

Federal Aviation Administration

Airport Concession

Disadvantaged Business Enterprise Program

Triennial Plan Goals

FFY: 2023-2025

Prescott Regional Airport



TABLE OF CONTENTS

POLICY STATEMENT Objectives/Policy Statement – Section 23.1, 23.23

SUBPART A – GENERAL REQUIREMENTS	1
Objectives - (§23.1)	1
Definitions - (§23.3)	1
Applicability - (§23.5)	1
Non-discrimination Requirements - (§23.9).....	1
Compliance and Enforcement - (§23.11).....	2
SUBPART B – ACDBE ADMINISTRATIVE REQUIREMENTS	3
ACDBE Program Updates - (§23.21)	3
Administrative Provisions - ((§23.23)	3
ACDBELO Duties:	4
Ensuring Nondiscriminatory Participation of ACDBEs - (§23.25).....	4
Reporting - (§23.27).....	5
Compliance and Enforcement Procedures - (§23.29).....	5
SUBPART C – CERTIFICATION AND ELIGIBILITY	7
Certification - (§23.31)	7
Personal Net Worth - (§23.35)	8
Firms Certified Under 49 CFR Part 26 - (§23.37).....	8
Certification Requirements for ACDBEs - (§23.39)	8
SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING	9
Basic Overall Goal Requirement - (§23.41).....	9
Consultation in Goal Setting - (§23.43)	9
Overall Goals - (§23.45).....	9
Overall Goal Calculations - (§23.51)	10
Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))..	10
Concession-Specific Goals - (§23.25(c)(e)(1)(iv)	10
Good Faith Efforts on Concession-Specific Goals - (§23.25(e)(1)(iii), (iv))	11
Good Faith Efforts Procedures (§26.25)	11
Information to be Submitted (§26.53(b))	12
Administrative Reconsideration (§26.53(d))	13
Good Faith Efforts When an ACDBE is Replaced on a Concession (§26.53(f))	13

Counting ACDBE Participation for Car Rental Goals - (§23.53)	16
Counting ACDBE Participation for Concessions Other than Car Rentals - (§23.53)	16
Goal shortfall accountability - (§23.57(a & b))	16
Quotas or Set asides - (§23.61)	17
What monitoring and compliance procedures must recipients (PRC)	17
follow § 23.29	17
SUBPART E – OTHER PROVISIONS	18
Existing Agreements - (§23.71)	18
Long-Term Exclusive Agreements - (§23.75)	18
Geographic Preferences - (§23.79)	18
ATTACHMENTS	19
ATTACHMENT 1: REGULATIONS: 49 CFR PART 23 PRCBSITE LINK	20
ATTACHMENT 2: DEMONSTRATION OF GOOD FAITH EFFORTS	21
ATTACHMENT 3: ORGANIZATION CHARTS	24
ATTACHMENT 4: ARIZONA UNIFIED TRANSPORTATION REGISTRATION AND CERTIFICATION SYSTEM (AZ UTRACS)	26
ATTACHMENT 5: ACDBE TRIENNIAL GOAL CALCULATION	27
ATTACHMENT 6: PUBLIC COMMENT	40
ATTACHMENT 7: MONITORING AND ENFORCEMENT - § 23.29	43
ATTACHMENT 8: GOOD FAITH EFFORT	44

THIS PAGE LEFT BLANK

CITY OF PRESCOTT, ARIZONA
PRESCOTT REGIONAL AIRPORT (PRC)
AIRPORT CONCESSIONS
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 23

POLICY STATEMENT

Objectives/Policy Statement – Section 23.1, 23.23

The City of Prescott on behalf of the Prescott Regional Airport (PRC) has established an Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program, in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Prescott Regional Airport has received Federal financial assistance from the DOT, and as a condition of receipt of funding, the City of Prescott has signed an assurance that it will comply with 49 CFR Part 23.

It is the City of Prescott's policy to ensure that ACDBEs as defined in 49 CFR Part 23 have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. The City of Prescott policy also includes the following:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance.
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions.
3. To ensure that the ACDBE Program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs at our airport.
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport; and
6. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Christina Papa, Management Analyst is the designated ACDBE Liaison Officer for PRC. In this capacity, she is responsible for overseeing and managing 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 PRC in its financial assistance agreements with DOT.

PRC has disseminated this policy statement to City Management and all of the appropriate divisions of the organization. This policy statement is made available to ACDBE and non-ACDBE companies that perform work on U.S. DOT-assisted contracts. Distribution channels include trade associations, online publications, and electronic notification via stakeholder distribution lists and the City/Airport website.

Robin Sobotta, Ph.D., A.A.E., Airport Director

Date

SUBPART A – GENERAL REQUIREMENTS

Objectives - (§23.1)

The Objectives are found in the POLICY STATEMENT of this program document.

Definitions - (§23.3)

PRC will adopt the definitions contained in 49 CFR Part 23, Section 23.3 (see Attachment 1, for copy of 49 CFR Part 23 regulations).

Applicability - (§23.5)

Prescott Regional Airport is a primary, non-hub airport and the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Non-discrimination Requirements - (§23.9)

PRC 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 the 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.

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

PRC 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, sex, or national origin 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.”

Compliance and Enforcement - (§23.11)

PRC 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)**.

PRC will comply with these Parts 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**.

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

The following enforcement actions apply to firms participating in PRC's ACDBE program:

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

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

Any person who knows of a violation of this part by PRC 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 PRCs ACDBE program:

SUBPART B – ACDBE ADMINISTRATIVE REQUIREMENTS

ACDBE Program Updates - (§23.21)

PRC is a non-hub primary airport required to have an ACDBE program.

As a condition of eligibility for FAA financial assistance, PRC will submit its ACDBE program and overall goals to FAA according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Non-Hubs	All regions	October 1, 2022	2023,2024,2025	October 1, 2025 (2026/2027/2028)

While PRC's new ACDBE program is under review for approval, PRC will implement the ACDBE program as submitted, except with respect to any provision that is contrary to **49 CFR Part 23**. When PRC makes significant changes to its ACDBE program, they will provide an amended program to the FAA for approval prior to implementing the changes.

