

**Capital Region Airport Commission  
Richmond International Airport**

**Airport Concession Disadvantaged Business Enterprise Program**

**October 1, 2015**

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President & Chief Executive Officer**

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Chairman**

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## POLICY STATEMENT

### Section 23.1, 23.23 Objectives/Policy Statements

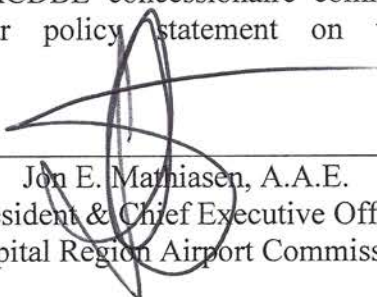
The Capital Region Airport Commission (Commission) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program for Richmond International Airport (RIC or Airport) in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. Richmond International Airport 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 Commission has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Commission 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 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs at our airport;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport; and
6. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Russell L. Peaden, Director of Real Estate, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Mr. Peaden 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 Commission in its financial assistance agreements with the Department of Transportation.

The Commission has disseminated this policy statement to all departments of the Commission. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area. This distribution is accomplished by posting our policy statement on the Airport's website at [www.flyrichmond.com](http://www.flyrichmond.com).

  
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Jon E. Mathiasen, A.A.E.  
President & Chief Executive Officer  
Capital Region Airport Commission

Date: 10/12/15

## **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 Commission will use terms in this program that have the same meaning defined in Section 23.3 and Part 26, Section 26.5 where applicable.

### **Section 23.5 Applicability**

Richmond International Airport is a small hub primary airport. The Commission is the sponsor of federal airport funds authorized for airport development at the Airport after January 1988 that were authorized under Title 49 of the United States Code.

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

As a recipient of DOT financial assistance, the Commission will meet the non-discrimination requirements provided in Part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by Part 23.

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

The following assurances will be included in all Commission concession agreements and management contracts it executes with any firm after April 21, 2005:

“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.

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 Commission 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 Commission 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 Commission’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 Commission’s ACDBE program:

(a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.

(b) For a firm that, in order to meet ACDBE goals or other ACDBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm 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 Commission's ACDBE program or otherwise violates applicable Federal statutes.

**Compliance reviews:** The FAA may review the Commission's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the Commission'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 Commission 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**

RIC is a small hub primary airport required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Commission will submit its ACDBE program and overall goals to FAA according to 23.45 (a) of this section.

Until the Commission's 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 Richmond International Airport.

When the Commission 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 Commission is committed to operating its ACDBE Program in a non-discriminatory manner. The Commission's Policy Statement is elaborated on the first page of this Program.

**ACDBE Liaison Officer (ACDBELO):** Jon E. Mathiasen, President & Chief Executive Officer, has ultimate responsibility for executing the Airport's ACDBE Program. Russell L. Peaden, Director of Real Estate, has been designated as the ACDBELO and is responsible for implementing all aspects of the ACDBE Program and ensuring that the Commission complies with all provisions of 49 CFR Part 23. The ACDELO has direct, independent access to the President & Chief Executive Officer concerning ACDBE program matters. An organization chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this Program.

Contact information for the ACDBELO is Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, VA 23250-2400. Phone (804) 226-8520 email: [rpeaden@flyrichmond.com](mailto:rpeaden@flyrichmond.com).

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

- a. developing, managing, and implementing the DBE program on a day-to-day basis;
- b. carrying out technical assistance activities for DBEs;
- c. disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to compete for FAA-assisted contracts awarded by the Commission;
- d. explaining DBE participation requirements internally and externally at pre-bid conferences;
- e. ensuring that solicitations contain the clauses and goals required by this program;
- f. reviewing concession and management contract and subcontract proposals, and providing recommendations on award of such contracts;
- g. gathering and reporting statistical data and other information as required by DOT;
- h. reviewing and reporting on DBE participation during the progress of concession and, and management contracts and subcontracts;
- i. advising the President & Chief Executive Officer on DBE matters and achievement.

Others assigned ACDBE Program responsibilities include:

A. The Chief Financial Officer, who is responsible for:

1. providing information to the President & Chief Executive Officer and ACDBELO on concession and management contract opportunities, together with a breakdown of subcontracting possibilities; and
2. consulting with the President & Chief Executive Officer and ACDBELO on financial requirements, including bonding, licenses, insurance, financial information and other requirements.

B. The Procurement Specialist, who is responsible for:

1. providing advice, guidance, and information to the ACDBELO regarding the Commission's procurement policies and procedures and requirements:



2. reviewing recommendations by the ACDBELO regarding incorporating ACDBE on participation language in Commission request for proposal and concession contract documents;
3. ensuring that DBE goals and procedures adopted by the Commission are properly contained in Commission concession and management contract advertisements; and
4. advising the ACDBELO of the results of concession and management advertisements for recommendation to the Commission regarding contract awards.

C. Outside legal counsel, who are called upon to:

1. assist in drafting solicitation and contract documents; and
2. review contract documents for legal sufficiency.

D. Outside consultants, who are called upon to: assist in the interpretation, development and implementation of DBE Program Policies.

**Directory:** The Commission through the Virginia 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'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. The UCP revises the Directory at least annually.

We make the Directory available at [www.dmb.virginia.gov](http://www.dmb.virginia.gov). A website link to the Directory can be found in Attachment 2 of this program document.

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.

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

The Commission will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a):

The Commission will never exclude any person from participation in, deny any person the benefit 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 Commission 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 Commission 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 Commission's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and in Attachments 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d)).

