

ACDBE PROGRAM**POLICY STATEMENT****Section 23.1, 23.23 Objectives/Policy Statement**

The City and County of Denver has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The City and County of Denver is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The 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 ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

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

Tanya Davis has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Tanya Davis 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 Manager(s) 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.


ACDBELO

Date 9/30/2017

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 of Denver 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:

(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, 26.105, 26.107) and 2 CFR parts 180 and 1200.

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

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

The 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.

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 D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.

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

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

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

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

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 its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

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

This ACDBE program will be implemented at Denver International Airport.

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: Tanya Davis, Manager DSBO, 201 W. Colfax Dept. 208, Denver, Colorado 80202, Telephone 720-913-1780, e-mail – tanya.davis@denvergov.org.

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 provision 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 3 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the City and County of Denver's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU- Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Unified Certification Program (UCP) in Colorado.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintain the City and County of Denver's updated directory on certified ACDBEs and distinguishes them from DBEs.

In addition the ACDBE Program Manager will be responsible for the following:

1. Monitor certification status

2. Collect and review reports from prime concessionaires
3. Provide periodic reports to City Council, when requested
4. Update ACDBE Plan
5. Conduct on-going site visits

Directory: The City and County of Denver through the Colorado Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory Daily. We make the Directory available as follows:

<https://coucp.dbesystem.com/directory.asp>

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The City and County of Denver will not 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 contract 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 of Denver 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 the respect to individuals of a particular race, color, sex, or national origin.

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 and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 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 alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and 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 ACDBEs. (23.25(f))

The City and County of Denver 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.

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 Commercial 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 lease 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

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.

1. 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 Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The City and County of Denver will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities. (26.37) **Attachment 3**

SUBPART C – CERTIFICATION AND ELIGIBILITY

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

The City and County of Denver is the member of a Unified Certification Program (UCP) administered by Colorado. The UCP will meet all of the requirements of this section.

The City and County of Denver *is 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 specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

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

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 for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

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

The City and County of Denver *recognizes that Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

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

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

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

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

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, the City and County of Denver 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. The City and County of Denver are not obligated to certify a part 26 DBE as an ACDBE if the firm does not perform work relevant to our concessions program. (23.37).

The City and County of Denver recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will follow the provisions of 23.39 (a) through (i). The City and County of Denver will obtain resumes

or work histories of the principal owners of the firm and personally interview these individuals. The City and County of Denver will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. The City and County of Denver will determine the work history of the firm, including any concession contracts or other contracts it may have received. The City and County of Denver 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 of Denver will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

The City and County of Denver 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. The City and County of Denver recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

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. (23.39(i))

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

The City and County of Denver will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The City and County of Denver will ensure the UCP reviews the eligibility of ACDBEs that we certified, to make sure that they will meet the standards of Subpart C of Part 23 and Subpart E of Part 26. The City and County of Denver will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will be: 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. The City and County of Denver 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.

For firms that we ensure UCP have certified or reviewed and found eligible under Part 23/26, the City and County of Denver will again review their eligibility three years from the anniversary date of each firm's most recent certification. These reviews will include the following components: Site visits, reviews of appropriate records, contracts, financial information, joint venture agreements, certification information and other relevant information deemed necessary.

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

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

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

The undersigned swears under penalty of perjury: that he or she has read and understands this eligibility affidavit and has the authority to sign it; that the responses and accompanying documents are true, complete and correct; that there have been no material changes regarding the firm's disadvantaged status, ownership or control and that any such changes have previously been reported to the Civil Rights & Business Resource Center; and that the firm continues to meet SBA and US Department of Transportation small business size criteria.

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

The UCP will notify all currently certified ACDBE firms of these obligations via B2G database notifications 30 days prior to the anniversary of their certification due date. This notification will inform ACDBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 23/26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 23/26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for ACDBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. The City and County of Denver will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If the City and County of Denver denies a firm's application or decertifies it, it may not reapply until 12 months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove an ACDBE's certification, the City and County of Denver will follow procedures consistent with 26.87.

Attachment 4 to this program sets forth these procedures in detail.

Section 26.89 Certification Appeals

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

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

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

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 City and County of Denver 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 City and County of Denver 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 understands that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

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

Section 23.43 Consultation in Goal Setting

The 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 sponsors efforts to increase participation of ACDBEs.