Administrative Provisions - (§23.23)

The following individual is designated as the PRC ACDBE Liaison Officer (ACDBELO):

Name: Christina Papa

Title: Management Analyst

Phone: (928) 777-1114 ext. 4696

Email: christina.papa@prescott-az.gov

Address: Prescott Regional Airport, 6630 Airport Avenue, Prescott, AZ 86301

The ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that PRC complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director concerning ACDBE program matters. An organization chart displaying the ACDBELO's position in the organization is found in Attachment 3 to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has assistance by professional, technical, and consulting services to assist in developing goals including legal staff as needed in the administration of the program. The ACDBELO has overall responsibility for the ACDBE program and advises PRC management including the Airport Director and others, on ACDBE matters and achievement. The duties and responsibilities of the ACDBELO include the following:

ACDBELO Duties:

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 ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Airport Director and other governing bodies on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information in preparing bids, obtaining bonding, financing, and insurance.
11. Acts as a liaison to the Office of Small and Disadvantaged Business Utilization (OSDBU) - Minority Resource Center (MRC).
12. Plans and participates in ACDBE training seminars.
13. Acts as liaison to the Unified Certification Program (AZUCP) in Arizona.
14. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
15. Maintains an updated directory on certified ACDBEs and distinguishes them from DBEs.

Ensuring Nondiscriminatory Participation of ACDBEs - (§23.25)

PRC will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities:

PRC will follow federal, state, and local nondiscrimination laws designed to ensure nondiscrimination. These laws, policies and procedures include but are not limited to Title VI and the regulations found at 49 CFR Parts 23 and 26.

PRC 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.

PRC will ensure that competitors for concession opportunities are informed during pre-bid meetings about the Airport's ACDBE program.

PRC's overall goal methodology and a description of the race-neutral measures used to meet the goals are described in **49 CFR Part 23, Section 23.25**, and Attachment 5 of this Program. The goals are set consistent with the requirements of Subpart D. If race-neutral measures alone are not sufficient to meet an overall

goal for the Airport, it will use race-conscious measures as described in 49 CFR Part 23, Section 23.25 (e) (1-2) of this plan.

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

Reporting - (§23.27)

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

By March 1 each year, PRC will submit to the FAA Regional Civil Rights Office an annual ACDBE participation report on the form in Appendix A of Part 23.

Compliance and Enforcement Procedures - (§23.29)

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

1. PRC will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment of Program Fraud and Civil Penalties rules) provided in 26.107.
2. PRC will consider similar action under their own legal authorities, including responsibility determinations in future contracts. PRC will have listed the regulations, provisions, and contract remedies available, in the event of non-compliance with the ACDBE regulation by a participant in the procurement activities.
3. PRC will also implement a monitoring and enforcement mechanism to ensure that works committed to ACDBEs at contract award is actually performed by the ACDBEs. This will be accomplished by the following:
 - a. PRC will utilize the legal instrument of a contract clause to ensure compliance with the bid specifications. After awarding the contract, Airport staff will conduct such audits and reviews as necessary to ensure the Airport that the concessionaire is complying.
 - b. Prime contractors must also report to the ACDBELO when an ACDBE is terminated for any reason.
 - c. ACDBELO will make prompt compliance determinations regarding its prime contractors. Documentation of noncompliance will include the specific areas in which the

concessionaire/sub-concessionaire failed to comply. In these instances, appropriate legal action consistent with the DBE and other contract provisions will be taken.

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

DRAFT

SUBPART C – CERTIFICATION AND ELIGIBILITY

Certification - (§23.31)

In compliance with **49 CFR Part 26.81** Arizona has established a Unified Certification Program (AZUCP). ADOT is the lead agency for the Arizona Unified Certification Program (AZUCP). The AZUCP provides "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a Disadvantaged Business Enterprise (DBE) or Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) certification that is honored by all recipient agencies in the state. Therefore, certifications by all AZUCP Partner agencies are binding on all agencies receiving federal USDOT funds in the State of Arizona.

The AZUCP is comprised of three certifying agencies: ADOT, City of Phoenix, and City of Tucson.

AZUCP Partners are assigned statewide geographical areas for DBE certification application processing as follows:

- City of Phoenix – Firms located in Phoenix and greater Maricopa County, AZ
- City of Tucson - Firms located in Tucson and greater Pima County, AZ
- ADOT – All other cities and counties in the state of Arizona and all interstate certifications

AZUCP Partners have assigned all ACDBE Certification application processing to City of Phoenix.

All three entities have a signed Operating Agreement to manage the certification program in a consistent manner.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, PRC will review their eligibility at that time rather than waiting until the latest date under Part 23. PRC will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone companies is 1500 employees and for ACDBE automobile dealers is 350 employees.

PRC uses the State of Arizona, Unified Transportation Registration and Certification System (AZ UTRACS) ACDBE directory (see Attachment 4), maintained by the Arizona Department of Transportation (ADOT). The directory lists each firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work. The directory is available online at <https://utracs.azdot.gov/>.

A link to the DBE Certification Application Form for firms not currently certified but seeking information on certification is provided in Attachment 4.

Personal Net Worth - (§23.35)

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

Firms Certified Under 49 CFR Part 26 - (§23.37)

PRC will presume that a firm that is certified as a DBE under Part 26 is eligible to participate as an ACDBE. However, before accepting such a firm, PRC will work with ADOT to ensure that the disadvantaged owners of a DBE certified under Part 26 are able to control the firm with respect to its activity in the concessions program. AZUCP is not obligated to certify Part 26 DBE as an ACDBE if the firm does not perform work relevant to our concessions program.

Certification Requirements for ACDBEs - (§23.39)

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

AZUCP acknowledges that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. The AZUCP recognizes that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of Part 23 is governed by Part 26 Section 26.73(h).