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

The Commission 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.

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

### **Section 23.27            Reporting**

The Commission will retain sufficient basic information about its ACDBE Program implementation, ACDBE certification, and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of three (3) years following the end of the concession agreement or other covered contract.

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Commission or DOT. This reporting requirement is also extended to any certified ACDBE.

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. We will submit the report to the FAA Regional Civil Rights Office via hard copy of the form or electronically via the DBE Office Online Reporting System (DOORS).

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

The Commission will monitor compliance of its contractors on concession related contracts consistent with the requirements of Part 23 and this Program. The Commission may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Failure to carry out the Commission's ACDBE Policy and goals and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the Commission.

The following monitoring and enforcement provisions are included in the Commission's concession agreements and management contract: to ensure compliance with 49 CFR Part 23:

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities.
3. Concessionaire shall submit, in the format required by the Commission, a monthly report of ACDBE utilization.
4. The Commission may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

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

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

The Commission is a member of the Unified Certification Program (UCP) administered by the State of Virginia, which will make ACDBE certification decisions on behalf of the Commission. For more information about the certification process or to apply for certification firms should contact:

The Virginia Department of Small Business and Supplier Diversity  
101 N. 14<sup>th</sup> St. 11<sup>th</sup> Floor  
Richmond, Virginia 23219  
PH: 804.786.6585

**OR**

The Metropolitan Washington Airports Authority  
Department of Supplier Diversity  
1 Aviation Circle  
Washington, DC 20001  
PH: 703-417-8625

The Commission relies on the ACDBE certification of a firm from the UCP and, on a case-by-case basis, other DOT recipients. We also rely on the UCP to review the eligibility of ACDBE firms to make sure that they meet the eligibility standards of Part 23.

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 occur during the solicitation evaluation process for a new contract and prior to executing any extension option of an existing contract.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm’s previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone companies’ it is 1500 employees, and for ACDBE automobile dealers it is 350 employees.

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

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

- (1) The individual’s ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual’s equity in his or her primary place of residence; and
- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual’s ACDBE business) to a maximum of \$3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

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

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

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

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

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

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

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

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

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

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

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

The Commission will establish two separate overall ACDBE goals -- one for car rentals and another for concessions other than car rentals -- each covering a three-year period. The Commission will review the goals annually to make sure they continue to fit the Commission's circumstances. The Commission will report any significant overall adjustments to the FAA.

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

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

### **Section 23.43 Consultation in Goal Setting**

The Commission consults with stakeholders before submitting its overall goals to FAA, including but not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination

on opportunities for ACDBEs, and the Commission's efforts to increase participation of ACDBEs.

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

### **Section 23.45 Overall Goals**

Richmond International Airport is a small hub primary airport. As a condition of eligibility for FAA financial assistance, the Commission will submit its overall goals for the Airport according to the following schedule:

**Initial Program and Goal Due: October 1, 2006**

**Second Goal Due: October 1, 2009**

**Subsequent Goals Due: Every 3 years on October 1**

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Commission will submit an appropriate adjustment to its overall goal to the FAA for approval at least six months before executing the new concession agreement.

The Commission will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the 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 Commission will arrange solicitations, times for presentation of bids, quantities, specifications, and delivery schedules in a ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program. A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in Attachment 5 to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 and 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

### **Concession Specific Goals (23.25(e)(iv)(c))**

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

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the Commission 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 Commission 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 Procedures on Concession Specific Goals (23.25(e)(1)(iii), (iv))**

To be eligible to be awarded a concession that has a concession specific goal, proposers must make good faith efforts to meet the goal. A proposer 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. 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 Commission's concession specific goals. Specifically, each solicitation for which a concession specific goal has been established will require each proposer to complete and submit the Commission's Airport Concession Disadvantaged Business Enterprise Participation Form with its proposal to provide the Commission information about ACDBE firms and/or ACDBE suppliers of goods and services that will participate in the concession and to document good faith efforts to identify potential ACDBEs when a proposer is unable to meet the concession specific

goal. The Commission's Airport Concession Disadvantaged Business Enterprise Participation Form can be found in Attachment 6 to this program. We will ensure that all information is complete and accurate and adequately documents the proposer's good faith efforts before we commit to the concession agreement with the proposer. The Commission treats proposers' compliance with good faith effort requirements as a matter of responsiveness. Specifically,

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

The Director of Real Estate and the Procurement Specialist are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsible.

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

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

The Commission treats bidder's/offeree's compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services 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/supplier 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.

When a concession specific goal is established pursuant to the Commission's ACDBE Program, the following specification will be used to notify proposers for concession opportunities of the requirements to make good faith efforts:

Award of this concession opportunity will be conditioned upon satisfying the requirements of this proposal specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. The Proposer shall make good faith efforts, such as those outlined in Appendix A, 49 CFR Part 26, to meet the ACDBE participation goal established for this concession opportunity. The following types of actions which the Commission reasonably expects Proposers to undertake to make good faith efforts to achieve ACDBE participation include:



- Attending pre-proposal meetings that are scheduled by the Commission.
- Advertising in general circulation, trade association, and DBE-, minority- and women-oriented media concerning this contract opportunity.
- Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for ACDBE participation; and evidence as to why additional agreements could not be reached for ACDBEs to perform the work.
- Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of women and minority firms.

ACDBE Reports. Concessionaire shall submit, in the format required by the Commission, a monthly report of ACDBE utilization. The Commission reviews the monthly reports that are required to be submitted to the Commission by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the Commission determines that any concessionaire is not complying with any contract requirements regarding this Program, the Commission will implement the contract remedies specified above.

