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Norfolk Airport Authority  
Norfolk International Airport



**NORFOLK INTERNATIONAL AIRPORT**

Airport Concession  
Disadvantaged Business Enterprise Program

August 2021

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**US Department of Transportation Federal Aviation Administration**  
Airport Concession Disadvantaged Business Enterprise Program  
49 CFR Part 23  
**Norfolk International Airport, Norfolk VA**

**POLICY STATEMENT**

The Norfolk Airport Authority ("the Authority") on behalf of the Norfolk International Airport ("the Airport"), has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Airport is a primary small-hub 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 to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also the policy:

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

**Steve Sterling, Deputy Executive Director, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351** has been designated as the ACDBE Liaison Officer (ACDBELO). 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 Federal Aviation Administration.

This policy statement will be disseminated to the Norfolk Airport Authority. It will also be distributed to ACDBE and non-ACDBE concessionaire communities in the market area.

1. This policy statement will be prepared as a handout, and made available at concession pre-proposal conferences, and/or outreach meetings conducted by the Airport.
2. This policy statement will be posted on the Airport Authority's website.

  
Robert Bowen, Executive Director

08/06/2021  
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 Norfolk International Airport (hereafter “the Airport”) will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

The Norfolk International Airport is 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 Norfolk Airport Authority (“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 ACDBE 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 assurances in all concession agreements and management contracts it executes with any firm:

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

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

### **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.

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

The 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 Authority's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the Authority'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:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.

- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (e) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Authority's ACDBE program or otherwise violates applicable Federal statutes.

## **SUBPART B – ACDBE Programs**

### **Section 23.21 ACDBE Program Updates**

Since the Airport is a small-hub primary airport, it is required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Authority 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 23.45(a) of this section.

This ACDBE program will be implemented at the Norfolk International Airport. However, if applicable, the Authority will establish separate ACDBE goals at each location.

When the Authority makes significant changes to its ACDBE program, the Authority 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 described on the third page of this program.

**ACDBE Liaison Officer (ACDBELO):** The Authority has designated the following individual as the ACDBELO:

**Steve Sterling, Deputy Executive Director,  
Norfolk Airport Authority,  
2200 Norview Ave, Norfolk VA 23518,  
Phone: 757-857-3351  
Email: [ssterling@norfolkairport.com](mailto:ssterling@norfolkairport.com)**

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

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO is assisted as may be required by appropriate members of the Airport staff as well as the Authority's legal counsel to assist in the administration of the program. The duties and responsibilities include the following:

1. *Gathers and reports statistical data and other information as required by FAA or DOT.*
2. *Reviews third party contracts and purchase requisitions for compliance with this program.*
3. *Works with 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 the Authority's progress toward attainment and identifies ways to improve progress.*
7. *Attends pre-bid/pre-proposal meetings.*
8. *Advises the Norfolk Airport Authority on ACDBE matters and achievement.*
9. *Chairs the ACDBE Advisory Committee, if/when formed.*
10. *Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.*
11. *Plans and participates in ACDBE training seminars.*
12. *Acts as liaison to the Unified Certification Program in Virginia.*
13. *Provides outreach to ACDBEs and community organizations to advise them of opportunities.*

**Directory:** The Virginia Department of Small Business and Supplier Diversity (SBSD) 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 SBSBD revises the directory in real time. The Authority will refer concessionaires to the directory available as follows:

<https://www.sbsd.virginia.gov/>.

## **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 follow all federal, state and local nondiscrimination laws, as well as comply with all of the Authority's policies and procedures 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.
- 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, are described in Section 23.25 and **Attachment 4 and 5** 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 **Attachment 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**

The Authority will submit annually the USDOT-FAA Uniform Report of ACDBE Participation. These reports will reflect concession revenue actually received by all concessionaires.

The Authority will retain sufficient basic information about its ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine its 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.

## **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:

1. The Authority will bring to the attention of the US 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. The Authority will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The Authority has listed the regulations, provisions, and contract remedies available to it in the event of non-compliance with the ACDBE regulation by a participant in procurement activities (see **Attachments 3 and 8**).
3. The Authority will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by the following:
  - The Authority will utilize the legal instrument of a contract clause to ensure compliance with the bid specifications. After award of the contract, the ACDBELO will conduct such audits and reviews as necessary to ensure the Airport that the concessionaire is in compliance.
  - The Airport will implement a monitoring and enforcement mechanism that will include written certification that the Airport has reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored work sites for this purpose. This monitoring will be conducted during routine site visits by the ACDBELO on a monthly basis. The ACDBELO will sign-off on the written certifications.
  - Prime contractors must also report to the ACDBELO when an ACDBE is terminated for any reason.
  - The 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 its reports of ACDBE participation to the FAA, the Authority will show both commitments and attainments, as required by the USDOT reporting form.

