

ACDBE CONCESSION PROGRAM

2006

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.

Tamela Lee, Director of Division of Small Business Opportunity has been delegated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Director 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 Managers 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.

Chief Executive Officer

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 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.

Until our new ACDBE program is submitted and approved we will continue to implement our current concessions DBE program that was in effect before April 21, 2005, except with respect to any provision that is contrary to 49 CFR Part 23.

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: Tamela Lee, Director, 201 W. Colfax Dept. 208, Denver, Colorado 80202, Telephone 720-913-1701, e-mail – Tamela.Lee@diadenver.net

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 Aviation Managers 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 4 staff to assist in the administration of the program. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to ACDBE's in a time manner.
- Identified contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- Analyzes City and County of Denver's progress toward attainment and identifies ways to improve progress.
- Participates in pre-proposal meetings.
- Advises the Managers of Aviation on ACDBE matters and achievement
- Chairs the ACDBE Advisory Committee.
- Provides ACDBE's with information and assistance in preparing proposals and acts as a liaison to the various Chambers in the community.
- Plans and participates in ACDBE training seminars.
- Acts as liaison to the Uniform Certification Process in Colorado.
- Provides outreach to ACDBE's and community organizations to advise them of opportunities.
- Maintains the City and County of Denver's updated directory on certified ACDBE's and distinguishes them from DBE's.

In addition the Concession Coordinator will be responsible for the following:

- Monitor certification status
- Collect and review reports from prime concessionaires
- Provide periodic reports to City Council, when requested
- Update Concession 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 ACDBE's. 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 revises the Directory monthly. We make the Directory available as follows: Division of Small Business Opportunity (DSBO), 201 W. Colfax, Dept. 208, Denver, Colorado 80202, telephone 720-913-1700 and DSBO, Denver International Airport, 8500 Pena Blvd, Suite 7810 Denver, Colorado 80249, Telephone 303-342-2187 or www.dot.state.co.us/app_ucp e-mail address. The Directory may be found in **Attachment 2**

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 in the daily newspaper. 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 Property Office will distribute a copy to DSBO to determine if the proposer has either met the ACDBE goal by submission of Letters of Intent for ACDBE;s listed in the proposal document or the submission of a good faith effort that was deemed responsive.

After a successful proposer is identified and once the concessionaire has signed a lease agreement DSBO begins to monitor for the utilization of ACDBE’s by on-site inspections and review of the concessionaires gross receipts to ACDBE’s . DSBO can determine from the payments submitted by the concessionaires if the ACDBE’s are achieving their participation.

The DSBO enforcement mechanism used for the utilization of ACDBE’s is that if it is determined that a ACDBE firm is not being utilized, under utilized, not being paid, or not being paid in a timely fashion, DSBO immediately will conduct an investigation for non-compliance. If the concessionaire has been found in non-compliance 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 ACDBE’s. The UCP’s directory of eligible DBE’s will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of Part 23.

The City and County of Denver will review the eligibility of currently certified ACDBE;s to make sure that they will meet the standards of Part 23. We will complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm’s most recent certification, whichever is later. The Division of Small Business Opportunity at DIA has a Concession Compliance Analyst that will be solely 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 \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees.

Section 23.35

The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000 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.

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 and 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 26.83©(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 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.

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 ACDBE's 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 ACDBE's and the City's efforts to increase participation of ACDBE's

In its submission of its overall goals, the sponsor will identify the stake holders 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 ACDBE's in the market area, "base figure". The second step is examine all relevant evidence reasonable available in the sponsor's jurisdiction to determine it 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 ACDBE's a disparity study, 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.

Project 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©.

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 do goals entirely as goods and services if rest of goal will be met through purchases of vehicles or other goods and services from ACDBE's. 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 ACDBE's)

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))

If the concession specific goal applies to purchases and/or leases of goods and services, the City and County of Denver will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBE's by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

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 following personnel are 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 Concession re: Food & Beverage, Retail, Services, etc.
- The dollar amount of the participation of each ACDBE firm/supplier participating;
- Written and signed documentation of commitment to use a 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.

Administrative Reconsideration 23.53(d)

Within 30 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: Tamela Lee, Director, Division of Small Business Opportunity, 201 W. Colfax, Dept.208, Denver, Co 80202,720-913-1701. 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. 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,/Subconcessionaire 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 an 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.