The Commission may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

Administrative reconsideration (26.53(d))

Within ten days of being informed by the Commission that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaires should make this request in writing to Jon E. Mathiasen, President & Chief Executive Officer, Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, VA 23250-2400. The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good

faith efforts to do. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the proposer 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 DOT.

Any business that fails to demonstrate that it achieved the concession-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall be deemed “non-responsible” and, therefore, shall be ineligible for award of the concession contract.

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

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

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

If the concessionaire fails or refuses to comply in the time specified, our ACDBELO/contracting office will serve a written notice to the concessionaire that it has thirty (30) days to remedy the situation. If the concessionaire still fails to comply, the ACDBELO/contracting office may issue a termination for default proceeding.

The following provision concerning replacement and substitution of ACDBEs will be included in the Commission’s concession agreements and management contracts:

Replacement or Substitution of an ACDBE. The successful Proposer shall utilize the specific ACDBE(s) listed in its proposal unless the successful Proposer obtains the Commission’s advance written consent to replace or substitute an ACDBE.

If an ACDBE is unwilling or unable to perform, the Concessionaire must notify the Commission’s DBE Liaison Officer immediately of the ACDBE’s inability or unwillingness to perform and provide a written request to terminate and/or substitute an ACDBE. Before transmitting such a request, the Concessionaire must give notice in writing to the ACDBE, with a copy to the Commission, of its intent to request to terminate and/or substitute, and the reason for the request.

The Concessionaire must give the ACDBE five (5) days to respond to Concessionaire’s notice and the ACDBE must advise the Commission and the Concessionaire of the reasons, if any, why it objects to the proposed termination of its contract with the Concessionaire and why the Commission should not approve the Concessionaire’s action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Commission may provide a response period shorter than five days.

When an ACDBE is terminated, or fails to complete its work on the contract for any reason, the Concessionaire is required to make good faith efforts to replace an ACDBE that is terminated for good cause with another ACDBE that is certified in accordance with 49 CFR Part 23 to meet the concession goal. When a substitute ACDBE cannot be identified, the Concessionaire must provide documentation to the Commission of the good faith efforts made to locate another ACDBE to perform the work. If Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the Commission detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

“Good cause” includes the following circumstances:

- The listed ACDBE fails or refuses to execute a written contract;
- The listed ACDBE fails or refuses to perform the work of its contract in a way consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal of the ACDBE to perform its work results from the bad faith or discriminatory action of the Concessionaire;
- The listed ACDBE fails or refuses to meet the Concessionaire’s reasonable, nondiscriminatory bond requirements;
- The listed ACDBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed ACDBE is ineligible because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The Commission has determined that the listed ACDBE is not a responsible concessionaire;
- The listed ACDBE voluntarily withdraws from the project and provides to the Commission written notice of its withdrawal;
- The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- An ACDBE owner dies or becomes disabled with the result that the listed ACDBE is unable to complete its work on the contract;
- Other documented good cause that the Commission determines compels the termination of the ACDBE, provided that good cause does not exist if the Concessionaire seeks to terminate an ACDBE it relied upon to obtain the contract so that the Concessionaire can self-perform the work for which the ACDBE was engaged or so that the Concessionaire can substitute another ACDBE or non-ACDBE after contract award.

If such a change is approved by the Commission, the Concessionaire must submit copies of executed contracts (i.e., subcontract, joint venture, partnership) legalizing the agreement between the Concessionaire and each ACDBE to the Commission’s DBE Liaison Officer within ten (10) days of the date of the Commission’s written notification of approval.

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

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

### **Section 23.55 Counting ACDBE Participation for Concessions Other Than Car Rental**

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

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

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

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

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

## **SUBPART E—OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

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

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

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

### **Section 23.77 Preemption of Local Requirements**

In the event that a State or local law, regulation, or policy differs from the requirements Part 23, the Commission must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of Part 23.

The Commission will clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of Part 23. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements Part will govern. FAA will not approve the Commission's ACDBE program if there are such provisions that conflict with the provisions Part 23.

If not deemed in conflict by the FAA, the Commission must write and administer such a State or local law, policy, or regulation separately from the ACDBE program. Copies of any such provisions and the legal authority supporting them will be provided to the FAA with the Commission's ACDBE program submission.

However, nothing in Part 23 preempts any State or local law, regulation, or policy enacted by the governing body of the Commission, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with Part 23.

