decision with the USDOT by mailing a written appeal to the U.S. Department of Transportation, Office of Civil Rights 1200 New Jersey Ave., S.E. Washington, D.C. 20590 within 90 days of the Decertified Firm's receipt of a copy of the decision from the Hearings Officer.
13. The PARTICIPANTS agree to refer all applicants seeking DBE certification to HDOT.
14. The PARTICIPANTS agree to abide by all HDOT and USDOT's DBE certification and decertification findings and determinations.

15. The PARTICIPANTS agree that it shall not count a firm as a DBE unless the firm has been certified as a DBE as follows: 1) prior to the opening of a sealed bid and 2) at contract award for all other methods of procurement.
16. The PARTICIPANTS agree to provide all reasonable assistance to ensure that HDOT has sufficient resources as may be requested by HDOT to facilitate the HDOT review and processing of DBE certification applications.
17. HDOT has been the single certifying agency since the adoption of the DBE Program. Upon approval of the UCP, the HDOT shall continue in this capacity and the PARTICIPANTS agree to fully implement all terms and conditions of the UCP no later than 18 months following the approval of the agreement by the FHWA.

VI. LIMITATIONS:

Nothing in this Memorandum of Understanding between HDOT and the PARTICIPANTS shall be construed as limiting or expanding the statutory or regulatory responsibilities of the HDOT or any PARTICIPANT with regard to the implementation and operation of the DBE Program. Each provision of this Memorandum of Understanding is subject to the laws and regulations of the State of Hawaii and of the United States.

Nothing in this Memorandum of Understanding shall be construed as expanding the liability of any party with regard to the DBE Program. In the event of a lawsuit or claim arising from this Memorandum of Understanding, or the HDOT's DBE certification review or determination, each party shall be responsible for its own defense, and all costs related thereto. No party shall be required to provide indemnification of any other party.

VII. EFFECTIVE DATE:

This Memorandum of Understanding shall become effective immediately upon its execution by all the parties.

VIII. METHOD OF TERMINATION:

This Memorandum of Understanding shall remain in force until the USDOT DBE Program terminates or changes its requirements.

IX. AMENDMENTS:

No amendment of this Memorandum of Understanding shall be effective until it has been approved by the USDOT and the Director of HDOT has approved the amendment in writing, and the PARTICIPANTS and HDOT execute a written amendment of this Memorandum of Understanding.

State of Hawaii, Department of Transportation



GLENN M. OKIMOTO
Director

SEP 10 2013

Date

City and County of Honolulu, Department of Transportation Services

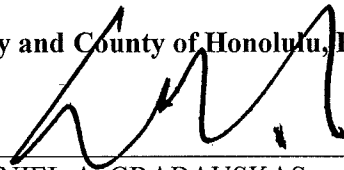


MICHAEL D. FORMBY
Director

9/12/13

Date

City and County of Honolulu, Honolulu Authority for Rapid Transportation

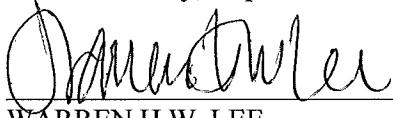


DANIEL A. GRABAUSKAS
Executive Director and CEO

9/17/13

Date

Hawaii County, Department of Public Works

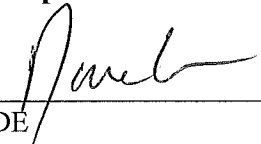


WARREN H.W. LEE
Director

30 SEP 2013

Date

Maui County, Department of Public Works and Environmental Management




DAVID GOODE
Director

10-28-13

Date

Kauai County, Department of Public Works



LARRY DILL
County Engineer

11-18-13

Date

Office of Hawaiian Affairs



DR. KAMANA'OPONO M. CRABBE
Administrator

12/4/13

Date

ATTACHMENT

10

**ATTACHMENT 10 - HAWAII DEPARTMENT OF TRANSPORTATION (HDOT)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
COMPLAINT PROCEDURES**

Purpose: The attached form is for use by any affected business or person who believes that a recipient, subrecipient, or business failed to carry out its obligations pursuant to the requirements of 49 CFR Part 23 and/or 49 CFR Part 26 (or other related statutes, contract, or subcontract). The HDOT DBE complaint process provides a means to submit allegations of noncompliance regarding matters believed to be the responsibility of a recipient, subrecipient, or business. Such allegations include, but are not limited to, procedural deficiencies, prompt payment, or other activities believed to be in violation of the DBE requirements.

