

# DES MOINES INTERNATIONAL AIRPORT

## ACDBE PROGRAM

### POLICY STATEMENT

#### Section 23.1, 23.23 Objectives/Policy Statement

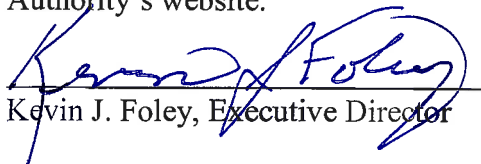
The Des Moines Airport Authority (hereinafter referred to as "Authority") has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Authority operates a small hub primary airport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

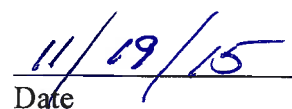
It is the policy of the Authority:

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

The Contracts Manager has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Contracts Manager 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 Authority in its financial assistance agreements with the Department of Transportation.

The Authority will disseminate this policy statement to the Des Moines Airport Authority Board and all of the components of our organization. This statement will be available to ACDBE and non-ACDBE concessionaire communities in our area by way of the Authority's website.

  
Kevin J. Foley, Executive Director

  
Date

## **SUBPART A - GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

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

### **Section 23.3 Definitions**

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

### **Section 23.5 Applicability**

The Authority operates a small hub primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

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

The Authority will include the following nondiscrimination language in all concession agreements and management contracts it executes with any firm after April 21, 2005:

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

### **Section 23.11 Compliance and Enforcement**

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

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

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

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

Any person who knows of a violation of this part by the Authority 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 Authority's ACDBE program:

1. For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
2. For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
3. In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
4. 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.
5. DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Airport's ACDBE program or otherwise violates applicable Federal statutes.

## SUBPART B - ACDBE Programs

### Section 23.21 ACDBE Program Updates

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

<b>Type of Airport:</b>	Small Hub Primary
<b>Initial Program and Goal Due:</b>	October 1, 2012
<b>Second Goal Due:</b>	October 1, 2015
<b>Subsequent Goals Due:</b>	Every 3 years on October 1

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that has been in effect since November 1, 2011 (the date of the Authority's creation), except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at the Des Moines International Airport.

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

### Section 23.23 Administrative Provisions

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

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

Mr. Steven C. Dawson  
Contracts Manager  
Des Moines Airport Authority  
5800 Fleur Drive, Room #207  
Des Moines, IA 50321  
515-256-5100  
[scdawson@dsmairport.com](mailto:scdawson@dsmairport.com)

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

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has no staff to assist in the administration of the program.

**Directory:** The Authority, through the State of Iowa Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists

the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP revises the Directory at least once a year. The Authority makes the directory available at its Administrative Offices located at 5800 Fleur Drive, Room #207, Des Moines, IA 50321, Phone 515-256-5100. The Directory can also be found on the Iowa Department of Transportation website at [http://www.dot.state.ia.us/contracts/contracts\\_eoaa.htm](http://www.dot.state.ia.us/contracts/contracts_eoaa.htm). The Directory's website may be found in Attachment 2 to this program document.

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

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

The Authority will publish notice seeking Requests for Proposals in local newspapers as well as on its website. Since Des Moines International is a small-hub airport and certain concession opportunities may be limited to large companies, the Authority will require these businesses to make good faith efforts to explore the purchase of goods and services from ACDBE vendors.

The 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. (23.25(c))

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

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

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

### **Section 23.27 Reporting**

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

Beginning March 1, 2016 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

### **Section 23.29 Compliance and Enforcement Procedures**

The Authority will take the following monitoring and enforcement mechanisms to ensure compliance with

49 CFR Part 23 and will insert the clause as set out in Attachment 3 in every concession agreement and management contract.

Additionally, the Authority will use the following enforcement mechanisms to ensure compliance as set out below and in Attachment 3.

1. Bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. Consider similar action under our own legal authorities, including responsibility determinations in future contracts. The Authority will have listed the regulations, provisions, and contract remedies available to us in the event of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment 3).
3. 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 as set out in Attachment 3.
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

## SUBPART C - CERTIFICATION AND ELIGIBILITY

**Section 23.31** The Authority will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in its concessions program and such standards are incorporated herein. The Authority is a member of the Iowa Unified Certification Program (IA UCP) administered by the Iowa Department of Transportation (IDOT), Office of Contracts, EEO Section, who will make certification decisions on behalf of the Authority for ACDBEs.

