



**CITY OF AUSTIN
ACDBE PROGRAM – 49 CFR, PART 23
AIRPORT CONCESSION DBE PROGRAM
EFFECTIVE APRIL 2012**

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

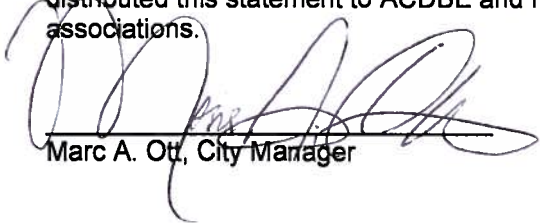
The City of Austin has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The City of Austin, through the Department of Aviation, is the owner and operator of Austin Bergstrom International Airport (ABIA) and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City of Austin has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City of Austin to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

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

Elton Price of the Small & Minority Business Resources Department (SMBR) has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Austin in its financial assistance agreements with the Department of Transportation.

The City of Austin has disseminated this policy statement to the Austin City Council, Department of Aviation, Austin Bergstrom International Airport, and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaires, service providers, and trade associations.



Marc A. Ott, City Manager

12.17.12

Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

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

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.)

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).

Section 23.5 Applicability

The City of Austin is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

The City of Austin will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

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

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

The City of Austin will include the following assurances in all concession agreements and management contracts it executes 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.

Section 23.11 Compliance and Enforcement

The City of Austin will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The City of Austin 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.

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

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

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

The following enforcement actions apply to firms participating in the City of Austin's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.

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

SUBPART B – ACDBE Programs

Section 23.21 ACDBE Program Updates

Since the City of Austin is a medium hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the City of Austin will submit its ACDBE program and overall goals to FAA according to the following schedule:

Type of Airport	Initial Program and Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1

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

This ACDBE program will be implemented at Austin Bergstrom International Airport. However, if applicable, we will establish separate ACDBE goals at any additional location.

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

Section 23.23 Administrative Provisions

Policy Statement: The City of Austin is committed to operating its ACDBE program in a nondiscriminatory manner. The City of Austin's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our ACDBELO:

Elton Price, Small & Minority Business Resources
4201 Ed Bluestein Blvd., Austin TX 78721
512/974-7725
elton.price@austintexas.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the City of Austin complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the City Manager 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. The ACDBELO has a staff of one (1) to assist in the administration of the program. We have designated Kristi Samilpa, ACDBE Program Designee, to administer and manage the day to day operational matters concerning the ACDBE Program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with Department of Aviation to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City of Austin's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid and pre-proposal meetings.
8. Participates with the legal counsel and SMBR Director to determine compliance with good faith efforts.
9. Advises the Austin City Council and the Department of Aviation on ACDBE matters and achievement.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in Texas.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the City of Austin's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The City of Austin, through the Texas Uniform Certification Program (TUCP) which is administered by the Texas Department of Transportation (TXDOT), utilizes a directory maintained by TXDOT identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The TUCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The TUCP revises the Directory weekly. The Directory is available as follows: <http://www.txdot.gov/business/tucp/default.htm>. The Directory may be found in *Attachment 2* to this program document. (26.31)

The TUCP directory is currently non-compliant with 26.31(b). The City of Austin has requested TXDOT implement modifications to the directory to meet federal program requirements.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The City of Austin will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

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

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

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

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

Section 23.27 Reporting

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

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

Section 23.29 Compliance and Enforcement Procedures

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

When a specific ACDBE contract goal is established, the City of Austin will include a clause in the solicitation, notifying competitors of the ACDBE requirements. A competitor that fails to achieve the goal will be required to submit documentation demonstrating that it made all necessary and reasonable efforts in attempting to do so, or that it would not be economically feasible to enter into either a sublease, joint venture, partnership, or other qualifying arrangement.

Clause Notifying of ACDBE Requirements

In accordance with Regulation of the U.S. Department of Transportation, 49 CFR Part 23, the City of Austin has implemented an Airport Concession Disadvantaged Business Enterprise (ACDBE) concession plan under which qualified firms may have the opportunity to operate an airport business. An ACDBE goal of 14% percent for Non-Car Rental concessions and 6% for Car Rental Concessions, as measured by estimated annual gross receipts, has been established for this concession agreement. The proposer (bidder) shall take all necessary and reasonable steps to achieve this goal.

DBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23. In the event that the proposer qualified as an ACDBE, the goal shall be deemed to have been met.

The proposer will be required to submit information in the form of a DBE Compliance Plan concerning the ACDBE firm(s) that will participate in this concession, including the name and address of each firm, the annual estimated gross receipts to be earned by each named firm, a description of the legal arrangement(s) to be utilized, and the total overall estimated annual gross receipts to be earned by the concession.

If the proposer will be unable to achieve the ACDBE goal stated herein, it will be required to provide documentation in its proposal demonstrating that it took all necessary and reasonable steps in attempting to do so, or that it is not economically feasible at this time to enter into either a joint venture, sublease, partnership, or other eligible arrangement with an ACDBE firm. The requirements of this paragraph are not intended to force the proposer to change its business structure.

A proposal that fails to adequately address the foregoing requirements will be considered nonresponsive and be rejected.