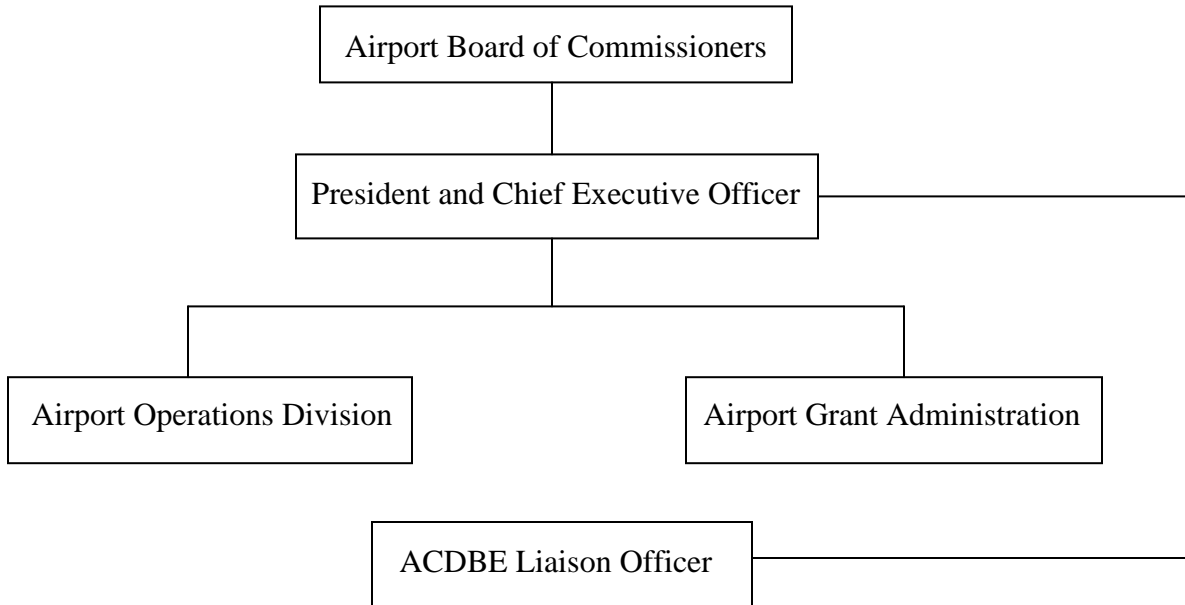
### **Section 23.79            Geographic Preferences**

We will not use a "local geographic preference", i.e., any requirement that gives an ACDBE located in one place (e.g., *our local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at our airport.

#### **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	Website Link to DBE/ACDBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goals for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation; Breakout of Estimated Race Neutral & Race-Conscious Participation
Attachment 6	Airport Concession Disadvantaged Business Enterprise Participation Form
Attachment 7	Website Link to the Uniform Certification Application Form
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Website Links to Regulations: 49 CFR Part 23 and 49 CFR Part 26

**Organizational Chart**



**Attachment 2**

**Website Link to Virginia DBE/ACDBE Directory:**

**<http://www.dmb.e.virginia.gov/DBESearchSub.html>**

### Monitoring and Enforcement Mechanisms

The Commission has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, under applicable VA law, pursuant to the terms of the contract;
2. Virginia Governmental Frauds Act, Va. Code § 18.2-498, 1 et seq.
3. Ethics in Public Contracting Act, VA Code § 2.2-4367.
4. Virginia Public Procurement Act, VA. Code § 2.2-4300.

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

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

The Commission will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to, including insertion of the following provisions into concessions agreements and management contracts:

Compliance. Failure to carry out the ACDBE Policy and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the Commission.

Audits. The Commission may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

Replacement/Substitutions of ACDBEs. Concessionaire is required to have a valid arrangement with the ACDBE(s) designated to fulfill the contract goal. Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it is demonstrated to the Commission that the ACDBE(s) is unwilling or unable to perform. Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. If an ACDBE is unwilling or unable to perform, Concessionaire shall inform the Commission in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. Concessionaire will identify a



replacement DBE or document good faith efforts to replace the ACDBE with another ACDBE. If Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the Commission detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

ACDBE Reports. Concessionaire shall submit, in the format required by the Commission, a monthly report of ACDBE utilization. The Commission reviews the monthly reports that are required to be submitted to the Commission by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the Commission determines that any concessionaire is not complying with any contract requirements regarding this Program, the Commission will implement the contract remedies specified above.

Notices to DOT. The Commission will also notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General).

We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by the ACDBELO/contracting office monitoring of ACDBE sales, which are tracked as a percentage of overall concession revenue. The Commission maintains these statistics on a monthly basis. In addition airport staff monitors the ongoing operation of the concession areas including but not limited to standards of service, pricing, cleanliness and opening and closing times. These standards are specifically listed in each agreement and together with direct observations we are able to gauge compliance.

In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

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

**AMOUNT OF GOAL: 17.19%**

**NAME OF RECIPIENT:** Capital Region Airport Commission/Richmond International Airport

**GOAL PERIOD:** FFYs 2016-2018 (October 1, 2015 through September 30, 2018)

**OVERALL THREE-YEAR GOAL:** 17.19%, to be accomplished 2.02% through race-neutral measures and 15.17% through race-conscious measures.

**MARKET AREA.** The Commission's market areas for non-car rental concessionaires is the geographical in which the substantial majority of firms which seek to do concessions business with the Airport are located and the geographical area in which the firms receiving a substantial majority of concessions related revenues are located. The Commission has established the following market areas for concession opportunities anticipated during this goal setting period:

1. Executive Sedan/Irregular Route Service: City of Richmond and the counties of Chesterfield and Henrico, Virginia
2. Indoor Advertising Management: National
3. Snack & Beverage Vending: City of Richmond and the counties of Chesterfield, Hanover, and Henrico, Virginia
4. Taxi Dispatch: City of Richmond and the counties of Chesterfield, Hanover and Henrico, Virginia

**BASE OF NON-CAR RENTAL GOAL.** To calculate the base of the goal, the Commission considered the previous three years of non-car rental gross concession receipts and the estimated gross receipts three years into the future including upcoming new opportunities, as shown in Table 1 on the next page.

**Table 1 – Gross Receipts (Revenue) for Previous 3 Years  
Non-Car Rental Concessions**

Federal Fiscal Year	Non-Car Rental Gross Receipts
2013	\$11,492,249
2014	\$12,721,451
2015	\$13,326,666*
<b>Total</b>	<b>\$37,540,366</b>
<b>Average</b>	<b>\$12,513,455</b>

\*Estimated

The Commission estimates that revenues to existing concessions will grow by 2% over the next three years due to inflation, calculated as follows:  $\$37,540,366 \times 2\% = \$750,807 = \$38,291,173$  base of goal.

