

City and County of Denver International Airport

Airport Concession Disadvantaged Business Enterprise Program

Table of Contents

Policy Statement

SUBPART "A"

Section 23.1	Objectives
Section 23.3	Definitions
Section 23.5	Applicability
Section 23.9	Non-Discrimination Requirements
Section 23.11	Compliance and Enforcement

SUBPART "B"

Section 23.21	ACDBE Program Updates
Section 23.23	Administrative Provisions
Section 23.25	Ensuring Nondiscriminatory Participation of ACDBE's
Section 23.27	Reporting
Section 23.29	Compliance and Enforcement Procedures

SUBPART "C"

Section 23.31-39	Certification and Eligibility
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SUBPART "D"

Section 23.41	Basic Overall Goal Requirement
Section 23.43	Consultation in Goal Setting
Section 23.45	Overall Goals
Section 23.45 (f) ,23.45(d-e))	
Section 23.25(e)(iv)	Concession Specific Goals
Section 23.25 (e)(1)(iii), (iv)	Good Faith Efforts Procedures on Concession Specific Goals
Section 23.53	Counting ACDBE Participation for the Car Rentals
Section 23.61	Quotas or Set-Asides

SUBPART "E"

Section 23.71	Existing Agreements
Section 23.75	Long Term Exclusive Agreements
Section 23.79	Geographic Preferences

ATTACHMENTS

Attachment	1	Organizational Chart
Attachment	2	Reserved
Attachment	3	Monitoring and Enforcement Mechanisms
Attachment	4	Overall Goal for Concessions other than Car Rental Calculations, Consultation, Breakout of Estimated Race-Neutral & Race Conscious Participation
Attachment	4A	Overall Goal for Car Rentals Calculation
Attachment	5	Estimated Race-Neutral & Race Conscious Participation
Attachment	6A & B	Demonstration of Good Faith Effort Forms

ACDBE CONCESSION PROGRAM
2013-2016
Policy Statement

This Airport Concession Disadvantage Business Enterprise Program (ACDBE) was prepared in accordance with Department of Transportation's (DOT) Final Rule 49 CFR Part 23 as amended, in DOT Programs issued March 22, 2005. The City and County of Denver (CCD) is a Primary Airport and has received federal funds authorized for airport development after January 1988. The City and County of Denver has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City and County of Denver to ensure that ACDBE's as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy;

To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;

To create a level playing field on which ACDBE's can compete fairly for opportunities for concessions;

To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;

To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBE's at our airport.

To help remove barriers to the participation of ACDBE's in opportunities for concessions at our airport; and

To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBE's.

Vicki Padilla, ACDBE Program Administrator, has been delegated 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 City and County of Denver in its financial assistance agreements with the Department of Transportation.

The City and County of Denver has disseminated this policy statement to the Mayor and the CEO of Aviation and all other components of our organization. We have distributed this statement to ACDBE and non-ACDBE Concessionaire communities in our area. This distribution was accomplished by publication in the local chambers as well as the local major and minority news media.

_____ Date _____
Chief Executive Officer

SUBPART A - GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

The City and County of Denver will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

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

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

The City and County of Denver will include the following assurances in all concession agreements and management contracts it executes with any firm after January 1, 2006;

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

The City and County of Denver will comply with this part or be subject to formal enforcement action under Sec. 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.

As provided in statute, the City and County of Denver will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

The City and County of Denver's compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d) 47111(d) and 47122, and regulations implementing them.

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

Any person who knows of a violation of this part by the City and County of Denver may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of the Chief Counsel.

The following enforcement actions apply to firms participating in the City and County of Denver's ACDBE Program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, FAA may initiate suspension or debarment proceedings against this firm under 49 CFR part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.

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

SUBPART B – ACDBE Programs

Section 23.21 ACDBE Program Updates

Since the City and County of Denver is a large hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the City and County of Denver will submit the ACDBE program and overall goals to FAA on January 1, 2006, October 1, 2008 and subsequent goals every 3 years on Oct. 1st.

When the City and County of Denver makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The City and County of Denver is committed to operating its ACDBE program in a nondiscriminatory manner. The City and County of Denver'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: Vicki Padilla, ACDBE Program Administrator, 8500 Pena Blvd, Denver, CO, 80249 Telephone 303-342-4358, e-mail – vicki.padilla@flydenver.com.

