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Policy Statement. (49 CFR §23.1 and §23.23)

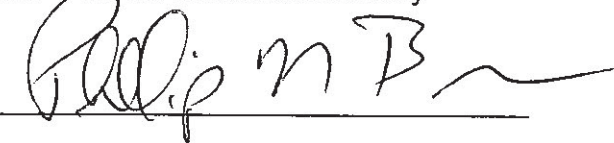
The United States Congress has made a determination that certain classes of businesses described as Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have been underutilized because of discrimination. The Greater Orlando Aviation Authority (the "Aviation Authority") is required to recognize and certify these ACDBEs. The Aviation Authority, operator of the Orlando International Airport (the "Airport"), has established this Airport Concession Disadvantaged Business Enterprise program in accordance with Regulations of the U.S. Department of Transportation ("DOT") 49 CFR Part 23. The Aviation Authority has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Aviation Authority has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Aviation Authority to ensure that ACDBEs, as defined in 49 CFR Part 23, have an equal opportunity to receive and participate in concession opportunities. In order to implement the Aviation Authority's policy, staff has established the following objectives and is directed as follows:

- To ensure nondiscrimination in the award and administration of concessions opportunities;
- To create a level playing field on which ACDBEs can compete fairly for concession opportunities;
- To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
- To help remove barriers to the participation of ACDBEs in concessions opportunities;
- To provide appropriate flexibility to the Airport in establishing and providing opportunity for ACDBEs; and
- To promote the development of firms that can compete successfully in the marketplace outside of the ACDBE program.

The Director of the Office of Small Business Development has been designated as the ACDBE Liaison Officer. In that capacity, the Director 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 Aviation Authority in its financial assistance agreements with the DOT.

Greater Orlando Aviation Authority

By: 

I. DEFINITIONS.

The Aviation Authority will use terms in this program that have the meaning defined in 49 CFR Part 23 § 23.3 and Part 26 § 26.5 where applicable.

“Affiliation” has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121, except that the provisions 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 the 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” means the Orlando International Airport.

“Airport Concession Disadvantaged Business Enterprise” means a concessionaire that is a for-profit small business concern that is (a) at least fifty-one percent (51%) owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In any event, the socially and economically disadvantaged individual(s) cannot exceed the personal net worth limitation.

“Alaska Native” means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

“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, as amended (43 U.S.C. 1601, et seq.).

“Aviation Authority” means the Greater Orlando Aviation Authority.

“Aviation Authority Board” means the governing board of the Greater Orlando Aviation Authority.

“Chief Executive Officer” means the Chief Executive Officer of the Aviation Authority or the person or persons designated by the Chief Executive Officer to act on his behalf with respect to issues delegated to the Chief Executive Officer 's authority in this policy.

“Compliance” means a recipient has correctly implemented the requirements of this part.

“Concession” means one or more of the types of for-profit businesses listed below:

A. a business located at the Airport, subject to Part 23, that is engaged in the sale of consumer products or services to the public under an agreement with the Aviation Authority or another concessionaire;

B. a business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location at the Airport subject to Part 23, 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 good and services to concessionaires.

49 CFR Part 23 contains a listing of the types of businesses which are not considered concessions.

A concession may be operated under various types of agreements, including but not limited to:

- a. A lease;
- b. A sublease;
- c. A permit;
- d. A contractor subcontract; or
- e. Another instrument or arrangement.

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

“Department or 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 a concession.

“Good faith efforts” means efforts to achieve an ACDBE goal or other requirement of Part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill 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 share 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 (1%) 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.

“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.

“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 a recipient has not correctly implemented the requirements of this part.

“Part 23” means 49 CFR Part 23, the Department of Transportation’s Airport Concession Disadvantaged Business Enterprise regulation for DOT-assisted contracts.

“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 does not include:

- (1) The individual’s ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; and
- (2) The individual’s equity in his or her primary place of residence.

“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.

“Program” means any undertaking on a recipient’s part to use DOT financial assistance authorized by the laws to which Part 23 applies.

“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.

“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. For the purposes of this part, Recipient is the Authority.

“Regulations” means 49 CFR Part 23 and 49 CFR Part 26, as applicable.

“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 49 CFR §23.33.

“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.

The Aviation Authority generally assumes that business owners who fall into one of these groups are socially and economically disadvantaged. Their disadvantaged status generally will not be investigated unless a third-party challenge is made. Information concerning challenge procedures is set forth below.

"Tribally-owned concern" means any concern at least fifty-one percent (51%) owned by an Indian tribe as defined in this section.

"You" refers to a recipient unless a statement in the text of Part 23 or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

II. GENERAL REQUIREMENTS.

A. Non-Discrimination (§23.9)

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

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

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

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

B. ACDBE Program Updates

The Aviation Authority is a large hub primary airport required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Aviation Authority will submit its ACDBE program and overall goals to the FAA according to the following schedule:

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

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

C. Designation of ACDBE Liaison Officer (§23.23)

Pursuant to 49 CFR §23.23, the ACDBE program shall be administered by the ACDBE Liaison Officer, the Director of the Office of Small Business Development, who has been appointed by and has direct and independent access to the Chief Executive Officer of the Aviation Authority on ACDBE issues. The ACDBE Liaison Officer will be the primary person responsible for implementing all aspects of this ACDBE Program and will work closely with all other departments of the Aviation Authority who are responsible for making

decisions relative to the Aviation Authority's concession related contracting opportunities. Please refer to organizational chart attached hereto as Appendix "A".