The non-car rental concession opportunities anticipated during this goal period are: (1) Executive Sedan/Irregular Route Service; (2) Indoor Advertising Management; (3) Snack & Beverage Vending; and (4) Taxi Dispatch with estimated gross receipts of \$906,554.

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

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Commission will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

**OVERALL GOAL CALCULATION METHODOLOGY**

*Goods and Services*

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar

value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

*Management Contract or Subcontract*

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport’s percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.

*Step 1 Base Figure*

The Virginia UCP DBE Directory, the Virginia Department of Small Business & Supplier Diversity SWAM Directory, our active participants lists, direct outreach, and information from other airports for airport advertising were the sources utilized to determine the number of ready, willing and able ACDBEs in the Commission’s market areas (numerator). US Census Bureau 2013 County Business Patterns data was used to determine the number of all ready, willing and able businesses available in our market areas (denominator) for new concession opportunities, except for Advertising Management. Information from other airports concerning businesses that specifically manage airport advertising concessions was used as the denominator for Advertising Management.

**Table 2 – Relative Availability of ACDBEs for New Opportunities**

Concession Opportunity	NAICS Code	Total ACDBEs in Market Area	Total Firms in Market Area
Advertising Management	451850/451810	1	8
Executive Sedan/Irregular Route Service	485320	0	10
Snack & Beverage Vending	441320	5	7
Taxi Dispatch	488410	2	45
<b>Total</b>		<b>8</b>	<b>70</b>

As shown in Table 3 on the next page, the Commission then calculated its overall ACDBE availability step one base figure of 16.58% for non-car rental by dividing the estimated non-car rental gross receipts from ACDBEs by the estimated gross receipts from all non-car rental concessions.

**Table 3 - Base Figure Calculation**

Concession Agreements	Estimated Total Gross Receipts	ACDBE \$s of Total Estimated Gross Receipts	ACDBE Participation Goal %
Food and Beverage	\$25,195,236	\$3,779,285	15%
News, Gifts & Specialty Retail	\$15,000,976	**\$3,000,195	**20%
Parking Management	0*	\$0*	0%
Baggage Carts	\$82,384	\$0	0%
Advertising Management***	\$432,000*	\$54,000*	12.50%
Executive Sedan/Irregular Route Service***	\$67,634	\$0	0%
Shoe Shine	\$22,291	\$0	0%
Snack & Beverage Vending***	\$194,717	\$0	0%
Taxi Dispatch***	\$212,203	\$0	0%
<b>TOTAL/ FFYs 2016-2018 BASE FIGURE</b>	<b>\$41,207,441</b>	<b>\$6,833,460</b>	<b>16.58%</b>

\*Estimated ACDBE management fees.

\*\*Goal is 15%; 20% achievement expected.

\*\*\* Anticipated concession opportunities during FFYs 2016-2018

Note: Percentages are rounded.

*Step Two Adjustments to the Base Figure*

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the Step 1 base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0.61%. Our overall goal for non-car rental concessions is 17.19%.

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

**Past Participation** As shown in Table 4 on the next page, median past ACDBE participation in the Commission’s non-car rental concessions has been 17.80%.

**Table 4 - Past Participation Achievements**

Federal Fiscal Year	Total Gross Receipts (excluding rental cars)	ACDBE Gross Receipts (excluding rental cars)	ACDBE Goal (excluding rental cars)	ACDBE Past Participation Achievement	ACDBE Over/Under Achievement
2010	\$11,069,278	\$1,970,533	15.00%	17.80%	+2.80%
2011	\$11,155,163	\$1,990,054	15.00%	17.84%	+2.84%
2012	\$11,190,418	\$1,975,974	15.00%	17.66%	+2.66%
2013	\$11,492,249	\$2,050,275	17.19%	18.00%	+0.81%
2014	\$12,721,451	\$2,203,253	17.19%	17.32%	+0.13%
MEDIAN ACDBE PAST PARTICIPATION = 17.80%					

Source: Uniform Report of ACDBE Participation, Richmond International Airport (FFYs 2010-2014)  
 Note: ACDBE achievement percentages are rounded.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 17.19%. We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this goal period.

We did not identify any disparity studies conducted anywhere within our jurisdiction that examine ACDBE participation in airport car rental concessions. Thus, we did not use a disparity study in determining an adjustment to the base figure.

The Commission will review its goal annually to determine whether the 17.19% goal is appropriate or can be adjusted. We will inform the FAA of any significant adjustments to the goal before our next scheduled plan submission.

**CONSULTATION WITH STAKEHOLDERS.** Before establishing an ACDBE goal for non-car rental concessions, the Commission sponsored two webinars to consult with minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as with existing and potential concessionaires, 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 Commission’s efforts to increase participation of ACDBEs. The webinar invitations sent to 162 individuals also sought written comments. A total of five individuals representing the following organizations participated in the webinars:

- Allen Elite Motors, LLC
- Richmond Limousine
- Rent-A-Wreck
- Clea
- Ugplay Service, Inc.

No comments were provided during the webinars or in writing.

## **BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE CONSCIOUS PARTICIPATION**

The Commission estimates that, in meeting our overall goal of 17.19%, we will obtain 2.02% from race-neutral participation and 15.17% from race-conscious participation. This estimate is based on past participation and the extent that our ACDBE goals have been exceeded in the past (see Table 4).