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

DSBO will publish a notice of proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection online at www.denvergov.org/dsbo for 30 days following the date of notice. DSBO and FAA will accept comments on the goals for 45 days from the date of the notice. The goal is published in all trade publications and industry newsletters, as well as minority-oriented media across the Denver metro area.

DSBO's overall submission to FAA will include: the goal (including a breakout of estimated race neutral and race-conscious participation as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from FAA. If we establish a goal on a project basis, we will begin using the goal by the time of our first solicitation for a FAA assisted contract for the project. DSBO's goal will remain effective for the duration of the three-year period established and approved by FTA.

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:

Primary Airport Size	Region Covered	Date Due	Period	Next Goal Due
Large/Medium Hubs	All regions	October 1, 2014	2015/2016/2017	October 1, 2017 (2018/2019/2020)

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

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

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

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

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in **Attachment 6** to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in **Attachment 5 & 6** to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

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

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

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. 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 DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

The City and County of Denver 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))

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 ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

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

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

Section 26.53 Good Faith Efforts Procedures

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

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

The ACDBE Program Administrator is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive

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

Administrative reconsideration (26.53(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: Tanya Davis, Manager DSBO, 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 bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City and County of Denver will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation

Attachment 7 to this program sets forth these procedures in detail.

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

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

In this situation, the City and County of Denver 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 City and County of Denver 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 City and County of Denver prior to approval.

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

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

- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

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

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

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

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

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

Sample Proposal/Bid Specification:**SECTION I. INSTRUCTIONS TO PROPOSERS**

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the 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 concessions firms and suppliers, including those who qualify as an ACDBE.

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 _____ concession opportunity, an ACDBE participation goal of _____ % 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/dsbo | Get Certified | Applying/Renewing. 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_____.

The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

SECTION 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_____ concession opportunity, an ACDBE participation goal of_____% 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, 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. 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/dsbo | Get Certified | Applying/Renewing. 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>)

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_____.

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, 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 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 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

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

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- (3) (i) CORE 30 or other Airport designated by FAA: The City and County of Denver will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, we will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
- (4) The City and County of Denver understands the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- (5) The City and County of Denver understands that we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:
 - (i) The City and County of Denver does not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this

(ii) FAA disapproves our analysis or corrective actions; or

(iii) The City and County of Denver does not fully implement:

(A) The corrective actions to which we have committed, or

(B) Conditions that FAA has imposed following review of our analysis and corrective actions.

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

Section 23.61 Quotas or Set-asides

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 23.73 Privately-Owned or Leased Terminal Buildings

The City and County of Denver will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee (*other means – identify.*) We will ensure that the owner or lessee complies with part 23. The City and County of Denver will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23 and it is incorporated herein and submitted as **Attachment 11**.

The City and County of Denver will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee (*other*

means – identify.) The City and County of Denver will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23 and it is incorporated herein and submitted as **Attachment 11**.

Section 23.75 Long-Term Exclusive Agreements

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

Section 23.79 Geographic Preferences

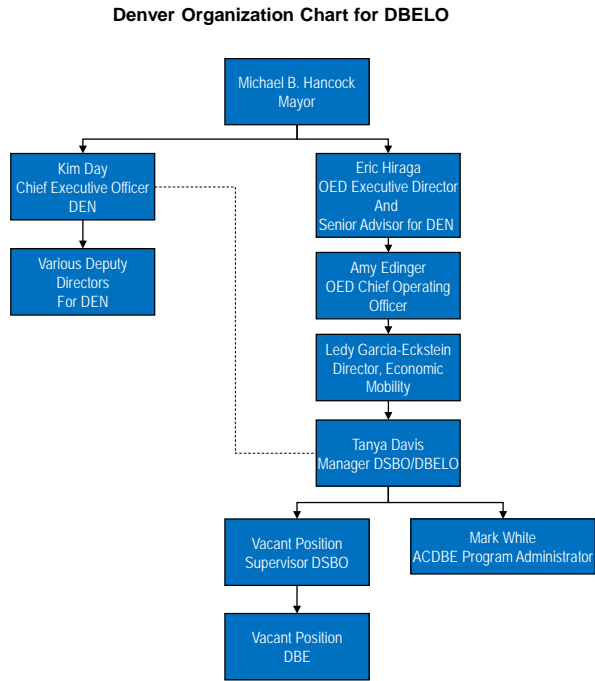
The City and County of Denver will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., *Colorado*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	State's UCP Agreement
Attachment 5	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	Procedures for Removal of ACDBEs Eligibility
Attachment 10	Regulations: 49 CFR Part 23
Attachment 11	Goals and Elements for Privately-Owned or Leased Terminal Buildings

