

## **POLICY STATEMENT**

### **Section 23.1, 23.23 Objectives/Policy Statement**

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

It is the policy of the St. Joseph County Airport Authority 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 Properties Manager has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Properties Manager 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 St. Joseph County Airport Authority in its financial assistance agreements with the Department of Transportation.

St. Joseph County Airport Authority has disseminated this policy statement to the St. Joseph County Airport Authority Board and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by way of our website.

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Michael Daigle, A.A.E.

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Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

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

### **Section 23.3 Definitions**

The St. Joseph County Airport Authority will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

The St. Joseph County Airport Authority is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

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

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

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

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

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(2) “The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

## **Section 23.11 Compliance and Enforcement**

The St. Joseph County Airport Authority will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200.

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

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

The St. Joseph County Airport Authority’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 the St. Joseph County Airport Authority’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 AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the St. Joseph County Airport Authority may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

## **SUBPART B – ACDBE PROGRAMS**

### **Section 23.21 ACDBE Program Updates**

The St. Joseph County Airport Authority is a non-hub primary airport required to have an ACDBE program.

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

Until the St. Joseph County Airport Authority's new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at South Bend International Airport.

When the St. Joseph County Airport Authority makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

**Policy Statement:** The St. Joseph County Airport Authority is committed to operating its ACDBE program in a nondiscriminatory manner.

The St. Joseph County Airport Authority's Policy Statement is elaborated on the first page of this program.

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

Kerianne Linn, A.A.E.  
Properties Manager  
St. Joseph County Airport Authority  
4477 Progress Drive  
South Bend, IN 46628

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

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO does not have a staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
4. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
5. Analyzes St. Joseph County Airport Authority's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on ACDBE matters and achievement.
8. Participates in ACDBE training seminars.
9. Acts as liaison to the Unified Certification Program (UCP) in Indiana.
10. Maintains the St. Joseph County Airport Authority's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The St. Joseph County Airport Authority through the Indiana 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 at least quarterly. We make the Directory available as follows: at <https://entapps.indot.in.gov/DBELocator/>

The Directory may be found in Attachment 2 to this program document. (26.31).

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

The St. Joseph County Airport Authority will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)).

The St. Joseph County Airport Authority will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The St. Joseph County Airport Authority'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 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

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

The St. Joseph County Airport Authority will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f))

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

### **Section 23.27 Reporting**

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for

a minimum of 3 years following the end of the concession agreement or other covered contract.

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

### **Section 23.29 Compliance and Enforcement Procedures**

The St. Joseph County Airport Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 3). (26.37)

## **SUBPART C – CERTIFICATION AND ELIGIBILITY**

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

The St. Joseph County Airport Authority is the member of a Unified Certification Program (UCP) administered by the State of Indiana. 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, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. South Bend International Airport is participating in Indiana's statewide certification program which will make certification and eligibility decisions.

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

telephone company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

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

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

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

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

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

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

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

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

to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

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

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

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

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

## **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 23.41 Basic Overall Goal Requirement**

The St. Joseph County Airport Authority will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. We will report any significant overall goal adjustments to the FAA.

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

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

### Section 23.43 Consultation in Goal Setting

The St. Joseph County Airport Authority consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to 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 nonhub primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

<b>Primary Airport Size</b>	<b>Region</b>	<b>Date Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
<b>Large/Medium Hubs</b>	<b>All regions</b>	<b>October 1, 2017</b>	<b>2018/2019/2020</b>	<b>October 1, 2020 (2021/2022/2023)</b>
<b>Small Hubs</b>	<b>All regions</b>	<b>October 1, 2018</b>	<b>2019/2020/2021</b>	<b>October 1, 2021 (2022/2023/2024)</b>
<b>Non-Hubs</b>	<b>All regions</b>	<b>October 1, 2016</b>	<b>2017/2018/2019</b>	<b>October 1, 2019 (2020/2021/2022)</b>

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

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

statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

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

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in Attachment 5 to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 & 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 (Also include this language in the DBE goal attachment) (23.25 (c)(e)(1)(iv))**

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

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

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

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

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

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

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

### **Section 26.53 Good Faith Efforts Procedures**

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

Kerianne Linn, Properties Manager is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

#### Information to be submitted (26.53(b))

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

- (i) The names and addresses of ACDBE firms that will participate in the contract;
  - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each ACDBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section: No later than 5 days after bid opening as a matter of responsibility.

