

ACDBE PROGRAM POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The County of Sacramento (County), owner of Sacramento International Airport (Airport) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The County has received federal financial assistance from the DOT, and as a condition of receiving this assistance, the County has signed as assurance that it will comply with 49 CFR Part 23 (hereafter referred to as "Part 23").

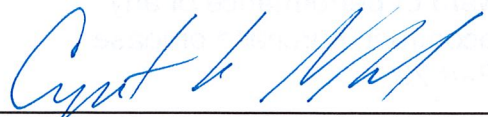
It is the policy of the County to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also the County's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of opportunities for concessions;
2. Create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. Ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet Part 23 eligibility standards are permitted to participate as ACDBEs;
5. Help remove barriers to the participation of ACDBEs in opportunities for concessions; and
6. Provide appropriate flexibility in establishing and providing opportunities for ACDBEs.

Renata Romero, Airport Economic Development Specialist, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Renata Romero is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the DOT.

The County has disseminated this policy statement to the Sacramento County Board of Supervisors and all of the components of the organization. This statement has been distributed to ACDBE and non-ACDBE concessionaire communities in the area by the following:

1. A copy of this policy statement will be posted on the airport website (www.sacramento.aero/scas/opportunities/acdbe/).
2. A copy of this policy will be made available to each attendee of all informational and pre-bid meetings dealing with concessions opportunities.



Cynthia A. Nichol, Director
Department of Airports

4/25/19
Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

The County 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 County 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 (Attachment 1) on the basis of race, color, sex, or national origin.

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

The County 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 County will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200.

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

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

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

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

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart 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 the County's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the County's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the County's monitoring and enforcement mechanism, as appropriate. (Attachment 2) The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the County 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

The Airport is a medium hub primary airport required to have an ACDBE program.

As a condition of eligibility for FAA financial assistance, the County will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

Until the County's new ACDBE program is submitted and approved, the County will continue to implement the 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 Sacramento International Airport.

The County has established ACDBE goals for Sacramento International Airport. (Attachments 4 & 5)

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

Section 23.23 Administrative Provisions

Policy Statement: The County is committed to operating the ACDBE program in a nondiscriminatory manner.

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

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

Renata Romero
Airport Economic Development Specialist
Sacramento County Department of Airports
6900 Airport Blvd.
Sacramento, CA 95837
(916) 874-0914
romerore@sacocounty.net

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

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

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. When relevant, reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the County's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on ACDBE matters and achievement.
9. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
10. Plans and participates in ACDBE training seminars.

The specific duties of other airport sections/divisions with responsibilities for the ACDBE Program are listed below:

Properties: Oversees the daily operation, monitoring and compliance of concession and car rental leases.

Accounting: Prepares and provides concessions and car rental revenue reports.

Marketing and Public Relations: Maintains information regarding ACDDBE policy and concessions opportunities on the County's website. Responsible for collaborative creation and distribution of ACDBE outreach materials and coordination of public outreach efforts.

Directory: The County through the California 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 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. The Directory is available online at:

http://www.dot.ca.gov/hq/bep/find_certified.htm

A link to the Directory may be found in Attachment 4 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The County will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)).

The County will follow all federal, State and local nondiscrimination laws, as well as comply with all County policies and procedures designed to ensure nondiscrimination. These laws, policies and procedures, include but are not limited to: Title VI and the regulations found at 49 CFR Parts 23 and 26. The County will ensure that all concessions businesses, and businesses that work with concessionaires, have a fair and equal opportunity to participate in concessions opportunities offered by the Airport. The County will ensure that the Airport personnel with responsibility for the administration of this program will engage in appropriate continuing education, including attendance at annual training seminars and professional conferences.

The County 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 County'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 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

The County will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f)).

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

Section 23.27 Reporting

The County will retain sufficient basic information about the ACDBE program implementation, ACDBE certification (Attachment 6) and the award and performance of agreements and contracts to enable the FAA to determine compliance with Part 23. This data will be retained for a minimum of three (3) years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, the County will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Section 23.29 Compliance and Enforcement Procedures

The County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23 described in further detail in Attachment 2.

1. The County 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. The County will consider similar action under legal authorities, including responsibility determinations in future contracts.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 The County will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs (Attachment 6) to participate in our concessions program and such standards are incorporated herein.

The County is a member of a Unified Certification Program (UCP) administered by the State of California, Department of Transportation which will make ACDBE certification

decisions on behalf of the County. 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, the County will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. The schedule for this review process will be to verify the eligibility status annually during the accomplishment reporting process.

The County will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone companies is fifteen hundred (1500) employees and for ACDBE automobile dealers is three hundred and fifty (350) employees.

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

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

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (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 personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

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

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

The County recognizes that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. The County will follow the provisions of 23.39 (a) through (i). The County will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. The County will analyze the ownership of stock of the firm, if it is a corporation. The County will analyze the bonding and financial capacity of the firm. The County will determine the work history of the firm, including any concession contracts or other contracts it may have received. The County will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. The County will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. The County will ensure that the ACDBE firm meets the applicable size standard. (23.39(a) (b)).

