

## **GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

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

### **Section 23.3 Definitions**

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

### **Section 23.5 Applicability**

The Airport is a primary airport, and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

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

The Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, 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 Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

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

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

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

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

## **Section 23.11 Compliance and Enforcement**

The Airport acknowledges that the compliance and enforcement provisions of 49 CFR part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under part 23 in the same way that they apply to FAA recipients and programs under part 26.

The Airport will include in all future concession agreements the following language:

"This provision obligates the concessionaire for the period during which the property is owned, used or possessed by the concessionaire and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

"The concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the concessionaire."

## **ACDBE PROGRAMS**

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

The La Crosse Regional Airport is a non-hub primary airport required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Airport will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

Until the Airport's new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at the La Crosse Regional Airport (LSE).

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

## **Section 23.23                      Administrative Provisions**

**Policy Statement:** The Airport is committed to operating its ACDBE program in a nondiscriminatory manner.

The Airport's Policy Statement is elaborated on the first page of this program.

The Airport will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. The Airport will also encourage prime concessionaires to use such institutions.

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

Lauren Koss  
Deputy Airport Director  
2850 Airport Road  
La Crosse, WI 54603  
(608) 789-7466  
kossl@lseairport.com

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

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

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to 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) and monitor results.
6. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.

7. Participates in pre-bid meetings.
8. Advises the Director/Aviation Board on ACDBE matters and achievement.
9. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Unified Certification Program (UCP) in Wisconsin.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
13. Maintains the Airport's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The Airport through the Wisconsin Unified Certification Program (UCP) maintains a directory identifying all firms eligible to participate as DBEs and 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 Directory clearly specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory continuously with additions, deletions, and other changes. The Directory is available electronically at:

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>  
(Attachment 2).

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

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

The Airport will seek ACDBE participation in all types of concession activities.

The Airport will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. The Airport will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)).

- Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate.
- Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process.

- All concession agreements will contain the required non-discrimination clause from 49 CFR Part 23.
- All concession solicitations will contain the required Title VI language pertaining to non-discrimination in contracting activities and concession performance.
- As part of its monitoring program, the Authority will include a review of nondiscrimination activities employed by concessionaires, including its awareness campaigns and training of personnel.
- All discrimination complaints will be aggressively investigated by compliance staff.

The Airport will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The Airport will also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures we will implement, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
  - a. In setting concession-specific goals for concession opportunities other than car rental, the Airport will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is de minimis availability for direct ownership arrangement participation for that concession opportunity.
  - b. In setting car rental concession-specific goals, the Airport will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, Airport is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
  - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
  - d. If the goal applies to purchases or leases of goods and services from ACDBEs, the Airport will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
  - e. When a concession-specific goal is set, the Airport will require competitors to make good faith efforts to meet this goal. A competitor

- 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.
- f. The administrative procedures applicable to contract goals in part 26, §§ 26.51 through 26.53. apply with respect to concession-specific goals.
  - g. In setting car rental concession-specific goals, the Airport will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, the Airport is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
  - h. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
  - i. If the goal applies to purchases or leases of goods and services from ACDBEs, the Airport will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
  - j. When a concession-specific goal is set, the Airport will require competitors to make good faith efforts to meet this goal. A competitor 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.
  - k. The administrative procedures applicable to contract goals in part 26, §§ 26.51 through 26.53. apply with respect to concession-specific goals.
- 2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.
  - 3. With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

The Airport requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

The Airport's overall goal methodology and a description of the race-neutral measures it will use 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))

## **Section 23.26                      Fostering Small Business Participation**

The Airport has created a small business element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as Attachment 11 to this ACDBE Program. The program elements will be actively implemented to foster small business participation. The Airport acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program.

Airport will submit an annual report on small business participation obtained through the use of this small business element. The report must be submitted in the format acceptable to the FAA based on a schedule established and posted to the agency's website, available at [https://www.faa.gov/about/office\\_offices/acr/bus\\_ent\\_program](https://www.faa.gov/about/office_offices/acr/bus_ent_program)

## **Section 23.27                      Reporting**

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

The Airport will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

The Airport will create and maintain active participants list information and enter it into a system designated by the FAA. The Airport will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession opportunities.