Filing Instructions: All complaints must be filed no later than 180 days from the date of the alleged violation of 49 CFR Part 23 and/or 49 CFR Part 26 (or other related statute, contract, or subcontract). If you need assistance in completing the complaint form or require it in an accessible format, including any other language, please contact the HDOT Office of Civil Rights (OCR) at (808) 831-7901. Please send the signed complaint form along with the attached “COMPLAINANT CONSENT/RELEASE FORM” (pages 1-3) via email to HDOT-DBE@hawaii.gov, or regular mail to:

Hawaii State Department of Transportation
Office of Civil Rights
Attention: DBE Program Supervisor
200 Rodgers Boulevard
Honolulu, HI 96819

These procedures do not deny or limit the right of a complainant to file a formal complaint with the U.S. Department of Transportation (USDOT).

Disposition of Complaints: Complaints should contain specific information to support each allegation. Any complaint that, on its face, lacks evidence supporting the allegations may be dismissed or held until additional information is obtained from the Complainant. Upon review of each complaint received by the HDOT OCR, the following actions will be taken, as appropriate:

- Notify Complainant of acceptance, dismissal, or make request for additional information;
- Notify Complainant of lack of jurisdiction and transfer the complaint to another government agency;
- Notify the Complainant of referral to the appropriate operating administration; and
- Where the HDOT OCR has completed an investigation, the Complainant and Respondent will be notified by letter.

Confidentiality: The HDOT OCR will protect the identity of Complainants to the maximum extent possible by law. Any individual filing a complaint may request to remain anonymous by indicating so in the attached “COMPLAINANT CONSENT/RELEASE FORM”; however, doing so may impede the completion of an investigation and resolution of any matters in which the Complainant or the FHWA hold interest.

HDOT DBE PROGRAM COMPLAINT FORM

1. Name of recipient, subrecipient, or business:

2. State or Federal Project number and description of project on which alleged violation(s) occurred:

3. **Complaint Description**

Check one or more boxes, indicating the area(s) of concern:

- ☐ Good Faith Effort Determinations (pre-award/post-award)
- ☐ Goal-setting
- ☐ Monitoring and Enforcement of Commercially Useful Function
- ☐ Counting/Crediting of DBE Participation
- ☐ Termination (including substitution or modification of work under commitment)
- ☐ Prompt Payment/Return of Retainage
- ☐ Eligibility
- ☐ Suspected Fraud or Criminal Activity
- ☐ Other (e.g. Discriminatory action based on race, sex, color, or national origin)

Please list below each allegation, including essential elements of information (who, what, where, when). Provide the date of each occurrence and describe how it violates the requirement(s). Attach any evidence or documentation supporting your claim(s). If you need additional space, you may do so on a separate page (attach to this document).

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

Complainant (Name and Title/Company Name):

Address:

City:

State:

Zip:

Telephone:

Fax:

E-Mail:

By:

(Signature)

(Date)

Office Use Only

Date received by HDOT:

Complaint Number:

Date Received and Initials:

Action Taken

- ☐ Complaint Accepted
- ☐ Complaint Incomplete/Requested additional information
- ☐ No Jurisdiction
- ☐ No Jurisdiction with referral to another government agency
- ☐ Referred to appropriate operating administration
- ☐ Other:

HDOT COMPLAINANT CONSENT/RELEASE FORM

Complainant (Name and Title/Company Name):

Address:

State or Federal Project number and description of project:

Please read the information below, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information. As a complainant, I understand that in the course of an investigation it may become necessary for HDOT to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of HDOT to honor requests under the Freedom of Information Act. I understand that it may be necessary for HDOT to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by USDOT's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by the USDOT.

