

TUCSON AIRPORT AUTHORITY ACDBE PROGRAM 2022-2024 49 CFR PART 23

APPROVED BY:

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Danette M. Bewley, A.A.E., President/CEO



A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., APPROVING THE UPDATED TUCSON AIRPORT AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM POLICY STATEMENT AND APPROVING THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM ASPIRATIONAL GOALS FOR FY 2022 THROUGH FY 2024.

WHEREAS the U.S. Department of Transportation (USDOT) requires entities receiving financial assistance from the Federal Aviation Administration (FAA) to establish and implement an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in compliance with regulations specified in the Code of Federal Regulations Title 49, Part 23 ("49 CFR Part 23" or "Part 23"); and

WHEREAS the Tucson Airport Authority (TAA) desires to apply for and receive financial assistance from the FAA to fund various programs and initiatives; and

WHEREAS USDOT regulations require the TAA to establish aspirational goals every three years for ACDBE participation in airport concession contracts; and

WHEREAS the TAA conducted a review and analysis and solicited feedback from interested parties and developed its proposed ACDBE aspirational goals for FY 2022 through FY 2024 as follows:

9.6% for Airport Concessions (Other than Car Rental Contracts)

1.2% for Car Rental Contracts

WHEREAS the Board of Directors accepts the staff recommendations as detailed in the Board Memorandum and supports the updated *Tucson Airport Authority Disadvantaged Business Enterprise Program Policy Statement*, a copy of which is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., AS FOLLOWS:

- 1. The updated *Tucson Airport Authority Disadvantaged Business Enterprise Program Policy Statement*, a copy of which is attached hereto as Exhibit A, is approved, and the Chair of the Board is authorized to sign the policy statement.
- 2. The President/CEO or her designee is authorized to submit the ACDBE aspirational goals for FY 2022 through FY 2024 to the FAA.

PASSED AND ADOPTED by the Board of Directors of the Tucson Airport Authority, Inc., this eighth day of December, 2021.

Bruce Dusenberry, Chair of the Board



ATTEST:

Keri Silvyn Keri Silvyn (Dec 9, 2021 11:04 MST)

Keri Silvyn, Secretary

APPROVED AS TO FORM:

Chris Schmaltz (Dec 14, 2021 13:36 MST)

Christopher Schmaltz, Vice President and General Counsel





EXHIBIT A

TUCSON AIRPORT AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM POLICY STATEMENT



Tucson Airport Authority Disadvantaged Business Enterprise Program

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM POLICY STATEMENT

TAA has received Federal financial assistance from the United States Department of Transportation ("DOT") and, as a condition of receiving this assistance, has signed an assurance that it will comply with the requirements of DOT regulations (49 CFR Parts 23 and 26; hereinafter, the "DBE Regulations") concerning the participation of disadvantaged business enterprises ("DBEs") in DOT programs.

It is the policy of TAA to comply with the requirements of the DBE Regulations and to ensure that DBEs, as defined in the DBE Regulations, have a fair and equal opportunity to participate in TAA's DOT-assisted projects or concession contracts. Specifically, to the extent reasonably possible and consistent with other legal requirements it is the goal of TAA:

To ensure nondiscrimination in the award and administration of TAA's DOT-assisted or concession contracts.

To create a level playing field on which DBEs can compete fairly for TAA's DOT-assisted or concession contracts.

To ensure that the DBE program is narrowly tailored in accordance with applicable law.

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

To help remove barriers to the participation of DBEs in TAA's DOT assisted contracts and opportunities for concessions at our airport; and

To provide appropriate flexibility to our airports in establishing and providing opportunities for DBEs.

The Compliance Audit Administrator has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Compliance Audit Administrator is responsible for implementing all aspects of the DBE program. The DBE Liaison Officer shall report directly to the CEO with respect to the implementation of the TAA DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by TAA in its financial assistance agreements with the United States Department of Transportation.

TAA has disseminated this policy statement to the TAA Board of Directors and all the components of our organization. TAA has distributed this policy statement to DBE and non-DBE business communities in our area. The policy statement was distributed at the public comment meeting for the DBE program and via the TAA website. A copy of this policy statement shall be available through the solicitation processes for all DOT-assisted or concession contracts.



Adopted by TAA Board of Directors: December 8, 2021

Supersedes: Disadvantaged Business Enterprise Program Policy Statement Dated September 12, 2018

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Bruce Dusenberry Chair of the Board of Directors





TUCSON AIRPORT AUTHORITY AIRPORT CONCESSION DISADVANATGED BUSINESS ENTERPRISE (ACDBE) PROGRAM FY 2022 - 2024



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

"CEO" means TAA's Chief Executive Officer.

"ACDBE" means a disadvantaged business enterprise as defined in 49 CFR Part 23 and 26 - DBE Regulations.

"ACDBE Program" means TAA's ACDBE Program.

"DBE Regulations" means 49 CFR Parts 23 and 26.

"DOT" means the United States Department of Transportation.

"FAA" means the United States Federal Aviation Administration.

"Liaison Officer" means the DBE Liaison Officer appointed by the CEO pursuant to the Policy. The name, address, and telephone number of the Liaison Officer is listed under Section 23.25 of this document.

"Policy Statement" means the policy statement dated September 1, 2021, a copy of which is included in the front of this document.

"TAA" means the Tucson Airport Authority.

"UCP" means the unified certification program being developed by DOT grant recipients in the State of Arizona, including TAA.

"AZUCP" means the Arizona Unified Certification Program being developed by grant recipients within the State of Arizona, including TAA.

Other capitalized terms used herein and not otherwise defined shall have the meanings given in the ACDBE and DBE Regulations.

Section 23.5 Applicability

TAA manages Tucson International Airport a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

ACDBE PROGRAM - 49 CFR PART 23 (2022-2024)



Section 23.9 Non-discrimination Requirements

TAA 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, TAA 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.

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

TAA will include the following assurances in all concession agreements and management contracts it executes with any firm:

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

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

Section 23.11 Compliance and Enforcement

TAA 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).

TAA 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.

TAA'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 TAA's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C.§§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in TAA's ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by TAA 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

TAA manages Tucson International Airport, a small hub primary airport, and Ryan Airfield, a General Reliever Airport. Only Tucson International Airport is required to have an ACDBE program. This ACDBE program will be implemented at Tucson International Airport.

As a condition of eligibility for FAA financial assistance, TAA will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

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

When TAA makes significant changes to its ACDBE program, TAA will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: TAA is committed to operating its ACDBE program in a nondiscriminatory manner.

The Policy Statement is elaborated on the first page of this DBE Program.

ACDBE Liaison Officer (ACDBELO): TAA has designated the following individuals as ACDBE Liaison Officers:

ACDBE Program Liaison Officer	Assistant ACDBE Program Liaison Office	
Vacant	Tina L. Moore, Director	
Compliance Audit Administrator	Programs & Regulatory Compliance	
7250 S. Tucson Blvd, Suite 300	7250 S. Tucson Blvd., Suite 300	
Tucson, AZ 85756	Tucson, AZ 85756	
Telephone Number: (520) 573-4892	Telephone Number: (520) 573-4859	
Fax Number: (520) 573-8029	Fax Number: (520) 573-8029	
E-mail Address:@flytucson.com	E-mail Address: tmoore@flytucson.com	

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



The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials and TAA staff. The ACDBELO works closely with the Procurement and Legal Departments in the administration of the program. The duties and responsibilities of the group include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Analyzes available data regarding ACDBE participation and works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes TAA's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO\governing body on ACDBE matters and achievement.
- Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
- Provides ACDBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in ACDBE training seminars and events.
- Acts as liaison to the Uniform Certification Program in Arizona.
- Provides outreach to ACDBEs and community organizations to advise them of opportunities.
- Verifies ACDBE status using the Uniform Certification Program directory of certified ACDBEs.

TAA participates in the Arizona Unified Certification Program ("AZUCP") developed by Arizona Department of Transportation (ADOT), City of Phoenix, and City of Tucson. Any entity that is a member of the AZUCP recognizes the ACDBE certifications made by any of the three partners. All certification functions (including certification, de-certification, re-certification, and no –change affidavits) will be performed centrally by the AZUCP.

TAA utilizes the State of Arizona ACDBE directory, produced, and maintained by the three partners of the AZUCP. The directory lists the firm's name, address, phone number, fax number, ethnicity, gender, certifying agency, certification type and the type of work the firm has been certified to perform as an ACDBE. In addition, 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 State of Arizona revises the Directory on an on-going basis. TAA provides access information to the Directory in bid documents and on the TAA website. The Directory may be found in Attachment 2 to this program document. (26.31).



Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

TAA will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a))

TAA 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))

TAA's overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 and Attachments 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

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

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

TAA does not use quotas or set asides as a means of obtaining ACDBE participation. (23.25(g))

Section 23.27 Reporting

TAA will report DBE participation to DOT/FAA annually on March 1, the "Uniform Report of ACDBE Awards or Commitments and Payments" form, found under Attachment 11. TAA will also report the ACDBE firm's information either on the FAA ACDBE Form or other similar format.

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

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

Section 23.29 Compliance and Enforcement Procedures

TAA has available to it all normal contract remedies for any concessionaire violation of ACDBE requirements. These remedies include auditing, monitoring, verification of organizational records, auditing authority in contracts, review of organization documents and updates, delaying payment, terminating the contract, and/or debarring the concessionaire from future contract participation to the extent consistent with federal and state law.

ACDBE PROGRAM - 49 CFR PART 23 (2022-2024)



TAA will respond to any information from an ACDBE firm or third party that indicates that the ACDBE's status may have changed. TAA will bring to the attention of the AZUCP any false, fraudulent, or dishonest conduct in connection with the ACDBE/DBE Program, so that the AZUCP 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 the AC/DBE Regulations. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts. If the Concessionaire fails to maintain the level of ACDBE participation described in Concessionaire's proposal, or to make good faith effort, as determined by TAA, TAA maintains the right to cancel or terminate the agreement in its entirety and all rights ensuing therefrom upon giving thirty (30) days written notice to Concessionaire.

TAA will ensure that entity identifying information and personal identifying information (as such terms are defined in A.R.S. § 13-2001) is secure and cannot be accessed, viewed, or acquired unless authorized or required by law. TAA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, TAA will not release personal financial information submitted by ACDBE firms without the written consent of the submitter.



SUBPART C – CERTIFICATION AND ELIGIBILITY OF ACDBE'S

Section 23.31 Certification Standards and Procedures

TAA is the member of a Unified Certification Program (UCP) administered by The State of Arizona. The UCP will meet all the requirements of this section.

The UCP's directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of Part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, TAA will review their certification status at that time (i.e., "as soon as possible").

As a member of the AZUCP, TAA recognizes, and honors certifications made by the AZUCP. The AZUCP follows the certification procedures of Subpart E of the DBE Regulations. *A firm's certification with the AZUCP must be complete prior to the due date on a proposal or bid in order for the firm to be eligible to participate as an ACDBE on that contract*. For further information about the certification process, or to apply for certification, firms should contact the TAA Liaison Officer or one of the certifying agencies as listed under Attachment 9.

Certification application instructions and documentation requirements can be found at the Unified Certification Program (UCP) website. See Attachment 2 for further information.

TAA is not a certifying agency; therefore, Sections 23.35 through 26.89 are being omitted.





SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

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

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

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

Section 23.43 Consultation in Goal Setting

TAA consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting overall goals, TAA will identify the stakeholders and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

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

Primary Airport Size	Region	Region Date Due		Next Goal Due
Small Hubs	All regions	October 1, 2021	2022/2023/2024	October 1, 2024 (2025/2026/2027)



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

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

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

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

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

Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.35(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(c)(e)(1)(iv)

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

TAA will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. TAA 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.

TAA 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, TAA 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, TAA will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

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

To be eligible to be awarded a concession that has a concession specific goal, bidders/proposers must make good faith efforts to meet the goal. A bidder/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. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to TAA's concession specific goals. Specifically:

Section 26.53 Good Faith Efforts Procedures

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

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

The Compliance Audit Administrator for TAA is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

TAA will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith effort before TAA commits to the concession agreement with the bidder/proposer.

The apparent successful concessionaire on a contract for which a goal has been established will satisfy TAA that it has made good faith efforts to utilize ACDBEs in meeting the established ACDBE goal. "Good faith

ACDBE PROGRAM - 49 CFR PART 23 (2022-2024)



efforts" are those efforts that could reasonably be expected to result in ACDBE goal attainment by a contractor who aggressively and actively seeks to obtain ACDBE participation. Efforts that are merely "Pro Forma" are not "good faith efforts" to meet ACDBE goals.

Information to be submitted 26.53 (b)

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

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

(i) The names and addresses of ACDBE firms that will participate in the contract.

(ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.

(iii) The dollar amount of the participation of each ACDBE firm participating.
 (iv) Written documentation of the bidder/proposer's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE, and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and

3. TAA will require that the bidder/proposer present the information required in this section under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53 (d))

Within 5 business days of being informed by Tucson Airport Authority that it is not responsive because it has not documented sufficient good faith efforts to meet the ACDBE contract goal, a bidder/proposer may request administrative reconsideration. Bidder/proposers shall make this request in writing to the following reconsideration official: Tucson Airport Authority, Chief Executive Officer, 7250 S. Tucson Blvd, Suite 300, Tucson, Arizona 85756. The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.



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

TAA will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

TAA 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 with another certified ACDBE, to the extent needed to meet the concession specific goal.

TAA will require the prime concessionaire to notify the ACDBE Liaison Officer immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

1. The listed ACDBE sub-concession fails or refuses to execute a written contract.

2. The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime concessionaire.

3. The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.

4. The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness.

5. The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceeding pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable law.

6. TAA has determined that the listed ACDBE subcontractor is not responsible.



7. The listed ACDBE sub-concession voluntarily withdraws from the project and provides to TAA written notice of its withdrawal.