The AZUCP will use the certification standards of Part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

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 standard, and the firm in all other respects remains an eligible DBE, PRC may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. PRC 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.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Basic Overall Goal Requirement - (§23.41)

PRC will establish two separates 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 PRC will review the goals annually to make sure the goal continues to fit PRC’s circumstances. PRC 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, PRC 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, PRC need not submit an overall goal for concessions other than car rentals. PRC understands 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 ACDBEs and will not be subdivided into group-specific goals.

Consultation in Goal Setting - (§23.43)

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

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

Overall Goals - (§23.45)

Prescott Municipal Airport is a primary, non-hub airport. As a condition of eligibility for FAA financial assistance, the Airport will submit its overall goals according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Non-Hubs	All regions	October 1, 2022	2023,2024,2025	October 1, 2025 (2026/2027/2028)

If a new concession opportunity arises at a time that falls before the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor

will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (§23.45i)

Overall Goal Calculations - (§23.51)

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

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

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

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodologies in Attachment 5 of this program. This section of the program will be reviewed annually when the goal calculation is revised under Part 23.41(c). <https://www.ecfr.gov/current/title-49/subtitle-A/part-23#Appendix-A-to-Part-23>.

Concession-Specific Goals - (§23.25(c)(e)(1)(iv))

PRC will use concession-specific goals to meet any portion of the overall goals the PRC 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.

PRC will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. PRC 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. Car rental firms are not required to change their corporate structure to provide direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services

from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

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

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

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors 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. This means that the bidder must show that it took all necessary and reasonable steps to achieve a ACDBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient ACDBE participation, even if PRC is not fully successful.

Examples of good faith efforts are found in **49 CFR Part 26 (Attachment 8)**. The procedures applicable to **49 CFR Sections 26.51 and 26.53**, regarding contract goals apply to the PRCs concession specific goals.

PRC shall include the following clause in each airport concession solicitation that includes an ACDBE goal:

Sample Proposal/Bid Specification Language:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Prescott 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. The award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concession firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in 49 CFR Part 26 Appendix A, to meet the concession specific goal for ACDBE participation in the performance of this concession.

Good Faith Efforts Procedures (§26.25)

To be eligible to be awarded the concessions, competitors must, at a minimum, make a good faith effort to meet the goals, as outlined under this part.

Demonstration of Good Faith Efforts - (§26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. The full text of good faith efforts can be found in Attachment 8 of this Document - Guidance to Good Faith Effort.

The following staff 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.

Name: Christina Pappa
Title: Management Analyst
Address: 6630 Airport Avenue, Prescott, AZ 86301
Telephone: (928) 777-1114 Ext 4696
Email: christina.pappa@prescott-az.gov

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

Information to be Submitted (§26.53(b))

PRC treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility (**See Attachment 2, Forms 1 and 2**). Each solicitation for which a concession-specific goal has been established will require the concessionaires to submit the following information per these Sections (1) through (3):

- (1) The award of the contract will be conditioned on meeting the requirements of this section.
- (2) All bidders or offerors will be required to submit the following information to PRC, at the time provided in Section (3) of this Part:
 - (i) The names and addresses of ACDBE firms that will participate in the contract.
 - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - (iii) The dollar amount of the participation of each ACDBE firm participating.
 - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Attachment 8 of this document). The documentation of good faith efforts must include copies of each ACDBE, and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) PRC will require that the bidder/offeror present the information required by Section 2 of this Information to Bidders:

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

OR,

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph 2 of this section before the final selection for the contract is made by the recipient.

Administrative Reconsideration (§26.53(d))

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

Name: Katie Gregory, City Manager
Address: 201 N Montezuma St, Prescott, AZ 86301
Phone: (928) 777-1435
Email: Katie.Gregory@Prescott-AZ.com

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

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. PRC will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts When an ACDBE is Replaced on a Concession (§26.53(f))

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

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

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

1. The listed ACDBE sub-concession fails or refuses to execute a written contract.
2. The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist or the refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor.
3. The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
4. The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to:
 - Title 2 - CFR 180 Grants and Agreements, Office of Management and Budget Guidelines to Agencies on Government-wide Debarment and Suspension,
 - Title 2 - CFR 215 Uniform Administration Requirements for Grants and Agreements,
 - Title 2 - CFR 1200 Non-procurement Suspension and Debarment,
 - or applicable state law.
6. PRC has determined that the listed ACDBE subcontractor is not responsible.
7. The listed ACDBE sub-concession voluntarily withdraws from the project and provides PRC with written notice of its withdrawal.
8. The listed ACDBE is ineligible to receive ACDBE credit for the type of work required.
9. An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract.
10. In addition, good cause can be grounds for PRCs termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

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

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

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

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

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

If the concessionaire fails or refuses to comply at the time specified, PRC's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

*The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the **City of Prescott** 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. The award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concession firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.*

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as

provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

Counting ACDBE Participation for Car Rental Goals - (§23.53)

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

Counting ACDBE Participation for Concessions Other than Car Rentals - (§23.53)

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

Goal shortfall accountability - (§23.57(a & b))

- a) PRC cannot be penalized or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.
- b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:
 - (1) Analyze in detail the reasons for the difference between the overall goal and its awards and commitments in that fiscal year.
 - (2) Establish specific steps and milestones to correct the problems PRC has identified in the analysis to enable PRC to fully meet their goal for the new fiscal year.
 - (3)
 - (i) If PRC is a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
 - (ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.
 - (4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
 - (5) PRC understand they may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement the ACDBE program in good faith if any of the following things occur:

- (i) PRC does not submit its analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section.
- (ii) FAA disapproves the analysis or corrective actions; or
- (iii) PRC do not fully implement:
 - (A) The corrective actions to which they have committed, or
 - (B) Conditions that FAA has imposed following review of our analysis and corrective actions.
 - (C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that PRC, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Quotas or Set asides - (§23.61)

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

What monitoring and compliance procedures must recipients (PRC) follow § 23.29

As a recipient, PRC must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. PRC must include in a concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means to ensure compliance.