The Aviation Authority has designated the Director of the Office of Small Business Development as the ACDBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the ACDBE program and ensuring that the Aviation Authority complies with all provisions of Part 23. The Director shall have direct, independent access to the Chief Executive Officer concerning ACDBE program matters. Any correspondence or questions should be sent to:

Greater Orlando Aviation Authority
Office of Small Business Development
Orlando International Airport
5850-B Cargo Road
Orlando, Florida 32827
Phone: 407-825-7133
Fax: 407-825-3004

Duties and responsibilities of the ACDBE Liaison Officer include the following:

1. Gathering and reporting statistical data and other information as required by the FAA or DOT;
2. Reviewing third party contracts for compliance with this program;
3. Working with all appropriate departments to set overall annual goals;
4. Ensuring that bid notices and requests for proposals are available to ACDBEs in a timely manner;
5. Identifying concession opportunities, contracts and procurements so that ACDBE goals, both race-neutral and contract specific, are included in solicitations;
6. Monitoring results of solicitations containing ACDBE goals;
7. Analyzing the Aviation Authority's progress toward goal attainment and identifying ways to improve progress;
8. Participating in pre-bid/pre-proposal meetings;
9. Advising the Chief Executive Officer on ACDBE matters and achievement;

10. Participating with legal counsel and project directors to determine contractor compliance with good faith efforts;
11. Providing ACDBEs with information and assistance in preparing bids, obtaining bonding and insurance;
12. Planning and participating in ACDBE training seminars;
13. Certifying ACDBEs according to the criteria set by DOT and acting as liaison to the Uniform Certification Process in Florida;
14. Providing outreach to ACDBEs and community organizations to advise them of opportunities; and
15. Maintaining the Aviation Authority's updated directory on certified ACDBEs.

The ACDBE Liaison Officer, or his or her designee, is responsible for the implementation of the ACDBE program in coordination with the Concessions Department.

D. Active Participants List (§23.23)

The Aviation Authority will use information collected pursuant to Section IV, subpart G.1.A., of this policy to create and maintain an Active Participants List.

E. Long Term and Exclusive Contracts (§ 23.75)

The Aviation Authority will only enter into long term and exclusive contracts with concessionaires pursuant to the Regulations. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, the Aviation Authority will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

III. DETERMINING AND ACHIEVING GOALS FOR ACDBE PARTICIPATION. (§23.25)

The Aviation Authority shall establish separate overall three-year goals for the participation of ACDBEs in rental car and non-rental car concession related contracting opportunities as required by the Regulations. Both overall goals of the Aviation Authority shall be expressed as a percentage of total gross receipts. The Aviation Authority's overall goals represent the amount of ready willing and able ACDBEs that are available to participate in contracting opportunities and are reflective of the amount of ACDBE participation the Aviation Authority would expect absent the effects of discrimination. The Aviation Authority intends to meet the goals to the maximum extent feasible through race-neutral measures as described herein. In the event race-neutral measures are inadequate to meet an overall goal, the Aviation Authority will use race-conscious

measures which may include establishing specific contract goals for particular concessions opportunities. While the Aviation Authority's prime objective is to provide concession opportunities to ACDBEs to own and operate independent concessions, the Aviation Authority shall require all businesses subject to ACDBE goals at the Airport to make good faith efforts to explore all available options to meet goals. The overall three-year goals shall be reviewed annually to determine whether the goals continue to fit the circumstances of the Aviation Authority.

A. Ensuring Non-discriminatory Participation of ACDBEs

The Aviation Authority will take the measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities.

The Aviation Authority 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.

The Aviation Authority's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in this plan. The goals are set consistent with the requirements of Subpart D. (§23.25(b), (d)).

If the Aviation Authority projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described herein.

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

B. Reporting

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

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

C. Compliance and Enforcement Procedures

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

1. The Aviation Authority 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 steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment of Program Fraud and Civil Penalties rules) provided in 49 CFR § 26.107.
2. The Aviation Authority will consider similar action under its legal authorities, including responsibility determinations in future contracts.
3. The Aviation Authority will 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. Attending monthly meetings with the Concessions Department (goal: to review the performance of ACDBEs, discuss any issues (operational or financial)). Inquire about all ACDBEs to including those not under direct lease with the Aviation Authority.
 - b. Reviewing draft Request for Proposal (RFP) and bid documents with the Concessions Department and legal counsel.
 - c. Attending any and all meetings where the Concessions Department will present key elements of the RFP/bid documents.
 - d. Presenting participation information at pre-proposal meetings.
 - e. Obtaining and reviewing all proposals to calculate proposed ACDBE percentages, ensure firms are certified, confirm participation amount with sub-concessionaire and if the goal is not met, perform good faith effort review.
 - f. Preparing memorandum to the Concessions Department advising of status of proposed participation.

- g. Attending the Concessions/Procurement Committee meeting (make sure minutes from next meeting and the current memo get into file).
- h. Attending Aviation Authority Board agenda meetings to ensure any ACDBE award language is included in draft board items. Obtaining copies of Aviation Authority Board approved items with participation goals for follow-up.
- i. Ensuring receipt of monthly disbursement report.
- j. Conducting compliance check at least two times each fiscal year.
- k. Conducting annual meeting with prime concessionaires to review participation.