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

The Iowa Unified Certification Participants (IA UCP) will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of Part 23. The IA UCP will complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later. Also, prior to entering into a new contract, extension, or option with a currently certified ACDBE, the IA UCP will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. The IA UCP has established a schedule for this review process.

The IA UCP directed all currently certified ACDBEs to submit by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

The IA UCP 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. The size standard for banks and other financial institutions is \$1 billion in assets, for car rental companies it is \$75.23 million, for auto dealerships the standard is 350 employees, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million. The IA UCP recognize that in calculating personal net worth, the following exclusions apply: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm, to a maximum of \$3 million. Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged.

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

The IA UCP recognizes that the provisions of Part 26, Sections 26.83(c) (2-6) do not apply to certifications for purposes of Part 23. They will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. They will analyze the ownership of stock of the firm, if it is a corporation. They will analyze the bonding and financial capacity of the firm. They will determine the work history of the firm, including any concession contracts or other contracts it may have received. They 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. They will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. They will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

The IA UCP 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 Authority 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). (23.39(c)(d)).

The IA UCP will use the certification standards of Part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

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

The IA UCP will use the Uniform Application Form found in Appendix F to Part 26 with additional instruction as stated in 23.39(g).



## SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

### Section 23.41 Basic Overall Goal Requirement

The Authority will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three year period and the Authority will review the goals annually to make sure the goal continues to fit the Authority's circumstances. The Authority 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, the 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 3 years does not exceed \$200,000, the Authority need not submit an overall goal for concessions other than car rentals. The Authority understands that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

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

### Section 23.43 Consultation in Goal Setting

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

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

### Section 23.45 Overall Goals

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

<b>Type of Airport:</b>	Small Hub Primary
<b>Initial Goal Due:</b>	October 1, 2012
<b>Second Goal Due:</b>	October 1, 2015
<b>Subsequent Goals Due:</b>	Every 3 years on October 1

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Authority will submit an appropriate adjustment to our overall goal to FAA for approval at least 90 days before executing the new concession agreement.

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

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

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 and 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

**Concession Specific Goals (23.25(c)(e)(1)(v))**

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

The Authority will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. The 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 DBEs (23.25(f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

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

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

If the concession specific goal applies to purchases and/or leases of goods and services, the Authority 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 Procedures on Concession Specific Goals (23.25(e)(1)(iii), (iv))**

To be eligible to be awarded a concession that has a concession-specific goal, bidders/proposers must make good faith efforts to meet the goal. A bidder/proposer may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Part 26.51 and 26.53, regarding contract goals apply to the Authority's concession specific goals. Specifically,

#### Demonstration of Good Faith Efforts (26.53(a) & (c))

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

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

#### Information to be Submitted (26.53(b))

The Airport treats bidder/proposer's compliance with good faith effort requirements as a matter of responsibility.

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

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. 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.

Administrative Reconsideration (26.53(d))

Within ten (10) days of being informed by the Authority that it is not responsible 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:

Kevin J. Foley, Executive Director  
Des Moines Airport Authority  
5800 Fleur Drive, Room #207  
Des Moines, Iowa 50321.

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. We 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))

The Authority 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. The Authority will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

If the concessionaire fails or refuses to comply in the time specified, our contracting office will contact the Authority's legal counsel who will implement the enforcement mechanisms as set out in Attachment 3.

