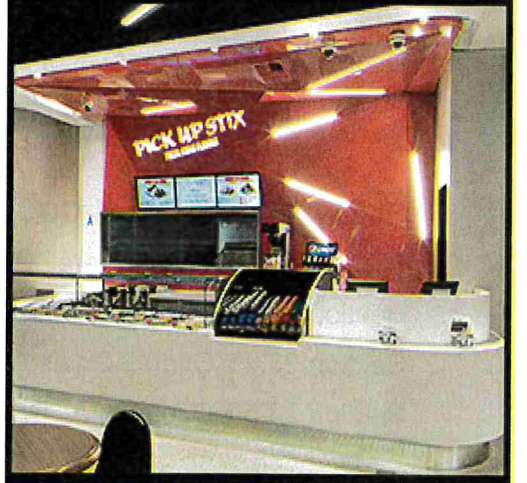




Los Angeles World Airports

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

Updated 2020



City of Los Angeles
Los Angeles World Airports
Procurement Services Division
7301 World Way West, 4th Floor
Los Angeles, CA 90045



**Los Angeles World Airports
Airport Concession Disadvantaged Business Enterprise (ACDBE) Program**

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ACDBE PROGRAM

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

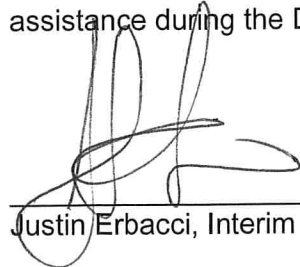
The Los Angeles World Airports of the City of Los Angeles, herein referred to as LAWA, has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the [U.S. Department of Transportation \(DOT\), 49 CFR Part 23](#). The Los Angeles International Airport (LAX) owned and operated by LAWA is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). LAWA has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of LAWA to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our 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 our 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 our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

The Director of Procurement Services Division has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by LAWA in its financial assistance agreements with the Department of Transportation.

This policy statement will be available for public access on LAWA's website (www.lawa.org). The link to LAWA website will also be listed on all solicitation documents qualified for DOT assistance during the DOT Fiscal Years 2018-2020.



Justin Erbacci, Interim Chief Executive Officer

2/7/20
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

LAWA will use terms in this program that have the meanings defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

LAX is a primary airport and LAWA is the recipient of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.7 Program Reviews

In 2010, and thereafter at the discretion of the Office of the Secretary of Transportation, the U.S. Department of Transportation (DOT) will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

Section 23.9 Non-discrimination and Assurance Requirements

LAWA 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, national origin, or sex.

In administering its ACDBE program, LAWA 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, national origin, or sex.

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

LAWA 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 concessionaire 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 concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by CFR Part 23."



Section 23.11 Compliance and Enforcement

Compliance:

LAWA will comply with and is subject to the provisions of Title 49 C.F.R. Part 26 (§§ 26.101, 26.105, 26.107, and Title 2 C.F.R. parts 180 and 1200.

LAWA will comply with any requirement of Part 26.101 or be subject to formal enforcement cited 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.

LAWA will comply with any requirement of Title 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. Title 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through 1 of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

Enforcement:

LAWA's compliance with all requirements of Part 26 Section 26.105 and Section 26.107 is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

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

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



statement in connection with participation of an ACDBE in LAWA's ACDBE program or otherwise violates applicable Federal statutes.

FAA's compliance reviews: FAA may review LAWA's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of LAWA'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 LAWA may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

LAX is a large hub primary airport required to have an ACDBE program.

As a condition of eligibility for FAA financial assistance, LAWA will submit its ACDBE program and overall goals to FAA according to this subpart, Section 23.21 and Section 23.45(a), respectively.

Until LAWA's new ACDBE program is submitted and approved, LAWA will continue to implement its 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 LAX, Van Nuys International, and Palmdale Airport.

Although this program document applies to all of the above Airports, as required by 23.21(c), LAWA has established ACDBE goals for LAX (primary airport) only as there are no concession activities at Van Nuys International (General Aviation) and Palmdale Airport (see Attachment 4 and Attachment 5).