CONSENT/RELEASE

- ☐ CONSENT - I have read and understand the above information and authorize HDOT to reveal my identity to persons at the organization or institution under investigation. I hereby authorize HDOT to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.
- ☐ CONSENT DENIED - I have read and understand the above information and do not want HDOT to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

Signature:

Date:

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding, or hearing conducted by HDOT are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce, or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.
- The laws and regulations provide that no recipient, contractor, or any other participant in the DBE program shall intimidate, threaten, coerce, or discriminate against any individual or firm because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.
- Information obtained from the complainant or other individual which is maintained in HDOT's investigative files may be exempt from disclosure under the Freedom of Information Act, the Uniform Information Practices Act, or the Hawaii Privacy Law if release of such information would constitute an unwarranted invasion of personal privacy.

There are three laws governing personal information submitted to HDOT: the Freedom of Information Act (5 U.S.C. ' 552), the Uniform Information Practices Act (HRS Chapter 92F), and the Hawaii Privacy Law (HRS §711-1111).

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of HDOT. Individuals can obtain items from many categories of records of HDOT -- not just materials that apply to them personally. HDOT must honor requests under the Freedom of Information Act, and also Disclosure of Personal Records under HRS §92F, with some exceptions. HDOT generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, HDOT may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."

THE UNIFORM INFORMATION PRACTICES ACT is intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible, while balancing personal privacy rights guaranteed under the Hawaii State Constitution

THE HAWAII PRIVACY LAW is intended to protect an individual's right to privacy, except in the execution of public duty or as authorized by law.

Persons who submit information to HDOT should know that:

- HDOT is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients, contractors, or any other participants in the DBE program. HDOT also is authorized to conduct reviews of recipients, contractors, or any other participants in the DBE program to assess their compliance with civil rights laws.
- Information that HDOT collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. HDOT staff may need to reveal certain information to persons outside HDOT in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. HDOT also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act.
- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. HDOT will not release the information to any other agency or individual unless the person who supplied the information submits a written consent, with some exceptions. One of these exceptions is when release is required under the Freedom of Information Act.
- No law requires a complainant to give personal information to HDOT, and no sanctions will be imposed on complainants or other individuals who deny HDOT's request. However, if HDOT fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.
- HDOT does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under the Freedom of Information Act. HDOT will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the Freedom of Information Act or otherwise required by law.

ATTACHMENT

11



State of Hawaii
Department of Transportation
Disadvantaged Business Enterprise Program
Procedures Regarding HDOT Proposal to
Remove DBE Eligibility



Objective:

When Hawaii Department of Transportation (HDOT) has determined a Disadvantaged Business Enterprise (DBE) no longer qualifies under the certification requirements of Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), the DBE is given the opportunity to respond to HDOT's proposal utilizing the following fair, uniform and consistent procedures.

I. DBE Opportunity to Respond to Decertification Proposal

When HDOT determines that there is reasonable cause to believe that a DBE is ineligible to be certified and proposes in writing to remove the DBE's eligibility, the DBE is afforded an opportunity to respond in accordance with 49 CFR §26.87(d). The DBE may take one of two actions if they are contesting the basis for the decertification: 1) request an informal hearing, or 2) submit a written response to the decertification proposal.

a. Informal Hearing Procedures

The DBE may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified at an informal hearing.

To help ensure the safety and well-being of those involved in the informal hearing, HDOT is adopting the guidance provided by the United States Department of Transportation (USDOT). Therefore, the informal hearing may be conducted by utilizing a computer, tablet, and mobile technologies, such as FaceTime, Skype, GoToMeeting, Zoom, and other similar telecommunication applications.