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 Des Moines Airport Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession

specific goal of percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

**Section 23.53 Counting ACDBE Participation for Car Rental Goals**

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

**Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

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

**Section 23.61 Quotas or Set-Asides**

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

## **SUBPART E - OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

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

### **Section 23.75 Long-Term Exclusive Agreements**

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

### **Section 23.79 Geographic Preferences**

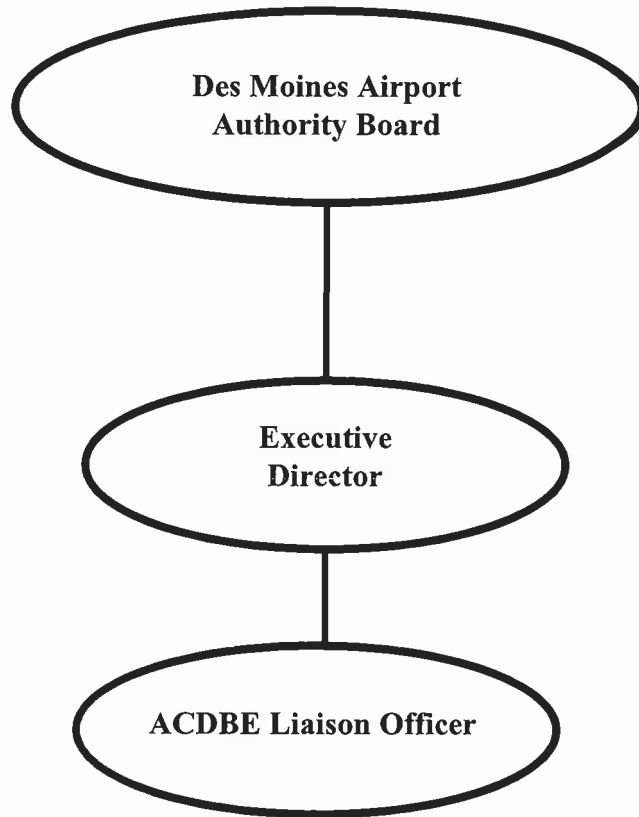
The Authority will not use a "local geographic preference," i.e., any requirement that gives an ACDBE located in one place an advantage over ACDBEs from other places in obtaining business as, or with, a concession at our airport.

### **ATTACHMENTS**

- Attachment 1..... Organizational Chart
- Attachment 2..... DBE Directory
- Attachment 3..... Monitoring and Enforcement Mechanisms
- Attachment 4..... Overall Goal for Concessions other than Car Rental Calculation,  
Consultation, Breakout of Estimated Race-Neutral & Race-Conscious  
Participation
- Attachment 5..... Overall Goals for Car Rentals Calculation, Consultation, Breakout of  
Estimated Race-Neutral & Race-Conscious Participation
- Attachment 6..... Forms 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 7..... Regulations: 49 CFR Part 23

Attachment 1

**Des Moines Airport Authority  
Organizational Chart**



**Attachment 2**

**DBE Directory**

The DBE Directory is located at the following websites or a printed copy can be viewed at Des Moines Airport Authority, 5800 Fleur Drive, Room #207, Des Moines, IA 50321

[http://www.iowadot.gov/civilrights/dbe\\_program.html](http://www.iowadot.gov/civilrights/dbe_program.html)

<http://www.ia.bidx.com/lettings/dbealpha.pdf>

<http://www.ia.bidx.com/lettings/dbework.pdf>



### Attachment 3

#### **Monitoring and Enforcement Mechanisms**

The Authority has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, a breach of contract action, pursuant to the terms of the contract.

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

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

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

1. The Authority will insert the following provisions into concessions agreements and management contracts:
  - A. It is the requirement of the Federal Department of Transportation ("DOT") that Disadvantaged Business Enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of concession agreements with the Authority. Consequently, the DBE requirements of 49 CFR Part 23 are hereby included in this Agreement. Concessionaire agrees to comply with the requirements of any such regulations as applicable to this Agreement. Furthermore, Concessionaire agrees to submit information at the request of the Authority concerning the DBE(s) that may participate in this Agreement. This information will include the name and address of each DBE, a description of the work to be performed by each named DBE and the dollar value of the DBE's contracted participation. The Concessionaire will also provide information as requested by the Authority describing the purchase or lease of goods or services from DBE(s) including, but not limited to, the purchase or lease of automobiles, fuel, tires, maintenance and janitorial services and other services.
  - B. In the event of breach of any of Concessionaire's duties contained in this Paragraph ( ), subparagraphs ( ), the Airport shall have the right to terminate this Agreement and to re-enter and repossess the facilities and hold the same as if said Agreement had never been made or issued, provided, however, that the Concessionaire shall have the right to contest said alleged breach under applicable procedures, and any sanctions under or termination of this Agreement shall be withheld pending completion of such procedures; and provided, however, that the Concessionaire will pursue these applicable procedures with diligence and dispatch.
2. We will implement the following additional monitoring and compliance procedures:

None.