Attachment 1

Organizational Chart



Attachment 2

**Colorado
DBE/ACDBE
Directory**

<https://coucp.dbesystem.com/directory.asp>

Attachment 3

Sample 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 Proposers 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."

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

State's UCP Agreement

UNIFIED CERTIFICATION PROGRAM PLAN



Revised 2013

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STATE OF COLORADO
DISADVANTAGED BUSINESS ENTERPRISE
UNIFIED CERTIFICATION PROGRAM PLAN

Introduction

This document revises the original Colorado Unified Certification Program Plan of 2002 (see Attachment 1). For the sake of brevity, the sections in the original plan regarding the history and formation of Colorado's UCP have been omitted from this revision. Specifically, the sections on pages 2 through 8, as well as the first paragraph of page 9, of the original plan are omitted. They are adopted by reference to the original plan.

This revision does not alter the fundamental nature or concept of the original UCP plan, it only updates things such as current members, member names, typographical errors, etc. It also adds a process for admitting new members through the ratification process, and adds procedures for administration of the Certification process.

The need for revision to Colorado's UCP plan was raised at a January 31, 2007 meeting of members in Denver. This revision has been reviewed and approved by the Unified Certification Program Executive Committee on behalf of the UCP members (see Attachment 2 for their approval). It is understood that any revision to the original UCP plan that alters its fundamental framework must be submitted to the US Department of Transportation (USDOT) for approval. The original UCP plan was approved by USDOT on April 5, 2004 (see Attachment 3).

Program Commitments

In accordance with 49 CFR Part 26.81, USDOT recipients within the State of Colorado establish the following Unified Certification Program (UCP). The UCP will follow all certification procedures and standards of 49 CFR Parts 23 and 26. The UCP will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations. The UCP will implement USDOT directives and guidance concerning certification matters.

Ratification Process

All Colorado recipients of federal funds administered by USDOT, either directly or indirectly, must ratify or comply with this UCP Plan. Failure to ratify the plan may be grounds for USDOT, or one of its operating administrations, finding the recipient in "noncompliance" with its DBE Regulation. A finding of noncompliance may put the recipient's federal funds in jeopardy.

See Attachment 4 for a list of UCP members who have ratified this plan.

Executive Committee

It is impractical to put all decisions regarding the UCP before the entire UCP membership. Therefore, the UCP establishes a Unified Certification Program Executive Committee (UCPEX) for the purpose of rendering decisions on issues relevant to the program both during implementation and throughout its future evolution. This committee will meet regularly during UCP implementation and a minimum of semi-annually thereafter. The UCPEX will include, but is not limited to, representatives from the following agencies: the Colorado Department of Transportation, the Regional Transportation District, the City and County of Denver's DSBO, Colorado Springs Airport or designated City of Colorado Springs representative, and a fifth member, representing the smaller members, invited for the meeting.

For purposes of determining a quorum and voting, each member agency of the UCPEX is entitled to one vote. A quorum is defined as the presence of a majority of the UCPEX members then named at the time of the meeting. A vote of the majority of UCPEX members in attendance at a meeting at which a quorum is established shall be the act of the UCPEX on all normal matters. Upon approval by the UCPEX, the minutes will become part of this UCP plan by incorporation into Attachment 11.

The following rules will be in effect for matters described as extra-normal. A quorum is defined as the presence of all members then named at the time of the meeting. A unanimous vote of all UCPEX members then named at the time of the meeting is required to act on all such matters. Extra-normal matters may include alteration of this UCP Plan in any fundamental manner, admittance of new UCPEX members, and recognition of new Certifying Members.