These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that PRC 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 this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

SUBPART E – OTHER PROVISIONS

Existing Agreements - (§23.71)

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

Long-Term Exclusive Agreements - (§23.75)

PRC will not enter into long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. PRC understands that a “long-term” agreement is one having a term of longer than 5 years, and 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, PRC will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Geographic Preferences - (§23.79)

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

ATTACHMENTS

ATTACHMENT 1: REGULATIONS: 49 CFR PART 23 PRCBSITE LINK

ATTACHMENT 2: DEMONSTRATION OF GOOD FAITH EFFORTS

ATTACHMENT 3: ORGANIZATION CHARTS

**ATTACHMENT 4: ARIZONA UNIFIED TRANSPORTATION
REGISTRATION AND CERTIFICATION SYSTEM
(AZ UTRACS)**

ATTACHMENT 5: ACDBE TRIENNIAL GOAL CALCULATION

ATTACHMENT 6: PUBLIC COMMENT

ATTACHMENT 7: MONITORING AND ENFORCEMENT - § 23.29

ATTACHMENT 8: GOOD FAITH EFFORT

ATTACHMENT 1: REGULATIONS: 49 CFR PART 23 PRCBSITE LINK

<https://www.ecfr.gov/current/title-49/subtitle-A/part-23#Appendix-A-to-Part-23>

DRAFT

**ATTACHMENT 2: DEMONSTRATION OF GOOD FAITH EFFORTS OR
GOOD FAITH EFFORT PLAN (FORM 1 and 2)**

DRAFT

**AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) UTILIZATION**

(FORM 1)

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 _____

(Signature)

Title

DEMONSTRATION OF GOOD FAITH EFFORTS OR GOOD FAITH EFFORT PLAN LETTER OF INTENT

(FORM 2)

Submit this page for each ACDBE subcontractor

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

County: _____ 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 DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

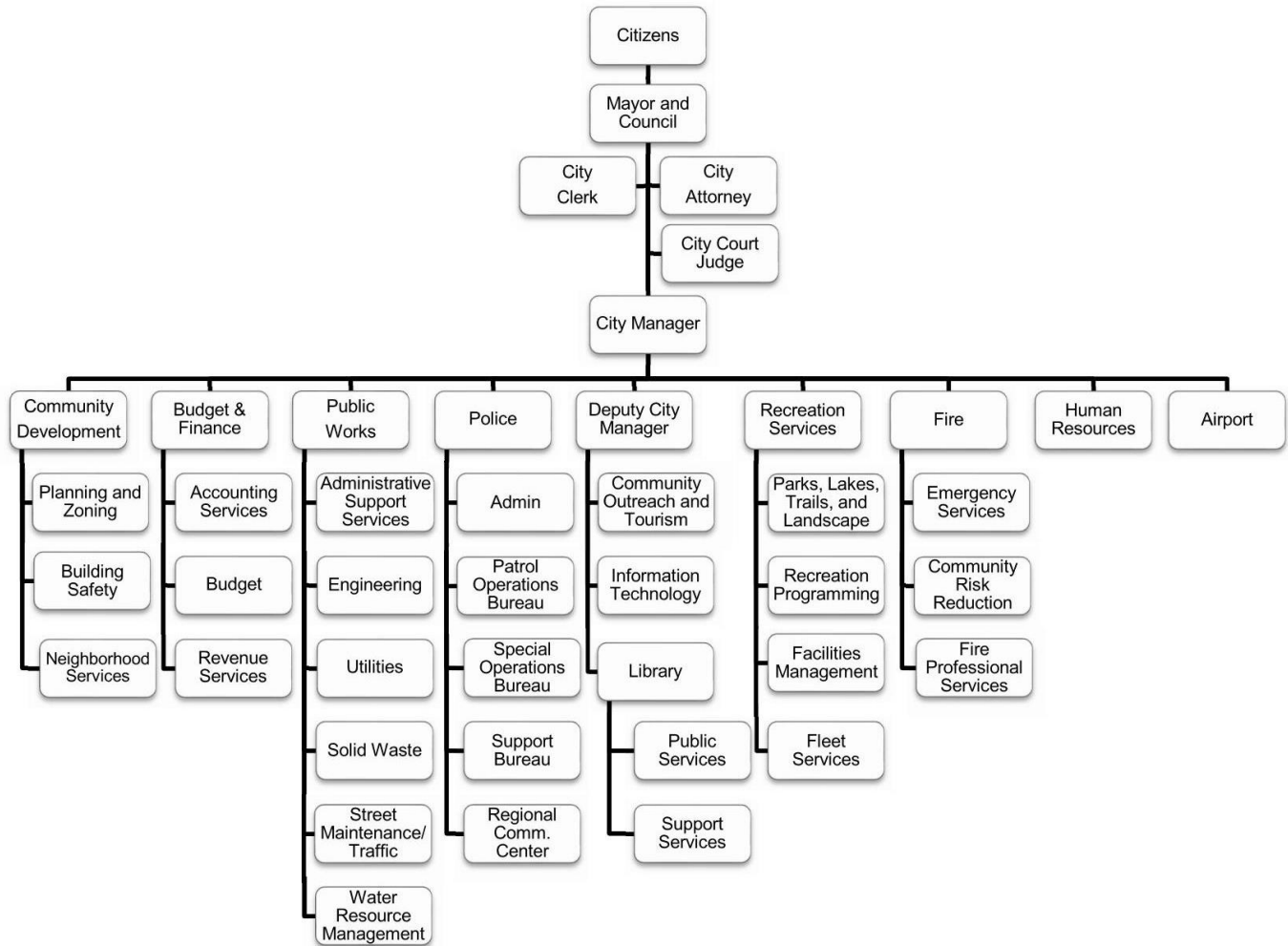
Date: _____

(Title)