## **SUBPART C – CERTIFICATION AND ELIGIBILITY**

### **Section 23.31 Unified Certification Program**

The Authority is a member of a Unified Certification Program (UCP) administered by Virginia Department of Small Business and Supplier Diversity (VDSBSD), which will make certification decisions on behalf of the Authority for ACDBEs. The UCP will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in the concessions program at the Airport and such standards are incorporated herein.

The 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 UCP will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of part 23. Prior to entering into a new contract, extension, or option with a currently certified ACDBE, the 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 Airport will request a review by the UCP at least four months prior to any lease renewal, as well as during the ACDBE program goal update process.

The 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 for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets; for pay telephone companies, 1,500 employees; and for ACDBE automobile dealers, 350 employees.

### **Section 23.35 Personal Net Worth Standard**

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

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

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

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

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

The 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 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 the Airport's concessions program. The UCP is not obligated to certify a Part 26 DBE as an ACDBE if the firm does not do work relevant to the concessions program (23.37).

The UCP 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. The UCP 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. The UCP will determine the work history of the firm, including any concession contracts or other contracts it may have received. The UCP 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. The UCP 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. The UCP will ensure that the ACDBE firm meets the applicable size standard (23.39(a)(b)).

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

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

### **Section 23.45      Overall Goals**

The Norfolk International Airport is a **small-hub primary** airport. As a condition of eligibility for FAA financial assistance, the Authority will submit its updated overall goals according to the following schedule.

<b>Primary Airport Size</b>	<b>Region</b>	<b>Date Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
<b>Small Hubs</b>	<b>All regions</b>	<b>October 1, 2021</b>	<b>2022/2023/2024</b>	<b>October 1, 2024 (2025/2026/2027)</b>

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 the overall goal to FAA for approval at least 90 days before issuing the solicitation for the new concession opportunity.

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, or the “base figure”. The second step is to examine all relevant evidence reasonably available in the Airport’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE participation the Airport would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs; a disparity study; evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, and 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 on which the Airport relied can be found in **Attachment 4** 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 on which the Airport relied 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 **Attachments 4 and 5** to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

**Concession-specific Goals (23.25 (c)(e)(1)(iv))**

The Authority will use concession-specific goals to meet any portion of the overall goals the Authority does not project being able to meet using race-neutral means. Concession-specific

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

The 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 needs 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 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 (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the Authority's concession-specific goals.

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

The following person 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.

**Steve Sterling, Deputy Executive Director,  
Norfolk Airport Authority,**

**2200 Norview Ave, Norfolk VA 23518,**  
**Phone:757-857-3351**  
**Email: [ssterling@norfolkairport.com](mailto:ssterling@norfolkairport.com)**

The Authority will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a commitment to the concession agreement with the bidder/offeror is made.

### **Information to be submitted (26.53(b))**

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

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

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

**Robert S. Bowen, Executive Director**  
**Norfolk Airport Authority**  
**2200 Norview Ave, Norfolk VA 23518**

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. The Authority 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 US 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 ACDBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the Authority will require the concessionaire to obtain prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The Authority will provide such written consent only if the Authority agrees, for reasons stated in a concurrence document, that the prime concessionaire has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE subconcessionaire fails or refuses to execute a written contract;
- (2) The listed ACDBE subconcessionaire fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE subconcessionaire to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE subconcessionaire fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE subconcessionaire becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE subconcessionaire is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The Authority has determined that the listed ACDBE subconcessionaire is not a responsible contractor;
- (7) The listed ACDBE subconcessionaire voluntarily withdraws from the project and provides to the Authority 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 subconcessionaire is unable to complete its work on the contract;
- (10) Other documented good cause that the Authority has determined compels the termination of the ACDBE subconcessionaire. Provided, that good cause does not exist if the prime concessionaire seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concessionaire can self-perform the work for which the ACDBE subconcessionaire was engaged or so that the prime concessionaire can substitute another ACDBE or non-ACDBE concessionaire after contract award.

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

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for ACDBE firms put forward by offerors in negotiated procurements.

If the concessionaire fails to comply with this provision, 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 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 has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, 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 rentals 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 overall goals other than car rentals as provided in 49 CFR 23.55.

### **Section 23.57                    Goal Setting and Accountability**

If the awards and commitments shown on the Authority's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall applicable to that fiscal year, the Airport will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

### **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 23.73           Privately-Owned or Leased Terminal Buildings**

The Authority does not have any privately-owned or leased terminal buildings.