In the Aviation Authority's reports of ACDBE participation to FAA, the Aviation Authority will show both commitments and attainments, as required by the DOT reporting form.

IV. GOALS, GOOD FAITH EFFORTS, AND COUNTING.

A. Overall Goal Requirement

The Aviation Authority will establish two separate overall goals, one for car rentals and another for concessions other than car rentals which will be disclosed as a percentage of the FAA funds that it anticipates expending on FAA-assisted contracts in the three (3) forthcoming fiscal years. The Aviation Authority shall submit its overall ACDBE goals for car rentals and concessions other than car rentals to the DOT on October 1 every three years and the overall goals will cover a three-year period. The Aviation Authority will review the goals annually to make sure the goals continue to fit the Aviation Authority's circumstances. In the event there are changed circumstances, the Aviation Authority may adjust its three-year goal. The adjusted goal will be submitted to the DOT for review and approval.

B. Methodology for Setting Overall ACDBE Goals (§23.51)

In developing its overall goals, the Aviation Authority reviews concession opportunities that will occur during the goal period, including those arising:

- 1. When a new concession agreement will be awarded;
- 2. When the Aviation Authority will exercise an option (if contained in the relevant agreement) to extend an existing agreement; and

3. When a material amendment will be made to an existing agreement, to the extent these are known in advance.

The ACDBE Liaison Officer, in conjunction with other appropriate Aviation Authority staff, will determine the total available businesses according to the relevant contracting market area.

The ACDBE Liaison Officer will conduct a similar analysis to determine the ACDBEs that are available to participate in the projected contracts. The ACDBE Liaison Officer may consult a variety of sources including, but not limited to, the Aviation Authority's Active Participant List discussed herein. The number of all ACDBE businesses shall be divided by the total businesses available to participate to establish a base goal.

Once a base for the goal is established, the ACDBE Liaison Officer along with staff will evaluate all available evidence to determine if an adjustment in the base figure is needed in order to arrive at a more accurate overall goal. The Aviation Authority believes that an adjustment for theme retail activity is warranted relevant to the non-car rental concession goal.

C. Rationale for Calculating Overall Non-Car Rental Goal Excluding Theme Retail

Given the nature of the Airport's concessions, the Aviation Authority would establish disproportionate percentage goal of forthcoming Airport concession opportunities to ACDBEs if "theme retail" revenues were included, which generates an unusually large share of total concession receipts. Theme retail concessions are unique to Orlando. They are concessions operated by area tourist attractions for the sale of themed and logoed goods relating specifically to the operator's respective attractions. Theme retail concessions currently include Sea World, Walt Disney World, Universal Orlando and Kennedy Space Center. The attempts of the Aviation Authority to secure ACDBE participation in theme retail concessions have been unsuccessful.

D. Adoption of Overall Goals

Once the concession goals are established, such goals shall be submitted to the Chief Executive Officer for review. Upon review and approval of the Chief Executive Officer, the goals shall be submitted to the Aviation Authority Board. The Aviation Authority Board will adopt separate three-year goals for rental car and non-rental car concession related opportunities, which shall include a projection of the portion of the goals that can be achieved through race-neutral and race-conscious measures. The ACDBE goals shall be submitted to the FAA every three years from the first date of submission.

If the average annual concession revenues for car rentals over the preceding three years do not exceed \$200,000, the Aviation Authority 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 three years do not exceed \$200,000, the Aviation Authority need not submit an overall goal for concessions other than car rentals. The Aviation Authority understands that “revenue” means the total revenue generated by concessions, not the fees received by the Airport from concessionaires.

E. Consultation in Goal Setting

The Aviation Authority consults the 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 organizations 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 Aviation Authority efforts to increase participation of ACDBEs.

Following the consultation, the Aviation Authority will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Aviation Authority’s principal office for forty-five (45) days following the date of notice and informing the public that the Aviation Authority and DOT will accept comments on the goals for forty-five (45) days from the date of the notice. The submitted plan is subject to modifications based upon the Aviation Authority’s review of any comments received through the date closing the comment period. Following the review period, the Aviation Authority will hold a public meeting to explain the goal methodology and provide an opportunity for questions and comments on the proposed goal.

The Aviation Authority’s overall goal submission to the DOT will include a summary of information and comments received during this public participation process and the Aviation Authority’s responses.

Once the final Program is approved by the FAA, the Aviation Authority will begin using the overall goal on October 1 of each year, unless the Aviation Authority has received other instruction from the DOT, and will distribute a copy of the Program to the abovementioned stakeholders via public publication of the Program on the Aviation Authority’s website.

F. Achieving Overall Goals

The Aviation Authority shall strive to achieve the overall goals for ACDBE participation through a combination of race-neutral measures and race-conscious measures. The Aviation Authority shall not use quotas or set-asides for ACDBE participation in the Program, which are prohibited by 49 CFR § 23.61.

The Aviation Authority will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 49 CFR § 26.51(f)) and will track and report race-neutral and race-conscious participation separately.