**Race-Neutral Measures.** The Commission uses the following race-neutral measures in its ACDBE Program:

- Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires;
- Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
- Providing advice to ACDBEs in overcoming limitations such as the inability to obtain bonding, financing, or technical assistance;
- Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Commission's ACDBE program will affect the procurement process;
- Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation;
- Providing information to ACDBE firms about the Commission, its function and full range of contractual needs;
- Offering instructions and clarifications on solicitation requirements, the Commission's procurement policies, procedures, and general proposal requirements;
- Conducting debriefing sessions to explain why certain proposals were unsuccessful;
- Providing information to ACDBE firms on future concession opportunities, contracting schedules, subcontracting opportunities and bonding requirements;

- Providing instructions about job performance requirements;
- Placing solicitation notices in periodicals of interest to the disadvantaged business community; and
- Taking other race-neutral steps to foster ACDBE participation in the Commission's concession opportunities.

**Race-Conscious Measures.** If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. Establishing concession-specific goals for particular concession opportunities.
  - a. If the objective of the contract-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession.
  - b. If the goal applies to purchases and/or leases of goods and services, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession.
  - c. To be eligible to be awarded the concession, competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
  - d. The administrative procedures applicable to contract goals in part 26, §26.51–53, apply with respect to the Commission's concession-specific goals.
2. Negotiating with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.
3. With FAA's prior approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. We will maintain data separately on ACDBE



achievements in those contracts with and without concession specific goals, respectively. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

## Section 23.49: Overall Goal Calculation for Car Rentals

**AMOUNT OF GOAL: 1.76%**

**NAME OF RECIPIENT:** Capital Region Airport Commission/Richmond International Airport

**GOAL PERIOD:** FFYs 2016-2018 (October 1, 2015 through September 30, 2018)

**OVERALL THREE-YEAR GOAL:** 1.76%, to be accomplished 0.92% through race-neutral measures and 0.84% through race-conscious measures.

**MARKET AREA.** The substantial majority of firms which seek to do car rental concessions business with the Airport and the firms receiving the substantial majority of car rental concessions revenues are national brands that operate car rental concessions nationwide. None of these companies are ACDBE-owned. The Commission believes that purchases of goods and services by national car rental concession operators can be achieved by utilization of ACDBE firms located in Greater Richmond. The Commission has determined that its market area for ACDBE participation is Greater Richmond, which includes the City of Richmond and Chesterfield, Hanover, and Henrico counties.

**BASE OF CAR RENTAL GOAL.** To calculate the base of the goal, the Commission considered the previous three years of car rental gross concession receipts and the estimated gross receipts three years into the future including upcoming new opportunities, as shown in Table 1.

**Table 1 – Gross Receipts (Revenue) for Previous 3 Years  
Car Rental Concessions**

Federal Fiscal Year	Car Rental Gross Receipts
2013	\$47,976,797
2014	\$55,778,522
2015	\$52,488,288*
<b>Total</b>	<b>\$156,243,607</b>
<b>Average</b>	<b>\$53,081,202</b>

\*Estimated

The Commission estimates that revenues to existing concessions will grow by 2% over the next three years due to inflation, calculated as follows:  $\$53,081,202 \times 2\% = \$1,061,624 = \$54,142,826$  base of goal.

The car rental concession opportunities anticipated during this goal period are shown in Table 2 on the next page.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Commission will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

## OVERALL GOAL CALCULATION METHODOLOGY

### *Step 1 Base Figure*

The Virginia UCP DBE Directory and the Virginia Department of Small Business & Supplier Diversity SWAM Directory were utilized to determine the number of ready, willing and able ACDBEs in the Commission’s market area (numerator). US Census Bureau 2013 County Business Patterns data was used to determine the number of all ready, willing and able businesses available in our market area (denominator). When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of 3.52% as shown in Table 2.

**Table 2 – Relative Availability of ACDBEs**

Type of Goods/Services	NAICS Code	ACDBEs in Market Area	Firms in Market Area	Percentage ACDBE Availability
Motor Vehicle Towing	488410	2	45	4.44%
Insurance Services	524210	4	538	0.74%
Janitorial Services	561720	22	277	7.94%
General Automobile Repair	811111	11	271	4.05%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	4	89	4.49%
<b>RELATIVE AVAILABILITY OF ACDBEs</b>		<b>43</b>	<b>1220</b>	<b>3.52%</b>

Note: Percentages are rounded.

### *Step Two Adjustments to the Base Figure*

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the Step 1 base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 50%. Our overall goal for car rental concessions is therefore 1.76%. We feel this adjusted goal figure more accurately reflects ACDBE participation that can be achieved during this goal period.

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

**Past Participation.** As shown in Table 3 on the next page, median past ACDBE participation in the Commission’s car rental concessions in FFYs 2010 through 2014 has been 0.96%. This participation has been achieved by only one car rental concessionaire in NAICS code 524210.

Even though there is no other historical ACDBE data to reference to make an adjustment to the Step 1 base figure, a limited number of ACDBEs and potential ACDBEs were identified in Step 1. The Commission, however, feels it can achieve a slighter higher level of achievement because of the additional opportunities identified for ACDBE participation during this goal period.