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

**Section 23.79           Geographic Preferences**

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

**ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	Virginia UCP DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms (26.37)
Attachment 4	Overall Goal Calculations for Car Rentals
Attachment 5	Overall Goal Calculations for Concessions Other Than Car Rentals
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Regulations: 49 CFR Parts 23

**Attachment 1**

**Organizational chart**



## **Attachment 2**

### **ACDBE DIRECTORY**

The DBE Directory for the Commonwealth of Virginia may be found at  
<https://www.sbsd.virginia.gov/>

## **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, the following:

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

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
2. Enforcement action pursuant to 49 CFR part 31; 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 at the next lease renewal:
  - A. The ACDBELO will conduct reviews of attainments versus commitments, on an as-needed basis. This review will ensure the actual attainments of the ACDBE, as committed at contract award.
2. The Authority will implement the following additional monitoring and compliance procedures, consistent with concession contract provisions:
  - A. The Authority has the right to inspect books and records of the ACDBE concerning operations at the Airport, directly or indirectly, at the discretion of the Authority.
3. The Authority will implement its compliance and monitoring procedures as follows:
  - A. All concessions will be required to submit, to the Authority, monthly revenue reports. Concessionaires will submit the ACDBE Attainment Reports annually.

## **Attachment 4**

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

## **Attachment 5**

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

## **ATTACHMENT 6**

### **Forms 1 & 2 for Demonstration of Good Faith Efforts**

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

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

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

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

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

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

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

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

**FORM 2: LETTER OF INTENT**

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

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

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

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

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

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

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

Description of work to be performed by ACDBE firm:

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

**Affirmation**

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

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

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

(Submit this page for each ACDBE subcontractor.)

## **ATTACHMENT 7**

### **Certification Application Forms**

The ACDBE Certification application for the Commonwealth of Virginia may be found at:

<https://www.sbsd.virginia.gov/>

## **Attachment 8**

### **I. Procedures for removing a DBE's eligibility.**

#### **A. Ineligibility complaints.**

1. Any person may file with VDSBSD a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. Confidentiality of complainants' identities will be protected. However, general allegations or anonymous complaints will not be accepted.
2. VDMBE will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. VDMBE may request additional information from the firm or conduct any other investigation that it deems necessary.
3. If VDMBE determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it will provide written notice to the firm that VDMBE proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If VDMBE determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**B. VDMBE-initiated proceedings.** If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, VDMBE determines that there is reasonable cause to believe that a currently certified firm is ineligible, VDMBE will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based.

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

1. VDMBE will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing.
2. The firm may elect to present information and arguments in writing, without going to a hearing.

- D. Separation of functions.** VDMBE will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
1. VDMBE's method of implementing this requirement will be made part of its DBE program.
  2. The decision-maker will be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
- E. Grounds for decision.** VDMBE will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to VDMBE at the time of its certification of the firm. Rather, such decision will be based on one or more of the following:
1. Changes in the firm's circumstances since the certification of the firm by VDMBE that render the firm unable to meet the eligibility standards of this part;
  2. Information or evidence not available to VDMBE at the time the firm was certified;
  3. Information that was concealed or misrepresented by the firm in previous certification actions by VDMBE;
  4. A change in VDMBE's certification standards or requirements since the firm was certified; or
  5. A documented finding that VDMBE's determination to certify the firm was factually erroneous.
- F. Notice of decision.** Following VDMBE decision, VDMBE will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of VDMBE's decision and of the availability of an appeal to the United States Department of Transportation shown below in Section II. VDMBE will send copies of the notice to the complainant in an ineligibility complaint.
- G. Status of firm during proceeding.**
1. A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.
  2. The firm does not become ineligible until the issuance of the notice provided for in paragraph (F) of this section.

**H. Effects of removal of eligibility.** When VDMBE removes a firm's eligibility, VDMBE will take the following action:

1. When a prime contractor has made a commitment to using the ineligible firm, or VDMBE has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before VDMBE will issue the decertification notice provided for in paragraph (F) of this section, the ineligible firm does not count toward the contract goal or overall goal. Prime contractor are directed to meet the contract goal with an eligible DBE firm or demonstrate to VDMBE that it has made a good faith effort to do so.
2. If a prime contractor has executed a subcontract with the firm before VDMBE has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after VDMBE issued the notice of its ineligibility shall not count toward VDMBE's overall goal, but may count toward the contract goal.
3. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, VDMBE may continue to count its participation on that contract toward overall and contract goals.

**I. Availability of appeal.** When VDMBE makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the United States Department of Transportation in accordance with Section II of this document.

## **II. USDOT Certification Appeals Process**

- A.** If you are a firm which is denied certification or whose eligibility is removed by the VDMBE, you may make an administrative appeal to the USDOT.
- B.** If you are a complainant in an ineligibility complaint to the VDMBE (including the concerned operating administration in the circumstances provided in paragraph (C), you may appeal to the USDOT if the VDMBE does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
- C.** Send appeals to the following address:

United States Department of Transportation  
Office of Civil Rights  
400 7th Street SW, Room 2401  
Washington DC 20590

## **Attachment 9**

### **49 CFR Part 23**

The federal regulations, Title 49 Code of Federal Regulations Part 23, may be found at:

[www.ecfr.gov](http://www.ecfr.gov).