- a. Firm name;
- b. Firm address including ZIP code;
- c. Firm status as an ACDBE or non-ACDBE;
- d. Race and sex information for the firm's majority owner;
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

The Airport will collect the data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. The Airport will enter this data in FAA's designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded. A sample active participants list can be found on Attachment 3.

The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to DOT's Departmental Office of Civil Rights each year.

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

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

1. We will insert the following provisions into concessions agreements and management contracts:
  - a. 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.
  - b. 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.
  - c. Company shall respond to City requests for annual DBE information.
  - d. Company shall utilize ACDBE suppliers to the extent they are available in the State of Wisconsin. If certified ACDBE's are unavailable, Company shall work with City, in a good faith effort, to identify possible supplies which may be interested in becoming a certified ACDBE. Should a utilized certified ACDBE become unable to perform, Company shall attempt to replace said certified ACDBE in a timely manner. Company shall document all ACDBE participation in a manner acceptable to City, in accordance with the City's ACDBE program, including dollar value of supplies purchased (gross receipts) and type of business operation.

Furthermore, Airport will conduct an annual verification of ACDBE certification status with the UCP for Wisconsin, and submit ACDBE uniform reports will be submitted annually.

We will implement the following additional monitoring and compliance procedures:

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT



- can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 3).
  3. We will provide a monitoring and enforcement mechanism to verify that work committed to ACDBEs at contract award is actually performed by the ACDBEs.
  4. We will show ACDBE commitments and attainments in the annual Uniform Report of ACDBE Participation as required by the FAA.

## **CERTIFICATION AND ELIGIBILITY**

### **Section 23.31**

#### **Certification Standards and Procedures**

The Airport is a non-certifying member of the Wisconsin Unified Certification Program (the “UCP”). The UCP complies with all relevant procedures and standards of Part 26, except for those specifically established in Part 23 in which case, Part 23 is used, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

The Wisconsin UCP directory of eligible ACDBEs specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

For information about the certification process or to apply for certification, firms should contact:

Wisconsin Dept. of Transportation  
P.O. Box 7965  
Madison, WI 53707  
(608)267-9527

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

### **Section 23.33**

#### **Business Size Standards**

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm’s previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm’s previous five (5) fiscal years.

2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.
4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in [13 CFR 121.104\(a\)](#)) of affiliates are included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

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

The personal net worth standard used in determining eligibility for purposes of Part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged

### **Section 23.39      Other ACDBE Certification Requirements**

The provisions of § 26.83(c)(1) of 49 CFR part 26 do not apply to ACDBE certifications. Instead, in determining whether a firm is an eligible ACDBE, the UCP will take the following steps:

- 1) Visit the firm's principal place of business, virtually or in person, and interview the socially and economically disadvantaged individual (SEDO), officers, and key personnel. The UCP will review those persons' résumés and/or work histories. The UCP will maintain a complete audio recording of the interviews. The UCP will also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the UCP will keep in its files.
- 2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;
- 3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;
- 4) Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;
- 5) Obtain or 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;
- 6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;

- 7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and
- 8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of part 26.

In reviewing the Declaration of Eligibility required by § 26.83(j), the UCP will ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

For purposes of this part, the term prime contractor in § 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of § 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.63(c)(1).

The UCP will use the Uniform Certification Application found in part 26 of this chapter without change. If the UCP seeks to supplement the form by requesting specified additional information consistent with this part, we will first seek written approval of the concerned Operating Administration and update this ACDBE program plan.

The UCP will require every applicant to state that it is applying for certification as an ACDBE and complete all of section 5.

Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs.

## **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 23.41                      Basic Overall Goal Requirement**

The Airport will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period, and the sponsor will review the goals annually to make sure the goal continues to fit the Airport's circumstances. The Airport will submit any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if

the average annual concession revenues for concessions other than car rentals over the preceding three (3) years do not exceed \$200,000, the Airport is not required to develop and submit an overall goal for concessions other than car rentals. The Airport understands that “revenue” means total revenue generated by concessions, not the revenue received by the airport from concession agreements.

The Airport’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 Airport 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 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 our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

The requirements of this section do not apply if no new concession opportunities will become available during the goal period. However, the Airport will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

### **Section 23.45                      Overall Goals**

Overall goals will be submitted to the FAA for approval. The overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA’s website.