8. The listed ACDBE is ineligible to receive ACDBE credit for the type of work required.

9. An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract.

10. Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concessionaire seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concessionaire can self-perform the work for which the ACDBE concession was engaged or so that the prime concessionaire can substitute another ACDBE or non-ACDBE concession after contract award.

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

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

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

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

If the concessionaire fails or refuses to comply in the time specified, TAA Procurement Department will issue an order stopping all or part of payment/work until satisfactorily action has been taken. If the

ACDBE PROGRAM - 49 CFR PART 23 (2022-2024)



concessionaire still fails to comply, the Director of Procurement may issue a termination for default proceeding.

Sample Proposal / Bid Specification:

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

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

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57 (b) Goal shortfall accountability

If the awards and commitments on TAA's Uniform Report of ACDBE Participation (Attachment 11) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, TAA will:

• Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year.



- Establish specific steps and milestones to correct the problems identified in the analysis to enable TAA to fully meet the goal for the new fiscal year.
- TAA understands the FAA may impose conditions as part of its approval of the analysis and corrective actions including, but not limited to, modifications to the overall goal methodology, changes in the race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- TAA understands that the airport may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:
 - (i) TAA does not submit the analysis and corrective actions to FAA in a timely manner.
 - (ii) FAA disapproves the analysis or corrective actions; or

(iii)TAA does not fully implement:

- The corrective actions to which TAA have committed, or
- Conditions that FAA has imposed following review of the analysis and corrective actions.
- If information coming to the attention of FAA demonstrates that current trends make it unlikely that TAA, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow TAA to meet the overall goal at the end of the fiscal year, FAA may require TAA to make further good faith efforts, such as modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set asides

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



SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

TAA 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. TAA will use any means authorized by Part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.73 Privately-Owned or Leased Terminal Buildings

This section does not apply.

Section 23.75 Long-Term Exclusive Agreements

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

Section 23.79 Geographic Preferences

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



ATTACHMENTS

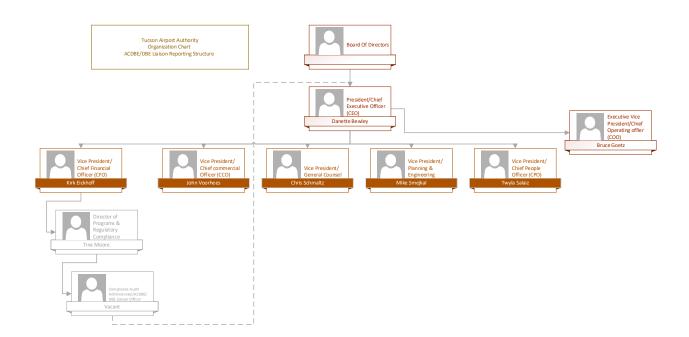
Attachment 1 Organizational Chart

- Attachment 2 DBE/ACDBE Directory Link
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculations for Concessions Other Than Car Rentals
- Attachment 5 Overall Goal Calculations Car Rental
- Attachment 6 Demonstration of Good Faith Efforts
- Attachment 7 ACDBE Certification Application Form Link/Link to State's UCP website
- Attachment 8 Procedures for Removal of ACDBEs Eligibility
- Attachment 9 State's UCP Agreement
- Attachment 10 Regulations: 49 CFR Part 23
- Attachment 11 Form of Published Notice Regarding Overall Goals



ATTACHMENT 1 Organizational Chart







ATTACHMENT 2 Arizona DBE / ACDBE Directory

https://utracs.azdot.gov



ACDBE PROGRAM

5 602-712-7761 E-mail AZUTRACS-Support Dactor on ADOT DBE System requires your DBE login (username/password) AZUTRACS ADOT DBE System DBE Certification and Payment Reporting System The ADOT DBE System is part of the AZ UTRACS Transportation Business Portal. The ADOT DBE System allows firms to report or verify contract. payments, monitor contract compliance, and submit or renew DBE Certification applications. Check out the new and improved AZUTRACS which now hosts the Firm (DBE) Search Directory ADOT DBE System LOG IN **DBE** Certification Manage Contracts Payment Reporting and Compliance Monitoring Apply for / Renew DBE Certification **DBE Search Directory** System Training Search for Firms See Online Training Times

23



ATTACHMENT 3 Monitoring and Enforcement Mechanisms



Monitoring and Enforcement Mechanisms

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

- 1. Breach of contract action, pursuant to the terms of the contract.
- 2. Breach of contract action, pursuant to Arizona Revised Statute, ARS. 38-511. Cancellation of political subdivision and state contracts; definition.
- 3. Other actions deemed appropriate including responsibility reviews on future concession award opportunities.

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

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

TAA will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

- TAA will insert the following provisions into concessions agreements and management contracts:
 - This agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 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.
- TAA will implement the following additional monitoring and compliance procedures.
 - TAA will keep a running tally of actual payments to ACDBE firms for work committed to them at the time of contract award.
 - Conduct site visits and interview with contractors and concessionaires (primes and subs)
 - Coordinate with TAA departments to monitor concession contracts for compliance with DBE requirements.
 - Review and work to resolve contractual compliance problems, including recommending corrective action.



- TAA will implement our compliance and monitoring procedures as follows:
 - TAA will require concessionaires submit written confirmation annually, that there are no changes in certification, duties, functions, and responsibilities of ACDBEs, including terms and conditions of joint venture agreements.
 - TAA will use appropriate personnel to perform, quarterly, reviews of ACDBEs to ensure their activities correspond to the previously submitted list of duties, functions, and responsibilities. All ACDBEs will be reviewed within a three-year period from the start of the review process, at which time the review process will begin again. Reviews will include site visits, reviews of appropriate records, contracts, financial information, joint venture agreements, certification information and other relevant information deemed necessary.
 - TAA will request from concessionaires any expenditures made with ACDBEs or DBEs in performing services and supplying goods. Those expenditures will be reported periodically to TAA, but no less than semi-annually.
 - Joint ventures will be reviewed in accordance with 49 CFR Part 23, the July 2008 FAA Joint Venture Guidance, and this section.
 - TAA will include, in the contract files, a written certification that it has reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site for each concession contract to which 49 CFR Part 23 applies.
 - TAA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the 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.
 - Implement similar action under TAA's own legal authorities, including responsibility determinations in future contracts.
 - Implement a mechanism that 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. In reports of ACDBE participation to the DOT, TAA will show both commitments and attainments, as required by the DOT uniform reporting form.





<u>ATTACHMENT 4</u> Section 23.45: Overall Goal Calculation for <u>Concessions</u> Other than Car Rentals

Overall Goal Calculation for Non-Car Rental Concessions FY 2022-24

Name of Recipient: TUCSON INTERNATIONAL

Goal Period: FY 2022-24 (10/1/2021 through 9/30/2024)

Overall Three-Year Goal: 9.6%, to be accomplished through 0.0% Race Conscious and 9.6% Race Neutral

Market Area

TUCSON INTERNATIONAL has determined that the market area is The State of Arizona. The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

The concession opportunities anticipated during this goal period for this market area are Food and beverage, advertising, news and gifts, books, electronics, apparel, ATM services, luggage carts and goods and services.

Base of the goal

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

Year	Non-Car Rental Concessions Gross Receipts
2018	\$14,258,733
2019	\$16,719,604
2020	\$10,206,688

TUCSON INTERNATIONAL estimates that revenues to existing concessions will grow by an average of 22% each year over the next three years due to COVID 19 reduced passenger traffic - slow buildup back to 2019 levels.

Year	Annual Growth / Reduction Estimate	Annual Gross Receipts Estimate
2022	20%	\$12,248,026
2023 20%		\$14,697,631
2024 15%		\$16,902,275
	Three-Year Total Gross Receipts:	\$43,847,932
	Average Annual Growth Rate:	22%

\$12,248,026 + \$14,697,631 + \$16,902,275 = **\$43,847,932** which is the recipient's base of goal for non-car rental concessions.

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

If a new concession opportunity arises prior to the end of this goal period, TUCSON INTERNATIONAL 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.

Methodology used to Calculate Overall Goal

TUCSON INTERNATIONAL can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. TUCSON INTERNATIONAL, 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 recipient'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.

TUCSON INTERNATIONAL, 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.

TUCSON INTERNATIONAL will include goods and services purchases from ACDBEs toward meeting the goal.

Step 1 - Actual Relative Availability of ACDBEs - §23.51 (c)

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

Numerator:	Ready, willing, and	able non-car rental ACI	DBEs in the m	harket area
2.1%	27.80	divided by	13	

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

The data source(s) used in the calculation included:

- State of Arizona UCP Data showing the number of ACDBEs that are certified within the market area (htps://utracs.azdot.gov)
- Census Bureau Data (https://data.census.gov/cedsci/)

The calculation and explanation for this is as follows:

Concession Activity	NAICS	# ACDBE Certified Firms	# Total Firms	% Availability
Food & Beverage	722511	9	4323	0.2%
Food & Beverage	722513	22	5020	0.4%
Food & Beverage	722515	9	1280	0.7%
News, Gift & Specialty Retail	453220	21	371	5.7%
News, Gift, Specialty Retail	453998	0	508	0.0%
News, Gift, Specialty Retail	443142	2	312	0.6%
News, Gift, Specialty Retail	445120	1	361	0.3%

News, Gift, Specialty Retail	448140	1	568	0.2%
News, Gift, Specialty Retail	448310	1	348	0.3%
News, Gift, Specialty Retail	451120	0	141	0.0%
News. Gift, Specialty Retail	45121	13	129	10.1%
News. Gift, Specialty Retail	448320	1	20	5.0%
Other Services	541870	1	23	4.3%
	Average ACDBE Availability:			

When we calculated the average availability, we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of **2.1%**.

Step 2 Adjustment

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

Past History Participation

FY	Race Conscious (%)	Race Neutral (%)	Total Achievement (%)
FY 18	0.0%	13.3%	13.3%
FY 19	0.0%	17.2%	17.2%
FY 20	0.0%	17.0%	17.0%

Arranging this historical data from low to high (13.27%, 17.04%, 17.21%), the median is **17.0%**, which is our Step 2 figure.

Step 1 Base averaged with historical median: (2.1% + 17.0%) / 2 = 9.6%

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **9.6%**. TUCSON INTERNATIONAL believes this adjusted goal accurately reflects ACDBE participation that can be achieved for the types of concession activities at the airport during this three-year goal period (FY 2022-24).

Breakout of Estimated "Race and Gender Neutral" (RN) and "Race and Gender Conscious" (RC) Participation

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

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

- Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23
- Notify ACDBEs of concession opportunities and encouraging them to compete, when appropriate
- When practical, structure concession activities so as to encourage and facilitate the participation of ACDBEs
- Provide technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing

- Ensure that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process
- Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation
- Establish a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions

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

- There will be no ACDBE concession goals as TUCSON INTERNATIONAL is a Ninth Circuit recipient.

TUCSON INTERNATIONAL estimates that, in meeting the overall goal of 9.6%, it will obtain 9.6% from race-neutral participation and 0.0% through race-conscious measures.

- TUCSON INTERNATIONAL exceeded the ACDBE goals in the past:
 - FY 2018 Goal was 6% Achievement was 13.27% on a Race Neutral Basis
 - FY 2019 Goal was 13.47% Achievement was 17.21% on a Race Neutral Basis
 - FY 2020 Goal was 13.37% Achievement was 17.04% on a Race Neutral Basis
- TUCSON INTERNATIONAL's accomplishments exceeded the goal in prior FY 2018-2020, which is evidence of race-neutral participation, therefore, 100% of our goal is being applied to race-neutral and 0% is applied to race-conscious participation.

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

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

Consultation

TUCSON INTERNATIONAL routinely meets with stakeholders in an effort to increase ACDBE participation. Stakeholders consulted included 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 sponsor's efforts to increase participation of ACDBEs.

Specifically, TUCSON INTERNATIONAL sent the consultation notice to the current concessionaires, their ACDBE's, TAA's interest list and all of the NAICS code contacts from the AZUCP. The consultation was done via video conference on September 22, 2021, at 2:00 p.m. with 10 attendees.

The following comments were received during the course of the consultation: General discussion and review of the proposed FY 2022-2024 participation goals. No specific comments were received on the goal setting process or the proposed goals. Attendees were more interested in knowing how to look up ACDBE's in the various systems and how TAA's new B2GNow reporting system was working.



ATTACHMENT 5 Section 23.45: Overall DBE Three-Year Goal Methodology Car Rental

Overall Goal Calculation for Car Rental Concessions FY 2022-24

Name of Recipient: TUCSON INTERNATIONAL

Goal Period: FY 2022-24 (10/1/2021 through 9/30/2024)

Overall Three-Year Goal: 1.2%, to be accomplished through 0.0% Race Conscious and 1.2% Race Neutral

Goal Based on Goods and Services Purchases - Determination

Upon review of the market, 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/services from ACDBEs. This is due to the fact that no certified ACDBE car rental companies exist within the market. As such, TUCSON INTERNATIONAL has structured the goal entirely in terms of the purchases of goods and services.

We determined the goal based on outreach for the purchases of goods and services from certified ACDBE firms and/or potential ACDBE firms in the market area. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the airport. We will make a good faith effort to pursue opportunities to meet the goods and services goal. We will continue to consult and work with the State DOT & UCP, our car rental concessionaires at the airport, similarly situated airports in our region, minority and women businesses in the State, minority serving institutions, local pro-business organizations, and targeted media publications to find prospective ACDBE firms. We will work with our car rental companies to strategize outreach to State DOT & UCP certified ACDBEs that may be able to provide car rental goods and services, to encourage current vendors who may be eligible for ACDBE certification to apply, and to encourage firms already working at the airport but certified as ACDBE in other states, to apply via the interstate certification process. The State DOT & UCP is aware of this requirement and is on board to assist and process certifications as required by 49 CFR Subpart C.

We have the following car rental agencies operating at the airport: Alamo, Avis, Budget, Dollar, Enterprise, Hertz and National.