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

#### Administrative reconsideration (26.53(d))

Within 5 business days of being informed by St. Joseph County Airport Authority 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: Aaron Kobb, Vice President of Finance, 4477 Progress Drive, South Bend, IN 46628, 574-282-4590 ext. 223, akobb@sbnair.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

reconsideration process is not administratively appealable to the Department of Transportation.

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

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

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

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work

for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

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

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

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

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

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

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the St. Joseph County Airport Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concession's firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of 1% percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

### **Section 23.53 Counting ACDBE Participation for Car Rental Goals**

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

### **Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

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

**Section 23.57 (b) Goal shortfall accountability.** If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;

### **Section 23.61 Quotas or Set asides**

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

## **SUBPART E – OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

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

### **Section 23.75 Long-Term Exclusive Agreements**

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

## **Section 23.79 Geographic Preferences**

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

### **ATTACHMENTS**

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

Attachment 1  
Organization Chart

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Attachment 2

**Indiana DBE Directory**

**<https://entapps.indot.in.gov/DBELocator/>**

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### **Attachment 3**

#### **Sample Monitoring and Enforcement Mechanisms**

The St. Joseph County Airport Authority has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;

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

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

The St. Joseph County Airport Authority will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:
  - A. The remedies enumerated above
  - B. Statement that failure to comply with the provisions of Part 23 will constitute a material breach of the agreement which may result in the agreements termination.
2. We will implement the following additional monitoring and compliance procedures:
  - A. Review of day to day operations of the concession to ensure that DBE participation is occurring, and the DBE's contribution is meaningful.
  - B. Quarterly review of the concessionaire's revenue reports to determine if the DBE is involved in the financial management of the Entity.
3. We will implement our compliance and monitoring procedures as follows:
  - A. Review of day to day operations of the concessionaire to ensure that DBE participation is occurring and that the DBE's contribution is meaningful.
  - B. Quarterly review of concessionaire's revenue reports to determine if the DBE is involved in the financial management of the entity.

C. Random inspection of the spaces occupied by the DBE Business

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**Attachment 4**

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

Overall Goal

Airport’s overall goal for non-car rental concessions during the period beginning October 1, 2020 through September 30, 2022 is 1.0% race conscious.

The Airport has determined that its market area is Northern Indiana. The market area is the geographical area in which substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

The concession opportunities anticipated during this goal period are: Food and beverage, advertising, parking management, busing and goods and services.

BASE of the goal

To calculate the base of the goal, the St. Joseph County Airport Authority considered the most recent previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Non-car rental base of goal

Year	Non-car rental companies gross receipts
2017	\$3,701,268
2018	\$8,864,983
2019	\$10,424,391

The St. Joseph County Airport Authority estimates that revenues to existing concessions will decrease by 10% each year over the next three years due to decreased passenger traffic.

2017	$\$3,701,268 - 10\% = \$3,331,142$
2018	$\$8,864,983 - 10\% = \$7,979,485$
2019	$\$10,424,391 - 10\% = \$9,381,952$

$\$3,331,142 + 7,979,485 + 9,381,952 = \mathbf{\$17,691,579}$  which is the recipients base of goal for non-car rental concessions.

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm’s estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period, the Airport will

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

The Airport will include goods and services purchases from ACDBEs toward meeting the goal.

The Airport can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The Airport, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

The Airport, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

**Step 1:**

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

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

13 divided by 2947

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

The data source used to derive the numerator was based on the Airport's Active Participant Lists and State UCP Data showing the number of ACDBEs that are certified within the State of Indiana.

The data source used to derive the denominator was based on Census Bureau Data <http://www.census.gov/econ/cbp/index.html>.