The City of Austin is not required to modify or abrogate any existing concession agreement (one executed prior to April 21, 2005) during its term. When options to renew such agreements are exercised or when a material amendment is to be made, the City of Austin will assesses potential for ACDBE participation and may, if permitted by the agreement, use any means authorized to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

The City of Austin may impose requirements on competitors for concession agreements as a means of achieving the overall ACDBE goals or a portion of the goals, provided that the ACDBE participation specified in the solicitation or other request is an eligible arrangement.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see *Attachment 3*).
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by:
 - A) Field Audits: On-site reviews will be conducted to include interviews, visits to project locations, and inspection of documents and/or information not available at desk audit that pertains to the bidder's/contractor's compliance requirements. Verifying actual ACDBE company participation for those scopes of work as reflected on the compliance plan shall be a critical component of the field audit.
 - B) Phone Audits: The ACDBELO shall conduct periodic desk audits to review all materials and information concerning the bidder's/contractor's compliance. Records capturing progress payments made by prime bidders/contractors shall be required on a monthly basis to ensure that ACDBE firms are being paid on time. ACDBE companies will be contacted periodically to verify payments as reported by prime bidders/contractors.
 - C) Compliance Review and Contract Close-Out
 - i. The ACDBELO shall ensure a project's goal attainment before closing a contract. Procedures for ensuring compliance may include, but are not limited to the following:
 - ii. Phone audits to verify ACDBE participation on the project.
 - iii. Review and verification of payments to ACDBEs as documented in the monthly Expenditure Report submitted to the ACDBELO.
 - iv. Addition of all invoices and other payments to ensure that prime bidder/contractor has met all payment obligations as agreed to with ACDBEs.
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by the Texas Department of Transportation and Small & Minority Business Resources which will make certification decisions on behalf of the City of Austin for ACDBEs.

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

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1

billion in assets, for pay telephone companies 1,500 employees, and for ACDBE automobile dealers 350 employees. The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million. We recognize that in calculating personal net worth, the following exclusions apply: The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification and the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

- * Only assets supporting obligations for which the individual is currently liable, which are properly documented, and for which his or her personal assets are encumbered, should be counted toward this exclusion.

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

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

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

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

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

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

Challenge to Status

As provided for in Subpart E § 26.87, any third party may present written evidence to the City of Austin challenging whether a firm's owners who are presumed to be socially and economically disadvantaged are truly disadvantaged.

When the City of Austin receives a written challenge to the disadvantaged status of a business owner that is certified or seeking certification, the City of Austin will make a determination of social and economic disadvantage. The City of Austin itself also may initiate an inquiry. The confidentiality of the complainant shall be protected as provided for in § 26.109(b).

Whenever a challenge is made, the City of Austin will observe the procedural guidelines in 49 CFR Part 26.87. These procedures are informal in that strict rules of evidence do not apply. While a challenge is in progress, the presumption of social and economic disadvantage continues, and if the firm has been certified, it will continue to be eligible as an ACDBE.

A final determination by the City of Austin in a challenge proceeding may be appealed to the Departmental Office of Civil Rights.

Certification Appeals

As provided for in Subpart E §26.89, when the City of Austin denies certifications or completes decertification, it will advise the firm that an appeal may be filed with the office named below. An appeal must be in writing, dated and signed, and must be filed within 90 days after the action, unless the time frame is extended by DOT. An appeal may be made only after the firm has exhausted all other administrative procedures available from the City of Austin.

Departmental Office of Civil Rights
Department of Transportation
400 7th Street, Southwest
Washington, D.C. 20590

We will use the Uniform Application Form found in appendix F to part 26, also included as *Attachment 8*, with additional instruction as stated in 23.39(g).

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

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

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

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

Section 23.43 Consultation in Goal Setting

The sponsor 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 sponsor's efforts to increase participation of ACDBEs.

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

Section 23.45 Overall Goals

The City of Austin is a medium hub primary airport. As a condition of eligibility for FAA financial assistance, the City of Austin will submit its overall goals according to the following schedule:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1

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

The City of Austin 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 City of Austin's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the City of Austin would expect in the absence of discrimination. Evidence may include, but is not limited to: past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

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

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

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

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

Our projection of race-neutral participation is based upon various factors and data. For example, based on our analysis of current car rental concession contracts for fiscal year 2011, we recorded approximately less than 1% participation by disadvantaged business enterprises for that period. In fact, prior to 2009, we have had no recorded participation by disadvantaged business enterprises for that period. The City of Austin has determined that given the current market conditions and future concession opportunities, it can expect to maintain less than 1% participation through race-neutral measures.

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))

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

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

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City of Austin will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the City of Austin 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/offers must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the City of Austin's concession specific goals. Specifically,

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

The following personnel are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive¹.

Elton Price, ACDBELO
Kristi Samilpa, ACDBE Program Designee

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

¹ When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder/offeror must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

Information to be submitted (Compliance Plan) (26.53(b))

City of Austin treats bidder/offeror's compliance with good faith effort requirements as a matter of responsiveness.

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

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. The dollar amounts and/or percentages for each non-ACDBE firm participating;
5. Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal;
6. For professional services solicitations, commitment letters from each ACDBE listed on the compliance plan;
7. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
8. If the contract goal is not met, evidence of good faith efforts (documentation is not limited to this list):
 - Fax logs/emails and copies of documents sent.
 - Copies of written correspondence to certified firms (include names, addresses, and other identifying information).
 - Phone logs with responses (Phone contacts, alone, will not be sufficient.).
 - Lists and copies of letters sent by mail, hand delivered, or e-mailed.
 - The following additional Good Faith Efforts factors may also be considered
 - Advertising in local newspapers.
 - Copies of all bids/proposals received in response to Bidder contacting other Firms.
 - Other communications regarding contacts with trade associations and Chambers of Commerce.