After collaboration and discussion with TUCSON INTERNATIONAL, car rental company concessionaires at the airport stated that the goods and services they may need in the goal period are Printing, Automobile parts and Repair Services, Stationery and Office Supplies, Insurance Services Towing, Locksmiths and Consulting Services.

Market Area

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

TUCSON INTERNATIONAL has determined that its market area is the State of Arizona.

Base of the goal

To calculate the base of the goal, TUCSON INTERNATIONAL considered the previous 3 years of car rental expenditures/purchases and the projected potential car rental expenditures/purchases three years into the future.

Car Rental Companies Goods and Services Purchases for Previous 3 Years

Year	Car Rental Companies Goods and Services Purchases	Increase/Decrease
2018	\$52,714,305	
2019	\$36,810,447	-30%
2020	\$31,090,272	-16%
	Average Decrease:	-23%

TUCSON INTERNATIONAL estimates expenditures will grow by an average of 22% each year over the next three years due to COVID 19 reduced passenger traffic - show buildup back to 2018 levels.

Year	Annual Growth / Reduction Estimate	Annual Gross Receipts Estimate
2022	20%	\$37,308,326
2023	20%	\$44,769,992
2024	15%	\$51,485,490
- Oracle wolds to an elements system of the	Three-Year Total Gross Receipts:	\$133,563,809
	Average Annual Growth Rate:	22%

37,308,326 + 44,769,992 + 51,485,490 = 133,563,809 which is the recipient's base of goal for car rental goods and services purchases.

The following are not included in this base: (a) non-car rental operations.

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 TUCSON INTERNATIONAL 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. (23.45(i))

Step 1 - Actual Relative Availability of ACDBEs - §23.51 (c)

We determined the base figure for the relative availability of ACDBEs for car rental goods and services purchases. The base figure was calculated as follows:

Numerator:	Ready, will	ing, and able non-car rental ACI	OBEs in the market	area
.5	9.2	divided by	19	

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

The data source(s) used in the calculation included:

State of Arizona UCP Data showing the number of ACDBEs that are certified within the market area (https://utracs.azdot.gov)

Census Bureau Data (https://data.census.gov/cedsci/)

The calculation and explanation for this is as follows:

		# ACDBE Certified		
Concession Activity	NAICS	Firms	# Total Firms	% Availability
Rental Car Purchases	323111	1	299	0.3%
Rental Car Purchases	445120	0	232	0.0%
Rental Car Purchases	423130	0	48	0.0%
Rental Car Purchases	423850	2	80	2.5%
Rental Car Purchases	424110	0	13	0.0%
Rental Car Purchases	424120	0	57	0.0%
Rental Car Purchases	424130	0	67	0.0%
Rental Car Purchases	424710	0	38	0.0%
Rental Car Purchases	441110	0	319	0.0%
Rental Car Purchases	441310	0	719	0.0%
Rental Car Purchases	441320	0	397	0.0%
Rental Car Purchases	484230	2	202	1.0%
Rental Car Purchases	488410	0	166	0.0%
Rental Car Purchases	524210	1	2820	0.0%
Rental Car Purchases	541612	8	169	4.7%
Rental Car Purchases	541620	1	174	0.6%
Rental Car Purchases	561622	0	79	0.0%
Rental Car Purchases	811111	1	1572	0.1%
Rental Car Purchases	812332	0	27	0.0%
		Average	ACDBE Availability:	0.5%

When we calculated the average availability, we arrived at the Step 1 base figure for our overall goal for car rental concessions of **0.5%**.

FY	Race Conscious (%)	Race Neutral (%)	Total Achievement (%)
FY 18	0.0%	1.0%	1.0%
FY 19	0.0%	7.8%	7.8%
FY 20	0.0%	1.9%	1.9%

Breakout of Estimated "Race and Gender Neutral" (RN) and "Race and Gender Conscious" (RC) Participation

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

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

- Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23
- Notify ACDBEs of concession opportunities and encouraging them to compete, when appropriate
- When practical, structure concession activities so as to encourage and facilitate the participation of ACDBEs
- Provide technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing
- Ensure that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process
- Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation
- Establish a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions

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

- There will be no ACDBE concession goals as TUCSON INTERNATIONAL is a Ninth Circuit recipient.

TUCSON INTERNATIONAL estimates that, in meeting the overall goal of 1.2%, it will obtain 1.2% from race-neutral participation and 0.0% through race-conscious measures.

- TUCSON INTERNATIONAL exceeded the ACDBE goals in the past:
 - o FY 2018 Goal was .35% Achievement was .99% on a Race Neutral Basis
 - o FY 2019 Goal was 1.43% Achievement was 7.84% on a Race Neutral Basis
 - o FY 2020 Goal was 1.43% Achievement was 1.85% on a Race Neutral Basis

TUCSON INTERNATIONAL's accomplishments exceeded its goal in prior years FY 2018-2020, which is evidence of race-neutral participation, therefore, 100% of our goal is being applied to race-neutral and the remaining 0% is applied to race-conscious participation.

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

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

Consultation

TUCSON INTERNATIONAL routinely meets with stakeholders in an effort to increase ACDBE participation. Stakeholders consulted included 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 sponsor's efforts to increase participation of ACDBEs.

Specifically, TUCSON INTERNATIONAL consulted with sent the consultation notice to the current concessionaires, their ACDBE's, TAA's interest list and all of the NAICS code contacts from the AZUCP. The consultation was done via video conference on September 22, 2021, at 2:00 p.m. with 10 attendees.

The following comments were received during the course of the consultation: General discussion and review of the proposed FY 2022 - 2024 participation goals. No specific comments were received on the goal setting process or the proposed goals. Attendees were more interested in knowing how to look up ACDBE'S in the various systems and how TAA's new B2GNow reporting system was working.



ATTACHMENT 6 Demonstration of Good Faith Efforts Forms 1 & 2



Form 1: ACDBE/DBE/SB Utilization Commitment

On behalf of the proposer, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) The firms indicated as selected in Attachment XX will participate in this concessions contract.
- 2) I understand and agree that all changes or substitutions must be authorized by TAA prior to implementation; and
- 3) The following breakdown of participation by ACDBEs and DBEs certified or expect to be certified and small businesses certified or self-identified is true and correct.

Proposed participation as sublessees or joint venture partners as a percentage of this contract's value:

ACDBE ____% DBE _____ Small Business ____%

Proposed participation as suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this contract:

	ACDBE%	DBE	Small Business	%
Name of	Proposer:			
Printed N	Name Authorized Person:			
Signature	e of Authorized Person:			



Form 2: Letter of Intent

Name of bidder/proposer's	firm:	
Address:		
City:	State:	Zip:
Name of ACDBE firm:		
Address:		
City:	State:	Zip:
Telephone:		
Description of work to be p	erformed by ACDBE firm:	

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

Affirmation

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

By _____

(Signature)

(Title)

ACDBE PROGRAM - 49 CFR PART 23 (2022-2024)



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

(Submit this page for each ACDBE subcontractor.)



ATTACHMENT 7 <u>ACDBE Certification –</u> Link to AZUCP Partners Websites



ACDBE Certification Application Link Administered by City of Phoenix Equal Opportunity Department – <u>https://phoenix.diversitycompliance.com</u>

Link to State's UCP website Administered by Arizona Department of Transportation Business Engagement and Compliance Office - <u>https://utracs.azdot.gov</u>



ATTACHMENT 8 Procedures for Removal of ACDBEs Eligibility



Per the ARIZONA UNIFIED CERTIFICATION PROGRAM PLAN (April 2003) -

SECTION 11. PROCESS TO DECERTIFY

- 11.1 <u>Decertification Process</u> The AZUCP will follow an established process for the decertification of firms. That process may proceed as follows:
 - A. The AZUCP will notify the firm in writing of the intent to decertify and document the evidence to substantiate the finding.
 - B. The firm is provided an opportunity to request, in writing, an informal hearing to present its arguments and evidence why this action should not occur.
 - C. The AZUCP bears the burden of proving, through a preponderance of evidence, that the firm does not meet the certification standards.
 - D. The hearing will be recorded either by a tape recorder or court reporter. A Copy of the hearing will be made available to the firm upon request. If the firm appeals the determination to USDOT, a copy of the transcript will be sent to USDOT.
 - E. If the firm prefers, it may submit its arguments and information in writing without having an informal hearing. The AZUCP Partners bears the burden of proof in its position to decertify.
- 11.2 <u>Decision maker</u> The individual who reviews a written rebuttal or who serves as the hearing officer will not have been involved in seeking to remove a firm's eligibility or in making the determination to do so. The individual will also not be in a position to be influenced by the office or person who made the determinations. The decision maker will be knowledgeable about the program and the certification standards.
- 11.3 <u>Certification Status during a Proceeding</u> During the process of removing a firm's eligibility, it remains certified and eligible to participate as a DBE in federally assisted contracts. The firm does not become ineligible until a determination is made and the firm receives written notification of the decision to remove its certification.
- 11.4 <u>Notice of Decertification Decision</u> A written determination containing specific references to evidence that support the decision will be provided to all firms. If the determination was that the firm is not eligible to participate as a DBE, the notice will inform the firm of the consequences of the decision. The notice will also provide notification to the firm of the USDOT appeal process.
- 11.5 <u>Effects of Removing Eligibility</u> If the decertified firm has been listed to meet a project DBE goal on bid documents or subsequent submittals approved by a AZUCP Partner, the prime contractor will be informed of the decertification action by the appropriate AZUCP partner.

In instances where a contract or subcontract has not been executed, the prime contractor will be informed that the decertified DBE cannot be counted towards the established project goal. The prime contractor will be provided the opportunity to make "good faith" efforts to replace the decertified DBE with an eligible DBE firm.



If the subcontract has been executed prior to the date of the decertification, the prime contractor is not required to replace the decertification in determining whether or not the reduced goal has been met.

The AZUCP Partner will not receive credit for work attributable to the decertified DBE in calculating the overall annual DBE participation.

If a firm exceeds the size standards and is therefore no longer eligible, work performed is credited towards both the contract and overall goals.





ATTACHMENT 9 State's UCP Agreement







ARIZONA UNIFIED CERTIFICATION PROGRAM (AZUCP)

Memorandum of Understanding

This Memorandum of Understanding acknowledges that you (recipient named below) are a recipient of United States Department of Transportation (USDOT) funding and as such, you are a partner in the efforts related to the inclusion of Disadvantaged Business Enterprises (DBE) and Airport Concession Disadvantaged Enterprises (ACDBE) certified in the State of Arizona. The AZUCP, comprised of the Arizona Department of Transportation, City of Phoenix, and City of Tucson, certify firms consistent with the AZUCP Agreement and according to 49 CFR Parts 23 and 26.

Tucson Airport Authority

Name of Federal-Aid Recipient

By signing this Memorandum of Understanding, the federal-aid recipient (named above) understands and will agree to all of the following:

- 1. We will comply with the administration of the DBE Program as prescribed by the regulations and requirements of USDOT and its modal agencies (i.e. Federal Aviation Administration, Federal Highway Administration, and Federal Transit Administration).
- 2. We will support the efforts of the AZUCP in conducting outreach and certifying firms as DBE and/or ACDBE in accordance with the eligibility requirements and guidelines outlined in 49 CFR Parts 23 and 26.
- We acknowledge that we are not a DBE/ACDBE certifying agency within the state of Arizona and we agree to accept all firms certified by the AZUCP as DBE's and/or ACDBE's in order to be utilized for DBE credit on all applicable USDOT-assisted contracts.
- 4. We will ensure non-discrimination in the award and administration of all USDOT-assisted contracts and create a level playing field on which DBE's can compete by removing barriers for the participation of DBE firms.
- 5. We will provide outreach, education, and/or training to assist in the development of firms to compete in the relevant market area outside of the DBE Program.
- 6. We herein affirm that we will immediately notify the AZUCP of any firm that does not meet the DBE eligibility criteria or if any firm is suspected or confirmed to have provided false, fraudulent, deceitful statements or representations or any other circumstances that indicate an issue regarding any firm's eligibility to participate in the DBE Program.

On the <u>5</u> day of <u>September</u>, 20<u>18</u>, by signature below, the undersigned Federal-Aid Recipient agrees to the terms and conditions cited herein as a matter of compliance with 49 CFR Parts 23 and 26 and the AZUCP Agreement.

Bonnie A. Allin, President/CEO Name and Title

> September 5, 2018 Date



P.O. BOX 27210 P.O. BOX 27210 TUCSÓN, AZ 85726-7210

Tucson Airport Authority Ms. Tina Moore 7005 S. Plumer Avenue Tucson, AZ 85706



ARIZONA UNIFIED CERTIFICATION PROGRAM PLAN April 2003

Section 1. PURPOSE

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In accordance with the requirements of Title 49 of the Code of Federal regulations (CFR) Part 26, Arizona recipients of Federal Transit Administration (FTA), Federal Aviation Administration (FAA), and Federal Highway Administration (FHWA) funding propose to create, implement, and maintain a unified certification program known as the Arizona Unified Certification Program (AZUCP). The AZUCP Partners will provide a model, reciprocal certification program for the small, disadvantaged business community in the State of Arizona. The AZUCP will be formed through the ratification of an intergovernmental agreement approved by all participating partners.

Section 2. PARTNERS

Within the State of Arizona, there are three (3) government partners that actively participate in the AZUCP. The partners are the Arizona Department of Transportation (ADOT) and the Cities of Phoenix (Phoenix) and Tucson (Tucson).

Since 1995, the partners have participated in a limited reciprocity agreement whereby applicants could complete the application process with any of the partners and seek certification with multiple jurisdictions. Under this arrangement, the group adopted a standardized application and on-site review form for use in the DBE certification process. Each jurisdiction retained the right to make separate and independent determinations of eligibility for each DBE applicant. In 1996, the partners were recognized by FHWA for the establishment of an intergovernmental agreement that simplified the DBE certification process and provided enhanced customer service to applicants. Through the development of the AZUCP, the arrangements will be extended to full reciprocity and acceptance of DBE certifications granted by any or all of the partners.