The informal hearing will be scheduled within 30 days from the date of the DBE's written request. Upon good cause presented to the Hearing Officer (HO), at the discretion of the HO, a one time extension of 30 days may be given. Any additional extensions shall only be granted under extreme or extenuating circumstances at the discretion of the HO. If an extension request is not approved by the HO for good cause, the DBE will be required to attend the informal hearing as scheduled. Should the DBE fail to participate at the informal hearing, HDOT will remove the firm's eligibility due to the DBE's failure to cooperate. Should the DBE choose to not attend any of the pre-hearing conferences with the HO, once notice is given of the hearing date and time, the DBE will be deemed to have waived their presence at the conference.

1) HDOT shall retain the original DBE file and provide copies to:

a. DBE (upon request);

- b. State of Hawaii, Attorney General's Office; and
- c. HO.

The file shall contain, at a minimum, a table of contents, relevant documents which HDOT used to determine eligibility, and all correspondence. Each page of each copy of the file shall be Bates Stamped or numbered for reference during the hearing.

- 2) HDOT will charge the DBE for any cost of copying the record. HDOT personnel shall charge not less than twenty-five (25) cents per page, sheet, or fraction thereof, for copies of government records. HDOT may also charge fees for the time spent searching, reviewing, and segregating government records in accordance with rules adopted by the Office of Information Practices.
- 3) The following steps will be taken to secure hearing venue by HDOT:
 - a. Check conference rooms at HDOT for availability.
 - b. If the HO is from out-of-state, arrangements shall be made for a videoconference at HDOT.
 - c. A court reporter will be retained to obtain a verbatim record of an administrative hearing.
- 4) HDOT will respond in writing to the DBE's request for an informal hearing (emails are acceptable if agreeable by the DBE). The letter will inform the DBE of the date, time, and location of hearing.
- 5) HDOT will provide a copy of the documents/evidence that it intends to provide to the HO at least 10 days prior to the hearing. HDOT will provide to the DBE, the names and contact information (phone numbers and emails) of all witnesses they intend to call as witnesses during the hearing.
- 6) The DBE will provide to HDOT, all documents and records they intend to provide at the hearing to the HO at least 10 days BEFORE the commencement of the hearing. If the DBE does not do so, it is deemed that they waive to present that evidence at the hearing. Otherwise, in extenuating circumstances, a request to the HO may be made for an extension of the time for the hearing until the documentation/evidence is provided to HDOT. Only one extension of 10 days may be given to the DBE. The DBE will also provide HDOT with any witnesses and their contact information (phone numbers and email addresses) within 10 days of the request for hearing. If the DBE does not do so within 10 days of the hearing, the witness may be precluded from testifying at the hearing. HDOT will provide to the DBE any witnesses they intend to call within 10 days of the hearing. If HDOT does not do so within 10 days of the hearing, the HDOT witness may be precluded from testifying at the hearing. The HO will have the discretion to require additional procedures and will inform HDOT and the DBE as soon as practicable.

- 7) The HO shall be a person who is knowledgeable about the certification requirements of the DBE program and also will NOT be the Civil Rights Coordinator or his/her designee from HDOT's Office of Civil Rights. Such an individual shall have not participated in any certification decisions affecting the requesting DBE and shall be knowledgeable about the DBE certification requirements. If a HO official is not available or does not possess the requisite knowledge of the DBE program, a representative from a Unified Certification Program in another state will serve as the HO. HDOT will maintain a record of the process, including a verbatim record.
- 8) HDOT will notify the out-of-state HO of the date, time (remember the time zone) and videoconference site. A copy of the complainant's entire DBE certification record shall be sent to the HO. A copy of what is provided to the HO will also be provided to the DBE at least 10 days prior to the hearing.
- 9) At the time of the hearing, the DBE will have an opportunity to present evidence to refute the decertification proposal. The DBE may respond to the reasons for removal of its eligibility and provide information and arguments concerning why the DBE should remain certified.