The goals must be submitted every three years based on the published schedule. 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 sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

The Airport will establish overall goals in accordance with the 2-Step process as specified in § 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in the sponsor’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE

participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship).

The Airport will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that the Airport's goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral "split." In such a case, the adjusted goal is binding on the Airport.

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

The Airport will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the Airport will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the Airport will communicate with the Wisconsin UCP to confirm that ACDBE has completed its annual Declaration of Eligibility.

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

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

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the Airport will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the Airport will communicate with the Wisconsin UCP to confirm that ACDBE has completed its annual Declaration of Eligibility.

**Section 23.57      Goal shortfall accountability.**

If the awards and commitments on the Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year.
2. Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year.
3. As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

The FAA may impose conditions as part of its approval of the Airport's analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

The Airport may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- a. The Airport does not submit the analysis and corrective actions to the FAA in a timely manner as required under paragraph (b)(3) of § 23.57;
- b. The FAA disapproves the analysis or corrective actions; or
- c. The Airport does not fully implement:
  - i. The corrective actions to which we have committed, or
  - ii. Conditions that FAA has imposed following review of our analysis and corrective actions.
  - iii. If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

**Section 23.61      Quotas or Set-asides**

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

## **OTHER PROVISIONS**

### **Section 23.71                      Existing Agreements**

If permitted by the existing agreement, the Airport will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

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

The Airport will pass through applicable provisions of part 23 to any private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23.

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

The Airport will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of more than 10 years including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an exclusive agreement is one having a type business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

The Airport may enter into a long-term, exclusive concession agreement only under the following conditions:

- 1) Special local circumstances exist that make it important to enter such agreement; and
- 2) FAA approves [Recipient's] plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, the Airport will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

- 1) A description of the special local circumstances that warrant a long-term, exclusive agreement;
- 2) A copy of the solicitation;
- 3) ACDBE contract goal analysis developed in accordance with this part;
- 4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;

- 5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
- 6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
- 7) Final long-term exclusive concession agreement, subleasing or other agreements;
  - a. In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, the Airport will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
  - b. In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, the Airport will submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:
    - i. A description of the special local circumstances that warrant the holdover;
    - ii. Anticipated date for renewal or re-bidding of the agreement;
    - iii. The method to be applied for renewal or re-bidding of the agreement;
    - iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

## **Section 23.77                      Preemption of Local Requirements**

In the event that a State or local law, regulation, or policy differs from the requirements of this part, [Recipient] will, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of 49 CFR part 23. However, nothing in part 23 preempts any State or local law, regulation, or policy enacted by the governing body of the Airport, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with part 23.

## **Section 23.79                      Geographic Preferences**

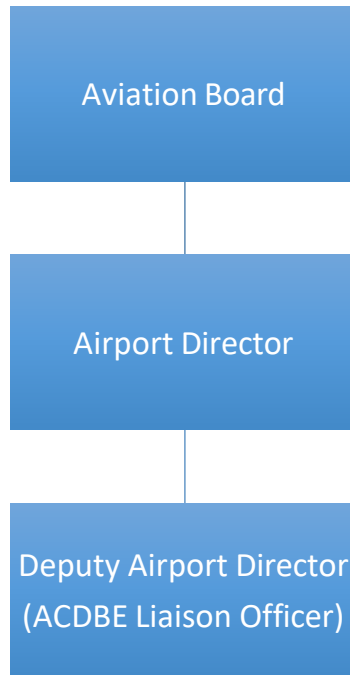
The Airport will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g. our local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport.



**ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Active Participants List Collection Form
Attachment 4	Monitoring and Enforcement Mechanisms
Attachment 5	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	State's UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23
Attachment 11	Small Business Element

**Attachment 1**  
**Organizational Chart**



**Attachment 2**

**WI DBE Directory**

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

**Attachment 3**  
**Active Participants List Collection Form**

Firm Name	Street Address	City	State	Zip Code	ACDBE or Non-ACDBE	Race of Majority Owner	Sex of Majority Owner	NAICS code	Age of the firm	Annual Gross Receipts

## **Attachment 4**

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

The La Crosse Regional Airport (Airport) has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to all applicable state laws; and
3. All other available legal remedies.