There are currently forty (40) smaller airports located in Arizona that receive direct federal financial assistance. These entities have agreed to adopt the use of certification directories made available by the AZUCP Partners. Only DBEs certified by the AZUCP Partners will be eligible to be credited towards goals on FAA sponsored projects bid and awarded by these smaller Arizona airports. The agreements to adopt the AZUCP certification program from the participating airports are listed in Appendix A.

The Citics of Phoenix and Tucson are the only direct recipients of transit funding in Arizona.

Section 3. ASSURANCES

3.1 The AZUCP Partners will follow all certification procedures and standards of 49 CFR Part 26, Subpart D.

Attachment to Exhibit A to Resolution No. 19954

- 3.2 The AZUCP Partners will cooperate fully with oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
- 3.3 The AZUCP Partners will implement USDOT directives and guidance concerning certification matters.
- 3.4 The AZUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.
- 3.5 The AZUCP will be created and fully functional no later than eighteen (18) months from the date of the approval by the Secretary of Transportation. The timeline for the creation and implementation of the AZUCP is as follows:

#	Implementation Component	Component Deadline
1.	Establish intergovernmental AZUCP Oversight Committee with representation by all AZUCP partners.	3 months from date of plan approval
2.	Oversight Committee standardizes DBE certification policies, procedures, and materials within 6 month of approval of UCP.	6 months from date of plan approval
3.	Develop and obtain appropriate partner approval of an intergovernmental agreement (IGA) for implementation of the AZUCP*.	9 months from date of plan approval
4.	Develop and complete a training plan for all AZUCP entities to ensure consistency of the DBE certification determinations.	12 months from date of plan approval
5.	Create a community outreach committee, partnering with key community stakeholders.	15 months from date of plan approval
6,	Establish and implement a intergovernmental media plan to educate the community of the purpose and function of the AZUCP.	18 months from date of plan approval
7.	Develop and implement a unified database system for online publication of AZUCP certification directory.	18 months from date of plan approval
8,	Full implementation of the AZUCP.	18 months from date of plan approval

* Due to state law, we are required to develop and implement an Intergovernmental Agreement (IGA). This agreement must comply with several provisions not included in this document. The AZUCP Plan will be incorporated in its entirety into the IGA.

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- 3.6 The AZUCP Partners will make all certification decisions for all USDOT recipients in the State of Arizona with respect to participation on the USDOT DBE program and all recipients agree to abide by the determination of the AZUCP.
- 3.7 The AZUCP Partners will comply, with all certification and nondiscrimination requirements of the regulations.
- 3.8 The AZUCP Partners will share information regarding its certified DBEs with other states as requested.
- 3.9 A DBE directory containing all certified firms will be maintained. This directory will be available electronically on partners' websites and in hard copy. The online directory will be "real time" and will reflect changes as they occur. The hard copy directory will be updated quarterly, at a minimum.

Section 4. CERTIFICATION PROCESS

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4.1 All applicants are required to submit an application, supporting documentation, and an affidavit swearing to the accuracy of the information under the penalty of perjury. This package may be submitted to any of the participating partners. A copy of the certification application to be used by the AZUCP Partners is attached as Appendix B. Note: At such time as the USDOT shall issue a national application form, the AZUCP Partners shall adopt such form as its standard.

4.2 The AZUCP Partner receiving the package will assign it to an analyst who will review, at a minimum, the following documentation or information:

- A. Proof of ownership by the applicant
- B. The firm's bonding and financial capacity
- C. Copies of current and completed contracts, or if a newly formed firm, evidence that the firm is attempting to participate in the marketplace
- D. The type of work that will be performed by the DBE as a part of the DBE program and the preferred locations
- E. A listing of owned and available equipment
- F. A listing of relevant licenses or professional registrations
- G. A listing of the firm's key personnel and their work histories/resumes
- 4.3 After initially reviewing the above information, the receiving AZUCP Partner will conduct an on-site review with the applicant at the firm's principal office. If possible, an active job site will also be visited. The AZUCP's on-site review form that will be utilized to record the on-site findings is attached as Appendix C.

- 4.4 The AZUCP Partners will make independent decisions regarding the eligibility of all firms, regardless of any other certifications held by the applicant firm in other states.
- 4.5 Applicants with home offices in other states must hold a DBE certification issued by the recognized unified certification entity in that state. The AZCUP Partner receiving the original application from an out-of-state DBE will contact the home state for a copy of the firm's on-site review. The certification determination will not be made without this document.
- 4.6 All files will remain confidential in compliance with the regulation, and to the extent allowed by state and local law, as they contain proprietary business information.
- 4.7 The AZUCP Pariners adhere to the standards found in 49 CFR Part 26, Subpart D.
- 4.8 The AZUCP Partner receiving the application will complete the review, and make a determination to certify or deny certification to the applicant firm. The determination is binding on all partners.
- 4.9 Firms that are granted DBE certification are placed on the listing of eligible DBE firms. The firms are certified for at least 3 years. Once the database in implemented, the list will be maintained by the Arizona Department of Commerce.

Section 5. CHANGES IN CURCUMSTANCES

- 5.1 All certified firms must inform the AZUCP Partner that issued the original certification in writing of any changes in the circumstances of the firm. Such changes include, but are not limited to, small business size, disadvantaged status, ownership, control requirements, or other material changes to information provided in the application.
- 5.2 This notice must be made within 30 days of the changes and must be in the form of a sworn affidavit. If this information is not filed in a timely manner, the firm may be decertified for failure to cooperate.

Section 6. ANNUAL UPDATE

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6.1 All DBEs must also submit an annual update to the AZUCP Partner that issued the original certification. Each Partner maintains it's own cycle time. The update must include documentation that includes a sworn affidavit that there have been no changes in the firms' ability to meet the eligibility criteria. This includes, but is not limited to a change in size, disadvantaged status, ownership or control, or other material changes to the circumstances of the firm as existed at the time of the original certification. The affidavit requires supporting documentation regarding the firm's size and gross receipts.

6.2 If this information is not filed in a timely manner, the firm may be decertified for failure to cooperate as provided for in the regulations.

Section 7. CERTIFICATION DETERMINATIONS

All decisions regarding a DBE application will be made within 90 days of receipt of the application and all required information. If circumstances warrant, the time frame may be extended for an additional 90 days. If an AZUCP partner does not render a decision within the established time, the application for certification will be deemed as constructively denied. Such denial may be appealed to USDOT

Section 8. DENIAL DETERMINATIONS

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- 8.1 <u>Denial of Certification</u> Firms denied certification in their initial application process must be provided a written explanation of the reasons for the denial. The specific evidence that supports the decision will be referenced. All information used to make the determination to deny the application for DBE certification is available to the firm.
- 8.2 <u>Reapplication After Denial</u> Firms that are denied certification may not reapply for a period of 12 months from the date the firm receives the denial letter.
- 8.3 <u>Appeal of Denials</u> All denied firms have appeal rights to the USDOT. This process is explained later in this document.

Section 9. COMPLAINTS AND INVESTIGATIONS

The process to remove a firm's certification can be initiated by a complaint filed by a third party, by an AZUCP partner and upon direction by FAA, FTA, or FHWA.

9.1 <u>Third Party Complaints</u> – Any person can file a complaint alleging a currently certified firm is not eligible to be certified as a DBE. The complaint must include specific reasons why the individual believes the firm is not eligible. When possible, the complainant's identity will remain confidential. AZUCP Partners do not accept and will not investigate general allegations or anonymous complaints.

9.2 <u>Recipient-initiated proceeding</u> – The AZUCP Partners may determine that there is reasonable cause to believe a firm is no longer eligible based on information submitted by the firm or from information that comes to the partner's attention. The AZUCP Partner that issued the original certification will be promptly notified and will conduct the investigation. The challenged firm will be notified of the allegations in writing. Additional information may be requested from the firm.

- 9.3 <u>USDOT Directive to Initiate Proceeding</u> If an operating administration, such as FHWA, FTA, or FAA, determines there is reasonable cause to believe a certified firm does not meet the eligibility requirements, it can direct the AZUCP Partners to initiate a decertification proceeding. The operating administration must provide the AZUCP Partners and the firm a written explanation of the directive including all relevant documentation. The point of contact in these instances is the Civil Rights Administrator at the Arizona Department of Transportation.
- 9.4 <u>Complaint Process</u> All complaints shall be processed by the AZUCP Partners, as follows:
 - A. Complaints received by any of the partners or an airport will be promptly referred to the AZUCP Partner that completed the initial certification.
 - B. The challenged firm will be notified in writing of the allegation(s) and pending investigation.
 - C. Additional information may be requested from the firm and/or complainant.
 - The investigating AZUCP Partner will present the ovidence found during the investigation to a meeting of all of the AZUCP Partners. The AZUCP Partners will make a final determination on the continued eligibility of the firm to retain, their DBE status.
 - E. The firm and the complainant will be notified in writing of the final determination of the AZUCP Partners.
 - F. If the AZUCP Partners makes a determination to decertify the firm, notification will be made in writing to the company. The notification will include the specific reasons for the proposed action.
 - G. If the AZUCP Partners make a determination that there is no reasonable cause to believe the firm is ineligible written notification of that determination will be made to the firm and complainant. The specific evidence considered in making the determination will be cited in the determination.

Section 10. DETERMINATION TO DECERTIFY

- 10.1 <u>Grounds to Decertify</u> A determination to decertify cannot be made on a reinterpretation or changed opinion related to information available at the time the AZUCP Partner certified the firm.
- 10.2 <u>Determination Basis</u> Determinations to remove a firm's eligibility must be based on one of the following reasons:
 - A. There have been changes in the firm's circumstances that make it unable to meet the certification standards;
 - B. Information or evidence that was not available at the time the firm's was certified becomes known;
 - C. Information that had been concealed or misrepresented in previous certification actions becomes known;

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- D. There has been changes in certification standards or requirements by the USDOT; or,
- E. The AZUCP Partners documents a finding that the decision to certify the firm was factually erroneous.

Section 11. PROCESS TO DECERTIFY

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- 11.1 <u>Decertification Process</u>- The AZUCP Partners will follow an established process for the decertification of firms. That process shall proceed as follows:
 - A. The AZUCP Partners will notify the firm in writing of the intent to decertify and document the evidence to substantiate the finding.
 - B. The firm is provided an opportunity to request, in writing, an informal hearing to present its arguments and evidence why this action should not occur.
 - C. The AZUCP Partners bear the burden of providing, through a preponderance of evidence, that the firm does not meet the certification standards.
 - D. The hearing will be recorded either by a tape recorder or court reporter. A Copy of the hearing will be made available to the firm upon request. If the firm appeals the determination to USDOT, a copy of the transcript will be sent to USDOT.
 - E. If the firm prefers, it may submit its arguments and information in writing without having an informal hearing. The AZUCP Partners bear the burden of proof in its position to decentify.
- 11.2 <u>Decision maker</u> The individual who reviews a written rebuttal or who serves as the hearing officer will not have been involved in seeking to remove a firm's eligibility or in making the determination to do so. The individual will also not be in a position to be influenced by the office or person who made the determinations. The decision maker will be knowledgeable about the program and the certification standards.
- 11.3 <u>Certification Status during a Proceeding</u> During the process of removing a firm's eligibility, its remains certified and eligible to participate as a DBE in federally assisted contracts. The firm does not become ineligible until a determination is made and the firm receives written notification of the decision to remove its certification.
- 11.4 <u>Notice of Decertification Decision</u> A written determination containing specific references to evidence that support the decision will be provided to all firms. If the determination was that the firm is not eligible to participate as a DBE, the notice will inform the firm of the consequences of the decision. The notice will also provide notification to the firm of the USDOT appeal process.
- 11.5 <u>Effects of Removing Eligibility</u> If the decertified firm has been listed to meet a project DBE goal on bid documents or subsequent submittals approved by a AZUCP Partner, the prime contractor will be informed of the decertification action by the appropriate AZUCP partner.

In instances where a contract or subcontract has not been executed, the prime contractor will be informed that the decertified DBE cannot be counted towards the established project goal. The prime contractor will be provided the opportunity to make "good faith" efforts to replace the decertified DBE with an eligible DBE firm.

If the subcontract has been executed prior to the date of the decertification, the prime contractor is not required to replace the decertification in determining whether or not the reduced goal has been met.

The AZUCP Partner will not receive credit for work attributable to the decertified DBE in calculating the overall annual DBE participation.

If a firm exceeds the size standard and is therefore no longer eligible, work performed is credited towards both the contract and overall goal.

Section 12. APPEALS TO USDOT

- 12.1 A firm denied certification or had its certification removed can appeal to USDOT, consistent with USDOT rules, regulations, and guidelines.
- 12.2 Individuals who file third party complaints or the operating administration that makes a complaint can also appeal to USDOT if the AZUCP does not find cause to remove a firm's eligibility or following a hearing, determines the firm is eligible.
- 12.3 All appeals must be sent to:

Department of Transportation Office of Civil Rights 400 7th Street, SW, Room 5414 Washington, DC 20590

- 12.4 During the appeal process, the AZUCP Partner's determination remains in effect.
- 12.5 The appeal must be filed within 90 days of the determination and must include information and arguments concerning why the determination should be reversed. USDOT may accept appeals filed beyond this time limit if USDOT determines there was good cause for the late filing.
- 12.6 Appellants must provide the following information in the appeal. Failure to provide this information may be deemed a failure to cooperate under 49 CFR 16.109.
 - A. The name and address of any recipient with which the firm is certified.

- B. The name and address of any recipient that has denied an application from the firm.
- C. The name and address of any recipient that decertified the firm in the past 12 months.
- D. The name and address of any recipient that has a decertification action pending.
- 12.7 The AZUCP Partners will cooperate fully with USDOT by providing a complete copy of the administrative record, including a hearing transcript, within 20 days of USDOT's request. This time frame may be extended for good cause. The record will be well organized, indexed and paginated. If a determination by the AZUCP Partners was based on the decision and/or administrative record of another recipient, this requirement is applicable to both.
- 12.8 The process USDOT uses when determining appeals can be found in 49 CFR 26.89.