Order of Hearing:

1. HDOT bears the burden of proving by a preponderance of the evidence that the DBE does not meet the certification standards of 49 CFR Part 26.
2. The HO shall initiate the hearing and explain the procedure to be followed.
 - (a) The reason for the informal hearing and name of the DBE owner shall be read into the record. A transcriber/electronic record of the proceeding shall be made and retained by the State of Hawaii. A court reporter will be retained for a verbatim record.
3. The HO shall call upon HDOT to provide a brief presentation (no more than 15 minutes) outlining the reasons why the DBE is not eligible to remain certified as a DBE. HDOT will make a brief presentation (no more than 15 minutes) to explain HDOT's position and reasons for its proposal to remove the DBE's eligibility.
4. HDOT shall present documents, evidence, and/or call witnesses addressing issues outlined in HDOT's proposal to decertify the DBE.
5. HDOT shall present their case to the HO and the DBE may have an opportunity to cross-examine the witnesses.
6. At the end of HDOT's presentation, the DBE will present their case to the HO and HDOT may have an opportunity to cross-examine the witnesses. The DBE may present documents, evidence, and/or call witnesses to address other issues relevant to the removal of its eligibility under 49 CFR Part 26.

7. The HO may question either HDOT, the DBE, or their witnesses at any time during the hearing.
8. On conclusion of the question period, HDOT followed by the DBE shall be given the opportunity to present a rebuttal case.
9. The HO shall proceed to develop findings of fact and or conclusions of law with regard to the eligibility of the DBE to remain certified under the provisions of 49 CFR Part 26 within 30 days of the informal hearing. HDOT shall forward the findings of fact and or conclusions of law to the DBE with a cover letter explaining the conclusions and its impacts and appeal rights if appropriate.
10. The decision by the HO shall be based on any one or more of the following:
 - (a) Changes in the DBE's circumstances since the certification of the DBE by HDOT that rendered the DBE ineligible pursuant to 49 CFR, Part 26;
 - (b) Receipt of information or evidence not available to HDOT at the time of certification;
 - (c) Receipt of information that was concealed or misrepresented before or during certification proceedings;
 - (d) Changes in the certification standards or requirements of the U.S. Department of Transportation since HDOT certified the DBE;
 - (e) A document finding that HDOT's determination to certify the DBE was factually erroneous.
 - (f) The DBE has failed to cooperate with HDOT; or
 - (g) The DBE has exhibited a pattern of conducting indicating its involvement in attempts to subvert the intent or the requirements of the DBE program.

While an informal hearing decision is pending, the DBE is eligible to participate on federally funded projects.

b. Written Response

The DBE may elect to present information and arguments in writing, without going to a hearing, within ten (10) calendar days from the date of the proposal letter. The request must set forth in detail the reasons the DBE believes HDOT's proposal is in error and must include any additional information and arguments concerning why the DBE should remain certified. The information and arguments will be duly submitted to an impartial third party hearing officer, not within the HDOT, Office of Civil Rights.

II. DBE Right to Appeal

The final decision must inform the DBE of the consequences and of the availability of an appeal to the U.S. Department of Transportation under 49 CFR §26.89. The DBE must appeal within 90 days of HDOT's final decision. Copies of the decision shall be sent via certified

mail to the DBE owner and the original shall be retained in HDOT's DBE certification file.
Note: If there is an appeal to USDOT under 49 CFR §26.89, HDOT will provide a transcript of the hearing to USDOT and to the DBE, upon request. If the DBE does not submit an appeal, the decision by the HO shall be final and the DBE will have no further appeal rights.

ATTACHMENT

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This content is from the eCFR and is authoritative but unofficial.