Administrative reconsideration (26.53(d))

Within 10 business days of being informed by the City of Austin that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official:

Byron Johnson
City of Austin Purchasing Officer
512/974-2500
Byron.johnson@austintexas.gov

The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration officials to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The reconsideration official will send the bidder/offeror a written decision on the reconsideration, explaining the basis for finding that the bidder/offeror 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))

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

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

If the concessionaire fails or refuses to comply in the time specified, our contracting office will monitor process until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

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

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

Section 23.53 Counting ACDBE Participation for Car Rental Goals

We will count the following as ACDBE participation toward overall goals for car rental as provided in 49 CFR 23.53:

1. Purchases or leases of vehicles from any vendor that is a certified ACDBE. The car rental company must also submit to the City of Austin documentation of the good faith efforts made to obtain ACDBE participation from other ACDBE providers of goods and services.
2. 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.
3. The entire amount of the fee or commission charged by an 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.
4. The City of Austin will 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.
5. For other goods and services, we will count participation toward ACDBE goals as provided in Part 26, Section 26.55 and 23.55.

6. For national or regional contracts, we will count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. The portion of the applicable gross receipts will be the basis for making this pro-rated assignment of ACDBE participation.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

We will count the following as ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55:

1. Only ACDBE participation that results from a commercially useful function will be counted. The term commercially useful function has the same meaning as in Part 26, Section 26.55(c), except that the requirements of Section 26.55(c)(3) do not apply to concessions.
2. 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, the gross receipts earned by that non-ACDBE will not be counted.
3. Only the portion of the gross receipts earned by the ACDBE under its subagreement will be counted toward the goal.
4. When an ACDBE that performs as a part of a joint venture, only that 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 will count towards the ACDBE goals.
5. The entire amount of fees or commissions charged by the ACDBE firm for a bona fide service, provided that the City of Austin determines this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services.
6. One hundred percent of the cost of goods obtained from an ACDBE manufacturer.
7. One hundred percent of the cost of goods purchased or leased from an ACDBE regular dealer.
8. For goods purchased from an ACDBE which is not a manufacturer or regular dealer, the following will be counted:
 - a. 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. The City of Austin will not count any portion of the cost of the goods themselves.
 - b. 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. The City of Austin will not count any portion of the costs of the goods themselves.
9. Only firms certified as ACDBEs will count towards the ACDBE goals.
10. Firms whose ACDBE certification status has been removed will not have their participation counted. However, if an ACDBE firm certified on April 21, 2005 is decertified because on or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards 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).
11. Costs incurred in connection with the renovation, repair or construction of a concession facility (sometimes referred to as the 'build-out') will not be counted.
12. The City of Austin will not count the ACDBE participation of car rental companies toward the ACDBE achievements or towards the ACDBE goals.

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

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

- (3) 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.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.73 Privately-Owned or Leased Terminal Buildings *(if applicable)*

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23 and it is incorporated herein and submitted as *Attachment 10*.

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23 and it is incorporated herein and submitted as *Attachment 10*.

Section 23.75 Long-Term Exclusive Agreements

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

Section 23.79 Geographic Preferences

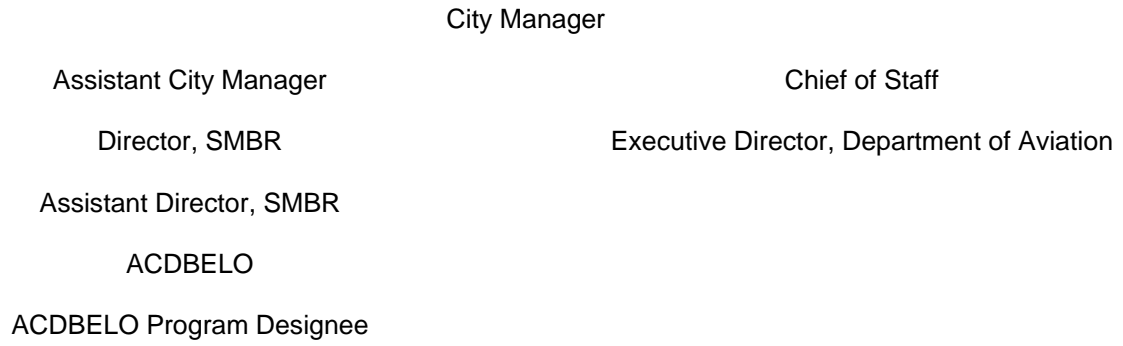
We will not use a “local geographic preference,” i.e., any requirement that gives an ACDBE located in one place (e.g., *your local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

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

Attachment 1

Organizational Chart



Attachment 2

TUCP ACDBE Directory (attachment follows)

Attachment 3

Sample Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract.

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;
2. Enforcement action pursuant to 49 CFR parts 26 and 31; and
3. Prosecution pursuant to 18 USC 1001.