Section 13. POST APPEAL ACTIONS

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- 13.1 Decisions made by USDOT are binding on the AZUCP Partners and all of the other USDOT recipients in Arizona, but are not binding on any other USDOT recipient outside of Arizona.
- 13.2 If USDOT decides the firm should not have been certified, the AZUCP Partners will remove the firm's eligibility on receipt of the determination. The consequences of removing eligibility take effect on this date.
- 13.3 If USDOT decides the AZUCP Partners failed to find reasonable cause to remove a firm's eligibility, the partner must begin a proceeding to determine if the eligibility should have been removed, in accordance with this agreement and regulation.
- 13.4 If USDOT decides the firm should have been certified, the AZUCP Partners will immediately certify the firm upon receipt of the written notice from USDOT.
- 13.5 In the event of an appeal based on a determination of social and economic disadvantage that USDOT determines was in error, the AZUCP Partners will take appropriate corrective action as indicated by USDOT.
- 13.6 If USDOT affirms the AZUCP Partners' determination, no action is required.

Section 14. CONSIDERATION OF APPEAL DECISIONS

14.1 If the AZUCP Partners becomes aware that a firm's ineligibility is either upheld or directed by USDOT, it may review the firm's eligibility and being proceedings to remove it. The AZUCP Partners will consider the merits of each applicant firm

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on a case-by-case basis and may not decertify a firm merely based on a USDOT decision in another matter.

14.2 If the AZUCP Pattners become aware that a firm has been deemed eligible by USDOT in an appeal process, it must take this finding into consideration in making a decision of the firm's eligibility for DBE certification. The AZUCP is not required to certify the firm, but will consider the merits of each applicant firm on a case-by-case basis.

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A. G. CONTRACT NO. KR 04-1674 TRN

04015 ADOT Contract No. ZGAOSCOIS Project: Arizona Unified Cartification Program Section: Statewide

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INTERGOVERNMENTAL AGREEMENT THE STATE OF ARIZONA acting for and on behalf of the DEPARTMENT OF TRANSPORTATION THE CITIES OF PHOENIX AND TUCSON AND

THIS AGREEMENT ("Agreement") is entered into October 1, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, by and among the STATE OF ARIZONA, acting for and on the behalf of the DEPARTMENT OF TRANSPORTATION ("ADOT") and THE CITY OF PHOENIX acting through its City Manager ("Phoenix") and THE CITY OF TUCSON acting through its City Manager ("Tucson") (ADOT, Phoenix and Tucson are collectively referred to as the "Parties").

I.

- ADOT is empowered by Arizona Revised Statutes Section 28-401 to enter into 1. this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ADOT.
- Phoenix is empowered by Article II, Chapter 2 of the Phoenix City Charter to 2.

enter into this Agreement and has by resolution, a copy of which is attached , hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this agreement on behalf of Phoenix.

Tucson is empowered by Chapter IV of the Tucson City Charter to enter into this 3. Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Tucson.

THEREFORE, in consideration of the mutual agreements expressed herein, it

NO. Filed with the Secretary of State Dats Filed: 11/18/64 nuel ewer Secretary of State newold1.

EX______TO RESOLUTION NO. 19954 CITY OF TUCSON CONTRACT NO. 0242-05

II. STATEMENT OF RESPONSIBIITIES

Title 40 of the Code of Federal Regulations, Part 2681 requires recipients of Federal Aviation (FAA), Federal Highway (FHWA) and Federal Transit (FTA) Administrations funding to create, implement and maintain a unified certification program known as the Arizona Unified Certification Program (AZUCP). The AZUCP plan received final approval from the United States Department of Transportation (USDOT) on April 17, 2003. The plan, which is attached, lays out specific assurances, processes, and standards for the AZUCP.

1. ADOT shall comply with the plan as approved and perform all duties of the AZUCP partners. The following duties are reserved for ADOT:

ADOT shall serve as team leader through the implementation period of the plan. ADOT shall develop and maintain the AZUCP DBE list webpage. ADOT shall develop the DBE Directory.

- 2. Phoenix shall comply with the plan as approved and perform all duties of the AZUCP partners except those specifically reserved to ADOT.
- 3. Tucson shall comply with the plan as approved and perform all duffes of the AZUCP partners except those specifically reserved to ADOT.

III. TERMS AND CONDITIONS

1. <u>Term of the Agreement</u>

This Agreement shall remain in force and effect until cancelled at any time by any party, upon thirty (30) days written notice to the other parties for a period not to exceed 60 months following the Effective Date.

2. Effective Date

This Agreement shall become effective upon the date of filing with the Arizona Secretary of State.

3. Dispute Resolution

In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by Arlzona Revised Statutes Section 12-1518 as appropriate.

- 2 -

4. Non-availability of Funds

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Every payment obligation of ADOT under this Agreement, if any, is contingent upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOT at the end of the period for which funds are available.

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5. Audit of Records

Each party to this Agreement shall be entitled to the rights, interests and privileges afforded the State of Arizona pursuant to A.R.S. §§ 35-214 and 35-215. Accordingly, each party shall retain and shall contractually require each subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion <u>of</u> the Agreement. All records shall be subject to inspection and audit by the other parties at reasonable times. Upon request, each party shall produce the original of any or all such records.

6. <u>Cancellation for Conflict of Interest.</u>

Pursuant to A.R.S. §38-511, each party may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of ADOT, Phoenix or Tucson is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any <u>other</u> party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when such party receives written notice of the cancellation unless the notice specifies a later time. Each party may, by written notice to the other party, immediately terminate this Agreement if such party determines that employment or a gratuity was offered or given by the other party or any agent or representative of such party to any officer or employee of the Parties for the purpose of influencing the securing of the Agreement, an amendment of the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision regarding Agreement performance.

7. Non-Discrimination

Each party shall comply with State of Arizona Executive Order 2003-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Each party shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

8. Third Party Antitrust Violations

Each party assigns to the other parties any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the such party toward fulfillment of this Agreement.

9. Indemnification

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Each party (as 'indemnitor') agrees to indemnify, defend and hold harmless the other parties (as 'indemnitees') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitees, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

- 10. All notices or demands upon any party to this agreement relating to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:
 - a. Civil Rights Administrator
 Arizona Department of Transportation
 206 S. 17th Ave., 154A
 Phoenix, AZ 85007
 - b. City of Phoenix
 Equal Opportunity Department
 251 W. Washington Street
 Phoenix, AZ 85003
 - c. City of Tucson Office of Equal Opportunity Programs 100 N. Stone Ste 610 P.O. Box 27210 Tucson, AZ 85726-7210

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11. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, Frank Fairbanks City Manager

B **Carole Coles Henry**

Director, Equal Opportunity Department

ATTEST

City Clerk

By

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CITY OF TUCSON, James Keene **City Manager**

By 010/ Liana Perez

Director, Office of Equal Opportunity Programs

ATTEST

By City Clerk

October 11, 2004

STATE OF ARIZONA Department of Transportation

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[insert] [insert]

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ATTORNEY GENERAL DETERMINATION

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Attorney General Contract No. ______, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this _____ day of _____, 2004

(Assistant, Attorney General's Signature)

(Typed Name)

PHOENIX'S LEGAL COUNSEL DETERMINATION

Pursuant to A.R.S. §11-952, Phoenix's Legal Counsel has determined that the above Agreement is in proper form and is in the powers and authority granted under the laws of the State of Arizona to Phoenix.

Dated this	day of	, 2004
	Ulun	Budwell

ACTING City Attorney wet

TUCSON'S LEGAL COUNSEL DETERMINATION

Pursuant to A.R.S. §11-952 Tucson's Legal Counsel has determined that the above Agreement is in proper form and is in the powers and authority granted under the laws of the State of Arizona to the Tucson.

Dated this	402	day of	Oct	. 2004	
			Aliel	s Signature)	
				eth Uebel	

(Typed Name)



OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA

TERRY GODDARD ATTORNEY GENERAL CIVIL DIVISION TRANSPORTATION SECTION WRITER'S DIRECT LINE 602 542,8855

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR04-1674TRN (ADOT CONTRACT NO. 0401S), an

Intergovernmental Agreement among The State of Arizona acting for and on behalf of the Department of Transportation and The Cities of Phoenix and Tucson, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 9, 2004

TERRY GODDARD Attorney General

SUSAN E. DAVIS

Assistant Attorney General Transportation Section

SED:mjf Attachment 576378

RECEIVED FEB 282002 CIVIL RIGHTS OFFICE

February 27, 2002



CITY OF TUCSON EQUAL OPPORTUNITY OFFICE

Ms. Lisa Wormington Civil Rights Administrator Arizona Department of Transportation Affirmative Action Office 1739 West Jackson # 118 Phoenix, Arizona 85007

RE: Arizona Uniform Certification Program: FTA, FAA and FHWA Funding Recipients

Dear Ms. Wormington:

On February 22, 2002 I received the attached, above referenced document from you via electronic mail. The document conceptually reflects the work of the primary agency representatives/recipients, which have been working toward the Arizona Uniform Certification Program (AZUCP) for several years, and most certainly the recent efforts toward this goal. These agents are the Arizona Department of Transportation, City of Phoenix, the Tucson Airport Authority and the City of Tucson.

I have noted to you that there are, of course, many details that will require our continued collaboration and resolution relative to best serving our individual communities through one program. These will be worked out during the actual plan implementation development period. However, I feel that the enclosed document reflects an excellent blue print from which to build the actual detailed program. In this vein, I would like to acknowledge your efforts in taking the lead, within Arizona, in ensuring our continued efforts in better serving DBEs through this vehicle.

As the City of Tucson DBE Liaison Officer, this is to confirm conceptual agreement and approval of the attached AZUCP.

Again, thank you for your leadership in this effort. This is an exciting benchmark in our efforts and I look forward to the next program development/implementation phase.

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Sincerely, Sivivia Campoy Equal Opportunity Office Director

enclosure

100 N. STONE AVE., SUITE 610 • P.O. BOX 27210 • TUCSON, AZ 85726-7210 (520) 791-4593 • FAX (520) 791-5140 • TTY (520) 791-2639 www.cityoftucson.org

INDEX

Section	Contents	Page #
I.	Purpose	1
П.	Partners	1
III.	Assurances	1 - 3
IV.	Certification Process	3 - 4
V.	Change in Circumstance	4
VI.	Annual Updates	4
VII.	Certification Determinations	5
VIII.	Denial Determinations	5
IX.	Complaints and Investigations	5 – 6
X.	Determinations to Decertify	6
XI.	Process to Decertify	7 – 8
XII	Appeals to USDOT	8 - 10
XIII.	Post Appeal Actions	10
XIV.	Consideration of Appeal Decisions	10

See letter of Jebruary 27, 2002 Hours Campar - Cry of Tucson DBE Liaison officer Signature of confirmation - conceptual agreement and approval of AZUCP, as follows.

SECTION I. PURPOSE

In accordance with the requirements of 49 CFR Part 26, Arizona recipients of Federal Transit Administration (FTA), Federal Aviation Administration (FAA), and Federal Highway Administration (FHWA) assistance propose to create, implement, and maintain a unified certification program known as the Arizona Unified Certification Program (AZUCP). The AZUPC partners will provide a model, reciprocal certification program for the small, disadvantaged business community in the State of Arizona. The Arizona Unified Certification Program (AZUCP) will be formed through the ratification of an Intergovernmental Agreement approved by all participating partners.

SECTION II. PARTNERS

Within the State of Arizona there are four (4) government partners that actively participate in the Arizona Unified Certification Program (AZUCP). The partners are the Arizona Department of Transportation, the Cities of Phoenix and Tucson, and the Tucson Airport Authority. Under the provisions of separate Intergovernmental Agreements, the City of Phoenix performs DBE certifications for Maricopa County and the City of Tucson does the same for Pima County. The Cities of Tucson and Phoenix will represent the interests of their IGA partners on the AZUCP.

Since 1995, the partners have participated in a limited reciprocity agreement whereby applicants could complete the application process with any of the partners and seek certification with multiple jurisdictions. Under this arrangement, the group adopted a standardized application and on-site review form for use in the DBE certification process. Each jurisdiction retained the right to make separate and independent determinations of eligibility for each DBE applicant. In 1996, the partners were recognized by FHWA for the establishment of an Intergovernmental Agreement that simplified the DBE certification process and provided enhanced customer service to applicants. Through the development of the AZUCP, the arrangement will be extended to full reciprocity and acceptance of DBE certifications granted by any or all of the partners.

There are currently forty-four (44) smaller airports that receive direct federal financial assistance. These entities have agreed to adopt the use of certification directories made available by the AZUCP. Only DBEs certified by the AZUCP will be eligible to be credited towards DBE goals on FAA sponsored projects bid and awarded by the entities. The participating airports are listed in *Appendix A*.

SECTION III. ASSURANCES

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• A. The AZUCP will follow all certification procedures and standards of Title 49 of the Code of Federal Regulations, Part 26, Subpart D.