In the event that a concessionaire must add or replace a ACDBE subcontractor or supplier or in the vent that a new scope of work id added to the ongoing project, and the contractor or consultant in such events in non-compliance with maintenance of the original ACDBE goals upon which the concession agreement was awarded, due to failure to utilize additional ACDBE's, as applicable, the following modified good faith efforts must be completed. Failure of a contractor or supplier 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 contractors 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 contractor's or consultants intention to terminate or replace a 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 Division of Small Business Opportunity o the UCP Website in an effort to contact ACDBE's 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 ACDBE's within the same identified subcontractor, subconsultant, and supplier area must be documented. Phone calls to ACDBE;s 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 the payment.

Sample Proposal Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the City and County of Denver 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 firms and suppliers, including those who qualify as a ACDBE. An ACDBE concession specific goal _____percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information; (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession. (2) A description of the work that each ACDBE 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 participating 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 must be submitted.

Section 23.53 Counting ACDBE Participation for the 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 Concessions Other than Car Rentals

The City and County of Denver will count ACDBE participation toward overall car rental goals as 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

John Hickenlooper, Mayor

Manager's of Aviation

Vicki Braunagel
Turner West

Division of Small Business Opportunity

Director/Liaison Officer

Tamela Lee

Attchment 2

Sample Directory

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 bidders and potential subcontractors of bidders 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."

The City and County of Denver, Department of Public Works and Department of Aviation, "Standard Specifications for Construction, General Contract Conditions," 1999 Edition, include the following General Conditions ("G.C."):

G.C. 909, which provides that the City may withhold progress payments due to the contractor, in addition to routine retainage amounts, for a number of reasons; one of the stated reasons is "Failure to comply with affirmative action, equal employment opportunity, or ...Disadvantaged Business Enterprise requirements set forth in the contract." The G.C. also provides that when the reasons for such withholding are removed, the City will pay the sums withheld with the next regular payment.

G.C. 2201, which provides that the City may terminate the contract for cause; the stated grounds include "If the Contractor fails to comply with affirmative action or...Disadvantaged Business Enterprise....requirements."

Prompt Payment Ordinance: The city and County of Denver's "prompt payment to contractors" ordinance, Sec. 20-107 through 115, D.R.M.C., requires, at Sec. 220-109 (i) (j) and (k), that contractors pay subcontractors and suppliers within seven days after receipt of payment from the City, and that failure to do so will result in the contractor's paying interest on any late payments to subcontractors and suppliers. The only exception is for situations where a bona fide dispute exists between the parties as to the amounts, if any, due and payable.

Contractor Pre-Qualification System: The City and County of Denver does not have a program of contractor debarment; however, it does pre-qualify bidders for large construction contracts, for both the Department of Public Works and the Department of Aviation. For construction contracts under \$750,000, qualifications of bidders are determined during bid evaluation. Pre-qualification is required for bidders on construction contracts over \$750,000, under City rules. Under those rules, a contractor can be denied pre-qualification, or have pre-qualification suspended or revoked, for failure to satisfy the City that the contractor's performance on public and private projects during the past five years has been "reliable and adequate".

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 CFR 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. DBE Participation In This Agreement. Concessionaire has represented that it is qualified as a 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 Interim goal for ACDBE concessions other than car rental during the period beginning 1-01-06 and ending 12-01-06 is the following 36.31 % 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 concession opportunities anticipated during this goal period are:

Twenty One (21) concession spaces, with an estimated projected revenues from 2006 – 2008 gross receipts of \$ 15,346,455. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenue are anticipated to be \$200,000 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. (23.45(i)).

The City and County of Denver has determined that its market area is the **Denver Statistical Metropolitan Statistical Area see Sec. 23.51 ©.** 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 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 ACDBE's 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 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 NERA Disparity Study base availability figure of 36.31%.

The disparity conducted by NERA in 2006 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 9.20%. Our overall goal for non-car rental concessions is 27%.

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 NERA in 2006. 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 2006 ending 2008 is** _____% of the total gross receipts of car rental operations at Denver International Airport.

The concession Car Rental opportunities anticipated during this goal period are: 0% with an estimated gross receipts revenue of **\$304,137,728.08**. 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 taking other steps to foster ACDBE participation in concessions
- Hold an Annual DIA Day of workshops and networking to assist Small Businesses, ACDBE's and DBE's in doing business and DIA.

We estimate that, in meeting our overall goal of **35.6 %** we will obtain **9.20%** from race-neutral participation and **27%** 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

The undersigned bidder/offer has satisfied the requirements of their 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 submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm:_____

State Registration No._____

By _____
Signature Title

Attachment 6 Form 6B: Letter of Intent

Name of Bidder/offeror's firm _____

Address: _____

City _____ State: _____ Zip _____

Name of ACDBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

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

AFFIRMATION

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

By _____
Signature Title

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

City and County of Denver International Airport
Airport Concession Disadvantaged Business Enterprise Program

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