Title 49 - Transportation

Subtitle A - Office of the Secretary of Transportation

Part 23 Participation of Disadvantaged Business Enterprise in Airport Concessions

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Appendix A to Part 23

Uniform Report of ACDBE Participation

PART 23 - PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

Source: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

Subpart A - General

§ 23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

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

§ 23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR § 121.103(f)) do not apply to this part.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

- (1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.
- (2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its

office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

- (3) For purposes of this subpart, a business is not considered to be "located on the airport" solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be "located on the airport," however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.
- (4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:
 - (i) Leases.
 - (ii) Subleases.
 - (iii) Permits.
 - (iv) Contracts or subcontracts.
 - (v) Other instruments or arrangements.
- (5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.
- (6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

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.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (<http://www.ntis.gov/naics>).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of § 23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is -

- (1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.*, "You must do XYZ" means that recipients must do XYZ).

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007; 77 FR 36931, June 20, 2012]

§ 23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

§ 23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

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

- (b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.
- (c) You must include the following assurances in all concession agreements and management contracts you execute 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."

§ 23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§ 26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

- (a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.
- (b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

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

- (c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.
- (d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

- (1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.
- (2) Your application must show that -
 - (i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;
 - (ii) Conditions at your airport are appropriate for implementing the proposal;
 - (iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and
 - (iv) Your proposal is consistent with applicable law and FAA program requirements.
- (3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:
 - (i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§ 23.53 through 23.55.
 - (ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;
 - (iii) There is a reasonable limitation on the duration of the your modified program; and
 - (iv) Any other conditions the Administrator makes on the grant of the waiver.
- (4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

Subpart B - ACDBE Programs

§ 23.21 Who must submit an ACDBE program to FAA, and when?

- (a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.
 - (1) You must submit this revised program on the same schedule provided for your first submission of overall goals in § 23.45(a) of this part.
 - (2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

- (3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.
- (b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.
- (c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.
- (d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.
- (e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

- (a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§ 26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.
- (b) You may combine your provisions for implementing these requirements under this part and part 26 (e.g., a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

- (a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.
- (b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.
- (c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.
- (d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:
 - (1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
 - (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 recipient's ACDBE program will affect the procurement process;
 - (6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
 - (7) Establishing a business development program (see part 26, § 26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.
- (e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:
- (1) Establishing concession-specific goals for particular concession opportunities.
 - (i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
 - (ii) If the goal applies to purchases and/or leases of goods and services, 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.
 - (iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor 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.
 - (iv) The administrative procedures applicable to contract goals in part 26, § 26.51-53, apply with respect to concession-specific goals.
 - (2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.
 - (3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.
- (f) Your ACDBE program must 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.
- (g) As provided in § 23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

- (a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.
- (b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

[77 FR 36931, June 20, 2012]

Subpart C - Certification and Eligibility of ACDBEs

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

- (a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§ 26.61-91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, § 26.81).
- (b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.
- (c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.
 - (1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.
 - (2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

- (a) As a recipient, you must, except as provided in paragraph (b) of this section, 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.

- (b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:
 - (1) **Banks and financial institutions:** \$1 billion in assets;
 - (2) **Car rental companies:** \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.
 - (3) **Pay telephones:** 1,500 employees;
 - (4) **Automobile dealers:** 350 employees.
- (c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a FEDERAL REGISTER document informing the public of each adjustment.

[77 FR 36931, June 20, 2012]

§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$1.32 million. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

- (a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.
- (b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

- (a) The provisions of part 26, §§ 26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:
 - (1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
 - (2) Analyze the ownership of stock of the firm, if it is a corporation;
 - (3) Analyze the bonding and financial capacity of the firm;
 - (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

- (5) Obtain or 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;
- (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.
- (b) In reviewing the affidavit required by part 26, § 26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in § 23.33.
- (c) For purposes of this part, the term prime contractor in part 26, § 26.87(i) 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.
- (d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, § 26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.73(h).
- (e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).
- (f) When UCPs are established in a state (see part 26, § 26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.
- (g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:
 - (1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.
 - (2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.
 - (3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.
- (h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.
- (i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Subpart D - Goals, Good Faith Efforts, and Counting

§ 23.41 What is the basic overall goal requirement for recipients?