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- B. The AZUCP will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations.
- C. The AZUCP will implement USDOT directives and guidance concerning certification matters.
- D. The Partners of the AZUCP will commit adequate resources and expertise to carry out this agreement.
- E. The AZUCP will be created and fully functional no later than 18 months from the date of approval by the Secretary of Transportation. The timeline for the creation and implementation of the AZUCP is as follows:

#	Implementation Component	Component Deadline
1.	Establish intergovernmental AZUCP Oversight Committee with representation by all AZUCP partners.	3 Months from date of Plan approval
2.	Oversight Committee standardize DBE certification policies, procedures, and materials.	6 Months from date of Plan approval
3.	Develop and obtain appropriate partner approval of an Intergovernmental Agreement (IGA) for implementation of the AZUCP	9 Months from date of Plan approval
4.	Develop and complete a training plan for all partner entities to ensure consistency of the DBE certification determinations	12 Months from date of Plan approval
5.	Create a community outreach committee partnering with key community stakeholders	15 Months from date of Plan approval
6.	Establish and implement an intergovernmental media plan to educate the community of the purpose and function of the AZUCP	18 Months from date of Plan approval
7.	Develop and implement a unified database system for online publication of AZUCP certification directories	18 Months from date of Plan approval
8.	Full implement of the AZUCP	18 Months from date of Plan approval

- F. The AZUCP will make all certification decisions for all USDOT recipients in the State of Arizona with respect to participation in the USDOT DBE program. All recipients agree to abide by the determinations of the AZUCP.
- G. The AZUCP will comply with all certification and nondiscrimination requirements of the regulation.
- H. The AZUCP will share information regarding its certified DBEs with other states as requested.
- I. A DBE Directory containing all certified firms will be maintained. This directory will be available electronically on partners' websites and in hard copy. The online directory will be "real time" and will reflect changes as they occur. The hard copy directory will be updated quarterly, at a minimum.

SECTION IV. CERTIFICATION PROCESS

- A. All applicants are required to submit an application, supporting documentation, and an affidavit swearing to the accuracy of the information under the penalty of perjury. This package may be submitted to any of the participating partners. A copy of the certification application to be used by the AZUCP is attached as Appendix B. Note: At such time as the USDOT shall issue a national application form, the AZUCP shall adopt such form as its standard.
- B. The AZUCP partner receiving the package will assign it to an analyst who will review, at a minimum, the following documentation or information:
 - 1. Proof of ownership by the applicant

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- 2. The firm's bonding and financial capacity
- 3. Copies of current and completed contracts
- 4. The type of work that will be performed by the DBE as a part of the DBE program and the preferred locations
- 5. A listing of owned and available equipment
- 6. A listing of relevant licenses or professional registrations
- 7. A listing of the firm's key personnel and their work histories/resumes
- C. After initially reviewing the above information, the receiving AZUCP partner will conduct an on-site review with the applicant at the firm's principal office. If possible, an active job site will also be visited. The AZUCP's on-site review form that will be utilized to record the on-site findings is attached as Appendix C.
- "D The AZUCP will make independent decisions regarding the eligibility of all firms, regardless of the firm's home state determination or 8-A status.

- E. Applicants with home offices in other states must hold a DBE certification issued by an agency in their home state that follows the requirements of 49 CFR Part 26. The partner receiving the original application from an out-of-state DBE will contact the home state for a copy of the firm's on-site review. The certification determination will not be made without this document.
- F. All files will remain confidential in compliance with the regulation, and to the extent allowed by state and local law, as they contain proprietary business information.
- G. The AZUCP adheres to the eligibility standards found in Title 49, Part 26, Subpart D, of the Code of Federal Regulations. They can be found as Appendix D.
- H. Once the analyst has completed the review, a determination is made to certify or deny certification to the applicant firm.
- I. Firms that are granted DBE certification are placed on the listing of eligible DBE firms. The firms are certified for at least 3 years.

SECTION V. CHANGE IN CIRCUMSTANCE

- A. All certified firms must inform the partner of the AZUCP that issued the original certification in writing of any changes in the circumstances of the firm. These include, but are not limited to, changes in small business size, disadvantaged status, ownership, control requirements, or other material changes to information provided in the application.
- B. This notice must be made within 30 days of the change(s) and must be in the form of a sworn affidavit. If this information is not filed in a timely manner, the firm may be decertified for failure to cooperate.

SECTION VL ANNUAL UPDATES

- A. All DBEs must also submit an annual update to the AZUCP partner that issued the original certification. Each partner has its own cycle time. The update must contain documentation that includes a sworn affidavit that there have been no changes in the firms' ability to meet the eligibility criteria. This includes, but is not limited to, a change in size, disadvantaged status, ownership or control, or other material changes to the circumstances of the firm as existed at the time of the original certification. The affidavit requires supporting documentation regarding the firm's size and gross receipts.
- B. If this information is not filed in a timely manner, the firm may be decertified for failure to cooperate as provided for in the regulations.

SECTION VII. CERTIFICATION DETERMINATIONS

All decisions regarding a DBE application will be made within 90 days of receipt of the application and all required information. If circumstances warrant, the time frame may be extended for an additional 90 days. If an AZUCP partner does not render a decision within the established time, the application for certification will be deemed as constructively denied. Such denial may be appealed to USDOT

SECTION VIII DENIAL DETERMINATIONS

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- A. <u>Denial of Certification</u> Firms denied certification in their initial application process must be provided a written explanation of the reasons for the denial. The specific evidence that supports the decision will be referenced. All information used to make the determination to deny the application for DBE certification is available to the firm.
- B. <u>Reapplication After Denial</u> Firms that are denied certification may not reapply for a period of 12 months from the date the firm receives the denial letter.
- C. <u>Appeal of Denials</u> All denied firms have appeal rights to the USDOT. This process is explained later in this document.

SECTION IX COMPLAINTS AND INVESTIGATIONS

The process to remove a firm's certification can be initiated by a complaint filed by a third party, by a member of the AZUCP, and upon direction by FAA, FTA, or FHWA.

- A. <u>Third Party Complaints</u> Any person can file a complaint alleging a currently certified firm is not eligible to be certified as a DBE. The complaint must include specific reasons why the individual believes the firm is not eligible. When possible, the complainant's identity will remain confidential. The AZUCP does not accept and will not investigate general allegations or anonymous complaints.
- B. <u>Recipient-Initiated Proceeding</u> The AZUCP may determine that there is reasonable cause to believe a firm is no longer eligible based on information submitted by the firm or from information that comes to a partner's attention. The partner that issued the original certification will be promptly notified and will conduct the investigation. The challenged firm will be notified of the allegations in writing. Additional information from the firm may be requested.
- C. USDOT Directive to Initiate Proceeding If an Operating Administration, such as
- FHWA, FTA, of FAA, determines there is reasonable cause to believe a certified firm does not meet the eligibility requirements, it can direct the AZUCP to initiate a

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decertification proceeding. The Operating Administration must provide the AZUCP and the firm a written explanation of the directive including all relevant documentation.

- D. <u>Complaint Process</u> All complaints shall be processed by the AZUCP, and/or its partners, as follows:
 - 1. Complaints will be promptly referred to the partner that completed the initial certification.
 - 2. The challenged firm will be notified in writing of the allegation(s) and pending investigation.
 - 3. Additional information may be requested from the firm and/or complainant.
 - 4. The investigating partner will present the evidence found during the investigation to the AZUCP Committee. The AZUCP will make a final determination on the continued eligibility of the firm to retain their DBE status.
 - 5. The firm and the complainant will be notified in writing of the final determination of the AZUCP.
 - If the AZUCP makes a determination to decertify the firm, notification will be made in writing to the company. The notification will include the specific reasons for the proposed action.
 - 7. If the AZUCP makes a determination that there is no reasonable cause to believe the firm is ineligible, written notification of that determination will be made to the firm and complainant. The specific evidence considered in making the determination will be cited in the determination.

SECTON X DETERMINATIONS TO DECERTIFY

- A. <u>Grounds to Decertify</u> A determination to decertify cannot be made on a reinterpretation or changed opinion related to information available at the time the firm was certified by the AZUCP.
- B. <u>Determination Basis</u> Determinations to remove a firm's eligibility must be based on one of the following reasons:
 - 1. There have been changes in the firm's circumstances that make it unable to meet the certification standards
 - 2. Information or evidence that was not available at the time the firm's was certified becomes known
 - 3. Information that had been concealed or misrepresented in previous certification actions becomes known
 - 4. There have been changes in certification standards or requirements by the USDOT
 - 5. The AZUCP documents a finding that the decision to certify the firm was factually erroneous.

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SECTION XI

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PROCESS TO DECERTIFY

- A. <u>Decertification Process</u> The AZUCP will follow an established process for the decertification of firms. That process shall proceed as follows:
 - 1. The AZUCP will notify the firm in writing of the intent to decertify and document the evidence to substantiate the finding.
 - 2. The firm is provided an opportunity to request, in writing, an informal hearing to present its arguments and evidence why this action should not occur.
 - 3. The AZUCP bears the burden of proving, through a preponderance of evidence, that the firm does not meet the certification standards.
 - 4. The hearing will be recorded either by a tape recorder or court reporter. A copy of the hearing will be made available to the firm upon request. If the firm appeals the determination to USDOT, a copy of the transcript will be sent to USDOT.
 - 5. If the firm prefers, it may submit its arguments and information in writing without having an informal hearing. The AZUCP bears the burden of proof in its position to decertify.
- B. <u>Decisionmaker</u> The individual who reviews a writtenr ebuttal or who serves as the Hearing Officer will not have been involved in seeking to remove a firm's eligibility or in making the determination to do so. The individual will also not be in a position to be influenced by the office or person who made the determinations. The decisionmaker will be knowledgeable about the program and the certification standards.
- C. <u>Certification Status During a Proceeding</u> During the process of removing a firm's eligibility, it remains certified and eligible to participate as a DBE in federally assisted contracts. The firm does not become ineligible until a determination is made and the firm receives written notification of the decision to remove its certification.
- D. <u>Notice of Decertification Decision</u> A written determination containing specific references to evidence that support the decision will be provided to all firms. If the determination was that the firm is not eligible to participate as a DBE, the notice will inform the firm of the consequences of the decision. The notice will also provide notification to the firm of the USDOT appeal process.
- E. <u>Effects of Removing Eligibility</u> If the decertified firm has been listed to meet a project DBE goal on bid documents or subsequent submittals approved by a partner, the prime contractor will be informed of the decertification action by the appropriate partner. In instances where a contract or subcontract has not been executed, the prime contractor will be informed that the decertified DBE cannot be counted towards the established project goal. The prime contractor will be provided the opportunity to make "good faith" efforts to replace the decertified DBE with an eligible DBE firm. If the subcontract has been executed, the prime contractor is not required to replace

the decertified DBE. The project goal that the prime contractor is required to meet will be reduced by the percentage portion of work completed by the decertified DBE after the date of decertification. The contractor will receive credit for the work performed by the decertified DBE prior to decertification in determining whether or not reduced goal has been met.

The AZUCP partner will not receive credit for work attributable to the decertified DBE in calculating the overall annual DBE participation.

If a firm exceeds the size standards and is therefore no longer eligible, work performed is credited towards both the contract and overall goals.

SECTION XII

APPEALS TO USDOT

- A. A firm that have been denied certification or had its certification removed can appeal to USDOT.
- B. Individuals who file third party complaints or the Operating Administration that makes a complaint can also appeal to USDOT if the AZUCP does not find cause to remove a firm's eligibility or determines the firm is eligible.
- C. All appeals must be sent to:

Department of Transportation Office of Civil Rights 400 7th Street, SW, Room 2401 Washington, DC 20590

- D. During the appeal process, the AZUCP's determination remains in effect.
- E. The appeal must be filed within 90 days of the determination notification and must include information and arguments concerning why the determination should be reversed. USDOT may accept appeals filed beyond this time limit if USDOT determines there was good cause for the late filing.
- F Appellants must provide that following information in the appeal. Failure to provide this information may be deemed a failure to cooperate under 49 CFR 16.109.
 - 1. The name and address of any recipient with which the firm is certified

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- 2. The name and address of any recipient that has denied an application from the firm
- 3. The name and address of any recipient that decertified the firm in the past 12 months
- 4. The name and address of any recipient that has a decertification action pending

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- G. The AZUCP will cooperate fully with USDOT by providing a complete copy of the administrative record, including a hearing transcript, within 20 days of USDOT's request. This time frame may be extended for good cause. The record will be well organized, indexed, and paginated. If a determination by the AZUCP was based on the decision and/or administrative record of another recipient, this requirement is applicable to both.
- H. USDOT will make a determination based on the information included in the administrative record. USDOT will not make its own determination or hold a hearing into the matter. USDOT may supplement the administrative record by accepting additional information from the DOT Inspector General, federal, state, or local law enforcement authorities, officials of an Operating Authority or other appropriate USDOT office, an AZUCP partner, or a firm or other private party.
- I. When the AZUCP submits additional information to USDOT, a copy will be provided to the appellant and/or third party complainant, consistent with applicable federal and state laws regarding freedom of information and privacy. USDOT will similarly make information available upon request from any other source.
- J. USDOT will affirm the AZUCP's decision unless it finds that it was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of the regulation.
- K. If USDOT determines the determination was not supported by evidence, or was inconsistent with the regulation, the AZUCP will be directed to either certify the firm or remove its eligibility. This action will be taken immediately upon receiving written notice.
- L. In the event it appears the record is incomplete or unclear, USDOT may remand the record with direction to seek clarification or augmentation of the record before making a determination. USDOT may also remand a record if it appears the provisions of 49 CFR 26.89 (f) have not been followed.
- M. USDOT will not uphold determinations based on grounds not included in the record.
- Ne. USDOT will base its determination on the status and circumstances of the firm as of the date of the decision being appealed.
 - O. USDOT will provide written notice of its decision to the AZUCP, the firm, and the complainant, if applicable. The notice will include the decision and the specific references to the evidence that supports each reason.
 - P. USDOT will make determinations within 180 days of receipt of the completed administrative record. In the event, USDOT does not make a decision in this time

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frame, all concerned parties will be notified of the reasons and the date by which the decision will be make.

Q. All decisions made by USDOT are administratively final and are not subject to petitions for reconsideration.

XIII POST APPEAL ACTIONS

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- A. Decisions made by USDOT are binding on the AZUCP. It is not binding on any other USDOT recipient.
- B. If USDOT decides the firm should not have been certified, the AZUPC oversight committee will remove the firm's eligibility on receipt of the determination. The consequences of removing eligibility takes effect on this date.
- C. If USDOT decides the AZUCP failed to find reasonable cause to remove a firm's eligibility, the AZUCP must begin a proceeding to determine if the eligibility should have been removed, in accordance with this agreement and the regulation.
- D. If USDOT decides the firm should have been certified, the AZUCP will immediately certify the firm upon receipt of the written notice from USDOT.
- E. In the event of an appeal based on a determination of social and economic disadvantage that USDOT determines was made in error, the AZUCP will take appropriate corrective action as indicated by USDOT.
- F. If USDOT affirms the AZUCP's determination, no action is required.