Communication

Sharing information on any matter related to the operation of the UCP is a core element of the process. All Colorado UCP members must be free to communicate openly with each other. Communication can take the form of, but is not limited to, telephone conversations, conference call, meetings, correspondence, and/or electronic transmittals.

If any Colorado UCP member is in receipt of information that is necessary or critical to making a determination of DBE eligibility, they shall notify and submit the appropriate information to the member conducting the review, if known, or to all of the recognized certification members if the member is unknown. Each Colorado UCP member shall be made aware through use of the UCP Directory of all status changes affecting certifications.

This UCP plan is a document that is certain to undergo revisions, changes and improvements over the course of time. The UCPEX will strive to keep all recipients informed of potential changes and solicit continuous input aimed at refining and improving the UCP. CDOT's Civil Rights & Business Resource Center is the point of contact for all such input, which will subsequently be relayed to the UCPEX for any necessary action.

Impact on Recipient Programs

The UCP will not establish, recommend, or alter any UCP member's overall DBE Program, other than to supplement an approved program submittal, DBE goal or goal methodology. DBE goal development, program administration, monitoring, and reporting remains the sole responsibility of the member with a USDOT-approved DBE Program in accordance with 49 CFR Part 26.

Program Overview and Requirements

Colorado's UCP concept is referred to as Interagency Recognition. It is one that allows for one or more certifying members within the state of Colorado, each operating independently but bound together by this UCP plan and its requirements.

EACH CERTIFYING MEMBER MUST:

- Be a current Colorado UCP member;
- Submit a written request to the UCPEX that it be recognized as a certifying member. The request must clearly demonstrate that the requesting member possesses the necessary in-house staff (not contractor) with expertise in the certification process and eligibility standards, that is has the ability to control certification work, and indicate how it will comply with all aspects of this UCP plan;
- Be formally recognized in writing, by unanimous agreement of the UCPEX, as a certifying member. The UCPEX is responsible for compliance and oversight of Colorado's UCP. Currently, CDOT's Civil Rights & Business Resource Center (CRBRC) and the City and County of Denver's Division of Small Business Opportunity (DSBO) are the only recognized certifying members;
- Adopt or employ the platform/system deployed by the certifying members at the time the ;
- Recognize as a certified DBE, any business that has obtained a valid certification from any certifying member recognized by the UCPEX;
- Apply criteria established by USDOT in 49 CFR, Part 23 or Part 26 as applicable, to all businesses applying for DBE certification to perform work on USDOT-assisted highway, aviation, and transit projects;
- Apply criteria established by the USDOT in 49 CFR Part 23 to all businesses applying for DBE certification to perform work in the area of airport concessions;
- Utilize the Uniform Certification Application provided in appendix F to 49 CFR Part 26, included herein as Attachment 5, for all businesses applying for DBE certification under 49 CFR Parts 23 and 26;
- Utilize the Uniform Statement of Findings and Facts, included herein as Attachment 6, to summarize the certification determinations for all firms making application for DBE certification;
- Utilize standard Change Affidavit included herein as Attachment 7. Accept a Change Affidavit from any firm who submits it to them. If they are not the administrators of the firm's DBE certification, they will forward it to the member that is for processing;
- Utilize standard Letter of Certification included herein as Attachments 8;

- Establish an appeal process consistent with the requirements of 49 CFR Parts 26.86-89;
- 49 CFR Part 26.81(g) requires “*Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by section 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print.*” Pursuant to those requirements, each certifying member will participate in a Unified Certification Directory (UCP Directory) and provide updates regarding new certifications, renewals, denials and other appropriate information at a minimum frequency of once per week;
- **NOT** process for certification any DBE application submitted by a firm previously denied, or whose certification was revoked, by another certifying member recognized under this UCP; **UNLESS** 12 months has elapsed since the firm was notified of its denial or revocation of certification;
- Reapplications must be made to the certifying member that issued the denial or revocation within 3 years from the date of denial or revocation. If a firm denied by CDOT becomes certified by DSBO for its local programs, elects to reapply for DBE certification after 12 months but less than 3 years following the DBE denial, it must reapply for DBE certification with CDOT. Exceptions to this requirement may be made when an applicant submits a written request to have its new application processed by a different member;
- Firms that have withdrawn prior applications must reapply with the certifying member to which the original application was made if the prior withdrawal occurred within 1 year;
- There will be no joint processing of DBE applications; and
- Regarding Information Sharing: send, to all certifying members operating within the State of Colorado, a copy of any denial and revocation notification letters issued; keep a comprehensive file of its own and other members’ denials and revocations to ensure they do not process applications from firms who have been denied or revoked by another certifying member.