**Table 3 - Past Participation Achievements**

Federal Fiscal Year	Total Gross Receipts	ACDBE Gross Receipts	ACDBE Goal	ACDBE Participation Achievement	ACDBE Over/Under Achievement
2010	\$44,178,552	\$415	0.00%	0.00%	0.00%
2011	\$45,441,229	\$0	0.00%	0.00%	0.00%
2012	\$46,706,483	\$508,460	0.00%	1.09%	+1.09%
2013	\$47,976,797	\$499,408	0.00%	1.04%	+1.04%
2014	\$55,778,522	\$537,011	0.00%	0.96%	+0.96%
Median ACDBE Past Participation			0.00%	0.96%	+0.96

Source: Uniform Report of ACDBE Participation, Richmond International Airport (FFYs 2010-2014)

Note: ACDBE achievement percentages are rounded.

We did not identify any disparity studies conducted anywhere within our jurisdiction that examine ACDBE participation in airport car rental concessions. Thus, we did not use a disparity study in determining an adjustment to the base figure.

The Commission will review its car rental goal annually to determine whether the 1.76% goal is appropriate or can be adjusted. We will inform the FAA of any significant adjustments to the goal before our next scheduled plan submission.

**CONSULTATION WITH STAKEHOLDERS.** Before establishing an ACDBE goal for car rental concessions, the Commission sponsored two webinars to consult with minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as with existing and potential concessionaires, 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 Commission’s efforts to increase participation of ACDBEs. The webinar invitations sent to 162 individuals also sought written comments. A total of five individuals representing the following organizations participated in the webinars:

- Allen Elite Motors, LLC
- Richmond Limousine
- Rent-A-Wreck
- Clea
- Ugplay Service, Inc.

No comments were provided during the webinars or in writing.

## **BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE CONSCIOUS PARTICIPATION**

The Commission estimates that, in meeting our overall goal of 1.76%, we will obtain 0.92% from race-neutral participation and 0.84% from race-conscious participation. This estimate is based on past participation and anticipated contracts with ACDBE requirements.

In accordance with the provisions of Section 23.53, rental car concessionaires' purchases of goods and services from ACDBEs certified by the Virginia UCP will be counted as follows:

1. All purchases or leases of vehicles from an ACDBE vendor;
2. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that such cost is reasonable and not excessive as compared with fees customarily allowed for similar services;
3. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with a rental car concessionaire, provided that such fee or commission is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services;
4. For other goods and services, ACDBE participation will be counted as provided in 49 CFR Part 26, §26.55 and Part 23, §23.55. In the event of any conflict between these two sections, §23.55 controls.
5. If a rental car company has a national or regional contract with an ACDBE, the pro-rated share of the amount of that contract that is attributable to its car rental concession at RIC will be counted toward ACDBE participation.
6. No portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty will be counted as ACDBE participation.

**Race-Neutral Measures.** The Commission uses the following race-neutral measures in its ACDBE Program:

- Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires;
- Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
- Providing advice to ACDBEs in overcoming limitations such as the inability to obtain bonding, financing, or technical assistance;

- Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Commission’s ACDBE program will affect the procurement process;
- Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation;
- Providing information to ACDBE firms about the Commission, its function and full range of contractual needs;
- Offering instructions and clarifications on solicitation requirements, the Commission’s procurement policies, procedures, and general proposal requirements;
- Conducting debriefing sessions to explain why certain proposals were unsuccessful;
- Providing information to ACDBE firms on future concession opportunities, contracting schedules, subcontracting opportunities and bonding requirements;
- Providing instructions about job performance requirements;
- Placing solicitation notices in periodicals of interest to the disadvantaged business community; and
- Taking other race-neutral steps to foster ACDBE participation in the Commission’s concession opportunities.

**Race-Conscious Measures.** If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. Establishing concession-specific goals for particular concession opportunities.
  - a. If the objective of the contract-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession.
  - b. If the goal applies to purchases and/or leases of goods and services, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession.
  - c. To be eligible to be awarded the concession, competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
  - d. The administrative procedures applicable to contract goals in part 26, §26.51–53, apply with respect to the Commission’s concession-specific goals.

2. Negotiating with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.
3. With FAA's prior approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Proposal Form \_\_\_\_

**CAPITAL REGION AIRPORT COMMISSION  
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**

**A. SUBMIT** this form with your proposal.

**B. INSTRUCTIONS:**

1. This form **must** be completed, signed and submitted by **all** Proposers with their Proposal. Proposers must make good faith efforts to meet the Airport Concession Disadvantaged Business Enterprise participation goal established for this RFP. The Proposer can meet this requirement in one of three ways: **First**, if the Proposer is itself a certified ACDBE by the Virginia Unified Certification Program (“VAUCP”); **second**, documenting commitments for participation by a VAUCP-certified ACDBE firm(s); or **third**, documenting good faith efforts.
2. In the event the Proposer qualifies as an ACDBE as defined below, please provide the current ACDBE Certification Number. (ACDBE Part I below).
3. All addresses provided must be the complete street address of an ACDBE’s principal place of business. Post Office box numbers shall not be considered. All phone numbers and email addresses provided must be current.
4. Submit supplemental pages if the number of entries provided under each item of information is insufficient.

**C. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (“ACDBE”)** means a concession that is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**D. ACDBE PARTICIPANT** is an ACDBE certified by the Virginia Unified Certification Program that has a direct role and area of responsibility in the Concession.

**E. GOOD FAITH EFFORTS** means efforts to achieve an ACDBE goal or other requirement of 49 CFR Part 23 that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement. Evidence of good faith efforts include the names, addresses and current telephone numbers of ACDBEs that were considered, and evidence as to why agreements could not be reached for ACDBEs to participate in the Concession.