XIV. CONSIDERATION OF APPEAL DECISIONS

- A. If the AZUCP becomes aware that a firm's ineligibility is either upheld or directed by USDOT, it may review the firm's eligibility and begin proceedings to remove it. However, in all cases, the firm must be afforded due process. The proceeding discussed in this agreement and in the applicable regulation must be followed. The AZUCP will consider the merits of each applicant firm individually and will not decertify a firm simply because of a USDOT decision.
- B. If the AZUCP becomes aware that a firm has been deemed eligible by USDOT in an appeal process, it must take this finding into consideration. The AZUCP is not required to certify the firm. Again, the AZUCP will consider the merits of each applicant firm individually.

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Tucson Airport Authority 7005 South Plumer Avenue Tucson, Arizona 85706 Telephone 520-573-8100 Fax 520-573-8008 www.tucsonairport.org

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On behalf of Tucson Airport Authority (Tucson International Airport and Ryan Airfield), a recipient of the United States Department of Transportation, Federal Aviation Administration, funds, I have read the foregoing, and agree to abide by all certification decisions made by the AZUCP.

(Signature)/

Walter A. Burg

(Print Name)

President/Chief Executive Officer

(Title)

February 27, 2002

(Date)

RECEIVED

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ATTACHMENT 10 Regulations: 49 CFR Part 23



Title 49 Subtitle A Part 23

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Title 49 \rightarrow Subtitle A \rightarrow Part 23

Title 49: Transportation

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Contents

Subpart A—General

- §23.1 What are the objectives of this part?
- §23.3 What do the terms used in this part mean?
- §23.5 To whom does this part apply?
- §23.7 Program reviews.

§23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

§23.11 What compliance and enforcement provisions are used under this part?

§23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

Subpart B—ACDBE Programs

§23.21 Who must submit an ACDBE program to FAA, and when?

§23.23 What administrative provisions must be in a recipient's ACDBE program?

§23.25 What measures must recipients include in their ACDBE programs to ensure

nondiscriminatory participation of ACDBEs in concessions?

§23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

§23.29 What monitoring and compliance procedures must recipients follow?

Subpart C—Certification and Eligibility of ACDBEs

§23.31 What certification standards and procedures do recipients use to certify ACDBEs?

§23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

§23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

§23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

§23.39 What other certification requirements apply in the case of ACDBEs?

Subpart D—Goals, Good Faith Efforts, and Counting

- §23.41 What is the basic overall goal requirement for recipients?
- §23.43 What are the consultation requirements in the development of recipients' overall goals?
- §23.45 What are the requirements for submitting overall goal information to the FAA?
- §23.47 What is the base for a recipient's goal for concessions other than car rentals?
- §23.49 What is the base for a recipient's goal for car rentals?
- §23.51 How are a recipient's overall goals expressed and calculated?
- §23.53 How do car rental companies count ACDBE participation toward their goals?

§23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

- §23.57 What happens if a recipient falls short of meeting its overall goals?
- §23.59 What is the role of the statutory 10 percent goal in the ACDBE program?
- §23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

Subpart E—Other Provisions

- §23.71 Does a recipient have to change existing concession agreements?
- §23.73 What requirements apply to privately-owned or leased terminal buildings?
- §23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?
- §23.77 Does this part preempt local requirements?
- §23.79 Does this part permit recipients to use local geographic preferences?

Appendix A to Part 23—Uniform Report of ACDBE Participation

AUTHORITY: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

SOURCE: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

▲ Back to Top

Subpart A—General

Back to Top

§23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

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

(b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;

(c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;

(e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and

(f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

▲ Back to Top

§23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR §121.103(f)) do not apply to this part.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

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.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) https://www.ecfr.gov/cgi-bin/text-idx?SID=4ec3745efcd1f75d7ecf53249ee8fe22&mc=true&node=pt49.1.23&rgn=div5 *Car dealership* means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this subpart, a business is not considered to be "located on the airport" solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be "located on the airport," however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

(i) Leases.

(ii) Subleases.

- (iii) Permits.
- (iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (*e.g.*, sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

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.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (*http://www.ntis.gov/naics*).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of §23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.*, "You must do XYZ" means that recipients must do XYZ).

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007; 77 FR 36931, June 20, 2012]

Back to Top

§23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

Back to Top

§23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

Back to Top

§23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must 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 this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

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

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

▲ Back to Top

§23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

▲ Back to Top

§23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that-

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

Back to Top

Subpart B—ACDBE Programs

Back to Top

§23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revisesd ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in §23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your

application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

▲ Back to Top

§23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (*e.g.*, a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

★ Back to Top

§23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during presolicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (*see* part 26, §26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, 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.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this 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. (iv) The administrative procedures applicable to contract goals in part 26, §26.51-53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must 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.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

▲ Back to Top

§23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

▲ Back to Top

§23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes. [77 FR 36931, June 20, 2012]

Back to Top

Subpart C—Certification and Eligibility of ACDBEs

▲ Back to Top

§23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61-91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

▲ Back to Top

§23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, 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.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: \$1 billion in assets;

(2) *Car rental companies:* \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) Pay telephones: 1,500 employees;

(4) Automobile dealers: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a FEDERAL REGISTER document informing the public of each adjustment.

[77 FR 36931, June 20, 2012]

▲ Back to Top

§23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$1.32 million. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

Back to Top

§23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

Back to Top

§23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(2) Analyze the ownership of stock of the firm, if it is a corporation;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

(5) Obtain or 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;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, §26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in §23.33.

(c) For purposes of this part, the term prime contractor in part 26, §26.87(i) 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.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, §26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by §26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.*, in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, §26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

(1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.

(2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

▲ Back to Top

Subpart D—Goals, Good Faith Efforts, and Counting

Back to Top

§23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit overall goals, do not exceed to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

Back to Top

§23.43 What are the consultation requirements in the development of recipients' overall goals?

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are 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 recipient's efforts to increase participation of ACDBEs.

▲ Back to Top

§23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (*see* §23.51(d)(5))

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.*, the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or

race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

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

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

▲ Back to Top

§23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

★ Back to Top

§23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

Back to Top

§23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a "level playing field" for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in §23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the "relative availability of ACDBEs").

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, *http://www.census.gov/epcd/cbp/view/cbpview.html.*) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) Use an Active Participants List. Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

(4) Use the goal of another recipient. If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) Alternative methods. (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) 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. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the

adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (*see* 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* §§26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.*, with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

▲ Back to Top

§23.53 How do car rental companies count ACDBE participation toward their goals?

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed

for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of any conflict between these two sections, §23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

▲ Back to Top

§23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be

reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e) (1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").

(I) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

Back to Top

§23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If the awards and commitments shown on your 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, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

 Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in §23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

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

(iii) You do not fully implement:

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

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

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

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

▲ Back to Top

§23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

▲ Back to Top

§23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

▲ Back to Top

Subpart E—Other Provisions

Back to Top

§23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Back to Top

§23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

Back to Top

§23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into longterm, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This longterm, exclusive agreement must provide that:

(i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the

estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (*e.g.,* location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

Back to Top

§23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient 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 this part.

(b) You must 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 this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE

program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, 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 this part.

Back to Top

§23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (*e.g.*, your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

★ Back to Top

★ Back to Top

Appendix A to Part 23—Uniform Report of ACDBE Participation

INSTRUCTIONS FOR UNIFORM REPORT OF ACDBE PARTICIPATION

1. Insert name of airport receiving FAA financial assistance and AIP number.

2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.

3a. Provide the annual reporting period to which the report pertains (*e.g.*, October 2005-September 2006).

3b. Provide the date on which the report is submitted to FAA.

4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (*e.g.*, a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (*e.g.*, manage the parking

facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns all non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7-9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the

appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5-6 and/or 8-9, the requested information about that firm should be attached in response to this item.

UNIFORM REPORT OF ACDBE PARTICIPATION

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____%

5. Non-car rental Cumulative ACDBE participation		A Total dollars (every		B Total numbe (every		C Total to ACDBEs (dollars)		D Total to ACDBEs (number)		E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions												
Subconcessions												
Management Contracts		XXXX	XXX	XXXX	XXX							XXXXXX
Goods/Services												
Totals												
6. Non-Car rental New ACDBE participation this period	A Tota dolla (eve	ars	B Tota num (eve	5	2012	BEs	AC	al to DBEs mber)	A	C to CDBEs Iollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions												
Subconcessions												
Management Contracts	XXX	XXXX	XXX	XXXX							XXXXXX	
Goods/Services												
Totals												

7. Current Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____% Overall Goal ____%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	number	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							

Electronic Code of Federal Regulations (eCFR)

Goods/Services	\perp		1		\downarrow			4						
Totals										_	100AU			
9. Car rental New ACDBE participation this period		A Total dollars (everyo	one)	B Total number (everyoi		C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	- 1	E RC to ACDBEs (dollars)		F RN to ACDBEs (dollars)	s 1	to	of Ilars DBEs
Prime Concessions														
Subconcessions														
Goods/Services														
Totals														
10. Cumulative ACDBE participation by race/gender	A Bla Am			•			sian-Indian mericans			mi	on- inority omen	G Othe	1	H Totals
Car Rental														
Non-Car Rental														
Totals													Τ	

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

▲ Back to Top

Need assistance?





ATTACHMENT 11 Form of Published Notice Regarding Overall Goals



Meeting Archives

This page contains information from past notices of public meetings of the Tucson Airport Authority Board of Directors, Board subcommittees and other public meetings involving the TAA and its airports. To view a meeting notice, click on the title of the meeting listed below.

All Meeting Types

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December 15, 2021 12:00 p.m.

Superfund Council Meeting Agenda Agenda Packet

December 8, 2021 3:00 p.m.

Board of Directors
<u>Meeting Agenda</u> <u>Agenda Packet</u>

December 7, 2021 8:00 a.m.

Public Safety Personnel Retirement System Local Board Meeting Agenda

November 16, 2021 9:30 a.m.

Audit Council Meeting Agenda Agenda Packet

November 4, 2021 1:30 p.m.

Executive Council Meeting Agenda Agenda Packet Meeting Minutes

November 3, 2021 3:00 p.m. CANCELED

Board of Directors

Cancelation Notice

The November 3, 2021, Board of Directors meeting has been canceled due to a lack of agenda items. The next Board of Directors meeting will be held on December 8, 2021. Additional information will be posted closer to that date.

October 13, 2021 9:00 a.m.

Nominating Council Meeting Agenda Agenda Packet Meeting Minutes

October 6, 2021 3:00 p.m.

Board of Directors Meeting Agenda Agenda Packet Meeting Minutes

September 29, 2021 3:00 p.m.

Nominating Council Meeting Agenda Agenda Packet Meeting Minutes

september 28, 2021 10:30 a.m. Walk-in COVID vaccination clinic is open 10 am-3 pm today. Follow signs in bag claim on the lower level to the clinic behind carousel 7. Click here for information. September 22, 2021 2:00 p.m.

Airport Concession Disadvantaged Business Enterprise Program

Meeting Notice Presentation Published Goal

September 1, 2021 3:00 p.m.

Board of Directors

Meeting Agenda Agenda Packet Meeting Minutes

August 24, 2021 3:00 p.m.

Finance and Risk Management Council

Meeting Agenda Agenda Packet Meeting Minutes

August 23, 2021

Executive Council

Meeting Agenda Agenda Packet Meeting Minutes

August 4, 2021 3:00 p.m.

Board of Directors

Meeting Agenda Agenda Packet Meeting Minutes

July 23, 2021 1:00 p.m.

Finance and Risk Management Council

Meeting Agenda Agenda Packet Meeting Minutes

July 20, 2021 9:00 a.m.

Nominating Council

Meeting Agenda Agenda Packet Meeting Minutes

July 19, 2021 3:00 p.m.

Corporate Governance Council

Meeting Agenda Agenda Packet Meeting Minutes

July 14, 2021

THE JULY 14, 2021, BOARD OF DIRECTORS MEETING HAS BEEN CANCELED DUE TO A LACK OF AGENDA ITEMS. THE NEXT BOARD OF DIRECTORS MEETING WILL BE HELD ON AUGUST 4, 2021. ADDITIONAL INFORMATION WILL BE POSTED CLOSER TO THAT DATE.

Board of Directors

Cancelation Notice

July 14, 2021 9:00 a.m.

Nominating Council

Meeting Agenda Agenda Packet Meeting Minutes

July 6, 2021 3:00 p.m.

Corporate Governance Council

Meeting Agenda Agenda Packet Meeting Minutes

June 29, 2021 10:00 a.m.

Superfund Council

Meeting Agenda Agenda Packet Meeting Minutes

June 2, 2021 3:00 p.m.

Board of Directors

Walk-in COVID vaccination stip open 19 and pm today. Follow signs in bag claim on the lower level to the clinic behind carousel 7. Click here for information.



Craig Reck Public Information Administrator <u>creck@flytucson.com</u> 520.573.4873

The Tucson Airport Authority (TAA) has an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program for Tucson International Airport. A requirement of this program is to establish a percentage goal of ACDBE participation in our concessions. The TAA will be setting an overall goal for the next three years (FY 2022-2024).

As part of this process, the TAA would like to invite interested parties to attend a meeting for the purpose of gathering comments regarding the availability of airport concession disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs and the TAA's efforts to establish a level playing field for the participation of ACDBE's.

The TAA's 2022-2024 fiscal years' ACDBE goal will be based, in part, on the following concession programs at Tucson International Airport:

- Car Rental
- Food & Beverage
- News & Gifts
- Advertising
- Goods & Services

A virtual meeting will be held on Wednesday, September 22, 2021, at 2:00 p.m. For further information, please contact Tina Moore, Tucson Airport Authority's Director of Programs & Regulatory Compliance/ACDBE Liaison Officer at (520) 573-4859.