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the City and County of Denver complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Chief Executive Officer of Denver International Airport concerning ACDBE program matters. An organization chart displaying the ACDBELO's position in the organization is found in **Attachment 1** of this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of 2 to assist in the administration of the program. The duties and responsibilities include the following:

- Gather and report statistical data and other information as required by FAA.
- Review third party contracts and purchase requisitions for compliance with this program.
- Work with all departments to set overall annual goals.
- Ensure that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identify contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)

- Analyze City and County of Denver's progress toward attainment and identify ways to improve progress.
- Participate in pre-proposal meetings.
- Advise the Chief Executive Officer of Aviation on ACDBE matters and achievement
- Chair the ACDBE Advisory Committee (if applicable).
- Provide ACDBEs with information and assistance in preparing proposals and act as a liaison to the various Chambers in the community.
- Plan and participate in ACDBE training seminars.
- Act as liaison to the Uniform Certification Process in Colorado.
- Provide outreach to ACDBEs and community organizations to advise them of opportunities.
- Maintain the City and County of Denver's updated directory of certified ACDBEs and distinguish them from DBEs.
- Monitor certification status
- Collect and review reports from prime concessionaires
- Provide periodic reports to City Council, when requested
- Update ACDBE Plan
- Conduct on-going site visits

Directory: The City and County of Denver through the State of Colorado's Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, and the type of work for which the firm has been certified to perform as an ACDBE. The Directory is maintained in real-time. We make the Directory available as follows: Online at <https://coucp.dbesystem.com/FrontEnd/VendorSearchPublic.asp?XID=9078&TN=coucp>

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBE's

The City and County of Denver will take the following measures to ensure nondiscriminatory participation of ACDBE's in concession, and other covered activities (23.25 (a))

The City and County of Denver 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 City and County of Denver's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.41 and Appendix 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d)).

If the City and County of Denver projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.41 and Appendix 4 and 5 of this plan. (23.25(e)).

The City and County of Denver 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 ACDBE's. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25(g))

Section 23.27 Reporting

The City and County of Denver 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 City and County of Denver will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

The City and County of Denver 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 Dept. 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

The City and County of Denver will consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 3** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities.

On the reports of ACDBE participation to DOT, we will show, on the "Uniform Report of ACDBE Participation" as it relates to the overall goal. The monitoring mechanism used by DSBO begins at the stage when the concession space is advertised with the ACDBE goal via www.flydenver.com and other outlets as determined by Denver International Airport. DSBO will attend the pre-proposal meetings and make a presentation to the proposers to explain the ACDBE program requirements. After the proposal submission, the Airport Revenue Office will distribute a copy of each proposal received to DSBO to determine if the proposer has either met the ACDBE goal by submission of Letters of Intent for ACDBE suppliers, Joint Venture arrangement, participation by ACDBE owner/operator, or any other arrangement listed in the proposal document, or the submission of a good faith effort.

After a successful proposer is identified, and once the concessionaire has signed a use agreement, DSBO begins to monitor for the utilization of ACDBEs by performing on-site inspections, reviews of the concessionaire's gross receipts, invoices from and payments to ACDBEs, Joint Venture documents, and any other documents related to the performance of the ACDBE in the operation of the concession, and interviews with staff, non-eligible owners, and ACDBEs. Determinations of compliance are made from this information.

If it is determined that an ACDBE firm is not being utilized in the manner detailed in the initial proposal, is being underutilized, not being paid, or not being paid in a timely fashion, DSBO will immediately conduct a compliance investigation. If the concessionaire is found non-compliant with ACDBE requirements, DSBO will recommend to the appropriate city officials that the concessionaire come into compliance or be found to be in breach of its Agreement.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31

The City and County of Denver will use the procedures and standards of Part of Part 26, except as provided in 23.31, for certification of ACDBE's to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by Colorado Department of Transportation and the Division of Small Business Opportunity which will make certification decisions on behalf of the City and County of Denver for ACDBEs. The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and/or as an ACDBE for purposes of Part 23.

The City and County of Denver will review the eligibility of currently certified ACDBEs to make sure that they continue to meet the standards of Part 23. We will complete these reviews three years from the anniversary date of each firm's most recent certification. The Division of Small Business Opportunity at DIA has staff members who are responsible for ACDBE Certification and Monitoring. **Attachment 8**

Section 23.33

The City and County of Denver 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. The size standard for banks and other financial institutions is \$1 billion in assets, for car rental companies it is \$75.23 million average annual gross receipts over the firm's three previous fiscal years, for automobile dealers the standard is 350 employees and for pay telephone companies the standard is 1,500 employees. Future changes to the size standard of any categories will be implemented in the program on the effective date of the change.