The calculation and explanation for this is as follows:

## Step 1

Concession Activity	NAICS / SIC code/s	ACDBE Firms Active Participant List and UCP directory	All firms	% Availability
Food and Beverage Supplies	722513	1	2650	.037%
Bussing	485113	0	17	0%
Advertising	541810	8	191	4.19%
Outdoor Advertising	541850	2	55	3.63%
Parking Management	812930	2	34	5.88%
<b>Totals</b>		13	2947	<b>.441%</b>

**The Step 1 base figure is .441%**

## Step 2:

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

The data used to determine the adjustment to the base figure was the historic ACDBE Participation achievements:

**2017 .37%**

**2018 0%**

**2019 .01%**

The median historical non car concessions ACDBE achievement participation is .01% for our Step 2 figure.

To arrive at the overall goal, we averaged Step 1 (.441%) and Step 2 (.01%) which = .226% or 1.0% for our overall goal.

#### Consultation with Stakeholders

The Airport meets with stakeholders in an effort to increase ACDBE participation. Stakeholders consulted include community organizations, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsor's efforts to increase participation of ACDBEs.

Specifically, the Airport consulted with: The City of South Bend Diversity Officer, current tenant stakeholders, Michiana African American Chamber of Commerce and the Latin American Chamber of Commerce. The consultation was done by mass mailer).

A summary of the feedback is as follows:

OR

No comments were received.

The goal along with additional stakeholder information is also available on the Airport's web site at [www.flysbn.com](http://www.flysbn.com).

To date, no comments have been received

OR,

We received the following comments:

#### Breakout of Estimated Race-Neutral & Race Conscious Participation

The Airport will make every reasonable effort to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The airport will use the following race-neutral measures to increase ACDBE participation:

- i. Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
- ii. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate;
- iii. Provide DBE workshops in order to identify ACDBE's;
- iv. Ensure that competitors for concession opportunities are informed during preproposal

meetings about how the Airport's ACDBE program will affect the procurement process;  
v. Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

We estimate that, in meeting our overall goal of 1.0%, we will obtain 0% from race-neutral participation and 1.0% through race-conscious measures. The reason for the breakout is that the Airport has not been able to achieve its goal in recent past years and will use ACDBE concession goals to achieve this goal.

If race-neutral measures, standing alone, are not sufficient to meet an overall goal, the following race-conscious measures will be used to meet the overall goal:

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

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

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

## Attachment 5

### **Section 23.45: Overall Goal Calculation for Car Rentals**

Section 23.45: Overall Goal Calculation for Car Rentals 2020-2022

#### Amount of Goal

The Airport Authority overall goal for car rentals during the period beginning October 1, 2020 and ending September 30, 2022 is the following: 1%.

#### Methodology used to Calculate Overall Goal

The St. Joseph County Airport Authority has determined that its market area is northern Indiana and southern Michigan.

#### Goods and Services

We determined the goal based on purchases of goods and services from certified ACDBEs or potential/ACDBE firms. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goal. We will continue to consult with the Indiana DOT UCP, our car rentals at the airport, airports in our region, minority and women businesses in the State and other publications to find prospects. We will work with our car rental agencies and outreach to ACDBEs for car rental goods and services and encourage certified ACDBEs to apply for certification in Indiana so we can count the ACDBE participation in goals and uniform form reports. The Indiana DOT UCP is aware of this requirement and is on board to assist and process certifications as required.

We have the following car rentals operating at the airport: Avis/Budget, Enterprise, Hertz/Dollar, National/Alamo

Car Rentals stated the services they may need are key blanks, oil change services, insurance, office supplies, janitorial services, tires, auto repair services, auto part supplies, security services, payroll services, towing services, car wash, landscaping services and freight transportation.

#### Base of Goal

To calculate the base of the goal St. Joseph County Airport Authority considered the previous 3 years of purchases and the projected potential purchases three years into the future.

