

PENSACOLA INTERNATIONAL AIRPORT
Airport Concession Disadvantage Business Enterprise Program (ACDBE)
49 CFR Part 23

Policy Statement (Section 23.1, 23.23)

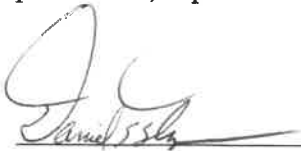
The Pensacola International Airport (the "Airport") has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Airport is a primary airport and has received federal funds authorized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

It is the policy of the Airport to ensure that ACDBE's, as defined in 49 CFR 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 ACDBE's can compete fairly for opportunities for concessions;
3. To ensure that the 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 ACDBE's at the airport;
5. To help remove barriers to the participation of ACDBE's in opportunities for concessions at the airport; and
6. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBE's.

Ms. Andrea Kvech has been delegated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Ms. Andrea Kvech 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 Airport in its financial assistance agreements with the DOT.

The Airport has distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by posting it on Airport maintained websites and by reference in bid requirements. As advertised in the local newspaper and in a local minority-focused publication, copies of this statement are available from the Pensacola International Airport.



Daniel E. Flynn
Airport Director

17 Sept 2018
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 Airport will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The Airport 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 Airport 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 covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

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

The Airport will include the following assurances in all concession agreements and management contracts it executes with any firm after August 1, 2015:

- (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 Airport will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200).

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

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

The Airport'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's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the Airport'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 Airport 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 Airport'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 2 CFR parts 180 and 1200.
- (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 2 CFR parts 180 and 1200.
- (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 Airport's ACDBE program or otherwise violates applicable Federal statutes.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 23.21 ACDBE Program Updates

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

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Small Hubs	All Regions	October 1, 2018 (2019/2020/2021)	October 1, 2021 (2022/2023/2024)

This ACDBE program will be implemented at Pensacola International Airport (PNS).

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

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

Ms. Andrea Kvech
Pensacola International Airport
2430 Airport Blvd., Suite 225
Pensacola, Florida 32504
(850)-436-5000
Email: akvech@cityofpensacola.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Airport complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in *Attachment 1 – Pensacola International Airport Organizational Chart* to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The duties and responsibilities

include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBE's 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 attainment).
6. Determines bidder/contractor compliance with good faith efforts.
7. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the Airport Director and governing body on ACDBE matters and achievement.
10. Provides ACDBE's with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in Florida.
13. Provides outreach to ACDBE's and community organizations to advise them of opportunities.

Directory: The Florida Department of Transportation's maintains the State's directory identifying all firms eligible to participate as DBE/ACDBE's. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE/ACDBE.

This Directory is available online at:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx>

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBE's

The Airport will take the following measures to ensure nondiscriminatory participation of ACDBE's in concessions and other covered activities:

The Airport 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))

All concession and management agreements with the Airport entered into by concessionaire and sub-concessionaires will include the following assurance:

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 agreements covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that enters and case those businesses to similarly include the statements in further agreements.

The Airport will review the contract size, term, and specifications and make such changes that will allow ACDBEs an equitable opportunity to compete for all concession opportunities that they can perform to the extent consistent with the Airport's interest.

The Airport 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 Airport'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 Attachments of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d)) (*Attachment 2 – Overall Goal Calculation for Non-Car Rental Concessions and Attachment 3 – Overall Goal Calculation for Car Rental Concessions*)

If the Airport projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachments of this plan. (23.25(e)) (*Attachment 2 – Overall Goal Calculation for Non-Car Rental Concessions and Attachment 3 – Overall Goal Calculation for Car Rental Concessions*)

The Airport will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBE's. The Airport will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(g))

Section 23.27 Reporting

The Airport 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.

The Airport will submit its accomplishments annually on the Uniform Report of DBE Commitments/Awards and Payments via the DOT DBE Office Online Reporting System ("DOORS").

Section 23.29 Compliance and Enforcement Procedures

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

1. The Airport will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The Airport will consider similar action under our own legal authorities, including responsibility determinations in future contracts. *Attachment 5* lists the regulation, provisions, and contract remedies available to the Airport in the event of non-compliance with the ACDBE regulation by a participant in our procurement activities.
3. The Airport will also provide a monitoring and enforcement mechanism to verify that work committed to ACDBE's at contract award is actually performed by the ACDBE's. 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. These mechanisms will include, but not be limited to, the following:
 - Review solicitation package documentation throughout, obtaining clarification, of necessary.
 - Monitor progress of gross revenues generated by ACDBE's and expenditures paid to DBE's as applicable through monthly reports from concessionaires.
 - Monitor progress of ACDBE's work through scheduled and unscheduled on-site visits and communication with ACDBE's.
 - Contract monitoring files will contain written certification that staff has reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at the Airport for the purpose of compliance with the ACDBE contract requirements and the Airport's ACDBE Program.