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

In all concession solicitations for which an ACDBE goal has been established for contracts, the ACDBELO shall ensure that prospective bidders/proposers are well informed about the ACDBE terms and requirements before submitting their bids or proposals to the City of Austin. Below is a summary of the ACDBE monitoring process:

A) Pre-Bid/Proposal Conferences

In solicitations for which an ACDBE goal has been established, the ACDBELO shall attend a pre-bid/proposal conference to make a presentation explaining the following:

- The goal for the specific solicitation
- The requirements related to achieving the goal
- The requirement to submit a Compliance Plan with the bid/proposal, including all instructions and forms required to be submitted as part of the compliance plan
- The criteria for evaluating a bidder/proposer's Good Faith Efforts
- ACDBE Joint Venturing
- ACDBE Certification requirements
- The requirement for Letters of Intent with Subcontractors
- Qualifications for counting ACDBE participation towards the ACDBE goal
- ACDBE availability list to assist prospective bidders/proposers

B) Evaluation of Compliance Plans

For bids sent in response to a competitively bid solicitations, the City of Austin shall review the Bids and the compliance plans included therein and shall forward to the ACDBELO the compliance plan of the three lowest bids that it considers responsive.

For responses to Requests for Qualifications and Requests for Proposals, the City of Austin shall review the compliance plans included therein and shall forward to the ACDBELO the compliance plans of all of the respondents who are considered responsive.

The ACDBELO shall conduct the following pre-award audit activities as part of the reviewing ACDBE compliance plans:

- Verify if ACDBE is aware that their company is listed on the compliance plan.
- Verify subcontract dollar amount or percentages.
- Verify the scope of work to be undertaken by the ACDBE.
- Verify if ACDBE has received a Letter of Intent from the Prime Bidder.
- Verify ACDBE's certification status.
- Verify Good Faith Efforts if a bidder/proposer does not achieve the ACDBE goal.

The ACDBELO 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. SMBR and the ACDBELO will ensure that all information is complete, accurate and adequately documents the Bidder/Proposer's good faith efforts before we commit to the performance of the contract by the Bidder/Proposer.

For each solicitation for which a contract goal has been established, the City's Contract Awarding Authority will require the Bidders/Proposer to submit Letters of Intent from the DBEs participating in the contract within three business days of being notified that they are the successful bidders, but before the contract is executed.

If the above pre-award activities are favorable, the ACDBELO shall recommend approval of the ACDBE compliance plan to the contract awarding authority. Within 7 business days of receiving the ACDBE Compliance Plan and documentation, the ACDBELO shall notify the Contract Awarding Authority in writing and the reasons for the determinations. If additional time is required to evaluate the ACDBE Compliance Plans, SMBR shall inform the Contract Awarding Authority of the reason(s) and the anticipated date for completion of the review.

C) Kick-Off Meetings

The ACDBELO shall attend Kick-Off meetings with the successful proposer/concessionaire to further explain the ACDBE goal and requirements to the prime bidder after contract award. Approval procedures and forms for Deletion, Substitution or Addition of subcontractors shall be explained and given to the prime bidder/contractor should the need arise during the contract. Field and Phone audit procedures shall also be explained to the prime bidder/contractor. The ACDBELO shall also provide phone numbers where they can be reached for assistance. The ACDBELO shall also attend any meetings held with concessionaires regarding performance and general information sessions.

D) Reviewing Request for Changes to the ACDBE Compliance Plan

The Bidder/Contractor or Consultant must seek in writing and obtain prior approval of changes to the original ACDBE Compliance Plan (or any subsequent amendments to the ACDBE Compliance Plan by way of approved Request for Change Forms) by using the Request for Change Form provided by SMBR as *Attachment 7*. The ACDBELO, or designee, has the authority to approve or deny changes to the ACDBE Compliance Plan.

- Additions – Adding new DBE and/or Non-DBE subcontractors that were not listed on approved DBE Compliance Plan. This includes all levels of subcontracting.
- Deletions-Deleting DBE and/or Non-DBE subcontractors approved on the original DBE Compliance Plan or approved Request for Change Form.
- Substitutions-Substituting DBE and/or Non-DBE subcontractors that were approved on the original DBE Compliance Plan or approved Request for Change Form.
- Contract Changes-Increasing/Decreasing original contract amounts (reported on the original DBE Compliance Plan) or approved Request for Change Form) for DBE and/or Non-DBE subcontractors.

If a bidder/contractor or consultant proposes to substitute, add or delete a subcontractor/subconsultant and either (1) the ACDBE goal was not met prior to this action; or (2) the ACDBE goal may not be met because of this action, the bidder/contractor or consultant must make good faith efforts to meet the goal.

Documentation demonstrating good faith efforts, as described in Good Faith Effort procedures under this program, must be submitted with a request for substitution, addition or deletion if the DBE goal is not otherwise met. The DBE Liaison Officer will determine whether good faith efforts have been satisfactorily met to approve the request for change to compliance plan. If good faith efforts to substitute or add a DBE have been made to the satisfaction of the DBE Liaison Officer, then the bidder/contractor may substitute or add a non-certified firm.

The written request must state specific reasons for the proposed addition, deletion or substitution of a subcontractor. The facts supporting the request must not have been known nor reasonably should have been known by the bidder/contractor and proposed subcontractor prior to the submission of the

Compliance Plan. The bidder/contractor must submit documentation to substantiate its request for a change in the Compliance Plan. Such documentation may include, but is not limited to the materials listed in Subsections A-D below:

- A. Documentation from the project manager or contract manager, City inspector or other appropriate City staff assigned to oversee the project.
- B. Correspondence between the bidder/contractor and the subcontractor.
- C. Field notes, laboratory reports, photographic evidence or other materials.
- D. A copy of the letter from the bidder/contractor to the subcontractor as required by this section.