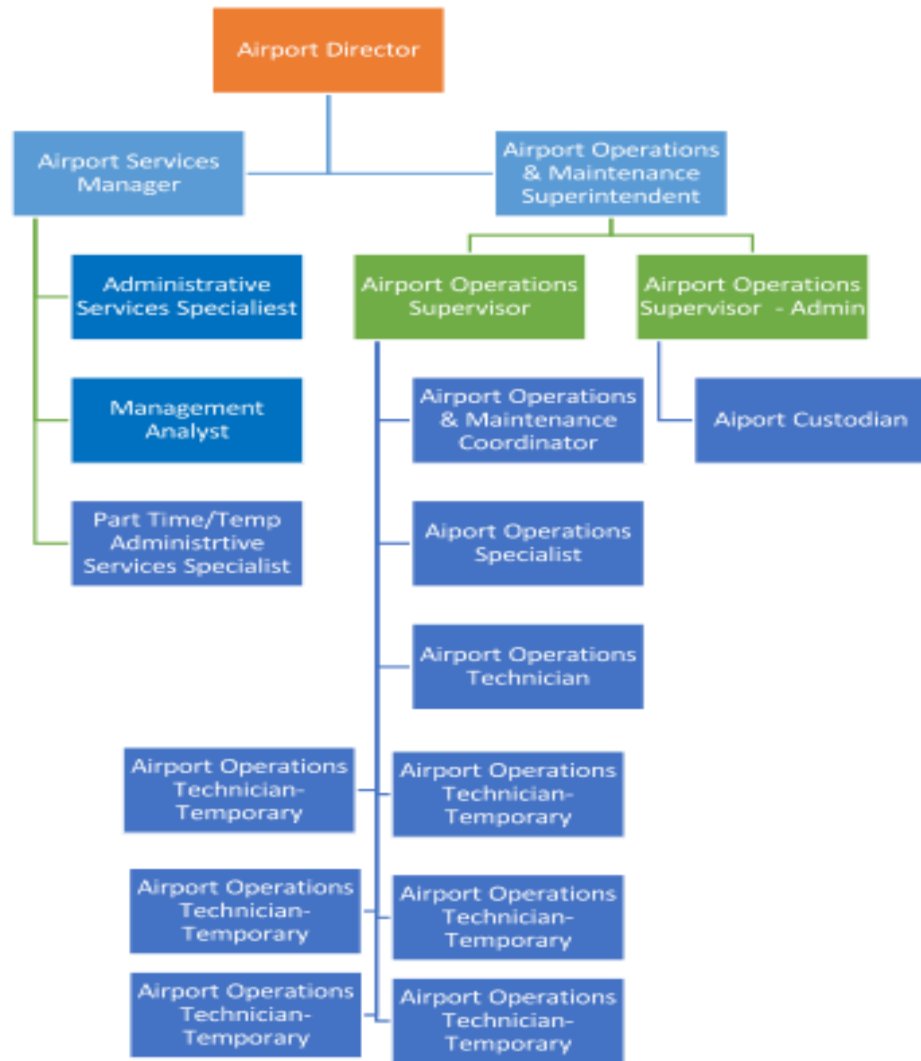
If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be invalid.

ATTACHMENT 3: ORGANIZATION CHARTS

City of Prescott Organization Chart 2023



City of Prescott Airport Organization Chart 2023



**ATTACHMENT 4: ARIZONA UNIFIED TRANSPORTATION
REGISTRATION AND CERTIFICATION SYSTEM (AZ UTRACS)**

<https://utracs.azdot.gov/Home>

DRAFT

ATTACHMENT 5: ACDBE TRIENNIAL GOAL CALCULATION

DRAFT

Federal Aviation Administration
Disadvantaged Business Enterprise Program
Airport Concessions
ACDBE TRIENNIAL GOAL CALCULATION
FFY: 2023-2025

NON-RENTAL CAR CONCESSION GOALS
CAR RENTAL CONCESSION GOALS

Prescott Regional Airport



**CITY OF PRESCOTT, ARIZONA
PRESCOTT REGIONAL AIRPORT (PRC)
AIRPORT CONCESSIONS
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 23**

POLICY STATEMENT

Objectives/Policy Statement – Section 23.1, 23.23

The City of Prescott on behalf of the Prescott Regional Airport (PRC) has established an Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program, in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Prescott Regional Airport has received Federal financial assistance from the DOT, and as a condition of receipt of funding, the City of Prescott has signed an assurance that it will comply with 49 CFR Part 23.

It is the City of Prescott's policy to ensure that ACDBEs as defined in 49 CFR Part 23 have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. The City of Prescott policy also includes the following:

To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance.

1. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions.
2. To ensure that the ACDBE Program is narrowly tailored in accordance with applicable law.
3. To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs at our airport.
4. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport; and
5. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Christina Papa, Management Analyst is the designated ACDBE Liaison Officer for PRC. In this capacity, she is responsible for overseeing and managing 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 PRC in its financial assistance agreements with DOT.

PRC has disseminated this policy statement to City Management and all of the appropriate divisions of the organization. This policy statement is made available to ACDBE and non-ACDBE companies that perform work on U.S. DOT-assisted contracts. Distribution channels include trade associations, online publications, and electronic notification via stakeholder distribution lists and the City/Airport websites.

Robin Sobotta, Ph.D., A.A.E., Airport Director

Date

SUMMARY OF FINDINGS – ACDBE OVERAL GOALS 2023-2025

Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rental ACDBE Three-Year Goal

SUMMARY OF FINDINGS:

Based on FFY2023 historical data provided by Prescott Regional Airport (PCR) has no non-car rental concessionaire businesses with revenues greater than \$200,000 annually (per concession). CFR Part 23 directs that Airports exceeding \$200,000 in annual non-car rental revenue must establish a goal for non-car rental ACDBE participation. The current situation at Prescott Regional Airport does not reach the required \$200,000 annual revenue requirement to be identified as a non-car rental concessionaire under this program. Therefore, no ACDBE goals have been calculated for this part.