3. We will implement our compliance and monitoring procedures as follows:

Each year we will review concession leases and determine compliance with any DBE requirements. Since the Airport is small and the number of concessionaires is small, informal contact is easy and frequent. Informal meetings are held with concessionaires as needed.

## Attachment 4

### **\*Section 23.45 Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation**

#### **Amount of Goal**

The Authority's overall goal for concessions other than car rental during the period beginning October 1, 2015, and ending September 30, 2018, is 8.07% of the total gross receipts for concessions at the Des Moines International Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

The potential concession opportunities anticipated during this goal period are food and beverage, gift and retail, terminal advertising, automatic teller machines (ATM), wireless internet, pay telephone, and baggage cart services. The food and beverage, gift and retail, and terminal advertising opportunities will have estimated gross receipts in excess of \$200,000, while the rest will have estimated gross receipts revenue less than \$200,000. It is anticipated that after the food and beverage, gift and retail, and terminal advertising concessions are awarded, the Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 90 days before issuing the solicitation for the concession opportunity. (23.45(i)).

The Authority determines the market area for each concession opportunity as it arises. This is the geographical area in which the substantial majority of firms which seek to do the specific 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.

#### **Method Used to Calculate Overall Goal**

##### Goods and Services

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

##### Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar

amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

**Step 1: 23.51(c)**

For Option 1, the Authority looked at census data for the Des Moines-West Des Moines Metropolitan Statistical Area, as defined by the U.S. Census Bureau. From that data, the Airport determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

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

The data source for the numerator was the Iowa Unified Certified Program DBE directory. Searching that directory, the Airport found four (4) certified DBEs in the area of airport concessions, including food/beverage, retail, and advertising. Therefore, the numerator for the base figure computation is four (4).

For the NAICS codes of, 541850, 72231, 722511, and 45322, the data source for the denominator is census bureau data at [www.census.gov](http://www.census.gov). The Authority searched for the Des Moines-West Des Moines Metropolitan Statistical Area, as defined by the U.S. Census Bureau. Under the above-listed NAICS codes, there are 582 establishments. Therefore, the denominator for the base figure computation is 582.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of:  $4/582 = .0069$  or **0.69%**.

**Step 2: 23.51(d)**

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 7.37%. **Our overall goal for non-car rental concessions is 8.06%.**

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

1. **Past participation** - The Authority evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past. The analysis of past participation showed that registered DBE's participation in airport non-car rental concessions averaged 15.43% over the prior three years (12.25% in 2012-13, 17.13% in 2013-14, 16.53% in 2014-15).

The growth of the figure indicates that it is a reasonable measure of participation in the absence of discrimination. However, the entire registered ACDBE participation comes from a single participant who operates the only two DBE firms registered in the state of Iowa, and is subcontracted through one concessionaire and operates a separate retail unit. Should that ACDBE's affiliation end with the primary concessionaire, the total

participation would be less than 5%. On that basis, the Authority averaged the base figure of 0.69% and the average participation from the last three years of 15.43%, and adjusted the base figure to 8.06%.

2. **Disparity study** – The Authority is not aware of any disparity studies for the Des Moines Metropolitan Area or the state of Iowa.
3. **Other evidence** - The Authority included all ACDBEs listed in the IA UCP in our numerator, even firms from outside our geographical area. The denominator is comprised of retail establishments only in the Des Moines Metropolitan Area proper. Therefore, our base figure could be inflated due to a number of ACDBE firms included that would not consider doing business in our market.

Finally, the Authority is not aware of any statistical disparities in the ability of ACDBEs to get financing, bonding, and insurance required to participate in this program, nor any data on employment, self-employment, education, training, and union apprenticeship programs to the extent it can be related to opportunities for ACDBEs to perform in this program. Consequently, it was appropriate to make no adjustment in the base figure.