1. Race-Neutral Methods

The Aviation Authority intends to use race-neutral methods to the maximum extent feasible to achieve its overall goal. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry an ACDBE goal; ACDBE participation on a prime contract exceeding a contract goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award. The Aviation Authority will use the following measures as appropriate:

- a. Notifying ACDBE and other small business community organizations that Aviation Authority contracting and subcontracting opportunities are available;
- b. Structuring concession activities so as to encourage and facilitate the participation of ACDBEs when practical and subdividing as many trade items as prudently possible into small contractual elements which will enable small trade contractors to compete effectively;
- c. Disseminating the Aviation Authority's ACDBE policy by advertising in news media, including minority-focused new media, and by notifying and discussing this policy with all contractors and suppliers;
- d. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Aviation Authority's ACDBE Program will affect the procurement process;
- e. Conducting pre-bid conferences to provide firms with an opportunity to ask questions about ACDBE requirements and encouraging ACDBE contractors to attend these conferences;
- f. Providing plans and specifications to ACDBE and other small business contractor organizations at a reduced cost;
- g. Providing ACDBE and other small business community organizations with lists of firms bidding as prime contractors;

- h. Assisting prime contractors in efforts to obtain the names and addresses of ACDBE firms that may be utilized as subcontractors;
- i. Assisting ACDBEs in overcoming limitations in bonding and financing through the Surety Bond and Financing/Loan Guarantee Program and, where reasonable, providing for relaxed bonding requirements;
- j. Providing information to small business regarding concession and management opportunities at the Airport;
- k. Facilitating introductions to the Aviation Authority's and other U.S. DOT recipients' contracting activities, through various Small Business Conferences and Hispanic Chamber, Black Board of Trade and Commerce, African American Chamber, Hispanic Business Initiative Fund, Black Business Initiative Fund, Women and Minority Business Enterprise Alliance and Asian Business Chamber sponsored events and conferences as well as other outreach activities;
- l. Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of ACDBEs;
- m. Ensuring the distribution of the UCP Database to the widest feasible universe of potential concessionaires and management services contractors by listing the website location in the RFPs and Request for Qualifications (RFQ);
- n. Participating in the local small business conference expos;
- o. Providing information on concession opportunities to local minority assistance organizations including the Minority/Women Business Enterprise Alliance, the Hispanic Business Initiative Fund and the Black Business Initiative Fund;
- p. Utilizing a small business initiative program initiated as a pilot program some years ago which designates opportunities to small businesses referred to as the Local Developing Business policy;
- q. Providing procedures for accelerated semi-monthly progress payments to meet certain cash flow needs of ACDBE and other small business firms; and
- r. Reimbursing contractors for aggregate purchases of materials and equipment (which have been properly received and satisfactorily stored) in the next succeeding monthly or semi-monthly payment.

2. Race-Conscious Methods

Unless the Aviation Authority determines that other race-conscious methods should be used, the Aviation Authority shall establish contract-specific ACDBE participation goals when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The goals shall be established by the Aviation Authority, and substantiated by information furnished by the ACDBE Liaison Officer. The contract-specific goal shall apply to the percentage of ACDBE participation calculated based on total gross receipts for concessions, and shall be set forth in the bid solicitation's ACDBE provisions. The Aviation Authority is not required to establish a contract-specific goal for every contracting opportunity. For each contract the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

- a. The projected portion of the overall goals that will be met by establishing contract-specific goals;
- b. The progress toward achieving the overall goals;
- c. The full range of activities in the proposed contract;
- d. The availability of ACDBEs for the types of work involved in the performance of the proposed contract;
- e. The unique conditions of the contract that might affect the ability of the concession related firm to coordinate, utilize or incorporate other concession related firms into the projects;
- f. The effect that the contract-specific goal might have on the time of completion;
- g. If the objective of the contract-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession;
- h. If the goal applies to purchase or leases of goods and services, the goal will be calculated by dividing the estimated dollar value of all purchases to be made by the concessionaire;
- i. Notwithstanding any of the above, concessionaires shall make good faith efforts to explore all available options to meet goals to the maximum extent practicable, through direct ownership arrangements with ACDBEs; and

- j. Any other relevant criteria.

G. Awarding Contracts with Contract-Specific Goals

The Aviation Authority will use contract goals to meet any portion of the overall goal the Aviation Authority does not project being able to meet using race-neutral means including but not limited to, arranging solicitations, time for the presentation of bids, quantities, drafting specifications and delivery schedules in ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses. The Aviation Authority will not use a local geographic preference in awarding contracts.

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The ACDBE Liaison Officer will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of ACDBEs to perform the particular type of work).

The Aviation Authority will express contract goals as a percentage of the total amount of a DOT-assisted contract.

Any proposed concessionaire that fails to demonstrate that it achieved the contract-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and therefore, shall be ineligible for award of the contract.

1. Proposed ACDBE Participation in Bid Document (§ 23.25 and § 26.53)

A. Information to Be Submitted:

As a matter of responsiveness, each bidder or proposer must submit to the Aviation Authority, together with the bid or proposal, at the designated time for bid or proposal submittal:

- i. The names, addresses and telephone numbers of ACDBE firms that will participate in the contract;
- ii. The firm’s status as an ACDBE or non-ACDBE;
- iii. The age of the firm;
- iv. A description of the work that each ACDBE will perform;

- v. The dollar amount of the participation of each ACDBE firm participation, as either estimated gross receipts or estimate total contract value;
- vi. Written and signed confirmation from the ACDBE that is participating in the contract as provided in the prime bidder/proposer's commitment; and
- vii. Any such other information as the Aviation Authority may request in the invitation or request for bids/proposals.