ACDBE TRIENNIAL GOAL CALCULATION

SECTION 23.45: OVERALL GOAL CALCULATION FOR NON- CAR RENTALS

HISTORICAL DATA

Based on FFY2023 historical data, Prescott Regional Airport (PCR) has no non-car rental concessionaire revenues greater than \$200,000 annually. 49 CFR Part 23 directs that Airports exceeding \$200,000 in annual non-car rental revenue must establish a goal for non-car rental ACDBE participation. The current situation at Prescott Regional Airport does not reach the required \$200,000 annual revenue requirement to be identified as a non-car rental concessionaire under this program. Therefore, no ACDBE goals have been calculated for this part.

If a new non-car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues of this new concession are anticipated to be \$200,000 or greater, PCR 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.

In addition, when revenues of the existing non-car rental concession reach the required \$200,000 of annual revenue, PRC will submit the appropriate adjustment to the overall goal. As a matter of enforcement, revenues for non-car rental concessions should be required periodically.

PCR has determined that its market area is the entire State of Arizona. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

CURRENT NON-CAR RENTAL CONCESSIONAIRES

Currently, Susie Skywalk Café is the only non-car rental concessionaire and does not meet the basic revenue requirements for the ACDBE program. PRC Airport states annual revenues are currently \$174,000 annually.

METHODOLOGY USED TO CALCULATE NON-CAR RENTAL GOALS

1.0 METHODOLOGY USED TO CALCULATE OVERALL GOAL

1.1 Goods and Services

When appropriate the Airport can meet its percentage goal requirements by including the purchase value from ACDBEs of goods and services used in businesses at the Airport. This percent goal calculation is a ratio of two-dollar values:

- (1) The dollar value from purchases of goods and services from ACDBEs, which is used as the numerator, and,
- (2) The dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) which is used as the denominator.

This ratio represents the weighted average of a ready willing and able ACDBE's for each of the disciplines or categories calculated.

1.2 Management Contract or Subcontract

The Airport can meet the percentage goal by including any business operated through a management contract or subcontract with 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 ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

1.3 Step One – Determination of The Base Figure

The first step in determining the goal for non-car rental ACDBE participation is to obtain a base figure of participation. The base figure is determined by using current and historic concession contracts and concession types and applying those types to the field of willing and available concession firms. The Arizona Department of Transportation (ADOT) United Certification Program (AZUCP) was referenced to determine the number of certified ACDBE firms in Arizona that fall into the North American Industrial CS (NAICS) codes listed below. The AZUCP database includes ACDBE firms that are certified by ADOT, the City of Phoenix, and the City of Tucson. The United States Census Bureau was referenced to determine the statewide total number of firms in the respective NAICS codes.

Table 4 below outlines the anticipated non-car rental concessionaire types and the expected availability of all firms and ACDBE firms.

Table 4 Non-Rental Car ACDBE Availability					
Concession Type	NAICS Code	Total Arizona Firms	Arizona ACDBE Firms	Percent ACDBE Availability	Weighted Overall Availability
Food and Beverage	722513	4,020	28	.006%	
Total ACDBE Percentage 0.006%					
Source: Arizona Department of Transportation DBE Directory, http://www.azdot.gov/azdbe United States Census Bureau, accessed 6/5/2023					

Put another way, a total of Arizona based firms in businesses similar to the categories of concessionaires at the Prescott Regional Airport divided by the number of ACDBE firms in the State of Arizona in those same categories equals the Base figure.

TEMPLATE EXAMPLE

$$\text{Base figure} = \frac{0}{0} = .0\%$$

1.4 Step Two – Examination of Criteria for Adjustment to Base Figure

According to 49 CFR Part 23, the base figure identified in Step 1 may be adjusted to more accurately reflect the local economic climate of a given market or to take historical ACDBE participation into consideration. Some areas may have more ACDBE firms readily available and willing to participate than others.

1.5 Historical ACDBE Participation

Goals will be calculated off of the revenue reports of eligible non-car rental concessions averaged over the past three years. Currently no concessionaires that meet the ACDBE income requirements are present. PRC will require accurate time reporting from non-car rental concessions.

1.6 Local Availability of ACDBE Firms and Market Area

Currently there are no non-car rental ACDBE's doing business at the Prescott Regional Airport. This situation may change in the future, and at that point and for the purposes of determining an overall non-car rental ACDBE participation goal, the market area for ACDBE firms is the State of Arizona, as it is unlikely that any concessionaire operators outside of the State would provide concession services such as food and beverage, vending machines, ATM services and similar to the Prescott Regional Airport.

1.7 Resultant Goal Adjustment

The Prescott Regional Airport currently has no non-car rental concessionaires eligible to participate in this program. Therefore, no goal adjustments are under consideration at this time.

1.8 Race-Neutral Vs. Race-Conscious Methods

No calculated goals or methods are identified for non-car rental concessionaires at this time. If a concessionaire should become eligible for participation in the program in future appropriate calculations will be identified at that time.

As new businesses are developed for the Prescott Regional Airport the sponsor will be actively engaged in assisting potential new businesses by:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires.
2. Notifying ACDBEs of concession opportunities and encouraging them to compete.
3. Structuring concession activities to encourage and facilitate the participation of ACDBEs.
4. Providing direction to ACDBEs in overcoming limitations, such as obtaining bonding or financing, by identifying state agencies or other sources that can provide that information.

1.9 Consultation: Section (§24.43)

In an effort to determine the availability of disadvantaged and non-disadvantaged businesses, to consider the effects of discrimination in opportunities for DBEs, and to further its efforts to establish a level playing field for participation of the same, the Prescott Regional Airport, with the assistance of an outside consultant, will participate in the following measures in its goal setting process as follows:

Prescott Regional Airport staff will conduct Public Outreach to inform minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport's efforts to establish a level playing field for the participation of DBEs. Information regarding Stakeholder Outreach will be posted on the Airport website as well as distributed to interested organizations/firms. See Attachment 6 for PUBLIC NOTICE.

SUMMARY OF FINDINGS – ACDBE OVERAL GOALS 2023-2025

Section 23.45: Overall Goal Calculation for Car Rental ACDBE Three-Year Goal

SUMMARY OF FINDINGS:

Based on FFY2023 historical data provided by Prescott Regional Airport (PCR) it has a single car rental concessionaire business with revenues greater than \$200,000 annually.