Section 23.35

The personal net worth standard used in determining eligibility for purposes of part 23 is \$1.32 million and 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 is otherwise presumed to be disadvantaged. Future changes to the personal net worth standard will be implemented in the program on the effective date of the change.

Section 23.37

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

Section 23.39(a),(b)

The City and County of Denver recognize that the provisions of part 26, Sections 26.83c(2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of their firm if it is a corporation. 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. The City and County of Denver 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. The City and County will ensure that the ACDBE firm meets the applicable size standard. 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).

Section 23.39 (i)

The City and County of Denver will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Section 23.39 (e)

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 ACDBE, 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.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The City and County of Denver 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. The sponsor will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, the sponsor need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, the City and County of Denver need not submit an overall goal for concessions other than car rentals.

The City and County of Denver'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 City and County of Denver 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 City's efforts to increase participation of ACDBEs

In its submission of its overall goals, the sponsor will identify the stakeholders that it consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

The City and County of Denver is a large hub primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule: Initial Goal Due January 1, 2006 the second goal due October 1, 2008 and subsequent goals due every 3 years on October 1.

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 at least six months before executing the new concession agreement.

The City and County of Denver 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 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 City would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, or evidence from related fields that affect ACDBE opportunities to form, grow and compete.

A description of the methodology to calculate the overall goal 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 4A** to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in **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(e)(iv))

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

The City and County of Denver will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or

subcontracting possibilities. Car rentals can meet goals entirely with goods and services if the rest of goal will be met through purchases of vehicles or other goods and services from ACDBEs. 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 City and County of Denver will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

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

To be eligible to be awarded a concession that has a concession specific Goal; competitors must make good faith efforts to meet the 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 effort 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 49CFR Part 26.51-3, regarding contract goals apply to the City and County's concession specific goals, Specifically,

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

The DSBO ACDBE Program staff is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the concessionaire's good faith efforts before we commit to the concession agreement with the proposer.

Information to be submitted (26.53(b))

The City and County of Denver treats concessionaire's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

- The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
- A description of the type of work or role to be performed, or a description of the goods and/or services to be provided, by the ACDBE in the operation of the concession; The dollar amount of the participation of each ACDBE firm/supplier participating;
- Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet the Lease Agreement Goal;
- Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's Lease Agreement and;
- If the contract goal is not met, evidence of good faith efforts to meet the goal.

Administrative Reconsideration 23.53(d)

Within five business days of being informed by The City and County of Denver that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official: Director, Division of Small Business Opportunity, 201 W. Colfax, Dept.208, Denver, CO 80202. The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

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

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

Good Faith Efforts When an ACDBE is replaced on a concession (23.53(f))

The City and County of Denver will require a concessionaire to make good faith efforts to replace an ACDBE Supplier, sub-concessionaire, partner that is terminated or has otherwise failed to complete its concession agreement, lease or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the Concessionaire to notify the ACDBE Liaison Officer immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation of such.

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.

In the event that a concessionaire must add or replace an ACDBE subcontractor, supplier, or partner, or in the event that a new scope of work is added to the ongoing project, and the concessionaire in such events is non-compliant with maintenance of the original ACDBE goal upon which the concession agreement was awarded, the following modified good faith efforts must be completed. Failure of a concessionaire to show good faith efforts as to any one (1) of the following categories shall render its overall good faith showing insufficient; and its contract performance in non-compliance with this program.

The following is a list of types of actions which the City will consider as part of the concessionaire's good faith efforts to obtain ACDBE participation. It is not intended to be mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- (1) Verification in writing to the Division of Small Business Opportunity of the concessionaire's intention to terminate or replace an ACDBE originally identified for participation in the bid or proposal upon which the contract was awarded. The reason for the termination or replacement must be stated and the type of work or services must be identified.

- (2) Verification that the Concessionaire used the most current UCP Directory from the UCP Website in an effort to contact ACDBEs that are certified in the applicable area of work or supply at the time of the good faith effort.
- (3) Verification of efforts to contact appropriate ACDBEs within the same identified area must be documented. Phone calls to ACDBEs will be an acceptable form of contact.
- (4) Documentation of the modified good faith effort must be submitted to the Division of Small Business Opportunity prior to approval.