ALL MEMBERS MUST:

- Be recipients of USDOT financial assistance;
- Abide by the provisions of this UCP plan and the requirements of 49 CFR Parts 23 and 26;
- Recognize as certified DBEs, **only** those firms contained in the UCP Directory;
- Recognize as certified DBEs, **all** firms in the UCP Directory regardless of the certifying member proffering the certification, provided the certifying member is recognized by the UCPEX to perform certification functions; and
- Refer businesses seeking DBE certification to one of the certifying members recognized by the UCPEX to perform certification functions.

Certification Member Roles, Responsibilities, and Procedures

The DBE Program is a USDOT program. As such, firms seeking certification must provide a service that can be used by at least one Colorado UCP member to meet a DBE goal. To be processed, applications from firms that do not provide a service listed on the current Colorado Unified Certification Program (UCP) Work Code Map (see Attachment 9) must include a written referral letter from a UCP member. The referral letter must identify the specific services and state that those services can be counted toward the member's DBE goal.

UCP members entrusted with Certification services under this UCP plan acknowledge that it is their responsibility to provide those services on behalf of all Colorado UCP members. Inherent in that responsibility is the willingness to provide those services without regard to a determination that a given firm provides services that may not be used in its own DBE program.

Applications are to be processed by the certifying member to whom an application is submitted; applications will not be transferred between certifying members. The sole exception to this policy will be in the case of firms seeking ACDBE certification for DIA. If a firm seeking ACDBE for DIA certification applies with the CRBRC, the application will be transferred to DSBO.

Firms whose applications have been denied, revoked, or withdrawn may not reapply until one year has passed from the date of the denial, revocation, or withdrawal. Within 3 years from the date of the denial, revocation, or withdrawal firms seeking to reapply must do so with the agency issuing the denial, revocation, or withdrawal. Following 3 years, the firm may reapply with any certifying member.

Once a firm has been certified, administration of the file will remain with the certifying member who conducted the review and granted certification. Files will not be transferred from one certifying member to another.

The certifying member is responsible for making any changes. Those changes include address, phone number, contact person, email, and work codes. If another member receives a request to make changes, the request must be forwarded to the member administering the firm's DBE certification.

When CDOT or DSBO certifies a DBE trucking company, the number of trucks must be entered into the Business Description field in the UCP directory in the following format: X eligible to be counted.

UCP Member Compliance

A great deal of the discussion has taken place regarding the need to trust each UCP member, as well as acknowledging issues that may arise related to quality and compliance. We acknowledge there are many agency-specific issues related to certification processes. The primary areas of concern are:

- Political Influence or Interference in Certification Determinations;
- Incomplete or Inadequate Definition of Processes;
- Non-Compliance With 49 CFR Parts 23 and 26; and
- Quality of Determinations.

In order for the UCP to succeed and its members to maintain the level of trust needed to

effectively comply with the UCP requirements, it is necessary to implement minimum requirements for compliance, as well as a process for dealing with any member that is found to be in non-compliance. The specific minimum requirements are:

- All decisions related to certification must be made in compliance with 49 CFR Parts 23 and 26. This requires the political independence to make determinations based upon the specific facts presented;
- Outside entities, such as industry or political organizations, cannot be involved in the certification process or determinations;
- All certifying members must make all decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or factors; and
- All UCP members agree that there is no “conditional, provisional, or emergency” certification, nor is there a provision within 49 CFR Parts 23 or 26 for “conditional, provisional, or emergency” certification. Eligibility determinations are to be made in accordance with 49 CFR Parts 23 and 26 from the facts presented at the time of application.