49 CFR Part 23 directs that Airports exceeding \$200,000 in annual per car rental revenue (1) must establish a goal for car rental ACDBE participation. The current vendor at Prescott Regional Airport exceeds the required \$200,000 annual revenue requirement and is a participating ACDBE concession. Therefore, ACDBE goals have been calculated for this part, and currently indicate a **0.5%** ACDBE participation goal.

Reporting Year

FFY 2020	No Reporting
FFY 2021	No Reporting
<u>FFY 2022</u>	<u>\$1,530,806.32</u>
Total	\$1, 530,806.32

Overall Three-Year Goal:

To be accomplished through 0% Race/Gender Conscious (RC) and **0.5%** Race/Gender Neutral (RN).

ACDBE TRIENNIAL GOAL CALCULATION

SECTION 23.45: OVERALL GOAL CALCULATION FOR CAR RENTALS

ACDBE CAR RENTAL CONCESSION’S GOAL METHODOLOGY

Based on 2023 historical data, Prescott Regional Airport (PCR) has a single car rental concessionaire with revenues greater than 1.5 million dollars annually. 49 CFR Part 23 directs that Airports exceeding \$200,000 in annual rental car revenue must establish a goal for car rental ACDBE participation.

This updated calculation of ACDBE goals concludes that the overall goal for car rental concessions during the period beginning FY2023 and running through the end of FY2025 is **0.5%** of the total gross receipts of car rental operations.

The concession opportunities anticipated during this goal period include current car rental and related service operations with estimated annual gross receipts revenue of \$1,530,806.00.

If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues of this new concession are anticipated to be \$200,000 or greater, PCR 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.

PCR has determined that its market area is the entire State of Arizona. This is the geographical area in which the substantial majority of firms which seek to do car rental concessions business with the Airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

CURRENT CAR RENTAL AND RELATED SERVICES CONCESSIONAIRES

Currently, the Airport has contracts with a single (1) eligible car rental concessionaire representing Avis and Budget Rental Car. This concessionaire is listed below in Table C-1 with Fiscal Year (FY) 2022 gross revenues.

Table C-1		
Car Rental Concessions and Revenues		
Car Rental Concessions	2022 Gross Revenues	Certified ACDBE?
Avis and Budget Car Rental	\$1,530,806.32	No
Total	\$1,530,806.32	
*** Prescott Regional Airport 2023 source of revenue data.		

METHODOLOGY USED TO CALCULATE OVERALL GOAL

1.0 GOODS AND SERVICES

The Airport can meet its percentage goal requirements by including the purchase value from ACDBEs of goods and services used in businesses at the Airport. This percent goal calculation is a ratio of two-dollar values:

- The dollar value from purchases of goods and services from ACDBEs, which is used as the numerator, and,
- The dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) which is used as the denominator.

This ratio represents the weighted average of a ready willing and able ACDBE's for each of the disciplines or categories calculated.

1.1 Step One - Determination of The Base Figure

The methodology used to determine a base figure of ACDBE car rental participation is to obtain the number of ready, willing, and able ACDBE firms that provide car rental services or provide goods and services to car rental concessionaires and dividing that number by the total number of ready, willing, and able firms in the market area. For the purpose of determining this goal, the market area is considered to be the State of Arizona, as car rental firms generally operate on a regional basis, shifting cars and resources among a region as needs dictate.

Table -2 below details the types of firms that are expected to be able to provide car rental sales and/or goods and services to the Airport.

Table -2 Car Rental and Related Services ACDBE Availability				
Concession Type	NAICS Code	Total Arizona Firms	Total DBE/ACDBE Firms	Weighted % DBE/ACDB
Car Rental Companies	532111	184	1	0.01
Printing	323111	286	4	0.05
New Car Dealers	441110	311	0	0
Used Car Dealers	441120	399	45	0.06
Automotive Supply Stores	441310	703	0	0
Insurance Agent/Broker	524210	2794	3	0.10
Office Supply and Stationary Stores	453210	93	0	0
General Automotive Repairs	811111	1572	3	0.14
Automotive Exhaust Repair	811112	15	0	0
Automotive Body, Paint, and Interior Repair	811121	564	2	0.03
Automotive Glass Replacement	811122	253	1	0.01
Automotive Oil Change	811191	111	1	0.01
Automotive Detailing Services	811192	328	7	0.09
Total		7613	67	0.5
Source: Arizona Department of Transportation DBE Directory, http://www.azdot.gov/azdbe 03/29/2023 and United States Census Bureau, FFY 2020				

Based on the availability of ACDBE firms in the State of Arizona that could be reasonably expected to provide services to car rental companies, a base figure of participation was determined to be .05%.

2.0 STEP TWO – EXAMINATION OF CRITERIA FOR ADJUSTMENT OF BASE FIGURE

According to 49 CFR Part 23, the base figure identified in Step 1 may be adjusted to more accurately reflect the local economic climate of a given market or to take historical ACDBE participation into consideration. Some areas may have more ACDBE firms readily available and willing to participate than others.

2.1 Historical ACDBE Participation

Goals are being calculated on the revenue reports of eligible car rental and related concessions averaged over the past three years. No prior information pertaining to ACDBE performance before the formulation of this program is available.

2.2 Local Availability of ACDBE Firms and Market Area

According to the ADOT AZUCP database, there are sixty-seven (67) potential ACDBE firms in the State of Arizona which provide any of the concessions services for Car Rental Companies that the Airport currently offers or plans to offer. For determining an overall car rental ACDBE participation goal, the market area for ACDBE firms is the State of Arizona, as it is unlikely that any concessionaire operators outside of the State would provide concession services listed for related car rental concessions.

2.3 Resultant Goal Adjustment

Based on the Airport's current and anticipated concession types and the local availability of ACDBE firms, there is little evidence supporting an upward adjustment of the base figure for car rental ACDBE participation goals. Therefore, the Airport's car rental ACDBE goal will be **0.5%**.