Sample Proposal Specification:

SECTION I. INSTRUCTIONS TO PROPOSERS

Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation is highly encouraged in all concession opportunities. In order to qualify as an ACDBE, a proposer, joint venture partner, goods/services provider and/or any other firm upon whose certification as an ACDBE is being relied must be currently certified by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation as an ACDBE under 49 CFR Part 23. The ACDBE's certification letter must be submitted at proposal time. **(Only the ACDBE partner needs to be ACDBE certified.)**

For this [redacted] concession opportunity, an ACDBE participation goal of **rfpACDBEgoal%** has been established by the DSBO Director. ACDBE participation may be in the form of a joint venture, partnership or other legal arrangement that meets the eligibility standards in 49 CFR Part 23. The ACDBE goal for this concession opportunity also may be met through the providing of goods and services from certified vendors. A list of ACDBE-certified vendors may be obtained from the Airport's Division of Small Business Opportunity (see below for contact information) and the ACDBE Commitment Form must be included with the proposal. Additionally, if participation is to be obtained from a supplier(s) of goods and/or services, the ACDBE Letter of Intent Form (including Affirmation) indicating which certified vendor(s) has agreed to participate must be included with the proposal. The successful proposer will be responsible for meeting this goal (or providing documentation of a good faith effort) on or before the deadline for submission of proposals in response to this RFP.

Certification applications may be obtained on the internet at www.denvergov.org/oed | Business Services | Doing Business w/City | Applying/Renewing, or from DSBO, 201 West Colfax Avenue, Dept. 208, Denver, CO 80202, phone (720) 913-1999 or Denver International Airport, Airport Office Building (AOB), Suite 7810, Denver, CO 80249, phone (303) 342-2185. Questions regarding the certification process should be directed to the ACDBE Certification Coordinator located at DIA at (303) 342-2185.

Entities proposing joint ventures with ACDBE participation in order to meet an ACDBE goal must be approved by DSBO prior to submission. The Division of Small Business Opportunity considers any entity that is comprised of an ACDBE and one or more other firms to be a joint venture even if the participants do not identify elsewhere as a joint venture. The proposing joint venture must submit its ACDBE Certification and joint venture Letter of Approval from DSBO with its proposal documentation. It is strongly encouraged that joint ventures proposing with

ACDBE participation submit their documentation to DSBO for approval as soon as possible and no later than **March 26, 2008**.

SECTION IV. REQUIRED FORMS

ACDBE Participation and Commitment Form

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation is highly encouraged in all concession opportunities. In order to qualify as an ACDBE, a proposer, joint venture partner, goods/services provider and/or any other firm upon whose certification as an ACDBE is being relied must be currently certified by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation as an ACDBE under 49 CFR Part 23. The ACDBE's certification letter must be submitted at proposal time. (Only the ACDBE partner needs to be ACDBE certified.)

For this conceptType, [redacted] concession opportunity, an ACDBE participation goal of **rfpACDBEgoal%** has been established by the DSBO Director. ACDBE participation may be in the form of a joint venture, partnership or other legal arrangement that meets the eligibility standards in 49 CFR Part 23. The ACDBE goal for this concession opportunity also may be met through the providing of goods and services from certified vendors. A list of ACDBE-certified vendors may be obtained from the Airport's Division of Small Business Opportunity (see below for contact information) and the ACDBE Commitment Form must be included with the proposal. Additionally, if participation is to be obtained from a supplier(s) of goods and services, the ACDBE Letter of Intent Form (including Affirmation) indicating which certified vendor(s) has agreed to participate must be included with the proposal. All firms upon which ACDBE certification is being relied, whether as proposer, JV partner, goods and services provider, subconcessionaire, subcontractor, or any other arrangement, must be certified by the City and County of Denver or the Colorado Department of Transportation as an ACDBE at the time Joint Venture paperwork or proposal, whichever is **earlier**, is submitted. The successful proposer will be responsible for meeting this goal (or providing documentation of a good faith effort) on or before the deadline for submission of proposals in response to this RFP.

Certification applications may be obtained on the internet at www.denvergov.org/oed | Business Services | Doing Business w/City | Applying/Renewing or from DSBO, 201 West Colfax Avenue, Dept. 208, Denver, CO 80202, phone (720) 913-1999 or Denver International Airport, Airport Office Building (AOB), Suite 7810, Denver, CO 80249, phone (303) 342-2185. Questions regarding the certification process should be directed to the ACDBE Certification Coordinator located at DIA at (303) 342-2185.