If any Colorado UCP member feels that a particular member is not complying with the requirements of 49 CFR Parts 23 and 26, they may make a written complaint to the UCPEX through CDOT’s CRBRC. The UCPEX will review the complaint and circumstances fully. If the UCPEX, not including the complaining member or the member in question, reaches a consensus that the member is not complying with the requirements, remedial action will be taken. Remedial action can take the form of one of the following:

- **Written Findings** – The UCPEX may issue a formal written determination of the issues regarding that member’s certification procedures or practices. This determination will be sent to the senior management official or chief operating officer of the member in question, the program administrator, and USDOT. It is hoped that the member will review the procedures at issue and make improvements to the process in order to meet 49 CFR Parts 23 and 26;
- **Monitoring & Concurrence** – The UCPEX may issue a formal written determination as set out above, as well as provide a procedural review and concurrence process. It is the hope of the members that the member in question will take this opportunity to gain additional knowledge and education of the regulations and requirements;

The member in question will be required to obtain UCPEX concurrence in certification determinations for a specific period of time. Depending upon the situation, the UCPEX may choose to “pair” the member with another certifying member or it may choose to require concurrence by a majority of the UCPEX. If a member is paired with another certifying member and a dispute continues to exist, the UCPEX will make the final determination; or

- **Non-Compliance** – Should the UCPEX make every effort to correct the deficiencies in a member’s certification process but is unsuccessful, additional measures may be necessary. Should the UCPEX find that a member is not acting in good faith, the UCPEX will submit its findings to USDOT and the relevant operating administration along with a formal request for assistance in resolving the issue.

Training

The UCPEX is committed to implementing a process that meets the requirements of the regulation and is applied uniformly by all certifying members. Uniform training is the key. This committee will develop and initiate training sessions to ensure all current and future certifying members utilize the same methods and procedures and make sound DBE certification determinations. All certifying members will be required to complete these training sessions before beginning certification reviews. Confirmation of a member’s completion of training will be made by the UCPEX through a formal letter of recognition.

North American Industry Classification System (NAICS) Codes

The Colorado UCP certifying members will certify all firms in compliance with 49 CFR Part 26, including designating specific work types. The NAICS codes will be used for determining small business size as required by 13 CFR Part 121. Consistent with 49 CFR Part 26.71(n), specific work types DBE firms are eligible to be counted for will be based on the NAICS system. Colorado has agreed to identify firms by a six-digit base number plus a text description. The following is an example of a complete work code: 541330 Electrical Engineering Services.

Any firm may request modification and/or additions to their approved work codes by making a written request to the certifying member. That request must include the equipment and experience indicating the firm’s ability to perform the particular work type. In addition, the firm must submit documentation of past contracts on which the firm has performed the specific type of work. A sample request form is contained herein as Attachment 10.

Appeals Process

Each certifying member must have an appeals process in place that meets the requirements of 49 CFR Part 26. Colorado UCP’s two certifying members have firmly established appeals processes. Applicants wishing to appeal denial determinations of initial applications must appeal directly to USDOT. Firms wishing to appeal a certification revocation determination will appeal through the certifying member’s local appeal process. In the event a firm wishes to appeal that local determination, it must appeal directly to USDOT.

Third-Party Challenges

Colorado UCP's certifying members shall accept signed written complaints from any person, including Colorado UCP members, alleging that a currently certified firm is ineligible. The complaining party must state specific reasons for ineligibility and submit any documentation in support of the challenge. The firm whose certification is challenged will be notified by the administering member in writing of the challenge, the basic grounds, and the relevant eligibility standards. The administering member will be responsible for thoroughly investigating the complaint, within a reasonable time, not to exceed 60 days. The member shall notify the DBE in writing, by certified mail, of the preliminary findings. If reasonable cause to remove certification eligibility is found, they will notify the complaining party of the specific grounds and inform the firm of its right to appeal the preliminary findings in accordance with the certifying member's appeal process.

Reciprocity

In accordance with 49 CFR Part 26.81(e) and (f) Colorado UCP may elect to enter into written reciprocity agreements with UCPs in other states or regions. The decision to execute such an agreement will be made by a majority vote of the UCPEX. All Colorado UCP members agree that they will not independently execute any reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that member, and subsequently the UCP, to a reciprocity agreement.

Interstate Certification

In January 2012 USDOT's new rule (49 CFR Part 26.85) governing interstate certification took effect. When a firm located outside Colorado applies for DBE certification in Colorado, Colorado UCP may process the application in one of two ways (assuming the firm is certified in its home state): we may accept the home state's certification and certify the firm without further procedures, or we may not accept the home state's certification. The UCPEX has chosen the second option to process out-of-state applications.