In addition, the federal government has available several enforcement mechanisms that 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 and 2 CFR parts 180 and 1200;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

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

1. We will insert the following provisions into concessions agreements and management contracts:
  - a. 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.
  - b. 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.
  - c. Company shall respond to City requests for annual DBE information.
  - d. Company shall utilize Airport Concessions Disadvantaged Business Enterprises (ACDBE) suppliers to the extent they are available in the State of Wisconsin. If certified ACDBE's are unavailable, Company shall work with City, in a good faith effort, to identify possible supplies which may be interested in becoming a certified ACDBE. Should a utilized certified ACDBE become unable to perform, Company shall attempt to replace said

certified ACDBE in a timely manner. Company shall document all ACDBE participation in a manner acceptable to City, in accordance with the City's ACDBE program, including dollar value of supplies purchased (gross receipts) and type of business operation.

2. We will implement the following additional monitoring and compliance procedures:

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

An annual verification of ACDBE certification status with the UCP for Wisconsin.

ACDBE uniform reports will be submitted annually.

## **Attachment 5**

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

**[Attached Separately]**

## **Attachment 6**

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

**[Attached Separately]**



## Attachment 7

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

## Attachment 7

**Forms 1 & 2 for Demonstration of Good Faith Efforts****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 8**

**ACDBE Certification Application Form**

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/eligibility-requirements.aspx>

**Attachment 9**

**State's UCP Agreement**

<https://www.msnairport.com/documents/pdf/ACDBE%20Part%2023%20Program.pdf>

**Attachment 10**

**Regulations: 49 CFR Part 23**

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl)

**Attachment 11**  
**Small Business Element**

**1. Objective/Strategies**

- (1) Establish a race-neutral small business set-aside for certain concession opportunities. Airport will document the rationale for selecting small business set-aside concession opportunities which may include consideration of size and availability of small businesses to operate the concession.
- (2) Consider the concession opportunities available through all types of concession models.
- (3) On concession opportunities that do not include ACDBE contract goals, require all concession models to provide subleasing opportunities, when reasonable, of a size that small businesses, including ACDBEs, can reasonably operate.
- (4) On concession opportunities that do not include ACDBE contract goals and may not provide subleasing opportunities, create opportunities for small businesses to participate in providing goods and services.
- (5) Use this Small Business Element as a resource for communicating upcoming contracts and opportunities to the community through its regional partners.

**2. Definition**

- Small Business – A profit-making corporation, sole proprietorship, or partnership that:
  - a) Business concern that is certified as a DBE by the Wisconsin Unified Certification Program (UCP), or
  - b) Possesses valid certification issued by an agency, approved by the Airport, that verifies the firm is within the SBA size standards, or
  - c) Is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33, or
  - d) All businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or sex.

### **3. Verification**

- Airport will verify that a small business conforms to the above-mentioned definition of a small business by the following means:
  - Small business is certified by an approved agency that uses the same size standard as defined in the Definition section of this Attachment 11.
  - When certification is not available, Airport will review the size criteria of the small business to confirm they meet the criteria established by this Attachment 11. This will include reviewing the last five years of business tax records.
  - Airport will assure that all businesses regardless of race, sex or geographic location will have equal access to the verification process.
- In the event a certified small business is vying for an airport concession opportunity, Airport will verify that the business entity complies with the size standards set forth in 49 CFR Part 23, Section 23.33.

### **4. Monitoring/Record Keeping**

- A small business may not be substituted or removed without the written authorization of the ACDBELO
- Airport will track and monitor participation by ACDBEs and other small businesses that results from the implementation of this small business element. Participation will be reported annually as part of the Uniform Report of ACDBE Participation.
- Airport will collect data from contractors on a monthly basis.
- Airport will maintain data on each contract tracking the contract goal, commitment and achievement. Contractors who achievement levels are less than 90% of commitment for three (3) consecutive months will be notified that they must increase small business participation to 100% or more of its commitment within ninety (90) days after being notified.

## 5. Assurances

- This small business element is authorized under State law;
- Certified ACDBEs that meet the size criteria established under this element are presumptively eligible to participate therein element;
- There are no geographic preferences or limitations imposed on any concession opportunities included in this small business element;
- There are no limits on the number of concession opportunities awarded to firms participating in this element but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
- Airport will take aggressive steps to encourage those minority and women owned firms that are eligible for ACDBE certification to become certified; and
- This element is open to small businesses regardless of their location. There is no local or other geographic preference as part of this small business element.