The Aviation Authority will use this information to maintain and update its Active Participants List (§ 23.51(c)(2)). This list will be augmented by any entity expressing an interest in doing business at the Airport. Such list will consist of information about all ACDBE and non-ACDBE firms that bid or quote on DOT-assisted contracts. The Active Participants list will include the name, address, and ACDBE or non-ACDBE status.

The Aviation Authority will collect this information as to subcontractors by requiring bidders to include a list of all firms quoting on subcontract work for each project as described above.

2. Good Faith Efforts (§ 23.25)

If the bidder or proposer does not meet the contract goal, the bidder/proposer must submit evidence of good faith efforts. The obligation of the bidder or proposer is to make good faith efforts to meet the ACDBE contract goal. The bidder or proposer can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts to do so. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26 and include:

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the ACDBEs to respond the solicitation. The bidder must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow-up initial solicitations.
- B. Selecting portions of the work to be performed by ACDBEs in order to increase the likelihood that the ACDBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate ACDBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested ACDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- D. Negotiating in good faith with interested ACDBEs.
 - i. It is the bidder's responsibility to make a portion of the work available to ACDBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available ACDBE subcontractors and suppliers, so as to facilitate ACDBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for ACDBEs to perform the work.
 - ii. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including ACDBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a bidder's failure to meet the contract ACDBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from ACDBEs if the price difference is excessive or unreasonable.
- E. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.
- I. A promise to use ACDBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

Within two (2) business days after receipt of a request from the Aviation Authority, competitors failing to meet the ACDBE contract goal must submit documentation of the good faith efforts they made before submission of the

bid/proposal, to achieve the ACDBE goal. The Aviation Authority may evaluate not only the different kinds of efforts made by the bidder, but also the quality and intensity of those efforts. Efforts made by the competitor after submission of the bid/proposal to meet the ACDBE contract goal will not be considered by the Aviation Authority.

The ACDBE Liaison Officer and legal counsel shall make the determination whether a bidder or proposer has made a good faith effort to meet the contract goal.

The Aviation Authority will ensure that all information is complete and accurate and adequately documents the bidder's or proposer's good faith efforts before it commits to the performance of the contract by the bidder or proposer.

3. Administrative Reconsideration

- A. In the event the Aviation Authority's ACDBE Liaison Officer and legal counsel determine that a bid should be rejected for failing to demonstrate good faith efforts, the Aviation Authority's ACDBE Liaison Officer shall promptly provide a written explanation of the basis for rejection. A bidder or proposer may appeal the ACDBE Liaison Officer's determination to the Chief Executive Officer. The Chief Executive Officer is the sole administrative reconsideration contact. The Chief Executive Officer plays no role in the determination by the ACDBE Liaison Officer whether good faith efforts were made. The reconsideration must be filed within five (5) business days after receipt of the written explanation of the basis for rejection. The reconsideration shall be submitted in writing to the Chief Executive Officer, Greater Orlando Aviation Authority, Orlando International Airport, One Jeff Fuqua Boulevard, Orlando, Florida 32827.
- B. As part of this reconsideration, the bidder or proposer will have the opportunity to provide written argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder or proposer will have the opportunity for a hearing before the Chief Executive Officer to address the issue of whether it met the goal or made adequate good faith efforts to do. The Chief Executive Officer will issue 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 DOT.

4. Good Faith Efforts When an ACDBE is Replaced on a Contract

The Aviation Authority will require the concessionaire to notify the ACDBE Liaison Officer immediately of the ACDBE's inability or unwillingness to perform and provide reasonable

documentation. In this situation, the Aviation Authority will require the concessionaire to obtain its prior approval of the substitute ACDBE and to provide copies of new or amended agreements, subcontracts, or documentation of good faith efforts. The Aviation Authority will include in each prime concessionaire contract a provision for appropriate administrative remedies or default that the Aviation Authority will invoke if the prime concessionaire fails to comply with these requirements, including the right to terminate the contract in substantially the following form:

A contractor may only terminate a ACDBE with good cause and not simply for the convenience of the prime contractor. The ACDBE firms must be allowed five (5) days to respond to a termination proposal from the prime contractor. After the allowed five (5) day response period, the Aviation Authority will require the prime contractor to obtain the Chief Executive Officer's prior written approval to terminate an ACDBE or substitute an ACDBE. Upon a showing of good cause for the termination by the prime contractor, the Aviation Authority will require a contractor 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. The Aviation Authority will require the prime contractor to notify the ACDBE Liaison Officer immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

The Chief Executive Officer may require the prime contractor to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Aviation Authority may issue an order stopping all or part of payment and work until satisfactory action has been taken. If the contractor still fails to comply, contractor may be deemed in default under the contract.