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

Section 23.23 Administrative Provisions

Policy Statement: LAWA is committed to operating its ACDBE program in a nondiscriminatory manner.

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

ACDBE Liaison Officer (ACDBELO): LAWA has designated the following individual as our ACDBELO:

Brain Haig, Purchasing Director
Los Angeles World Airports
Procurement Services Division
7301 World Way West, 4th Floor
Tel: 424-646-7392, Fax: 424-646-9262
Email: bhaig@lawa.org



In that capacity, the ACDBELO or his designee is responsible for implementing all aspects of the ACDBE program and ensuring that LAWA complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Chief Executive Officer of Los Angeles World Airports 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 Concessions Development Group, LAWA's Terminal Concessions Manager, operators/concessionaires, and 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)
6. Analyzes LAWA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body 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 California.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
13. Maintains LAWA's updates into the directory on certified ACDBEs and distinguishes them from DBEs.

Directory: LAWA through the California Unified Certification Program (UCP) updates the directory, maintained by CALTRANS, 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 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 Directory may be found in Attachment 2 to this program document (26.31).



Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

LAWA will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)) – see Section 23.9.

LAWA 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)).

LAWA's overall goal methodology and a description of the race-neutral and race-conscious measures will be used to meet the goals are described in Section 23.25 and Attachment 4 and Attachment 5 of this plan. The goals are set consistent with the requirements of Subpart D (23.25(b), (d)).

If LAWA projects that race-neutral measures 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 Attachment 5 of this plan (23.25(e)).

LAWA will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith effort to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs (23.25(f)), as well as through ACDBE Concessionaire/Subconcessionaire agreements managed by Unibail-Rodamco-Westfield.

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

Section 23.27 Reporting

LAWA 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 three years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, LAWA will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23. We will submit the report to the FAA Regional Civil Right Office via hard copy of the form or electronically via the DBE Office Online Reporting System (DOORS).

Section 23.29 Compliance and Enforcement Procedures

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

1. LAWA 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 Section 26.107.



2. LAWA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. If the concessionaire fails to maintain the level of ACDBE participation described in Concessionaire's proposal, or to make good faith effort, as determined by LAWA, LAWA shall have the right to cancel or terminate the agreement in its entirety and all rights ensuing therefrom upon giving a thirty (30) days written notice to Concessionaire.
3. The following provisions are inserted in all concession agreements and management contracts to ensure compliance with the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program:
 - (a) Compliance with Department of Transportation (DOT). LAWA strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, leasing or any subleasing under this Agreement (the "Non-Discrimination Policy"). Additionally, LAWA has established an Airport Concession Disadvantaged Business Enterprise program in accordance with regulations of the U.S. Department of Transportation, 49 Code of Federal Regulations Part 23 (the "ACDBE Rules"). Concessionaire shall comply with the Discrimination Policy and the ACDBE Rules and shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with its performance under this Agreement, the management of the concession, subleasing, or purchasing. Concessionaire shall cooperate with City in City's program of recruiting, training, providing technical assistance and holding workshops to ensure that contracting, subcontracting and purchasing opportunities available under this Agreement are accessible and available to all qualified business owners, including "Airport Concession Disadvantaged Business Enterprises" (ACDBEs), as defined in the ACDBE Rules. In order to assure compliance with the Non-Discrimination Policy and the ACDBE Rules, Concessionaire agrees as follows:
 - (b) Concessionaire shall submit, in the format required by Chief Executive Officer, including any online system, a monthly utilization report to LAWA, describing the Gross Revenues of each such ACDBE and Non-ACDBE (and each substitute ACDBE that may be obtained pursuant to this agreement), in each case calculated in accordance with the requirements of this Agreement. Said report shall be submitted with the monthly report of Gross Revenues as required.
 - (c) Concessionaire shall have no right to terminate any ACDBE without LAWA's prior written consent. If an ACDBE is terminated by Concessionaire with Board's written consent or because of the ACDBE default, then Concessionaire shall provide City with evidence satisfactory to City that Concessionaire will continue to comply with its non-discrimination obligations under this Agreement, which evidence may include the substitution of the terminated ACDBE with another ACDBE.
 - (d) Concessionaire's breach of its obligations shall be a default of Concessionaire and shall entitle City to exercise all of its contractual and legal remedies, including termination of this Agreement.