TUCSON INTERNATIONAL AIRPORT • RYAN AIRFIELD

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Airport Concession Disadvantaged Business Enterprise (ACDBE) Consultation Meeting Goal Setting and Methodology FY 2022-2024

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Tina Moore Director of Program and Regulatory Compliance/ Disadvantaged Business Enterprise Liaison Officer

Wednesday, September 22, 2021at 2:00 p.m. Virtual Meeting

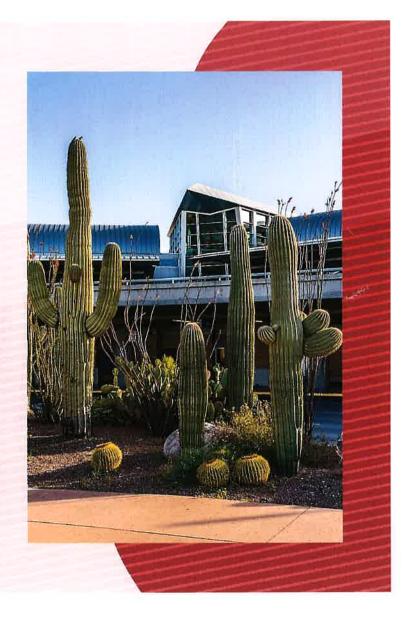
AGENDA

Welcome & Introductions, Sign In Sheet
ACDBE Program Governing Regulations &
Objectives
What is an ACDBE?
Arizona Unified Certification Program
(AZUCP)
ACDBE Compliance Requirements
Types of Concession Contracts
Methodology Used in Goal Setting Process
Comment Period Schedule
Questions and Answers

Governing Regulations – 49 CFR Part 23

- Condition for Receiving Federal Assistance

 Airport Improvement Program (AIP)
- Engineering, Planning, and Construction Activities
 Tucson International Airport (TUS) & Ryan Airfield (RYN)
- Subject to Title 49 CFR Part 23
 - Participation of Disadvantaged Business Enterprise in Airport Concessions



ACDBE Program Objectives

The Regulations require that the airport have a program in place that achieves the following objectives:

- Ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- Create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- Ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet eligibility standards are permitted to participate as ACDBEs;
- Help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- Provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

What is an ACDBE?

ACDBE Eligibility Requirements

Ownership

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- Social and Economic Disadvantage
- Personal Net Worth
- Business Size Standard
- Independence
- Management and Control



Arizona Unified Certification Program (AZUCP)

- TAA is part of the Arizona Unified Certification Program (AZUCP)
- Utilizes DBE/ACDBE Directories
- Honors Certifications and Re-certifications
- The three partners are:
 - Arizona Department of Transportation
 - The City of Phoenix
 - The City of Tucson
- Goal of the AZUCP
 - Standardize the DBE/ACDBE certification policies, procedures and materials
 - Develop and implement database online publication
- Online Applications Arizona Unified Transportation Registration and Certification System (AZ UTRACS) at www.adot.dbesystem.com

ACDBE Compliance Requirements

- Establish Overall Goal (Set Triennially)
- Certification Performed by AZUCP
- Contracting Activities

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- Monitoring and Enforcement
- Reporting Performed Annually



Types of Concession Contracts



- Car Rental
- Food and Beverage
- News, Gifts, and Specialty Retail
- Management Contracts
- Small Concession Opportunities (Upcoming)

TAA's ACDBE Goal Setting Methodology for Car Rental

Setting the overall goal for participation for Car Rental

Step 1:Examined Potential Goods and Services
Looked up NAICS Codes
Reviewed Certified Firm Directory
Pulled all Certified Firms Listed Under NAICS Code Using the 2019 County Business
Pattern NAICS Code Comparison

Step 2: Pulled ACDBE Achievements for past 3 fiscal years

Adjustment: Calculate Step 1 and Step 2 Results

TAA's ACDBE Goal FY 2022 - 2024: Car Rental - Step 1

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A REAL PROPERTY OF A REAL PROPERTY OF A				(YEAR)	(ESTAB)	AZUCP	Availab	e
	Arizona	323111	Commercial printing (except screen and books)	2019	299	1	0.	33%
040000US04	Arizona	423120	Motor vehicle supplies and new parts merchant wholesalers	2019	232	0	0.	00%
040000US04	Arizona	423130	Tire and tube merchant wholesalers	2019	48	0	0.	00%
040000US04	Arizona	423850	Service establishment equipment and supplies merchant	2019	80	2	2.	50%
040000US04	Arizona	424110	Printing and writing paper merchant wholesalers	2019	13	0	0.	00%
040000US04	Arizona	424120	Stationery and office supplies merchant wholesalers	2019	57	0	0.	00%
040000US04	Arizona		Industrial and personal service paper merchant wholesalers	2019	67	0	0.	00%
040000US04	Arizona	424710	Petroleum bulk stations and terminals	2019	38	0	0.	00%
040000US04	Arizona	441110	New car dealers	2019	319	0	0.	00%
040000US04	Arizona	441310	Automotive parts and accessories stores	2019	719	0	0.	00%
040000US04	Arizona		Tire dealers	2019	397	0	0.	00%
040000US04	Arizona	484230;	Specialized freight (except used goods) trucking, long-	2019	202	2	0.	99%
040000US04	Arizona	488410	Motor vehicle towing	2019	166	0	0.	00%
040000US04	Arizona	524210	Insurance agencies and brokerages	2019	2,820	1	0.	04%
040000US04	Arizona		Human resources consulting services	2019	169	8	4.	73%
040000US04	Arizona	541620	Environmental consulting services	2019	174	1	0.	57%
	Arizona		Locksmiths	2019	79	0		00%
	Arizona		General automotive repair	2019	1,572	1	0.	06%
040000US04	Arizona	812332	Industrial launderers	2019	27	0	0.	00%
						Count	Total	

TAA's ACDBE Goal FY 2022 - 2024: Car Rental - Step 2

Fiscal Year Achievements	Race Conscious (%)	Race Neutral (%)	Total Achievement (%) Rounded
FY 18	0%	0.99%	1.00%
FY19	0%	7.84%	7.80%
FY20	0%	1.85%	1.90%



TAA's ACDBE Goal Setting Calculations Car Rental

Results

Step 1: Base Figure = 9.23% divided by 19 = 0.5% Average ACDBE Availability

Step 2: Arranging this historical data from low to high (1%, 1.9%, 7.8%), the median is 1.9%

Adjustment:Base Figure for Certified Firms Availability = 0.5%Historical Data of Participation = 1.9%0.5% + 1.9%Divided by2

Proposed ACDBE Overall Aspirational Goal for FY 2022 – FY 2024 is 1.2%, to be accomplished through 0.0% Race Conscious and 1.2% Race Neutral Basis.

TAA's ACDBE Goal FY 2022 - 2024: Other Than Car Rentals - Step 1

Geographic identifier code (GEO_ID)	Geographic Area Name (NAME)	2017 NAICS code (NAICS2017)	Meaning of NAICS code (NAICS2017_LABEL)	Year (YEAR)	Number of establishments (ESTAB)	AZUCP	Percentage Available
0400000US04	Arizona	443142	Electronics stores	2019	312	2	0.64%
0400000US04	Arizona	445120	Convenience stores	2019	361	1	0.28%
0400000US04	Arizona	448140	Family clothing stores	2019	568	1	0.18%
0400000US04	Arizona	448310	Jewelry stores	2019	348	1	0.29%
0400000US04	Arizona	448320	Luggage and leather goods stores	2019	20	1	5.00%
0400000US04	Arizona	451120	Hobby, toy, and game stores	2019	141	0	0.00%
0400000US04	Arizona	451211/451212	Bookstores, News dealers and newsstands	2019	129	13	10.08%
0400000US04	Arizona	453220	Gift, novelty, and souvenir stores	2019	371	21	5.66%
0400000US04	Arizona	453998	All other miscellaneous store retailers (except tobacco stores)	2019	508	0	0.00%
0400000US04	Arizona		Advertising material distribution services	2019	23	1	4.35%
0400000US04	Arizona	772511	Full-service restaurants	2019	4323	9	0.21%
0400000US04	Arizona	722513	Limited-service restaurants	2019	5020	22	0.44%
0400000US04	Arizona	722515	Snack and nonalcoholic beverage bars	2019	1280	9	0.70%
						Count	Total
						13	27.82% 2

TAA's ACDBE Goal FY 2022 - 2024: Other Than Car Rental - Step 2

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Fiscal Year Achievements	Race Conscious (%) Race	ce Neutral (%)	Total Achievement (%) Rounded
FY 18	0%	13.27%	13.3%
FY19	0%	17.21%	17.2%
FY20	0%	17.04%	17.0%



TAA's ACDBE Goal Setting Calculations Other Than Car Rental

Results

Step 1: Base Figure = 27.82% divided by 19 = 2.1% Average ACDBE Availability

Step 2: Arranging this historical data from low to high (13.2%, 17%, 17.2%), the median is 17%

<u>Adjustment:</u> Base Figure for Certified Firms Availability = 2.1% Historical Data of Participation = 17%

> <u>2.1% + 17%</u> = 19.1% Divided by 2

Proposed ACDBE Overall Aspirational Goal for FY 2022 – FY 2024 is 9.6%, to be accomplished through 0.0% Race Conscious and 9.6% Race Neutral Basis.

Public Comment Period Schedule

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- September 22, 2021– Public Consultation Meeting
- September 24, 2021– Publish Notice of Goal
- September 24, 2021– October 24, 2021- Goal Setting and Methodology Research Available for Inspection (30 days)
- September 24, 2021 November 24, 2021 Comment Period on TAA's Goal and Methodology (45 days)
- December 2021– TAA Board Meeting to Seek Approval of FY 2019-2021 ACDBE Goal Pending FAA Approval.
- December 2021 Send ACDBE Program to FAA for Approval



QUESTIONS? THANK YOU!

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Tina Moore

Director of Programs and Regulatory Compliance/DBE Liaison Officer 7250 S. Tucson Blvd., Suite 300 Tucson, AZ 85756 <u>tmoore@flytucson.com</u> (520) 573-4859

TUCSON AIRPORT AUTHORITY FEDERAL AVIATION ADMINISTRATION ACDBE PARTICIPATION GOALS

The Tucson Airport Authority (TAA), pursuant to 49 Code of Federal Regulations Parts 23 and 26, hereby announces its aspirational Airport Concession Disadvantaged Business Enterprise (ACDBE) Goals for Federal Fiscal Years (FFYs) 2022 – 2024 for ACDBE participation in concession contracts at Tucson International Airport as follows: FEDERAL AVIATION ADMINISTRATION GOALS FOR FFYs 2022 – 2024 (to be achieved entirely through Race-and Gender-Neutral measures): 9.6% Concessions Other Than Car Rentals, 1.2% Car Rental Concessions. The proposed goals and methodology for TAA's Triennial ACDBE Goals are available for public review and inspection at the following location during normal business hours for 30 days following the date of this notice at the TAA offices at the Tucson International Airport, 7250 S. Tucson Blvd., Suite 300. Public comments will be received for a period of 45 days from the date of this notice. Please send written comments to: Tucson Airport Authority, Attention: DBE Liaison Officer, 7250 S. Tucson Blvd., Suite 300, Tucson, Arizona 85756. Based upon a review of comments and additional information received, TAA reserves the right to adjust the proposed goal.

THE DAILY TERRITORIAL

AFFIDAVIT OF PUBLICATION ACDBE Ad - Federal Aviation Admin ACDBE goals

STATE OF ARIZONA

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County of Pima

Marco Pablo Coppola, being first duly sworn, deposes and says that (s)he is the Public Notice Clerk of the Daily Territorial (Tucson) newspaper printed and published in the County of Pima, State of Arizona, and of general circulation in the City of Tucson, County of Pima, State of Arizona and elsewhere, that this affidavit is Page 1 of 1 with the full text of the sworn-to notice set forth on the pages that follow, and the hereto attached:

PUBLICATION DATES: 24 Sep 2021

Notice ID: 0KTVHurJP6RIYpc4Otih Publisher ID: 438566

Request of: Daily Territorial (Tucson) 2900 E Broadway Blvd by: Susan Rose

Public Notice/Clerk DUANE J HOLLIS Notary Public - Arizona VERIFICATION Pima County Commission # 608690 My Comm. Expires Apr 24, 2025 STATE OF ARIZONA COUNTY OF RIMA Signed or attested before me on this day Notary Publi

PUBLIC NOTICE

TUCSON AIRPORT AUTHORITY FEDERAL AVIATION ADMINISTRATION ACDBE PARTICIPATION GOALS

The Tucson Airport Authority (TAA), pursuant to 49 Code of Federal Regulations Parts 23 and 26, hereby announces its aspirational Airport Concession Disadvantaged Business Enterprise (ACDBE) Goals for Federal Fiscal Years (FFYs) 2022 - 2024 for ACDBE participation in concession contracts at Tucson International Airport as follows: FEDERAL AVIATION ADMINISTRATION GOALS FOR FFYs 2022 - 2024 (to be achieved entirely through Race- and Gender-Neutral measures): 9.6% Concessions Other Than Car Rentals, 1.2% Car Rental Concessions The proposed goals and methodology for TAA's Triennial ACDRE Goals are available for public review and inspection at the following location during normal business hours for 30 days following the date of this notice at the TAA offices at the Tucson International Airport, 7250 S. Tucson Bivd., Suite 300. Public comments will be received for a period of 45 days from the date of this notice. Please send written comments to: Tucson Airport Authority, Attention: DBE Lialson Officer, 7250 S. Tucson Blvd., Suite 300, Tucson, Arizona 85756. Based upon a review of comments and additional information received. TAA reserves the right to adjust the proposed goal Publish: The Daily Territorial

Publish: The Daily Territoria Date: September 24, 2021