The applicant must provide Colorado UCP with a complete copy of its (original) application form, all supporting documents, and any other information it has submitted to the home state or any other state related to the firm's certification. (See 49 CFR Part 26.85(c))

Within 7 days of receiving all information required under Part 26.85(c), Colorado UCP must contact the home state to request a copy of the on-site interview transcript and eligibility report.

Within 60 days of receiving all information required under Part 26.85(c), Colorado UCP must certify the firm or notify it of the specific reasons why we believe it is not eligible. Colorado UCP must provide an opportunity for an appeal with the decision maker. The firm may respond in writing or request an in-person meeting. In-person meetings must take place within 30 days of the request.

Colorado UCP must issue a written determination within 30 days of receipt of the written response or the meeting with the decision maker, whichever is later. This determination may be appealed to USDOT.

Process for Expediting Applications

As a matter of general principle, applications for DBE certification are to be processed on a first-come first-served basis. Colorado UCP members set forth the following process for expediting applications:

- The expediting process is to be used on a case-by-case basis;
- The general principle behind the expediting process is that the firm performs a service that could be used on an upcoming project of a Colorado UCP member, and that there is a lack of currently certified firms on the UCP Directory performing that service which could be drawn upon;
- A request to expedite an application must be made in writing by the prime contractor or consultant proposing to use the applicant to meet a DBE goal on a specific project or contract;
- A request to expedite must include the project (project number if known), the UCP member owning the project, the type of work the firm seeks to perform on the project, and the date of bid opening or proposal submission;
- Agreement to expedite an application is not a guarantee of a favorable outcome, i.e., certification;
- Agreement to expedite an application does not include “conditional” certification pending an eligibility determination; and
- Agreement to expedite an application is nothing more than putting the application to the front of the application queue. The applicant must meet all other processing requirements, i.e., complete documentation, on-site interview, eligibility standards.

Process for Adding Work Codes

Because the DBE Program is a program of USDOT, firms seeking certification must provide a service that can be counted by at least one UCP member toward that member’s annual DBE goal. The Work Code Map is a reflection of the various types of work UCP members have indicated they can count in their programs. This section defines the process to create and add new work codes to the UCP Work Codes.

- First, the requested new work code must exist in NAICS. Colorado UCP will not create work codes that do not already exist in NAICS;
- Colorado UCP members will be surveyed to confirm that the services can count toward a DBE goal. If no UCP member responds affirmatively, there is no need to add the work code and the process will end;
- If at least one UCP member responds affirmatively, the requested work code will be created, but only if a minimum of two DBE firms performing the requested work code are available; and
- Until there are at least two DBE firms available, the firm making the request should be given an appropriate miscellaneous work code with a suitable description in the Certified Business Description field.

Attachment 5

Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals
See FAA Civil Rights Connect – ACDBE Part 23 Goals

Attachment 6

Section 23.45: Overall Goal Calculation for Car Rentals
See FAA Civil Rights Connect – ACDBE Part 23 Goals

Attachment 7

Forms 1 & 2 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

Attachment 8

Certification Application Forms

www.denvergov.org/dsbo
Get Certified | Applying/Renewing

Attachment 9

Procedures for Removal of ACDBEs Eligibility

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

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

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

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

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

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

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

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

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

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

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

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

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

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

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

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

Attachment 10

Regulations: 49 CFR Part 23

<https://www.ecfr.gov/cgi-bin/text-idx?SID=0248ce3819846318132716c378eef399&mc=true&node=pt49.1.23&rgn=div5>

Attachment 11**Goals and Elements for Privately-Owned or Leased Terminal Building**

Goals and Elements for Privately-Owned or Leased Terminal Building's Section 23.73 Privately-Owned or Leased Terminal Buildings. The City will pass through applicable provisions of Part 23 to private terminal owner or lessee via agreement with the owner or lessee (other means - identify,) the City will ensure that the owner or lessee complies with Part 23. The City will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23 is incorporated herein. Section 23.75 Long-Term Exclusive Agreements. The City will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. The City understands that a long-term agreement is one having a term of longer than 5 years. The City understands that an "exclusive" agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.