H. Eligibility of Proposals

The ACDBE Liaison Officer, or his or her designee, shall evaluate all proposals to determine whether the proposers submitted all of the information required by the Regulations. Proposers who also meet the contract-specific ACDBE goal or demonstrate sufficient good faith efforts (a "responsive" proposer) shall be eligible for the contract award. Should the ACDBE Liaison Officer determine that additional information is needed to evaluate a proposer's submission with regard to the ACDBE requirements, the ACDBE Liaison Officer shall request said proposer to submit the required information or may contact the listed ACDBE directly.

I. Over-Concentration

To the extent practicable, the Aviation Authority seeks to obtain ACDBE participation in all types of concession activities so that ACDBE participation is not concentrated in one or a few categories of Airport concessions to the exclusion of others. Currently, the

Aviation Authority is unaware of any types of work or contracting opportunities that have an over-concentration of ACDBE participation.

J. Evaluation of ACDBE Certification Status

The Aviation Authority shall require that any ACDBEs listed by bidders or proposers for participation in the contract be certified as eligible ACDBEs pursuant to this Program, at the time of proposal/bid opening.

K. Recommendation for Award

Following the recommendation of the proposer, the ACDBE Liaison Officer shall prepare a report on the proposer's compliance with the ACDBE requirements for review by the Chief Executive Officer and for presentation to the Aviation Authority Board at the time the contract award is considered. The decision of the Aviation Authority Board on the award of the contract shall be final and binding on all parties, subject to the review and approval of the contract by the Aviation Authority's legal counsel.

L. Counting ACDBE Participation (§ 26.55)

The Aviation Authority will count ACDBE participation toward overall and contract goals as provided in 49 CFR §§ 23.53 and 23.55.

M. Addressing Goal Shortfalls

If the awards and commitments shown in the Aviation Authority's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Aviation Authority shall implement the following in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the Aviation Authority to meet fully the goal for the new fiscal year;
3. As a CORE 30 airport, the Aviation Authority must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under subparts 1 and 2 of this section to the FAA for approval. If the FAA approves the report, the Aviation Authority will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
4. Fully implement corrective actions to which the Aviation Authority has committed.
5. Fully implement conditions that the FAA has imposed, if any, following its review of the Aviation Authority's analysis and corrective actions.

It is understood that the FAA may impose conditions on the Aviation Authority as part of its approval of the Aviation Authority's analysis and corrective actions including, but not

limited to, modifications to the Aviation Authority's overall goal methodology, changes in the Aviation Authority's race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

V. CERTIFICATION STANDARDS AND PROCEDURES. (§23.31-39)

The Aviation Authority will count only firms that were certified pursuant to Part 23 as an ACDBE. The Aviation Authority is not obligated to certify a 49 CFR Part 26 DBE as an ACDBE if the firm does not do work relevant to its concessions program.

A. Process

For information about the certification process or to apply for certification, firms should contact the Aviation Authority's ACDBE Liaison Officer, 5850-B Cargo Road, Orlando, Florida 32827-4399, (407) 825-7133.

In the event an ACDBE's certification is removed, the Aviation Authority will follow procedures consistent with 49 CFR Part 23. To ensure separation of functions in a decertification, the Chief Executive Officer will serve as the decision maker in decertification proceedings. The Aviation Authority established an administrative separation to ensure that the Chief Executive Officer will not have participated in any way in the decertification proceeding against the firm, including in the decision to initiate such a proceeding.

If the Aviation Authority denies a firm's application or decertifies it, the firm may not reapply until six (6) months have passed from the Aviation Authority's action. Upon the Aviation Authority's denial and a request by the firm, the Aviation Authority must provide the firm a written explanation for the reasons of the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant on request.

In instances when concessionaire's ACDBE eligibility is removed due to the firm exceeding the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible ACDBE, the firm's participation may continue to count toward ACDBE goals during the remainder of the current concession agreement. The concessionaire's participation toward ACDBE goals will not count beyond the termination date for the concession agreement in effect at the time of the decertification.

B. Unified Certification Program

The Aviation Authority utilizes and participates in Florida's Unified Certification Program (UCP) in addition to the procedures and standards of 49 CFR Part 23 §§23.31-39 for

certification of ACDBEs for the purposes of participation in the Aviation Authority's concession plan.

C. Certification Appeals

Any firm or complainant may appeal the Aviation Authority's decision in a certification matter to DOT. If a firm or complainant would like to file an appeal, the firm or complainant must send a letter to the Department within ninety (90) days of the date of the Aviation Authority's decision including information and arguments concerning why the Aviation Authority's decision should be reversed. The DOT may accept an appeal filed later than ninety (90) days after the date of the decision if the DOT determines that there was good cause for the late filing of the appeal. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue SE.
Washington, DC 20590-0001

The Aviation Authority will promptly implement any DOT certification appeal decisions affecting the eligibility of ACDBEs for DOT-assisted contracting (e.g., certify a firm if DOT has determined that the Aviation Authority's denial of its application was erroneous), but only as to contracts to be awarded after the DOT appeal decisions.

D. Recertification

The Aviation Authority will review the eligibility of ACDBEs that were certified under 49 CFR Part 23 to make sure that they meet the standards of Subpart C of 49 CFR Part 23. The Aviation Authority will complete this review no later than three (3) years from the most recent certification date of each firm.

E. No Change Affidavits and Notices of Change

The Aviation Authority requires all ACDBEs to inform the Aviation Authority, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 23 or of any material change in the information provided within an application for certification.