If a bidder/contractor or consultant proposes to add an ACDBE to the Compliance Plan after the contract has been awarded, a signed letter of intent must be submitted with the request. If any requested change consists of reducing or eliminating the work of a listed ACDBE (by deletion, substitution, or decreasing of contract amount), the change will only be approved if the ACDBELO or designee concludes that the prime bidder/contractor or consultant has demonstrated good cause. Good cause includes those reasons provided at 49 CFR § 26.53 (discussed below).

Prior to submitting a request for the deletion or substitution of a subcontractor, the bidder/contractor must send a letter via certified mail to the subcontractor with a copy to SMBR informing the subcontractor of the basis for the requested change and providing an opportunity for the subcontractor to resolve the problem. The bidder/contractor must immediately request a meeting with the subcontractor in a good faith attempt to resolve any outstanding issues. If requested by either party, the City shall facilitate such a meeting and monitor the process. The bidder/contractor must verify in a sworn statement that a meeting with the subcontractor has taken place. The sworn statement must be submitted to SMBR at the same time that a Request for Change is submitted. The bidder/contractor may submit a request for change to the ACDBELO upon a showing that the certified letter has been sent as required and after the meeting with the subcontractor referenced above has occurred. However, notwithstanding the above, if the subcontractor has not responded to the bidder/contractor's letter or the bidder/contractor's request for a meeting by the eighth day after the letter was sent by certified mail, the bidder/contractor shall be allowed to submit a request for change for consideration by the ACDBELO.

Within 7 business days of receiving the Request for Change of Compliance Plan and documentation, the ACDBELO shall notify in writing all parties whether the request was approved or denied and, if denied, the basis for the denial. If additional time is required to evaluate the request for change, the ACDBELO shall notify all parties in writing the reason(s) and the anticipated date for completion of the review.

Unauthorized changes or substitutions shall be a violation of the ACDBE Procurement Program, and may constitute grounds for rejection of Bids/Proposals, termination of the executed contract for breach, and/or subject the Bidder/Proposer to Contract penalties or other sanctions.

E) Good Cause to Terminate an ACDBE Firm

49 CFR § 26.53 of the Federal Regulations has provided that good cause for "terminating" (which includes any reduction or elimination of an ACDBE's work as listed on the ACDBE Compliance Plan) a DBE firm includes the following reasons (this is applicable to ACDBE Program):

- i. The listed DBE subcontractor fails or refuses to execute a written contract;
- ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime bidder/contractor;
- iii. The listed DBE subcontractor fails or refuses to meet the prime bidder/contractor's reasonable, nondiscriminatory bond requirements.
- iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- vi. You have determined that the listed DBE subcontractor is not a responsible contractor;

- vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- viii. The listed DBE is ineligible to receive DBE credit for the type of work required;
- ix. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- x. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime bidder/contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime bidder/contractor can self-perform the work for which the DBE contractor was engaged or so that the prime bidder/contractor can substitute another DBE or non-DBE contractor after contract award.

Violations to the ACDBE Program

Below are the sanctions/remedies the City of Austin will enforce in the event of noncompliance with the DBE regulations by a participant in procurement activities.

- A) The following violations are unlawful and may result in sanctions:
 - 1. Providing false or misleading information to the City in connection with an application for or challenge to certification, recertification or decertification as an ACDBE.
 - 2. Providing false or misleading information to the City in connection with submission of a bid, response to Request for Qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other program operations;
 - 3. Substituting ACDBE subcontractors without first receiving approval for such substitutions; or
 - 4. Committing any other violations of the provisions of the DBE and DBE Program.
- B) A bidder, proposer, contractor, subcontractor or applicant for certification is subject to being barred, suspended, or deemed non-responsive in future City solicitations and contracts for a period up to five (5) years, if it is found to have:
 - 1. Provided false or misleading information in connection with an application for ACDBE certification or recertification;
 - 2. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations;
 - 3. Failed to fulfill contractual goals and thereby materially breached the contract; or
 - 4. Repeatedly failed to comply in good faith with substantive provisions of the Program.
- C) When the ACDBELO or any other City official identifies a violation, such violation must be referred to the Purchasing Office for evaluation of proper sanctions. Such evaluation shall include consultation with the Law Department prior to any recommendation for sanctions.
- D) Department procedures shall be promulgated and conducted by the Purchasing Office of the Financial & Administrative Services Department.
- E) An ACDBE that repeatedly and knowingly refuses to honor bid or proposal prices is subject to being decertified by the Director, after notice and hearing.
- F) Nothing in this section shall be deemed to prevent the City Attorney from seeking criminal sanctions at municipal court or referring the matter to other appropriate law enforcement authorities, as authorized by this section.
- G) Where appropriate and lawful, the City may by Contract impose a fixed sum as a penalty to be paid by the Bidder/Proposer for an unexcused failure to meet the ACDBE goal or to otherwise comply with the Program.
- H) In addition to other sanctions available to the City, the violation of any provision to this chapter may be included as an incident of breach in each contract.
- I) For federally funded contracts administered pursuant to federal regulations, sanctions may be imposed as provided therein.