3.0 RACE-NEUTRAL VS. RACE-CONSCIOUS METHODS

49 CFR Part 23 requires that airports meet the maximum feasible portion of their overall ACDBE participation goal utilizing race-neutral means. Race-neutral participation includes any instance when an ACDBE firm wins a contract through customary competitive procedures. Race-conscious methods are those that are focused specifically on assisting only ACDBEs, such as establishing a contract goal of ACDBE participation. The Airport expects to solely utilize race-neutral methods to achieve its car rental and car rental participation goal of 0.5% and does not expect to establish contract goals to achieve this goal. The underlying reason for the use of race-neutral means to achieve the goal is the market availability of ACDBE firms in the Airport's market area. There is a limited opportunity for participation of ACDBE firms in the current and planned airport concessions. Some race-neutral methods that the Airport will utilize are listed below:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires.
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate.
3. When practical, structuring concession activities to encourage and facilitate the participation of ACDBEs.

4. Providing direction to ACDBEs in overcoming limitations, such as obtaining bonding or financing, by identifying state agencies or other sources that can provide that information.

4.0 CONSULTATION: SECTION (§23.43)

In an effort to determine the availability of disadvantaged and non-disadvantaged businesses, to consider the effects of discrimination in opportunities for DBEs, and to further its efforts to establish a level playing field for participation of the same, the Prescott Regional Airport, with the assistance of an outside consultant, will participate in the following measures in its goal setting process as follows:

Prescott Regional Airport staff will conduct Public Outreach to inform minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport's efforts to establish a level playing field for the participation of DBEs. Information regarding Stakeholder Outreach will be posted on the Airport website as well as distributed to interested organizations/firms. See Attachment 6 for PUBLIC OUTREACH.

ATTACHMENT 6: PUBLIC COMMENT

OPPORTUNITY FOR PUBLIC COMMENT - LOCAL PUBLICATION

AFFIDAVIT OF PUBLICATION (To be added)

PUBLIC NOTICE - WEBPAGE



PUBLIC NOTICE

**Prescott Regional Airport
Airport Concession Disadvantaged Business Enterprise Program (ACDBE)
Car Rental Concession Triennial Goal
and
Non-Car Rental Concession Triennial Goal
for
Federal Fiscal Year 2023-2025**

Prescott Regional Airport hereby announces its Airport Concessions Disadvantaged Business Enterprise (ACDBE) program goals & methodology for PCR. The proposed Airport Concessions Disadvantaged Business Enterprise Report is available for 30-day review beginning, _____, at:

**Prescott Regional Airports Website: flyprescott.com
and**

**Prescott Regional Airports Administration
6630 Airport Avenue,
Prescott, AZ 86301
Telephone: (928) 777-1114**

Car Rental Concession

Prescott Regional Airports' overall goal for Airport Car Rental Concessions for the period of Federal Fiscal Years (FFYs) 2023-2025 is the following: 0.5% of the revenue generated by ACDBE Airport Car Rental Concessions at Prescott Regional Airport, to be accomplished through 0% Race/Gender Conscious (RC) and 0.5% Race/Gender Neutral (RN) participation.

Non-Car Rental Concession

Prescott Regional Airports' overall goal for Non-Car Rental Concessions for the period of Federal Fiscal Years (FFYs) 2023-2025 is the following: 0.0% of the revenue generated by Airport Non-Car Rental Concessions at Prescott Regional Airport.

The Airport will accept comments on the ACDBE goals and methodology for 30 days from the date of this publication. Comments can be sent to:

Christina Papa, Management Analyst
Prescott Regional Airport
6630 Airport Avenue
Prescott, AZ 86301
Phone: (928) 777-1114 ext. 4696
Email: christina.papa@prescott-az.gov

and/or

Shaun A. Bouy, Equal Opportunity Compliance Specialist Western Pacific Region
DBE/ACDBE Compliance Specialist, Office of Civil Rights – ACR 4
Federal Aviation Administration
U.S. Department of Transportation
Phone: (267) 702 5190
Email: Shaun.A.Bouy@faa.gov

ATTACHMENT 7: MONITORING AND ENFORCEMENT - § 23.29

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

ATTACHMENT 8: GOOD FAITH EFFORT

49 CFR Sections 26.51 and 26.53

- I. As the recipient you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by ACDBE firms sufficient for this purpose. Second, even if it does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a ACDBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient ACDBE participation, even if they were not fully successful.
- II. In any situation in which PRC has established a contract goal, Part 26 requires PRC to use the good faith efforts mechanism of this part. As a recipient, PRC has the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for PRC to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.
- III. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain ACDBE participation sufficient to meet the ACDBE contract goal. Mere pro forma efforts are not good faith efforts to meet the ACDBE contract requirements. It is PRC's determination, concerning the sufficiency of a firm's good faith efforts, and is a judgment call. Determinations should not be made using quantitative formulas.
- IV. It also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of ACDBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith effort showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- V. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain ACDBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified ACDBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all ACDBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the ACDBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the ACDBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.

- A. 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 (for example, smaller tasks or quantities) to facilitate ACDBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates ACDBE participation.
- B. 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 with their offer for the subcontract.
- C. (1) Negotiating in good faith with interested ACDBEs. 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.

(2) 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 a 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.

- D. (1) 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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the ACDBE because its quotation for the work was not the lowest received. However, nothing in this paragraph should be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement ACDBE at the original price is not sufficient to support a finding that good faith efforts have been made to replace the original

ACDBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement ACDBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- E. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- F. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- G. 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.
- H. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average ACDBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
- I. PRC also requires the contractor to submit copies of each ACDBE and non-ACDBE subcontractor quote submitted to the bidder when a non-ACDBE subcontractor was selected over a ACDBE for work on the contract to review whether ACDBE prices were substantially higher. Contact the ACDBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to ACDBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- J. A promise to use ACDBEs after the contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.