The Aviation Authority also requires all owners of all ACDBEs that the Aviation Authority has certified to submit, on the anniversary date of their certification, a "no change" affidavit. The Aviation Authority shall notify all currently certified ACDBE firms of the obligation to submit such affidavit and notice of change.

Notifications are submitted to the ACDBE every year. This notification informs the ACDBE that, to submit the no-change affidavit, the owners must swear or affirm that they meet all

regulatory requirements of 49 CFR Part 23, including personal net worth. Likewise, if a firm's owner knows or should know that he or she or the firm fails to meet 49 CFR Part 23 Eligibility Requirement, the obligation to submit a notice of change applies.

F. Personal Net Worth

The Aviation Authority requires all disadvantaged business owners of applicants and of currently certified ACDBEs whose eligibility under 49 CFR Part 23 is reviewed, to submit a statement of personal net worth with the application for certification.

49 CFR § 23.35 set the personal net worth cap for each disadvantaged owner of a firm applying to participate as an ACDBE. In determining net worth, the Aviation Authority will exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence, with the exception of any portion of such equity that is attributable to excessive withdrawals from the applicant firm. A contingent liability will not reduce an individual's net worth.

G. Removal of an ACDBE's Eligibility (§ 26.87)

1. Ineligibility Complaints

Any person may file a written complaint with the Aviation Authority alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Aviation Authority is 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 continue to be certified. Confidentiality of complainants' identities shall be protected as provided in 49 CFR § 26.109(b).

The Aviation Authority shall review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The Aviation Authority may request additional information from the firm or conduct any other investigation that it deems necessary.

If the Aviation Authority determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the Aviation Authority must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Aviation Authority determines that such reasonable cause does not exist, the Aviation Authority 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.

2. Aviation Authority-Initiated Proceedings

If, based on notification by the firm of a change in its circumstances or other information that comes to the Aviation Authority's attention, the Aviation Authority determines that there is reasonable cause to believe that a currently certified firm is ineligible, the Aviation Authority must provide written notice to the firm that the Aviation Authority proposes 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.

3. Directive to Initiate Proceeding

If the FAA, DOT or other concerned operating administration determines that information in the Aviation Authority's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm the Aviation Authority certified does not meet the ACDBE eligibility criteria, the concerned operating administration may direct the Aviation Authority to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide the Aviation Authority and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information,

The Aviation Authority shall immediately commence and prosecute a proceeding to remove eligibility as provided below.

4. Hearing

When the Aviation Authority notifies a firm that there is reasonable cause to remove its eligibility, as provided above, the Aviation Authority shall 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.

In such a proceeding, the Aviation Authority bears the burden of providing, by a preponderance of the evidence, that the firm does not meet the ACDBE certification standards.

The Aviation Authority shall maintain a complete record of the hearing, by any means acceptable under Florida state law, for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT, the Aviation Authority shall provide a transcript of the hearing to DOT and, on request, to the firm. The Aviation Authority shall retain the original record of the hearing and may charge the firm only for the cost of copying the record.

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

5. Separation of Functions

The decision in a proceeding to remove a firm's eligibility shall be 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. The decisionmaker shall be an individual who is knowledgeable about the certification requirements of the Aviation Authority's ACDBE program and 49 CFR Part 23.

6. Grounds for Decision

The Aviation Authority may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- a. Changes in the firm's circumstances since the certification of the firm by the Aviation Authority that render the firm unable to meet the ACDBE eligibility standards;
- b. Information or evidence not available to the Aviation Authority at the time the firm was certified;
- c. Information relevant to eligibility that has been concealed or misrepresented by the firm;
- d. A change in the certification standards or requirements of the DOT since the Aviation Authority certified the firm;
- e. The Aviation Authority's decision to certify the firm was clearly erroneous;
- f. The firm has failed to cooperate with the Aviation Authority;
- g. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the ACDBE program; or
- h. The firm has been suspended or debarred for conduct related to the ACDBE program. The required notice must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures outlined above.

7. Notice of Decision

Following its decision, the Aviation Authority shall 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 the Aviation Authority's decision and of the availability of an appeal to the DOT. The Aviation Authority must send copies of the notice to the complainant in an ineligibility complain or the concerned operating administration that had directed the

Aviation Authority to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, the Aviation Authority shall not include information reasonably construed as confidential business information without written consent of the firm that submitted the information.

8. Status of Firm During Proceeding

A firm remains an eligible ACDBE during the pendency of the Aviation Authority's proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the decertification notice described above.

9. Effectives of Removal of Eligibility

When removing a firm's eligibility, the Aviation Authority will take the following actions:

- a. When a prime contractor has made a commitment to using the ineligible firm, or the Aviation Authority has made a commitment to using an ACDBE prime contractor, but a subcontract or contract has not been executed before the Aviation Authority issues the decertification notice, the ineligible firm does not count toward the contract goal or overall goal. The Aviation Authority must direct the prime contractor to meet the contract goal with an eligible ACDBE firm or demonstrate to the Aviation Authority that it has made a good faith effort to do so.
- b. If a prime contractor has executed a subcontract with the firm before the Aviation Authority has 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 the Aviation Authority has let a prime contract to the ACDBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Aviation Authority issued the notice of its ineligibility shall not count towards the Aviation Authority's overall goal but may count toward the contract goal.
- c. However, if the ACDBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the Aviation Authority may continue to count its participation on that contract toward overall and contract goals.