Failure to obtain prior authorization for additions, deletions, substitutions, or contract changes of ACDBE subcontractors/subconsultants as provided for in this Section is a violation. The ACDBELO may recommend to the City's Purchasing Department that the City enforce the following sanctions for each violation within a rolling twenty-four month period:

1st Violation: Probation for a period of up to 6 months

2nd Violation: Suspension for a period of up to 24 months

3rd Violation: Debarment for a period of up to 5 years

If the bidder/contractor engages in more than one of the above actions (i.e., unauthorized substitutions, additions, and deletions) at any given time, the ACDBELO has the discretion to determine whether such actions should be counted as multiple violations of the ACDBE Program.

In order to dispute a finding of a violation, the bidder/contractor must submit a written request for an appeal to the DBE Liaison Officer within 7 days of receipt of written notice of the violation. The DBE Liaison Officer will determine whether the grounds for an appeal are sufficient, and, if the Director so determines, shall set a date for an appeal hearing, usually within five calendar days. The appeal hearing is an informal meeting and is not an adversarial proceeding. The DBE Liaison Officer will determine on the basis of the information provided at the appeal hearing whether to maintain or deny the Adverse Decision. Such decision by the DBE Liaison Officer shall be a final decision, subject to protest, and shall be communicated to the bidder/contractor in writing within 10 calendar days of the hearing.

A bidder/contractor that is subject to an Adverse Decision after appeal may protest the Adverse Decision to the Contract Awarding Authority and request a hearing with an Independent Hearing Officer appointed by the City. The bidder/contractor shall submit the protest within five calendar days within receipt of the ACDBELO's decision.

Attachment 4

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

Amount of Goal (submit if gross receipts exceed \$200,000)

City of Austin's overall goal for concessions other than car rental during the period beginning 2012 and ending 2014 is the following: 14.00% of the total gross receipts for concessions at Austin-Bergstrom International Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (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.

The concession opportunities anticipated during this goal period are: food & beverage, retail including news and gift, all other personal services, massage services, shuttle services, vending machines, and florists with estimated gross receipts revenue of \$7,228,994. 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, City of Austin will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

City of Austin has determined that its market area is Austin-Round Rock Metropolitan Statistical Area. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal

Goods and Services

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

Management Contract or Subcontract

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

Step 1: 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:

Option 1:

Base figure =
$$\frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area}}{\text{All ready, willing and able non-car rental concession firms in the market area}}$$

The data source or demonstrable evidence used to derive the numerator was:

TUCP DIRECTORY-

NAICS CODES: 722211, 722212, 722213, 722310, 722330, 991000

448310, 451211, 451212, 453220, 453998, 992000, 812990, 812199, 485320, 485999, 454210, 453110

The data source or demonstrable evidence used to derive the denominator was:

Census Bureau Data at www.census.gov/epcd/cbp/view/cbpview.html – NAICS CODES:

722211, 722212, 722213, 722310, 722330, 991000, 448310, 451211, 451212, 453220, 453998, 992000, 812990, 812199, 485320, 485999, 454210, 453110

When we divided the numerator by the denominator we arrived at the base figure of 5.30% for our overall goal for non-car rental concessions.

NAICS Code	Concession Opportunity	No. ACDBE Firms	Census Participants/ Concession Listing Participants	ACDBE Availability
722211, 722212, 722213, 722310, 722330, 991000	Food & Beverage	62	1803	3.44%
448310, 451211, 451212, 453220, 453998, 992000	Retail including News Gift	41	377	10.88%
812990	All Other Personal Services including Shoe Shine Services	9	50	18.00%
812199	Massage Services	0	92	0.00%
485320, 485999	Shuttle Services	9	20	45.00%
454210	Vending Machines	7	20	35.00%
453110	Florists	0	54	0.00%
	TOTAL	128	2416	5.30%

Step 2: 23.51(d)

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by an additional 8.70%. Our overall goal for non-car rental concessions is 14.00%

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

- a. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past. Historically, the median ACDBE percentage is 22.71%, or 23%, from 2007 through 2011. We utilized this data to increase the goal by averaging the sum of the availability percentage of 5.3% with median historical participation percentage of 23% ($5.3\%+23\%/2$). The result was a revised overall goal of 14.00%.

Concession Revenues (DOORS DATA)					
<i>Fiscal Year</i>	<i>Total (\$)</i>	<i>ACDBE (\$)</i>	<i>ACDBE Participation Goal</i>	<i>Percentage ACDBE Participation</i>	<i>Difference</i>
<i>FY 7</i>	<i>\$38,330,562</i>	<i>\$4,750,901</i>	<i>22%</i>	<i>12%</i>	<i>-10%</i>
<i>FY 8</i>	<i>\$41,699,867</i>	<i>\$4,066,924</i>	<i>22%</i>	<i>10%</i>	<i>-12%</i>
<i>FY 9</i>	<i>\$30,706,612</i>	<i>\$6,973,093</i>	<i>21%</i>	<i>23%</i>	<i>2%</i>
<i>FY 10</i>	<i>\$33,963,163</i>	<i>\$9,468,267</i>	<i>21%</i>	<i>28%</i>	<i>7%</i>
<i>FY 11</i>	<i>\$38,735,112</i>	<i>\$10,885,784</i>	<i>21%</i>	<i>28%</i>	<i>7%</i>
<i>Total</i>	<i>\$176,562,808</i>	<i>\$36,444,971</i>			
<i>Median Participation/ Average Difference</i>				<i>23%</i>	<i>2%</i>

We chose to adjust our figure using this data based upon prior year information; for years 2007 and 2008, we were unable to meet participation goals. For years 2009, 2010, and 2011, after participation goals had been adjusted the City of Austin has been able to consistently meet and exceed the ACDBE goals during that period. This may have resulted from an increase in the ACDBE availability pool following the 2009 American Recovery and Reinvestment Act as many business owners, including new business, sought additional opportunities to increase their business operations and revenue.