4. Good Faith Effort when an ACDBE is replaced on a Concession (26.53(f)):
 - I. LAWA will require a concessionaire to make good faith effort 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.
 - II. LAWA will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.
 - III. LAWA will require the concessionaire to obtain a prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith effort.
 - IV. LAWA will provide such written consent or approval only if LAWA agrees, for reasons stated in the concurrence document, that the prime concessionaire has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:
 - 1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
 - 2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime concessionaire;
 - 3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements;
 - 4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - 5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - 6) We have determined that the listed ACDBE sub-concessionaire is not responsible;
 - 7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us written notice of its withdrawal;
 - 8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
 - 9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
 - 10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime concessionaire can substitute another ACDBE or non-ACDBE concession after contract award.



- (a) Before transmitting to LAWA the request to terminate and/or substitute an ACDBE sub-concession, the prime concessionaire must give notice in writing to the ACDBE sub-concession, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.
- (b) The prime concessionaire must give the ACDBE five days to respond to the prime concession's notice and advise us and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why we should not approve the prime concessionaires action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.
- (c) We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 LAWA will use the procedures and standards of Part 26, except as provided in this section for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

LAWA is the member of a Unified Certification Program (UCP) administered by the State of California (Attachment 10). The UCP will meet all of the requirements of this section.

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

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, LAWA will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

LAWA 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 it's 1,500 employees; and for ACDBE automobile dealers it's 350 employees.

Section 23.35 The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

LAWA recognizes that Personal Net Worth (PNW) means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's 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



- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012 (23.3).

An individual's PNW 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 PNW exceeding this amount is not a socially and economically disadvantaged individual, even if he/she is a member of a group otherwise presumed to be disadvantaged (See 23.3 - Personal Net Worth definition and 23.35).

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

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

LAWA acknowledges that a prime concessionaire includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire of a firm holding a prime concession agreement with a recipient. We recognize 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)).

LAWA 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, LAWA may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. LAWA 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)).



LAWA will use the Uniform Certification Application found in Appendix F to Part 26 with additional instruction as stated in 23.39(g) – Attachment 7

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

LAWA will ensure the UCP reviews the eligibility of ACDBEs that LAWA certified, to make sure that they will meet the standards of Subpart C of Part 23 and Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will be an annual update of eligibility submitted by each ACDBE-certified firm with the Federal Corporate Income Tax Return for the certified firm including all schedules and attachments and the Federal Corporate Income Tax Return including all schedules and attachments for any affiliated company. After five (5) years, a comprehensive eligibility review will be conducted and will include, but is not limited to, the following documents:

1. Most recent Federal Income Tax Return (Form 1040, 1120, 1120S, or 1065) including all schedules and attachments for your business and **all affiliates**.
2. Most recent Federal Individual Income Tax Return (Form 1040) with all schedules and attachments for all owners and/or partners whose ownership is relied upon for DBE certification.
3. Personal Net Worth Statement (form and instructions attached).
4. Most recent year-end balance sheet and income statement.
5. Current relevant licenses, license renewal forms, and permits.
6. Minutes of stockholders and board of directors meetings for the past three years,
7. If applicable:
 - Trucking firms: current title (s) and registration certificate (s) for each truck owned or operated by your firm.

For firms that we ensure UCP have certified or reviewed and found eligible under Part 23/26, we will again review their eligibility on an annual basis. These reviews will include the following components: Federal Corporate Income Tax Return for the certified firm including all schedules and attachments and the Federal Corporate Income Tax Return including all schedules and attachments for any affiliated company. Information will be reviewed and analyzed to determine ACDBE eligibility under NAICS codes size standards for gross net receipts averaged over a three year period.