10. Availability of Appeal

When the Aviation Authority makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the Department of Transportation under 49 CFR § 26.89.

VI. DEVELOPMENT OF AN ACDBE DIRECTORY. (§26.31)

The Aviation Authority currently maintains an ACDBE directory. On an ongoing basis, based upon the new certification criteria, the Aviation Authority will continue to update and maintain a directory of ACDBEs. The directory lists the firm's name, address, telephone number, date of most recent certification and the type of work the firm has been certified to perform as an ACDBE by using the most specific NAICS code available to describe each type of work. The Aviation Authority's directory is updated at least semi-annually in accordance with the requirements contained in the Regulations. The directory is made available at the Office of Small Business Development of the Aviation Authority, Orlando International Airport, 5850-B Cargo Road, Orlando, Florida 32827-4399, or by telephone at (407) 825-7133 and via the Aviation Authority's website at www.orlandoairports.net/airport-business. The Aviation Authority is a certifying member with the State of Florida Unified Certification Program (UCP). Access to information about currently certified ACDBE's under the Florida UCP can be obtained by visiting the website at <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory>.

VII. BUSINESS DEVELOPMENT PROGRAMS. (§26.35)

In order to encourage the development of ACDBEs who are ready, willing and able to bid for and participate in Aviation Authority awarded contracts, both as part of and outside of the ACDBE program, the Aviation Authority may participate in the business development program of the Black Business Initiative Fund, the Hispanic Business Initiative Fund, and other such community organizations whose emphasis is on business development. Such business development programs will conform to the guidelines of 49 CFR Part 26 Appendix C. Persons interested in participating in the Business Development Program may contact the Aviation Authority's Office of Small Business Development at the Office of Small Business Development of the Aviation Authority, Orlando International Airport, 5850-B Cargo Road, Orlando, Florida 32827-4399, or by telephone at (407) 825-7133.

VIII. MONITORING, RECORDKEEPING AND ENFORCEMENT MECHANISMS. (§26.37)

A. Monitoring Payments to ACDBEs

The Aviation Authority will require contractors to submit information certifying work performed by, and payment made to, ACDBE subcontractors on each contract.

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

The Aviation Authority retains the right to audit a contractor's books and records to determine the accuracy of the information reported. The Aviation Authority may perform interim audits of contract payments to ACDBE management firms or joint venture partners, general partners or subcontractors. The audit will review payments to ACDBE and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation. In the event the Aviation Authority determines a contractor has failed to comply with the ACDBE participation submitted by contractor and accepted by the Aviation Authority, the Aviation Authority may require contractor to comply, default contractor pursuant to the Aviation Authority's contract provisions, or disqualify contractor from consideration for award of future Aviation Authority contracts.

The Aviation Authority will also review the quarterly reports submitted by the concessionaires to ensure that the ACDBE participation levels remain in compliance with the contract requirements. This information will be used to provide the statistical data for the achievement reported as described below. If the Aviation Authority determines that the concessionaires are not complying with the contract requirements, the Aviation Authority will implement the contract remedies specified below.

B. Monitoring Contracts and Work Sites

The Aviation Authority will monitor contracts and work sites to ensure work committed to ACDBEs is actually performed by the ACDBE to which the work was committed. The Aviation Authority will provide written certification of review of contracting records and monitored work sites.

Additionally, the Aviation Authority will implement and enforce all Compliance and Enforcement Procedures listed in Section III, subpart C of this policy.

C. Compliance and Enforcement

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

1. Compliance Regulations

The Aviation Authority will comply with and is subject to the provisions of 49 CFR Part 26 (§§26.101 and 26.105 through 26.107 and 2 CFR Parts 180 and 1200) and is 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. Compliance Reviews

The FAA may review the Aviation Authority's compliance with Part 23 at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the Aviation Authority's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

3. Enforcement Actions

The following enforcement actions apply to firms participating in the Aviation Authority's ACDBE program:

- a. For a firm that does not meet the eligibility criteria of subpart C of Part 23 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 Part 23, DOT and FAA may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.
- c. In a suspension or debarment proceeding, 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 ACDBE in the Aviation Authority's ACDBE program or otherwise violates applicable Federal statutes.

D. Reporting to the U.S. DOT

The Aviation Authority will continue to report ACDBE participation and overall goal setting methods to the FAA as directed. Statistical data will be maintained as prescribed on annual basis to provide reports to the FAA reflecting the ACDBE participation on the Aviation Authority's concession related contracting. These reports will provide information on the Aviation Authority's achievements in attaining ACDBE participation through race-neutral and race-conscious methods.

E. Contract Remedies

The Aviation Authority will monitor compliance of its contractors on concession related contracts with the requirements of the Regulations and the Program. The Aviation Authority may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to termination of the contract in whole or in part.

F. Confidentiality

The Aviation Authority will safeguard from disclosure to third parties, other than the DOT, personal financial information submitted in response to the personal net worth requirement without the written consent of the submitter.

APPROVAL AND UPDATE HISTORY

Last Approval Authority Board: August 15, 2018

Supersedes All previous

Marie Winkler
Approved
Sep 23 2020 11:22 AM

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