ACDBE Participation:

ACDBE participation must be included in the proposal and evidenced by an ACDBE Commitment Form, Letter of Intent (if applicable) and Affirmation signed by the proposer and by each ACDBE participant. The amount and type of participation proposed will become a firm commitment in the Lease Agreement. The monitoring by DSBO of the participation throughout the term of the concession agreement depends upon the type of ACDBE participation as submitted in the proposal. The options are:

1. 100 % ACDBE participation: The Concession is solely owned and operated by an ACDBE firm (letter of intent not necessary).

2. Percentage Participation: A designated percentage of the business to be owned operated and/or maintained by an ACDBE through sub-contract, sub-lease or joint venture arrangements.**

3. Percentage of Goods/Services towards Vendor Purchases: A designated percentage of the gross revenue committed to the purchase of goods and services from ACDBE certified vendors.

*** Joint Venture Agreements: For purposes of ACDBE participation, 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. The Division of Small Business Opportunity considers any entity that is comprised of an ACDBE and one or more other firms to be a joint venture even if the participants do not identify elsewhere as a joint venture. Joint venture entities are not certified as ACDBEs.*

If the proposer is participating in a joint venture with a certified ACDBE firm, the Joint Venture Eligibility Form and Joint Venture Affidavit contained in this RFP must be completed. (Go to <http://business.flydenver.com/bizops/smallBus.asp> under "FORMS".)

Note: The final date for submission of the Joint Venture Agreement and all associated forms and documentation for approval by the Division of Small Business Opportunity (DSBO) is on **March 26, 2008**.

Note: All firms upon which ACDBE certification is being relied, whether as proposer, JV partner, goods and services provider, sub concessionaire, subcontractor or any other arrangement, must be certified by the City and County of Denver or the Colorado Department of Transportation as an ACDBE at the time Joint Venture paperwork or proposal, whichever is **earlier**, is submitted.

ACDBE Good Faith Efforts:

The Department of Transportation (DOT) ACDBE regulations found at 49 Code of Federal Regulations Part 23 provides for the adoption of a good faith effort (GFE) goals program to be administered by the Division of Small Business Opportunity (DSBO). In order to comply with the proposal requirements of Part 23 a proposer shall either meet the specific ACDBE goal for this concession opportunity, or in the alternative demonstrate that the proposer has made sufficient good faith efforts to meet the goal in accordance with the good faith effort provisions of Part 23 detailed below. **Documentation, in DSBO's format, must be provided to support your Good Faith Efforts.**

1. If pre-proposal meetings are scheduled by the City at which ACDBEs may be informed of concession opportunities under a given proposal solicitation, attendance at such pre-proposal meetings is mandatory. Proposers are responsible for the information provided at these meetings. The good faith effort statement must reflect the proposer's knowledge of the information provided at these meetings.

2. Verifications of efforts to subcontract or joint venture, consistent with industry and professional practice, with the ACDBE whom the proposer has contracted, or who have contracted the proposer, including the name, addresses and telephone numbers of all ACDBEs contacted; a description of efforts made to subcontract; a description of the information provided to ACDBEs regarding the scope of work to be performed by subcontractors and members of a joint venture; and if attempts to subcontractor actually occurred, the dates and places of such process and a description of the outcome.

3. Verification that, consistent with industry and professional practice, the proposer gave ACDBEs necessary access to and adequate time to review projected scopes of work and other documents as well as adequate time to prepare subcontractor proposals and/or negotiate joint venture arrangements. The proposer will also give a statement as to why the proposer and the ACDBE did not succeed in reaching a subcontractor or joint venture agreement.

4. Verification that, reasonably consistent with industry and professional practice, and the proposer's past practices on similar projects, the proposer selected appropriate goods and services, and functions and activities of the concession operation, to be performed by ACDBEs in order to achieve the goals, including consideration of structuring the contract into economically feasible units to facilitate meaningful ACDBE participation.

Section 23.53 Counting ACDBE Participation for Concessions other than Car Rental Goals

The City and County of Denver will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55, **Attachment 4**

Section 23.55 Counting Participation for Car Rentals Goals

The City and County of Denver will count ACDBE participation toward overall car rental goals a provided in 49 CFR 23.53, **Attachment 5**

Section 23.61 Quotas or Set – Asides

The City and County of Denver will **not** use quotas or set-asides as a means of obtaining ACDBE participation.