Proposal Form \_\_ – Page 2 of 7

**PART I – PROPOSER IS ITSELF AN ACDBE**

If Proposer is an ACDBE, please provide your current ACDBE Certification No.: \_\_\_\_\_

**PART II – PROPOSER OBTAINED ACDBE PARTICIPATION**

**FOR EACH ACDBE PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION CONTAINED IN SECTIONS 1 THROUGH 5 OF PART II (use additional sheets as necessary):**

1. ACDBE Participant Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.(\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ ACDBE Certification Number: \_\_\_\_\_  
(Attach to this Form a copy of current ACDBE certification documentation.)

2. Describe the business relationship between the Proposer and the ACDBE Participant:

\_\_\_\_\_ Partnership                      \_\_\_\_\_ Joint Venture  
\_\_\_\_\_ Sublessee                      \_\_\_\_\_ Limited Liability Company (LLC)  
Other \_\_\_\_\_

Date of formation of the business relationship with ACDBE Participant: \_\_\_\_\_

NOTE: Attach to this ACDBE Form, the agreement, sublease or other documentation (actual or proposed) that is the basis for the business relationship between Proposer and the ACDBE Participant.

3. Commercially useful function and area of direct responsibility of the ACDBE Participant in the Concession: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Business experience of each ACDBE firm who will participate in the Concession (firms listed must be certified ACDBEs by the VAUCP; do not list firms that have not been certified): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposal Form \_\_ – Page 3 of 7

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5. Names, addresses, current phone numbers, email addresses, and percentage of ownership of all business entities other than individuals listed above with an ownership interest in the ACDBE Participant.

Percentage of ownership: \_\_\_\_\_

Business Entities w/Ownership Interest: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Email Address: \_\_\_\_\_

Proposal Form \_\_ – Page 4 of 7

**PART III – PROPOSER GOOD FAITH EFFORTS WAIVER REQUEST FORM**

\_\_\_\_\_ hereby requests a waiver of the contract goal for the participation of ACDBEs as specified in solicitation number \_\_\_\_\_. Good faith efforts to identify potential ACDBEs have been made, but we have been unable to achieve the ACDBE participation goal for the following reason(s):

**COMPLETE FOR EACH ACDBE CONTACTED.**

Name of ACDBE entity: \_\_\_\_\_

ACDBE Certification No.: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ FAX No.: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Business Operated: \_\_\_\_\_

Name/Title of Person Contacted: \_\_\_\_\_

Date of Contact: \_\_\_\_\_

Reason Proposer was unable to obtain participation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposal Form \_\_ – Page 5 of 7

Name of ACDBE entity: \_\_\_\_\_

ACDBE Certification No.: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ FAX No.: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Business Operated: \_\_\_\_\_

Name/Title of Person Contacted: \_\_\_\_\_

Date of Contact: \_\_\_\_\_

Reason Proposer was unable to obtain participation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION:** I hereby certify that the information I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above. The necessary documents to substantiate the information provided on this form is attached. (Note: Please attach advertisements, telephone conversations, and other documentation to support this statement.)

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Proposal Form \_\_ – Page 6 of 7

**PART IV – PROPOSER ACDBE COMMITMENT FORM**

**Submit this page for each ACDBE participant.**

**Name of Non-ACDBE Firm:** \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Name of ACDBE Firm:** \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Affirmation**

The Firms named above affirm that they have entered into a written commitment for the work to be performed by ACDBE firm prior to Proposer submitting its proposal in response to solicitation number \_\_\_\_\_.

**NON-ACDBE :**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

**ACDBE:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

**If the Proposer does not receive award of the Concession Agreement, any and all representations in this ACDBE Commitment Form shall be null and void.**

Proposal Form \_\_ - Page 7 of 7

**PART V - ACDBE JOINT VENTURE INFORMATION**

**(to be submitted with joint venture agreement for review)**

1. Name of Joint Venture:
  
2. Name, address and phone number of joint venture contact person:
  
3. Firms participating in joint venture (use additional pages if necessary):

Name of firm:

Address:

Phone Number:

Contact name/phone number:

% ownership:        %

ACDBE: yes no Certifying agency:

Date of Certification:

Type of work for which certification was granted:

Name of firm:

Address:

Phone Number:

Contact name/phone number:

% ownership:        %

ACDBE: yes no Certifying agency:

Date of Certification:

Type of work for which certification was granted:



13. Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):
  - a. ACDBE joint venture participant:
  - b. Non- ACDBE joint venture participant:
  
14. Which firm will be responsible for accounting functions relative to the joint venture’s business?
  
15. Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?
  
16. Please provide information relating to the approximate **number** of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the ACDBE, non-ACDBE or joint venture.

	Non-ACDBE Firm	ACDBE Firm	Joint Venture
Management			
Administrative			
Support			
Hourly Employees			

17. Please provide the name of the person who will be responsible for hiring employees for the joint venture.      Who will they be employed by?
  
18. Are any of the proposed joint venture employees currently employees of any of the joint venture partners?  yes  no

If yes, please list the number and positions and indicate which firm currently employs the individual(s).



19. Attach a copy of the proposed joint venture agreement, promissory note or loan agreement (if applicable), and any and all written agreements between the joint venture partners.
  
20. List all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved.

**Website Link to the Uniform Certification Application Form**

**<https://www.transportation.gov/sites/dot.gov/files/docs/New%20DBE%20Certification%20Application%202011-18-2014.pdf>**

### Procedures for Removal of ACDBEs Eligibility

The procedures for removal of ACDBEs eligibility, as stated in Part 26.87, are as follows:

(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]

**Website Links to Regulations**

**49 CFR Part 23:**

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

**49 CFR Part 26:**

<http://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rgn=div5>