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

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31

The Airport will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBE's to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by Florida Department of Transportation which will make certification decisions on behalf of the Airport for ACDBE's.

The Airport is a member of the Florida Unified Certification Program (FUCP) administered

by the Florida Department of Transportation (FDOT). The Florida Unified Certification Program Disadvantaged Business Enterprise (UCP DBE) maintains a searchable listing of all certified Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) firms eligible to perform work under the federal DBE Program. Florida UCP Certifying Members are responsible for ensuring that DBE information is accurate.

All certification procedures will be handled through the FDOT pursuant to the agreement establishing a Unified Certification Program for Disadvantaged Business Enterprises in the State of Florida between the Airport and the Florida Department of Transportation.

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 personal net worth (PNW) standard, and the firm in all other respects remains an eligible ACDBE, the Airport 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)).

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The Airport 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 Airport will review the goals annually to make sure the goal continues to fit the Airport's circumstances. The Airport 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 Airport's overall goals will provide for participation by all certified ACDBE's and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

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

Section 23.45**Overall Goals**

The Airport operates as a small hub primary airport. As a condition of eligibility for FAA financial assistance, the Airport will submit its overall goals according to the following schedule:

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Small Hubs	All Regions	October 1, 2018 (2019/2020/2021)	October 1, 2021 (2022/2023/2024)

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 Airport will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

The Airport will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBE's in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the Airport'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 Airport 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).

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 3 – Overall Goal Methodology for Car Rentals* to this program.

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 2 – Overall Goal Methodology for Concessions for Non-Car Rental* to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in *Attachments 2 and 3* 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

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

The Airport will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. The Airport 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 DBE/ACDBE's, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

The Airport 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 Airport 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 Airport will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from DBE/ACDBE's by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

Good Faith Efforts 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 Airport's concession specific goals.

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

The Airport's ACDBELO, Ms. Andrea Kvech is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

The Airport 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.

Information to be submitted (26.53(b))

The Airport treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information (*Attachment 4*):

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

Administrative reconsideration (26.53(d))

Within ten (10) days of being informed by the Airport that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following reconsideration official:

Daniel E. Flynn, Airport Director
Pensacola International Airport
2430 Airport Blvd., Suite 225
Pensacola, Florida 32504

The reconsideration official will not have played any role in the original determination that the bidder/offeror 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 the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The Airport will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the USDOT.

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

The Airport will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a contract with another certified ACDBE, to the extent needed to meet the contract goal. The Airport requires the concessionaire to notify the ACDBELO immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the Airport will require the concessionaire to obtain the Airport's prior written approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The concessionaire must include the specific reasons for the termination and/or failure to complete its agreement as set forth above. The concessionaire must also provide the ACDBE with any and all documents and information as may be requested with respect to the termination or substitution of the ACDBE.

If the concessionaire fails or refuses to comply in the time specified, the contracting officer will give notice of intent to terminate the award or contract within 10 days of the notice unless satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Each solicitation for which a contract goal is established will include a provision requiring a bidder/offeror submit information concerning ACDBE participation. Therefore, the following provisions stating the specific contract goal will be included in such solicitation and contract documents:

The requirements of 49 CFR Part 23, Regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the Airport 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 contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of # percent has been established for this concession. The concession firm shall make good faith efforts, as defined in 49 CFR Part 26 Appendix A, 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 that will participate in the contract;
- (2) A description of the work that each ACDBE firm will perform;
- (3) The dollar amount of the participation of each ACDBE firm participating;
- (4) Written and signed documentation commitment to use an ACDBE whose participation it submits to meet a contract goal;
- (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
- (6) If the contract goal is not met, evidence of good faith efforts.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

The Airport will count ACDBE participation toward overall goals for car rentals as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57 (b) Goal Shortfall Accountability

If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A) 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 the new fiscal year.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.73 Privately-Owned or Leased Terminal Buildings

(This section is not applicable to Pensacola International Airport at this time.)