Consultation with Stakeholders (23.43)

As part of the goal setting process, the City of Austin has and will continue to consult with the following stakeholders: *Department of Aviation, concessionaires at ABIA, service providers, trade associations, local small businesses within the Austin-Round Rock MSA.*

In addition, the City of Austin will publicly notice its goal to its stakeholders and the community through a 45-day advertisement period, allowing for inspection and comment.

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

City of Austin will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The City of Austin uses the following race-neutral measures to increase ACDBE participation. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
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 pre-solicitation meetings about how the City of Austin'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 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

The City of Austin is committed to obtaining as much as possible of the ACDBE participation needed to meet overall goals through race-neutral measures and has projected race-neutral participation to be 9.67%. Our projection of race-neutral participation is based upon various factors and data. For example, based on our analysis of current non-car rental concession contracts for fiscal year 2011, we recorded approximately 23% participation by disadvantaged business enterprises for that period. However, in prime contracts awarded, 9.67% were awarded to ACDBE firms as prime contractors.

The City of Austin has determined that given the current market conditions and future concession opportunities, in meeting our overall goal of 14.00%, we can expect to maintain 9.67% participation through race-neutral measures and 4.33% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. *The extent that we've exceeded our ACDBE goals in the past;*
2. *ACDBE participation on concession leases that did not have ACDBE requirements;*
3. *Data from private sector MBE/WBE participation;*
4. *ACDBE participation in local programs in which there are no ACDBE concession specific goals;*
5. *Extent of our race-neutral business assistance efforts;*
6. *Information obtained through consultation with stakeholders;*
7. *ACDBE participation on other city or county concession activity; and*

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

1. *We will establish concession-specific goals for particular concession opportunities.*
2. *Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.*
3. *With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.*

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

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

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

Amount of Goal (submit if gross receipts exceed \$200,000)

City of Austin's overall goal for car rentals during the period beginning 2011 and ending 2014 is the following: 6.00% of the total gross receipts of car rental operations at Austin-Bergstrom International Airport.

The concession opportunities anticipated during this goal period are: fuel dealers, auto body work, windshield repair, general automotive maintenance, car wash and auto detailing, other goods repair and maintenance including key cutting, insurance, custodial services, office supplies merchant wholesalers with estimated gross receipts revenue of \$858,688. If a new car rental 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, City of Austin will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i))

City of Austin has determined that its market area is Austin-Round Rock Metropolitan Statistical Area. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal

Goods and Services

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

Step 1: 23.51(c)

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

Option 1:

$$\text{Base figure} = \frac{\text{Ready, willing, and able car rental ACDBEs in the market area}}{\text{All ready, willing and able car rental firms in the market area}}$$

The data source or demonstrable evidence used to derive the numerator was:

TUCP DIRECTORY-
NAICS CODES: 441110, 454310, 424720, 811121, 811122, 811111, 488410, 811192, 811490, 524210, 561720, 424120

The data source or demonstrable evidence used to derive the denominator was:

Census Bureau Data at www.census.gov/epcd/cbp/view/cbpview.html – NAICS CODES:
441110, 454310, 424720, 811121, 811122, 811111, 488410, 811192, 811490, 524210, 561720, 424120

When we divided the numerator by the denominator we arrived at the base figure of 10.58% for our overall goal for car rental concessions.

NAICS Code	Concession Opportunity	No. of ACDBE Firms	Census/ Concession Listing Participants	ACDBE Availability
441110	New Car Dealers	0	95	0.00%
454310, 424720	Fuel Dealers	9	7	128.57%
811121	Auto Body Work	11	163	6.75%
811122	Windshield Repair	3	20	15.00%
811111	Gen. Auto Maint.	16	341	4.69%
488410	Towing Services	0	52	0.00%
811192	Car Wash and Auto Detailing	4	67	5.97%
811490	Other Goods Repair and Maintenance, including Key Cutting	0	50	0.00%
524210	Insurance	22	684	3.22%
561720	Custodial Services	110	239	46.03%
424120	Stationery and Office Supplies Merchant Wholesalers	10	30	33.33%
	TOTAL	185	1748	10.58%

Step 2: 23.51(d)

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by -4.81%. Our overall goal for car rental concessions is 10.58%

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

- a. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our car rental concessions program by measuring the volume of work ACDBEs have performed in the past. Historically, the median ACDBE percentage is 0% from 2007 through 2008, and 1% from 2009 through 2011. We utilized this data to decrease the goal by averaging the sum of the availability percentage of 10.58% with median historical participation percentage of 1% ($10.58\% + 1\% / 2$). The result was a decreased overall goal of 5.77%, or 6.00%.

Fiscal Year	Total (\$)	ACDBE (\$)	ACDBE Participation Goal	Percentage ACDBE Participation	Difference
FY 7	\$87,610,031	\$0	10%	0%	-10%
FY 8	\$83,426,100	\$0	10%	0%	-10%
FY 9	\$83,208,653	\$799,557	10%	1%	-9%
FY 10	\$88,487,113	\$860,856	10%	1%	-9%
FY 11	\$95,921,110	\$915,652	10%	1%	-9%
Total	\$438,653,007.52	\$2,576,065.47			

We adjusted our figure using this data due to the inability to meet our 10% participation goals for years 2007-2011. This adjustment would align the goals with a more conservative, and attainable, while still allowing the use of race-conscious and race-neutral goals.