- (a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.
- (b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.
- (c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.
- (d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.
- (e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

- (a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.
- (b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

- (a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:
 - (1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.
 - (2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.
 - (3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.
- (b) You must then submit new goals every three years after the date that applies to you.
- (c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.
- (d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

- (e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must “show your work” to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.
- (f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (see § 23.51(d)(5)).
- (g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious “split,” as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (i.e., the number).
- (h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral “split.” The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.
- (i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

- (a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.
- (b) This base does not include the gross receipts of car rental operations.
- (c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.
- (d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

§ 23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of § 23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§ 23.51 How are a recipient's overall goals expressed and calculated?

- (a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.
 - (1) This percentage is the estimated ACDBE participation that would occur if there were a “level playing field” for firms to work as concessionaires for your airport.
 - (2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.
 - (3) You must complete the goal-setting process separately for each of the two overall goals identified in § 23.41 of this part.
- (b)
 - (1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the “relative availability of ACDBEs”).
 - (2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.
 - (3) Your 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. Your market area may be different for different types of concessions.
- (c) **Step 1.** You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.
 - (1) **Use DBE Directories and Census Bureau Data.** Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, <http://www.census.gov/epcd/cbp/view/cbpview.html>.) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.
 - (2) **Use an Active Participants List.** Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

- (3) **Use data from a disparity study.** Use a percentage figure derived from data in a valid, applicable disparity study.
 - (4) **Use the goal of another recipient.** If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
 - (5) **Alternative methods.**
 - (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.
 - (ii) 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. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.
- (d) **Step 2.** Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.
- (1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:
 - (i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and
 - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.
 - (2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.
 - (3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:
 - (i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;
 - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.
 - (4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
 - (5) Among the information you submit with your overall goal (see 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and

the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §§ 26.51(c)).

- (e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.*, with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.
- (f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:
 - (1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and
 - (2) Avoid imposing undue burdens on non-ACDBEs.

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

- (a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.
- (b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.
- (c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.
- (d) The following special rules apply to counting participation related to car rental operations:
 - (1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) Do 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.
- (e) For other goods and services, count participation toward ACDBE goals as provided in part 26, § 26.55 and § 23.55 of this part. In the event of any conflict between these two sections, § 23.55 controls.
- (f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count

toward the goal of each airport.

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

- (a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, § 26.55(c), except that the requirements of § 26.55(c)(3) do not apply to concessions.
- (b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
- (c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.
- (d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.
- (e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
- (f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, § 26.55(e)(1)(ii).
- (g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, § 26.55(e)(2)(ii).
- (h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:
 - (1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.
 - (2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.
- (i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.
- (j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds

business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

- (k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").
- (l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

- (a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.
- (b) If the awards and commitments shown on your 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, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:
 - (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
 - (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;
 - (3)
 - (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
 - (ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.
 - (4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
 - (5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:
 - (i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;
 - (ii) FAA disapproves your analysis or corrective actions; or
 - (iii) You do not fully implement:

- (A) The corrective actions to which you have committed, or
- (B) Conditions that FAA has imposed following review of your analysis and corrective actions.
- (c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

- (a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.
- (c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

Subpart E - Other Provisions

§ 23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

§ 23.73 What requirements apply to privately-owned or leased terminal buildings?

- (a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.
- (b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.
- (c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

- (d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in § 23.21(e).

§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

- (a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.
- (b) You may enter into a long-term, exclusive concession agreement only under the following conditions:
 - (1) Special local circumstances exist that make it important to enter such agreement, and
 - (2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.
- (c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:
 - (1) A description of the special local circumstances that warrant a long-term, exclusive agreement.
 - (2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:
 - (i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§ 23.47 through 23.49 of this part.
 - (ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.
 - (iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.
 - (3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.
 - (4) Documentation that ACDBE participants are properly certified.
 - (5) A description of the type of business or businesses to be operated (e.g., location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).
 - (6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.
 - (7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

§ 23.77 Does this part preempt local requirements?