#### **Consultation with Stakeholders (23.43)**

Because there are limited opportunities during this goal period, our consultation with stakeholders has been likewise limited. As new concession opportunities arise during this goal period, the Airport will conduct stakeholder meetings for each concession opportunity during the goal setting process for the specific opportunity. We will invite the current concessionaires, ACDBEs listed in the IA UCP directory for the appropriate trades, and members of the various organizations that could be expected to have information concerning either the availability of disadvantaged businesses or the effects of discrimination on opportunities for ACDBEs.

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

The Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Authority uses the following race-neutral measures to increase ACDBE participation:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23 - The Authority entertains any and all requests for doing business at our airport. Our website contains a feature allowing for requesting information on concessions and leases.
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate - All requests for proposals for business in our airport are published in local newspapers and posted on the Authority's website. In some instances, we also publish these needs in industry trade journals.

The Authority estimates that, in meeting our overall goal of 8.07%, it will obtain 100% from race-neutral participation and 0% through race-conscious measures.

The Authority believes the race-neutral measures alone are sufficient to meet its goal. In the past, it has met its ACDBE goals without requiring race-conscious measures. In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we

use concession-specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51 (f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ADCBE participation through a subcontract on a prime contract that does not carry ACDBE goals; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award. The Authority does not have, nor does it plan to institute, any race-conscious measures to meet our goal.

If the Authority projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will consider establishing race-conscious measures to meet the overall goal.

**Attachment 5**

**Section 23.45: Overall Goal Calculation for Car Rentals**

**Amount of Goal**

The Authority's overall goal for car rentals during the period beginning October 1, 2015, and ending September 30, 2018, is 0% of the total gross receipts of car rental operations at the Des Moines International Airport.

During this goal period, if a new car rental concession opportunity arises prior to the expiration of the current rental car concessions and if the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 90 days before executing the new concession agreement. (23.45(i)).

The Authority has determined that its market area for rental cars is the United States of America. The majority of rental car companies are national companies that continue to grow.

**Methodology used to Calculate Overall Goal**

Goods and Services

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

**Step 1: 23.51(c)**

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

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

The data source or demonstrable evidence used to derive the numerator was the IA UCP directory. None of the companies currently under lease are ACDBEs. Therefore, our numerator is 0.

The data source or demonstrable evidence used to derive the denominator was our Active Participant List. There are six companies leasing at our airport. Therefore, our denominator is six.

When we divide the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of: 0%,  $0/6 = 0\%$

**Step 2: 23.51(d)**

We do not currently believe there should be an adjustment to the goal of 0%. There are no car rental companies listed in the IA UCP nor are there any companies listed as suppliers of goods and services to rental car companies. Prior to the expiration of the current contracts, the Authority will reevaluate the information to determine if an adjustment in the Step 1 base figure is warranted.

**Consultation with Stakeholders (23.43)**

The Authority investigated the use of an alternative method for goal setting for rental cars. It inquired of the six current lessees as to their purchases of goods and services from DBEs and received dollar values of purchases from them. The analysis of past participation showed that registered DBE's participation in airport car rental concessions averaged 1.27% over the prior three years (2.92% in 2012-13, 0.91% in 2013-14, 0.12% in 2014-15). The decline of the figure indicates that it may not be a reasonable measure of participation in the absence of discrimination. On that basis, the Authority believes that in the absence of a national ACDBE reporting structure for rental car concessionaires, the base figure should not be adjusted. The Authority will consider this information in setting ACDBE goals for the car rental concessions at the expiration of the current agreement.

**Breakout of Estimated Race-Neutral & Race Conscious Participation (23.51)**

The Authority will make this determination and submit that information to the FAA prior to expiration of the current rental car concession agreement.



Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

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

\_\_\_\_\_ The bidder/proposer is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract.

\_\_\_\_\_ The bidder/proposer (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/proposer's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts (continued)**

**FORM 2: LETTER OF INTENT**

Name of bidder/proposer's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of ACDBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by ACDBE firm:

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

**Affirmation**

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

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

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

(Submit this page for each ACDBE subcontractor.)