If the NAICS code size standard is number of employees, recipient will also request DE9Cs or equivalent payroll records to verify ACDBE-certified firm does not exceed the number of employees size standard (if applicable.)



"No Change" Affidavits and Notices of Change (26.83(j))

The UCP requires all ACDBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with LAWA's application for certification.

The UCP also requires all ACDBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following: (CUCP Annual Declaration – Attachment 8).

I swear (or affirm) that there have been no changes in the circumstances of [name of ACDBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 23. There have been no material changes in the information provided with [name of ACDBE]'s application for certification, except for any changes about which you have provided written notice to the [Recipient] under 26.83(j).

The UCP requires ACDBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The UCP will notify all currently certified ACDBE firms of these obligations during the mandatory site visit and prior to approval or denial of ACDBE certification. This notification will inform ACDBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 23/26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 23/26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for ACDBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until twelve (12) months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove an ACDBE's certification, we will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail (CUCP Reconsideration Panel Procedures). To ensure separation of functions in a de-certification, the UCP have determined that recipient certifying agencies will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative "firewall" to ensure that recipient certifying agencies will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to the CUCP Reconsideration Panel. If the firm or complainant does not agree with the CUCP Reconsideration Panel decision, they still have the option of submitting a written appeal to U.S. DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of ACDBEs (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART D – GOALS, GOOD FAITH EFFORT, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

LAWA has established two separate overall ACDBE goals; 3.1% for car rentals and 19.8% for concessions other than car rentals for Federal Fiscal Years 2018 - 2020. The overall goals will cover a three-year period and LAWA will review the goals annually to make sure the goal continues to fit the circumstances. LAWA will report any significant overall goal adjustments to FAA.

If the average annual concession revenues for car rentals over the preceding three-year do not exceed \$200,000, LAWA need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, LAWA need not submit an overall goal for concessions other than car rentals. LAWA understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

LAWA’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

LAWA prepared a Public Notice of the proposed overall goal, informing the public that the proposed goal and its rationale were available for inspection during normal business hours at our principal office for 30 days following the date of the notice. It also stated that DOT-FAA and LAWA would accept comments on the goals for a period of 30 days following the date of the notice. Publication of this notice was available through LAWA website www.lawa.org as well as FAA’s dBE-Connect System. No comments were received.



Section 23.45 Overall Goals

LAX is a large hub primary airport. As a condition of eligibility for FAA financial assistance, LAWA has submitted its overall goals for FFYs 2018-2020, and will submit its overall goals for FFYs 2021-2023 according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large Hub	All regions	October 1, 2017	2018/2019/2020	October 1, 2020 (2021/2022/2023)

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

LAWA will establish overall goals in accordance with the two-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 based on LAWA's Active Participants Lists (Approach No. 2) as the "base figure". The second step is to examine all relevant evidence reasonably available in LAWA'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 LAWA 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, data on employment, self-employment, education, training, or union apprenticeship).

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

A description of the methodology to calculate the overall goal for car rental, the goal calculations, and the date we refiled on 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 LAWA relied on can be found in Attachment 5 to this program.

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

The breakout of estimated race-conscious and race-neutral participation can be found with the goal methodology in Attachment 4 and Attachment 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 (Also include this language in the DBE goal attachment)(23.25(c)(e)(1)(iv))

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

LAWA will establish concession specific goals.. LAWA will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith effort 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 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.

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, LAWA 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, LAWA 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 Effort on Concession Specific Goals (23.25(e)(1)(iii) & (iv))

To be eligible to be awarded a concession that has a concession specific goal, Bidders/Proposers must make good faith effort to meet the goal. A Bidder/Proposer may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith effort to do so (23.25(e)(1) & (iv)). Examples of good faith effort 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 LAWA concession specific goals as follows:

1. Demonstration of Good Faith Effort (26.53(a) & (c))

The obligation of the Bidder/Proposer is to make good faith efforts. The Bidder/Proposer can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.