- (a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.
- (b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.
- (c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.
- (d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.
- (e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

§ 23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

Appendix A to Part 23 - Uniform Report of ACDBE Participation

Instructions for Uniform Report of ACDBE Participation

- 1. Insert name of airport receiving FAA financial assistance and AIP number.
- 2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.
 - 3a. Provide the annual reporting period to which the report pertains (e.g., October 2005-September 2006).
 - 3b. Provide the date on which the report is submitted to FAA.
- 4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.
- 5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (e.g., a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement

between the airport and a firm to manage a portion of the airport's facilities or operations (e.g., manage the parking facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.
7. Blocks 7-9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.
8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.
9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.
10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.
11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5-6 and/or 8-9, the requested information about that firm should be attached in response to this item.

Uniform Report of ACDBE Participation

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____% Overall Goal
____%

| 5. Non-car rental Cumulative ACDBE participation | A Total dollars (everyone) | B Total number (everyone) | C Total to ACDBEs (dollars) | D Total to ACDBEs (number) | E RC to ACDBEs (dollars) | F RN to ACDBEs (dollars) | G % of dollars to ACDBEs |
|---|-------------------------------------|------------------------------------|-----------------------------------|----------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| Prime Concessions | | | | | | | |
| Subconcessions | | | | | | | |
| Management Contracts | XXXXXXX | XXXXXXX | | | | | XXXXXX |
| Goods/Services | | | | | | | |
| Totals | | | | | | | |

| 6. Non-Car rental New ACDBE participation this period | A Total dollars (everyone) | B Total number (everyone) | C Total to ACDBEs (dollars) | D Total to ACDBEs (number) | E RC to ACDBEs (dollars) | F RN to ACDBEs (dollars) | G % of dollars to ACDBEs |
|---|-------------------------------------|------------------------------------|-----------------------------------|----------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| Prime Concessions | | | | | | | |
| Subconcessions | | | | | | | |
| Management Contracts | XXXXXXXX | XXXXXXXX | | | | XXXXXX | |
| Goods/Services | | | | | | | |
| Totals | | | | | | | |

7. Current Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____% Overall Goal ____%

| 8. Car rental Cumulative ACDBE participation | A Total dollars (everyone) | B Total number (everyone) | C Total to ACDBEs (dollars) | D Total to ACDBEs (number) | E RC to ACDBEs (dollars) | F RN to ACDBEs (dollars) | G % of dollars to ACDBEs |
|---|-------------------------------------|------------------------------------|-----------------------------------|----------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| Prime Concessions | | | | | | | |
| Subconcessions | | | | | | | |
| Goods/Services | | | | | | | |
| Totals | | | | | | | |

| 9. Car rental New ACDBE participation this period | A Total dollars (everyone) | B Total number (everyone) | C Total to ACDBEs (dollars) | D Total to ACDBEs (number) | E RC to ACDBEs (dollars) | F RN to ACDBEs (dollars) | G % of dollars to ACDBEs |
|--|-------------------------------------|------------------------------------|-----------------------------------|----------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| Prime Concessions | | | | | | | |
| Subconcessions | | | | | | | |
| Goods/Services | | | | | | | |
| Totals | | | | | | | |

| 10. Cumulative ACDBE participation by race/ gender | A Black Americans | B Hispanic Americans | C Asian-Pacific Americans | D Asian-Indian Americans | E Native Americans | F Non-minority Women | G Other | H Totals |
|---|-------------------------|----------------------------|---------------------------------|--------------------------------|--------------------------|----------------------------|------------|-------------|
| Car Rental | | | | | | | | |
| Non-Car Rental | | | | | | | | |
| Totals | | | | | | | | |

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of 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);
 - (5) Estimated gross receipts for the firm during this reporting period.