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.75 Long Term Exclusive Agreements

The City and County of Denver will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office.

Section 23.79 Geographic Preferences

The City and County of Denver will not use a local geographic preference.

Attachment 1

Sample Organizational Chart

Michael Hancock, Mayor

Kim Day, Chief Executive Office, Denver International Airport

Director, Division of Small Business Opportunity
Director

Attachment 3 - Monitoring and Enforcement Mechanisms

The City and County of Denver has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

Contractual Provisions and Remedies: The City and County of Denver's standard construction contract provisions for project subject to the ACDBE program provide that noncompliance remedies for such breach. These provisions include the following:

Instructions to Bidders include this statement: "All proposers for this contract are hereby notified that if they are awarded a contract, failure to carry out the City's policy and the ACDBE obligation, as set forth above, shall constitute a breach of contract which may result in termination of such contract or such other remedy as deemed appropriate by the City."

A few of the numerous factors to be considered In the "reliable and adequate performance" determination include whether the contractor; has breached any City contract conditions; has demonstrated its ability to perform its contractual obligations; has demonstrated its ability to work effectively and cooperatively with all parties, including subcontractors, on construction projects; shown itself able and willing to effectively schedule, administer and manage the work performed by its subcontractors and to promptly pay them; or has by action or inaction evidenced a lack of integrity in contract performance. Noncompliance with ACDBE program or contract requirements would be considered relevant to several of the foregoing categories.

The City and County of Denver will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

We will insert the following provisions into concessions agreements and management contracts:

Section 1. General. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or in any exhibit thereto.

Section 2. ACDBE Obligation. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The Concessionaire 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 covered by 49 CRF Part 23.

Section 3. Other Agreements. The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters into and cause those businesses to similarly include the statements in further agreements.

Section 4. ACDBE Participation in This Agreement. Concessionaire has represented that it is qualified as an Airport Concession Disadvantaged Business Enterprise (ACDBE) under 49 CFR Part 23 of the regulations of the U.S. Department of Transportation and hereby covenants to remain so throughout the term of this Agreement. Concessionaire's status as a certified ACDBE constitutes 100% ACDBE participation and satisfies all DBE obligations of this Agreement.

Attachment 4 – 23.45: - Overall Goal Calculation for Concessions Other Than Car Rentals

Amount of Goal:

The City and County of Denver's overall goal for ACDBE concessions other than car rental during the period beginning 10-01-13 and ending 09-30-16 is the following 33 % of the total gross receipts for concessions at Denver International Airport. 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, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

The City and County of Denver has determined that its market area is the Denver Metropolitan Statistical Area see Sec. 23.51(b)(3). This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms that receive a substantial majority of concessions related revenue are located.

Methodology Used to Calculate Overall Goal

Goods and Services

The City and County of Denver can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. The City, 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 arrangement, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

Management Contract or Subcontract

The City and County of Denver can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The City, 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 numerations 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.

Step 1: 23.51 ©

The City and County of Denver will use the MGT of America, Inc. Disparity Study. The disparity conducted by MGT of America, Inc. in 2013 indicates that they collected lists of D/M/WBE's from CDOT as well as other public and private entities in and surrounding the City and County of Denver. Specifically, directories were included from: City of Denver's Division of Small Business Opportunity (DSBO), Regional Transportation District of Denver, CDOT UCP

DBE Program, CDOT Emerging Small Business Program, Colorado Office of Economic Development and International Trade Minority Business Office, Colorado Women's Chamber of Commerce, Rocky Mountain Indian Chamber of Commerce, Hispanic Contractors of Colorado, Asian Chamber of Commerce, African American Construction Council, Central Contractor Registration, Diversity Information Resources, Business Research Services, National Association of Women Business Owners – Denver, Small Business Association Dynamic Small Business Search, Colorado Springs Hispanic Chamber of Commerce, and the Latino Chamber of Commerce – Pueblo, Co. Denver.

Step 2: 23.51 (d)

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we would have to adjust our base figure by **3.21%** Our overall goal for non-car rental concessions is **33%**.

The data used to determine the adjustment to the base figure was:

Past Participation: Denver has no information relative to concessions; Food & Beverage or retail.