LAWA's Procurement Services Division is responsible for determining whether a Bidder/Proposer who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

LAWA will ensure that all information is complete and accurate and adequately documents the Bidder/Proposer's good faith effort before we commit to the concession agreement with the Bidder/Proposer.

2. Information to be Submitted (26.53(b))

LAWA treats Bidder/Proposer'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:

- (a) The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
- (b) A description of the work that each ACDBE will perform;
- (c) The dollar amount of the participation of each ACDBE firm/supplier participating;
- (d) Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal;
- (e) If the contract goal is not met, evidence of good faith efforts.

3. Administrative Reconsideration (26.53(d))

Within three (3) days of being informed by LAWA that it is not responsive because it has not documented sufficient good faith effort, a Bidder/Proposer may request administrative reconsideration. Bidder/Proposer should make this request in writing to the following reconsideration official:

Director of Procurement Services Division
Los Angeles World Airports
7301 World Way West, 4th Floor
Los Angeles, CA 90045

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

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



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

Sample Proposal/Bid Specification:

Below is the sample language included in concession projects subject to ACDBE:

Pursuant to United States Code of Federal Regulations Title 49—Transportation, Subtitle A, Part 23 (49 CFR 23), it is the policy of Los Angeles World Airports (LAWA) to provide Airport Concessions Disadvantaged Business Enterprises (ACDBEs) the opportunity to compete for and participate in the performance of all LAWA contracts. The objective of this policy is to achieve the participation of ACDBEs at levels comparable to their availability to provide goods and services to LAWA with the ultimate goal of developing their status and expertise so that they may compete for future contracts on an equal basis with other successful non-ACDBE firms.

The anticipated level of participation for this project has been set at: __% ACDBE

Failure to meet this ACDBE participation level will not by itself be the basis for disqualification or determination of noncompliance with this policy. However, it is incumbent on the Bidder/Proposer to submit appropriate documentation to demonstrate that a “good faith effort” was made to reach out to ACDBEs. **Failure to provide supporting documentation of a good faith effort within three (3) days of notification by the Department, as described in the attached, will render the bid/proposal non-responsive and will result in its rejection.**

Attachments: - See Attachment 6

- ACDBE Policy Statement
- Instructions Regarding Demonstration of ACDBE Good Faith Efforts
- Subconcessionaire Participation Plan

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57(b) Goal shortfall accountability. If the awards and commitments on LAWA’s Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, LAWA will:

1. Analyze in detail the reasons for the difference between the overall goal and LAWA’s awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems LAWA has identified in the analysis to enable LAWA to fully meet our goal for the new fiscal year;
3. (i) LAWA will submit within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA



for approval. If the FAA approves the report, LAWA will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

- a. (ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, LAWA will retain analysis and corrective actions in our records for three-year and make it available to the FAA, on request, for its review.
4. LAWA understands the FAA may impose conditions as part of its approval of our 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 measure.
5. LAWA understands we 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:
 - (i) LAWA does not submit our analysis and corrective actions to the FAA in a timely manner as required under paragraph (b)(3) of this section;
 - (ii) The FAA disapproves LAWA's analysis or corrective actions; or
 - (iii) LAWA does not fully implement:
 - (a) The corrective actions to which LAWA has committed,
 - (b) Conditions that the FAA has imposed following review of LAWA's analysis and corrective actions, or
 - (c) If information coming to the attention of the FAA demonstrates that current trends make it unlikely that LAWA, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow LAWA to meet our overall goal at the end of the fiscal year, the FAA may require LAWA to make further good faith effort, 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

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



SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Concession Agreements

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

Section 23.75 Long-Term-Exclusive Agreements

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

Section 23.79 Geographic Preferences

LAWA will not use a “local geographic preference” that gives an ACDBE located in our local area an advantage over ACDBEs from other geographical areas in obtaining business as, or with, a concession at LAX.