**Car Rental Companies Goods and Services Purchases - previous 3 Years**

<b>Fiscal Year</b>	<b>Purchases (Expenditures)</b>	<b>Increase</b>
	<b>Car Rental</b>	
<b>2017</b>	<b>7,189,579</b>	
<b>2018</b>	<b>7,721,236</b>	<b>7.39%</b>
<b>2019</b>	<b>7,164,585</b>	<b>-7.2%</b>

The St. Joseph County Airport Authority does not anticipate any major changes that would increase or decrease concession revenues over next three years.

$$\$7,189,579 + 7,721,236 + 7,164,585 = \$22,075,400/3$$

Therefore, the recipient's base of goal is the car rental goods and services purchases of \$7,358,467.

**Step 1**

<b>Fiscal Year</b>			<b>(E)</b>
<b>2017</b>	<b>7,189,579</b>		
<b>2018</b>	<b>7,721,236</b>	<b>7.39%</b>	
<b>2019</b>	<b>7,164,585</b>	<b>-7.2%</b>	

	<b>Average \$7,358,467</b>

The average car rental goods and services purchases at the airport for the last three years was \$7,358,467. The anticipated car rental ACDBE purchases through outreach is \$110,500. The \$6,000 was determined by considering the national certified ACDBEs already being used by our car rental companies and also potential outreach to other national certified ACDBEs. We anticipate being able to encourage national certified ACDBEs already being used by our car rental companies to certify in the Indiana UCP. We also expect we will be able to encourage other certified ACDBEs to certify in Indiana and encourage our car rental companies to utilize them, amounting in at least \$110,500 of ACDBE participation. To arrive at a Step 1 goal, we divided \$110,500 by \$7,358,467 which equals 1.5%. §23.51(c)(5)(ii)

**Step 2**

Our history of achievements are as follows:

2017 1.26%  
 2018 1.22%  
 2020 5.93%

The median is 1.26% which is our Step 1 adjustment figure.

We do not have an applicable disparity study or any other evidence to use to adjust the goal.

Overall Goal:

To arrive at our overall goal, we averaged Step 1 and Step 2:

1.5% plus 1.26% = 2.76% divided by 2 = 1.38% which is our overall goal.

Consultation with Stakeholders: Section 23.43.

Prior to submitting this goal to the FAA, the Recipient consulted with: Tenant Stakeholders, Chamber of Commerce, City of South Bend; Michiana African American Chamber of Commerce, Latin American Chamber of Commerce. The consultation was done by mass mailer.

**A summary of the feedback is as follows:**

**OR**

No comments were received.

**Breakout of Estimated Race-Neutral & Race Conscious Participation**

The 1% goal will be achieved by race-conscious means (ACDBE goal).

The Airport will make every reasonable effort to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport will use the following race-neutral measures to increase ACDBE participation:

- i. Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
- ii. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate;
- iii. Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

If race-neutral measures, standing alone, are not sufficient to meet an overall goal, the following race-conscious measures will be used to meet the overall goal:

- i. Establish concession-specific goals for particular concession opportunities;

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

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

Attachment 6

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

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

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

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

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

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

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**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:

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

**Affirmation**

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

By \_\_\_\_\_  
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

**Attachment 7**

**ACDBE Certification Application Form**

**<https://www.in.gov/indot/2748.htm>**

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**Attachment 8**  
**Procedures for Removal of ACDBE's Eligibility**

**§26.87 What procedures does a recipient use to remove a DBE's eligibility?**

(a) Ineligibility complaints.

(1) Any person may file with you a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) Recipient-initiated proceedings. If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) DOT directive to initiate proceeding.

(1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) Hearing. When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm 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.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) Separation of functions. You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decision maker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) Grounds for decision. You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see §26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(g) Notice of decision. Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that

had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) Status of firm during proceeding.

(1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) Effects of removal of eligibility. When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) Availability of appeal. When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011; 79 FR 59599, Oct. 2, 2014]

**ATTACHMENT 9**

**State's UCP Agreement**

<http://www.in.gov/indot/2748.htm>

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**Attachment 10**

**Regulations: 49 CFR Part 23**

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rgn=div5>

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