Section 23.75 Long-Term Exclusive Agreements

The Airport 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. The Airport understands that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

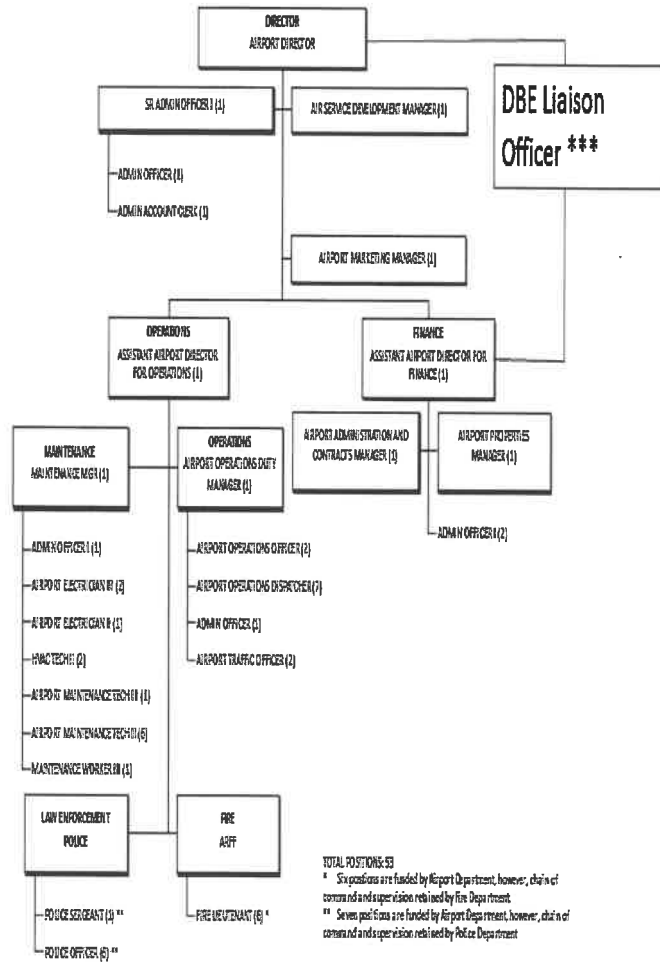
Section 23.79 Geographic Preferences

The Airport will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in the South Alabama/NW Florida area an advantage over ACDBE’s from other places in obtaining business as, or with, a concession at the Airport.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 Overall Goal Calculation for Non-Car Rental Concessions
- Attachment 3 Overall Goal Calculation for Car Rental Concessions
- Attachment 4 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 5 Monitoring and Enforcement Mechanisms
- Attachment 6 Certification Application Forms
- Attachment 7 Regulations: 49 CFR 23

Attachment 1



*** Chart reflects the reporting function line of the DBELO and does not denote a separate position

Attachment 2
PENSACOLA INTERNATIONAL AIRPORT
OVERALL AIRPORT CONCESSIONS DISADVANTAGED
BUSINESS ENTERPRISE GOAL
FISCAL YEARS 2019-2021

Section 23.45: Overall Goal Calculation for Non-Car Rental Concessions

Amount of Goal

The Airport's overall goal for concession other than car rentals during the period beginning October 1, 2017 and ending September 30, 2021 is the following: **40%** of the total gross receipts for concessions at the Pensacola 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: Advertising, Banking, Food and Beverage, Retail, and Vending. The estimated gross receipts revenue projected for existing concessions, assuming 3% revenue growth for the goal period is **\$10,575,834**. 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, Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i))

The Airport has determined that its market areas are: Alabama, Florida, Georgia, and Mississippi. This is the geographical area(s) in which the substantial majority of firms which do concessions business with the Airport are located and the geographical area(s) in which the firms receive a substantial majority of concessions related revenues. The Airport considered the locations of the corporate headquarters of current concessionaires at the Airport as well as respondents of recent RFP's.

Methodology used to Calculate Overall Goal

Goods and Services

The Airport can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. The Airport, 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

The Airport can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The Airport, 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 ACDBE's 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.

Step 1: 23.51(c)

The Airport determined the base figure for the relative availability of ACDBEs other than car rentals by reviewing the list of responders to Requests for RFP's circulated by the Airport since 2012. The base figure was calculated as follows:

$$\text{Base Figure} = \frac{\text{Ready, willing, and able ACDBE concessions firms in the market area}}{\text{All ready, willing and able concessions firms in the market area}}$$

$$\text{Base Figure} = \frac{1}{10}$$

The data source or demonstrable evidence used to derive the numerator was an Active Participant list as outlined in 23.51(c)(2). This number is based upon the past experience of the Airport. The data source or demonstrable evidence used to derive the denominator was an Active Participant List as outlined in 23.51(c)(2).