Consultation with Stakeholders (23.43)

As part of the goal setting process, the City of Austin has and will continue to consult with the following stakeholders: *Department of Aviation, concessionaires at ABIA, service providers, trade associations, local small businesses within the Austin-Round Rock MSA.*

In addition, the City of Austin will publicly notice its goal to its stakeholders and the community through a 45-day advertisement period, allowing for inspection and comment.

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

Although the City of Austin is committed to obtaining as much as possible of the ACDBE participation needed to meet overall goals through race-neutral measures, the City of Austin proposes to use race-conscious measures for the 6.00% goal for car rental concession opportunities. The City of Austin uses the following race-neutral means to increase ACDBE participation:

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23*
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 pre-solicitation meetings about how the City of Austin'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 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

We estimate that, in meeting our overall goal of 6.00%, we will obtain 1.00% from race-neutral participation and 5.00% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. *The extent that we have not met our ACDBE goals in the past;*
2. *ACDBE participation on concession leases that did not have ACDBE requirements;*
3. *Data from private sector MBE/WBE participation,*
4. *ACDBE participation in local programs in which there are no ACDBE concession specific goals,*
5. *Extent of your race-neutral business assistance efforts.*
6. *Information you obtained through consultation with stakeholders*
7. *ACDBE participation on other city or county concession activity;*

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

1. We will establish concession-specific goals for particular concession opportunities
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession

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

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

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % ACDBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

Attachment 7

Request for Change Forms (attachment follows)

**REQUEST FOR CHANGE OF COMPLIANCE PLAN**

Note: This form is not for changes to a current subcontractor's contract amount if the change is both less than 5% of the current subcontractor's contract amount and less than \$25,000. A change this minor will be documented instead on the subcontractor participation form submitted with the next application for payment. This provision is intended to accommodate the typical margin of error in quantities that is inherent in construction projects. This provision is not intended to allow contractors to self-perform work intended for subcontractors or to unlawfully substitute subcontractors.

DATE: _____

CONTRACT NO.: _____

SOLICITATION NO.: _____

PROJECT NAME: _____

PRIME CONTRACTOR/CONSULTANT: _____

PROPOSED CHANGE: ☐ ADDITION ☐ DELETION ☐ SUBSTITUTION ☐ CONTRACT CHANGE☐ INCREASE EXISTING SUB CONTRACT ☐ DECREASE EXISTING SUB CONTRACTSUBCONTRACTOR/SUBCONSULTANT LEVEL: ☐ 1ST TIER ☐ 2ND TIER ☐ 3RD TIER

Name of Subconsultant/Subcontractor: _____

Vendor Code: _____ Ethnic/Gender Code: _____ City of Austin Certified: Yes _____ No _____

Contact Person: _____ Phone No.: (_____) _____

Proposed Change: \$ _____ AND % _____

Commodity Code and Brief Description of Work: _____

REASON FOR REQUESTING CHANGE: Attach supporting documentation as necessary.

Note: If the request is a substitution, complete information for the firm being removed in the space above and the sub being added below.

SUBCONTRACTOR/SUBCONSULTANT LEVEL: ☐ 1ST TIER ☐ 2ND TIER ☐ 3RD TIER

Name of Subconsultant/Subcontractor: _____

Vendor Code: _____ Ethnic/Gender Code: _____ City of Austin Certified: Yes _____ No _____

Contact Person: _____ Phone No.: (_____) _____

Proposed Change: \$ _____ AND % _____

Commodity Code and Brief Description of Work: _____

REASON FOR REQUESTING CHANGE: Attach supporting documentation as necessary.

I certify that the information included in this Request for Change of Compliance Plan is true and complete to the best of my knowledge and belief.

Prime Consultant/Contractor Printed Name

Prime Consultant/Contractor Signature

Date

DUPLICATE THIS PAGE AS NEEDED

**** This page for City of Austin use only ****

If all of the following requirements are met, the SMBR Department Director's prior written approval is on file with the Public Works and Purchasing Directors, and is automatic. Project Manager should sign the form and send a copy directly to SMBR:

ATTACHMENT 7

- ☐ Change is for an existing certified subcontractor already listed in the Compliance Plan.
- ☐ Change is within the existing scope being performed by the subcontractor.
- ☐ Change is an increase in the contract amount for the subcontractor.

Project Mgr. /Contract Administrator Approval

Date

Project Manager Comments:

Division Manager Approval

Date

Division Manager Comments:

Department Director Approval

Date

Department Director Comments:

SMBR Representative Signature

Date

SMBR Representative Comments:

I approve the requested change.

I disapprove the requested change.

Director, SMBR

Date

Director, SMBR

Date

SMBR Director Comments:

OMITTING FOR REVIEW- CAN BE PROVIDED UPON REQUEST.

Attachment 8

Certification Application Forms (attachments follow)

Attachment 9

Procedures for Removal of ACDBEs Eligibility

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart E—Certification Procedures

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

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

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

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

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

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

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

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

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

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

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled

ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

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

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

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

OMITTED FOR REVIEW- CAN BE PROVIDED UPON REQUEST

Attachment 10

Regulations: 49 CFR Part 23 (attachment follows)

Attachment 11

Goals and Elements for Privately-Owned or Leased Terminal Buildings