Disparity Study: A Disparity Study was conducted by MGT of America, Inc. in 2013. The purpose of the study was to examine the past and current status of D/M/WBEs and ACDBE's in Denver's geographic and product markets for construction, construction-related, professional services, and concessions –related to goods and services. The results of the study provides an important part of the record necessary to implement a new and revised D/M/WBEs and ACDBEs policies that comply with the requirements of the courts and to assess the extent to which previous and current D/M/WBE and ACDBE policies have assisted then in participating in Denver's contracting, procurement and concession activity.

Differences in Market Area and Concessions Program: Denver has no information relative to Food and Beverage or Retail.

Available evidence from related fields that affect opportunities for ACDBEs to form, grow, and compete: Denver has no information relative to Food and Beverage or Retail.

Consultation with Stakeholders (23.43)

Prior to submitting this goal to FAA, the City and County of Denver consulted with the following stakeholder: The Minority and Women's Chambers, Certified ACDBE Community, Airport Concessions Coop, DIA Airport Property Office as well as existing concessionaires themselves. Denver International will conduct, annually, a 1 day seminar, "DIA DAY" for the purpose of disseminating information as to up coming concession spaces as well as construction projects. In addition "Pre-Proposal Informational" Meetings will be held as concession spaces become available in addition to attendance at the Monthly Concession Managers meetings and the DIA Concession Association..

Attachment 4a

Overall Goal Calculation for Car Rentals

The City and County of Denver's overall goal for car rentals during the period **beginning 20013 ending 20016** is **2%** of the total gross receipts of car rental operations at Denver International Airport.

The concession Car Rental opportunities anticipated during this goal period are: **2%** with an estimated gross receipts revenue of **\$500,000,000.** If a new car rental concession opportunity arises prior to the end of this goals period and the estimated average of annual gross revenues are anticipated to be \$200,00 or greater, the City and County of Denver will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement.

The City and County of Denver has determined that its market area is: **Unable to determine** This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology Used To Calculate Overall Goal

Goods and Services

The City and County of Denver can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses at the airport. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

Step 1: 23.51 ©

The City and County of Denver determined the base figure for the relative availability of car rental ACDBEs. The base figure was calculated as follows:

Attachment 5

Breakout of Estimated Race-Neutral & Race Conscious Participation Section 23.51

The City and County of Denver will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The City and County of Denver used the race-neutral means to increase ACDBE participation:

- By holding Informational Meetings for ACDBE's and small businesses prior to the Pre-Proposal Process in an effort to locate and identify those interested in participating as concessionaires under 49 CFR Part 23
- Advertising Concession Opportunities in the local and community media ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the City and County of Denver's program will affect the procurement process
- Sending notice of Request For Proposals to local Chambers and to those firms on the database located in the Airport Property Office
- Established a Small Business Policy to ensure Small Businesses have equal opportunity to participate as concessionaires
- In some instances the City and County of Denver will absorb the cost of build out of a concession space
- Establish a Business Development Program (49 CFR Part 26.35); technical assistance program or other steps to foster ACDBE participation in concessions
- Hold an Annual DIA Day of workshops and networking to assist Small Businesses, ACDBEs and DBEs in doing business and DIA.

We estimate that, in meeting our overall goal of **33 %** we will obtain **8%** from race-neutral participation and **25%** through race-conscious measures.

The following is a summary of the basis of our estimated breakout or race-neutral and race-conscious ACDBE participation: **See Attachment 4**

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal: **See attachment 4**

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

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

Attachment 6A Form 6A

for Demonstration of Good Faith Efforts

ACDBE COMMITMENT FORM

The undersigned concessionaire/vendor has satisfied the requirements of the proposal specifications in the following manner (Please check (✓) the appropriate space):

____ The concessionaire is committed to a minimum of ____% of ACDBE utilization on this contract.

____ The concessionaire is unable to meet the ACDBE goal of ____% but is committed to a minimum of ____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

____ The concessionaire is unable to meet the ACDBE goal of ____% and submits documentation demonstrating good faith efforts.

Name of concessionaire firm: _____

Signature Title

ACDBE Letter of Intent

Name of Concession/vendor firm _____

Address: _____

City: _____ State: _____ Zip _____

Telephone: _____ E-mail address _____

Name of ACDBE Firm: _____

Address: _____

City: _____ State: _____ Zip _____

Telephone: _____ E-mail address _____

Description of Goods and Services or work to be performed by ACDBE firm:

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value and percentage 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: _____
Concessionaire Signature Title

By: _____
ACDBE Signature Title