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: **10%**

Anticipated Concessions Types for Solicitation during FY 2019 - 2021	Number DBEs	All Firms	Availability
Retail	1	4	25%
Automatic Teller Machine	0	6	0%
Totals	1	10	

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBE's, the Airport 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 adjusted our base figure.

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

Past participation – We evaluated the current capacity of ACDBE's to perform work in our

non-car rental concessions program by measuring the volume of work ACDBE's have performed in the past. The following steps were taken to calculate this Step 2 adjustment:

1. The ACDBE accomplishments reported in the concessions program at PNS were reviewed for Fiscal Years 2013-2016.
2. The percentages were arranged from low to high to arrive at the median of 70%.
3. Finally, the median of past participation was added to the Step 1 Base Goal and divided by 2 to arrive at the average.

Fiscal Year	Percentage of ACDBE participation in Non-Car Rental Concessions
2013	78%
2014	50%
2015	63%
2016	86%

Fiscal Year Goal = (Step 1 Base Goal + Step 2 median)/2

$$(10\% + 70\%) \div 2 = 40\%$$

FY 2019 - 2021 Overall Goal = 40%

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, the Airport consulted with the following stakeholders:

- Florida Department of Transportation, Office for Equal Business Opportunity;
- City of Pensacola Purchasing Department;
- Pensacola Chamber of Commerce; and
- Gulf Coast African American Chamber of Commerce.

After consulting with the list of Stakeholders above, the Airport has not been made aware of any such action that would cause further adjustment to the overall ACDBE goals.

Breakout of Estimated Race-Neutral & Race Conscious Participation for Non-Car Rental Goal (Section 23.51)

Pensacola International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport uses the following race-neutral means to increase ACDBE participation. Locating and identifying ACDBE's and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23.

1. Notifying ACDBE's of concession opportunities and encouraging them to compete, when appropriate;
2. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBE's;
3. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
4. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Airport's ACDBE program will affect the procurement process;

5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
6. 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 **40%**, we will obtain **40%** from race-neutral participation and **0%** through race-conscious measures.

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

1. 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 3

PENSACOLA INTERNATIONAL AIRPORT OVERALL AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE GOAL FISCAL YEARS 2019-2021

Section 23.45: Overall Goal Calculation for Car Rental Concessions

Amount of Goal

The Airport's overall goal for car rentals during the period beginning October 1, 2017 and ending September 30, 2021 is the following: **2%** of the total gross receipts of car rental operations at the Pensacola International Airport.

The ACDBE opportunities anticipated during this goal period are: Car Rental Operations with estimated gross receipts revenue of **\$103,500,000**. 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, the Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least six months before executing the new concession agreement. (23.45(i))

The Airport has determined that its market areas are: Northwest Florida and Southern Alabama. This is the geographical area(s) in which the substantial majority of firms which do car rental business with the Airport are located and the geographical area(s) in which the car rental firms receive a substantial majority of concessions related revenues.

Methodology used to Calculate Overall Goal

Goods and Services

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

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

$$\text{Base Figure} = \frac{0}{9}$$

The data source or demonstrable evidence used to derive the numerator was an active participant list as outlined in 23.51 (c)(2). The active participants list was developed based on existing car rental firms operating at the Airport and firms that expressed as interest in doing business at Pensacola International Airport as concessionaires.

The data source or demonstrable evidence used to derive the denominator was an active participant list as outlined in 23.51 (c)(2). The active participants list was developed based on existing car rental firms operating at the Airport and firms that expressed as interest in doing business at Pensacola International Airport as concessionaires.

When we divided the numerator by the denominator, we arrived at the base figure for our overall goal for car rental concessions of: **0%**

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBE's, 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 **2%**.

The Airport chose to adjust the figure with the aspiration of the rental car companies obtaining goods and services from local DBE's. Our overall goal for car rental concessions is **2%**.

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, the Airport consulted with the following stakeholders:

- Florida Department of Transportation, Office for Equal Business Opportunity;
- City of Pensacola Purchasing Department;
- Pensacola Chamber of Commerce; and
- Gulf Coast African American Chamber of Commerce.

After consulting with the list of Stakeholders above, the Airport has not been made aware of any such action that would cause further adjustment to the overall ACDBE goals.

Breakout of Estimated Race-Neutral & Race Conscious Participation for Car Rental Goal (Section 23.51)

The Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport uses the following race-neutral means to increase ACDBE participation. Locating and identifying ACDBE's and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23.

1. Notifying ACDBE's of concession opportunities and encouraging them to compete, when appropriate;
2. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBE's;
3. Providing technical assistance to ACDBE's in overcoming limitations, such as inability to obtain bonding or financing;
4. Ensuring that competitors for concession opportunities are informed during pre-

- solicitation meetings about how the Airport's ACDBE program will affect the procurement process;
5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
 6. 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 **2%**, we will obtain **2%** from race-neutral participation and **0%** through race-conscious measures.

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

1. 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 4 ACDBE Bid Forms 1-3

BIDDERS LIST FORM

The Pensacola International Airport (PNS) is required per 49 CFR 26. 11 (c) to create and maintain a comprehensive Bidders List. The Bidders List Form will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency's annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific project. Please provide the following mandatory data:

Part A: Business Data

Business Name: _____

Business Address:

Street	City	State	Zip
--------	------	-------	-----

County Business is located in: _____

Name of Contact Person: _____

Phone: () _____ 6. Fax: () _____

Email Address: _____

Is this business certified as a Disadvantaged Business Enterprise? Yes No

Business Annual Gross Receipts:

Less than \$500,000	\$500,000 to \$1,000,000	\$1,000,000 to \$2,000,000	\$2,000,000 to \$5,000,000
Over \$5,000,000			

Age of Business: _____ Years _____ Months

Part B: Project and Work Description

RFP # _____

Project Name: _____

Provide brief description of scope of work, services, and/or materials to be performed/furnished:

Will you subcontract any of your work? Yes* No
(* If "Yes," the subcontractor(s) must complete an individual Bidders List Form also.)

Part C: Signature

The undersigned declares that the information set forth on this page is current, complete and accurate.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title: _____

**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)

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.

Attachment 5

Monitoring and Enforcement Mechanisms

The Airport 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.
2. Other actions deemed appropriate including responsibility reviews on the future concession award opportunities.

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

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

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

Pre-Bid/Proposal Conference

The ACDBELO, or designee, shall attend a pre-bid/proposal conference to make a presentation explaining the following:

1. The goal for the specification solicitation.
2. The requirements related to achieving the goal.
3. The criteria for evaluating a bidder/proposer's Good Faith Efforts.
4. ACDBE Certification requirements.
5. The requirement for Letters of Intent with Subcontractors.
6. Qualifications for counting ACDBE participation towards the ACDBE goal.

Concession Agreements and Management Contracts

The Airport will insert the following provisions into agreements/contracts:

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 agreements covered by 49 CFR Part 23.
2. The concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that enters and case those businesses to similarly include the statements in further agreements.

Good Cause to Terminate an ACDBE Firm

49 CFR 26.53 of the Federal Regulations has provided that good cause for “terminating” an ACDBE firm includes the following reasons:

1. The listed ACDBE subcontractor fails or refuses to execute a written contract.
2. The listed ACDBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
3. The listed ACDBE contractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
4. The listed ACDBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law.
5. We have determined that the listed ACDBE subcontractor is not a responsible contractor.
6. Other documented good cause that we determine compels the termination of the ACDBE subcontractor.

Violations to the ACDBE Program

Below are the sanctions/remedies the Airport will enforce in the event of noncompliance with the ACDBE regulation by a participant in the procurement activates:

1. A bidder, proposer, contractor, or applicant for certification is subject to being barred, suspended, or deemed non-responsive in future Airport solicitations and contracts for a period up to five year.
2. Any violation must be referred to the City’s Purchasing Department for evaluation of proper sanctions.
3. An ACDBE that repeatedly and knowingly refuses to honor bid or proposal prices is subject to being decertified by the Airport Director, after notice.
4. Nothing in this section shall be deemed to prevent the City’s Attorney from seeking criminal sanctions.
5. For federally funded contracts administered pursuant to federal regulation, sanctions may be imposed as provided therein.

In order to dispute a finding a violation, the bidder/contractor must submit a written request for review to the ACDBE Liaison Officer within 7 days of receipt of written notice of the violation. The review is an informal meeting and outcome shall be comminuted to the bidder/contractor in writing within 10 calendar days.

Attachment 6

Certification Application Forms

The Florida Department of Transportation's DBE Program, administered by the Equal Opportunity Office, is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a level playing field and foster equal opportunity and non-discrimination in DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

The FUCP Uniform Certification Application is also available at the following website:

http://www.fdot.gov/equalopportunity/New_Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf

Attachment 7

Regulations: 49 CFR Part 23

49 CFR Part 23 is available at:

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