The County acknowledges that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. The County recognizes that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c) (d)).

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

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

The County will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The County 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 County will review the goals annually to make sure the goal continues to fit the County’s circumstances. The County will report any significant overall goal adjustments to the FAA.

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

The recipient’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 County 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 County’s efforts to increase participation of ACDBEs.

Section 23.45 Overall Goals

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

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large/Medium Hubs	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, the County will submit an appropriate adjustment to the overall goal to FAA for approval no later than ninety (90) days before issuing the solicitation for the new concession opportunity. (23.45(i)).

The County will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the County'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 County 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 County will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under Section 26.39 of this part.

A description of the methodology to calculate the overall goal for concessions other than car rental companies, the goal calculations, and the data the County relied on can be found in Attachment 5 to this program.

A description of the methodology to calculate the overall goal for car rental companies, the goal calculations, and the data the County relied on can be found in Attachment 7 to this program.

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

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

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

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

The County will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. The County will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

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

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

If the concession specific goal applies to purchases and/or leases of goods and services, the County will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii)).

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

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

Section 26.53 Good Faith Efforts Procedures

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

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

Renata Romero, Airport Economic Development Specialist is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The County will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before the County commits to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

In solicitations for concession contracts for which a contract goal has been established, the County will require the following:

- (1)** Award of the contract will be conditioned on meeting the requirements of this section;
- (2)** All bidders or offerors will be required to submit the following information to the County, at the time provided in paragraph (b) (3) of this section:
 - a. The name and address of each ACDBE that will participate in the contract; and
 - b. A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; and
 - c. The dollar amount of the participation of each ACDBE firm participating; and
 - d. Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - e. Written documentation of each listed ACDBE firm that is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - f. If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract.
- (3)** The County will require that the bidder/offeror present the information required by paragraph (b) (2) of this section: Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53(d))

Within seven (7) business days of being informed by the County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request

administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Donna Scranton
6900 Airport Blvd.
Sacramento, CA 95837
Phone (916) 874-0910
scrantond@saccounty.net

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

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

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

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

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

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

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

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

The prime concession must give the ACDBE five (5) days to respond to the prime concession's notice and advise the County and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why the County should not approve the prime concession's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the County may provide a response period shorter than five (5) days.

The County will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that the County established for the procurement. The good faith efforts shall be documented by the concessionaire. If the County requests documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to the County within seven (7) days, which may be extended

for an additional seven (7) days if necessary at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

The County 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 the County deems appropriate if the prime concessionaire fails to comply with the requirements of this section.

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

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the Sacramento County Department of Airports to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of 3.65% of (*annual gross receipts; value of leases and/or purchases of goods and services*) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 8), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

The County 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 the 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, the County will:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems that have identified in the analysis to enable the County to fully meet the goal for the new fiscal year;

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

The County will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. The County 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 County does not have any terminal buildings that are privately-owned or leased.

Section 23.75 Long-Term Exclusive Agreements

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

agreement, the County will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

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

ATTACHMENTS

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

Attachment 1

Regulations: 49 CFR Part 23

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

Attachment 2

Monitoring and Enforcement Mechanisms

The County 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; and
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 it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:

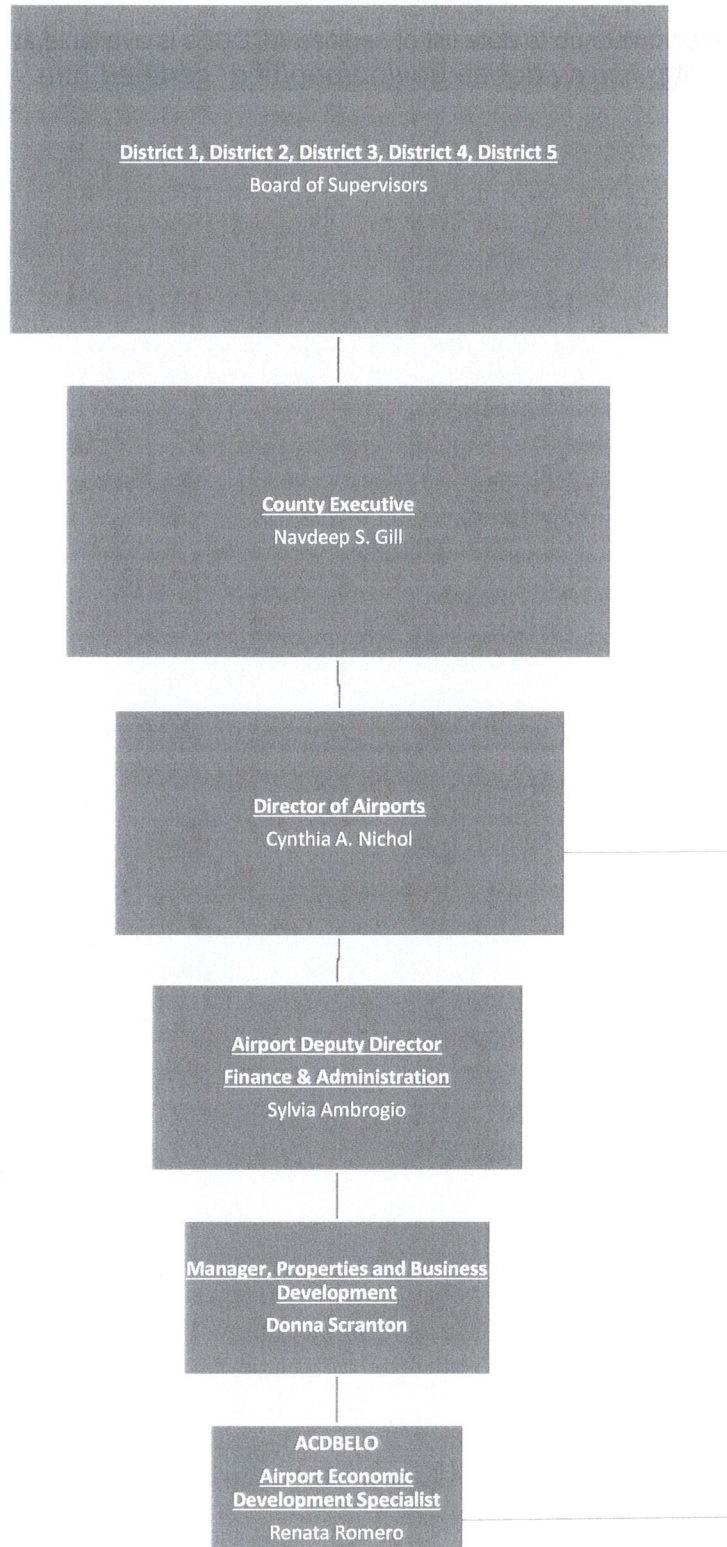
1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200; and
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The County will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to, verification of DBE certification status, request for revenue statements, and regular review of agreement terms and conditions for compliance.

1. The County will implement the following additional monitoring and compliance procedures:
 1. Concession revenue reports are reviewed on an annual basis to monitor ACDBE participant's sales.
 2. Annual verification of ACDBE certification status with the California UCP for all ACDBE leases and Joint Venture agreements.
 3. ACDBE Uniform reports will be submitted annually.

Attachment 3

Organizational Chart – Sacramento County Airport System



Attachment 4

ACDBE Directory

A complete up to date list of certified ACDBEs is available at
http://www.dot.ca.gov/hq/bep/find_certified.htm

Attachment 5

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

Amount of Goal *(submit if average annual gross receipts exceed \$200,000)*

Name of Recipient:

Sacramento International Airport

Goal Period: FY 2018, 2019, and 2020

Overall Three-Year Goal:

3.65%, to be accomplished through 0.00% RC and 3.65% RN

The County has determined that its market area is the State of California.

Base of Goal

To calculate the base of the goal the County considered the previous three (3) years of gross concession receipts and the projected potential concession revenue (gross receipts) three (3) years into the future including upcoming new opportunities.

Gross Receipts for Previous 3 Years - Non-Car Rental Concessions

Fiscal Year	Concessions Revenue (Excluding Car Rental)
2015	\$48,305,109
2016	\$53,634,907
2017	\$59,475,070
Total	\$161,415,086
Average	\$ 53,805,029

The County estimates that revenues to existing concessions will grow by 5% over the next three years due to inflation and increased passenger traffic or other reasons.

The concession opportunities anticipated during this goal period are: Food and Beverage, Advertising, News and Gifts, Vending machines, Telephone Communications with estimated gross receipts of \$56,495,280.

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a

management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the County will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

Methodology used to Calculate Overall Goal

Goods and Services

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

Management Contract or Subcontract

The County can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The County, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in Airport concessions (both the numerator AND the denominator) and to the base from which the Airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. *While the County realize that this appears to go against the normal rules and rationale for goal-setting, the County understands that this method is nevertheless required by statute.*

Step 1: 23.51(c)

The County determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

Numerator: Ready, willing, and able non-car rental ACDBEs in the market area

$$\frac{76}{73,565}$$

Denominator: All ready, willing and able non-car rental concession firms in the market area

NAICS	Type of Concession	Total ACDBE's	Total All Firms
448110, 448120, 448130, 448140, 448150	Men's, women's, family's clothing stores and jewelry stores	5	10,355
451211, 451212, 453210, 453220	News & Gift	26	3,824
722410, 722511, 722513, 722515	Food & Beverage, Vending	28	47,356
522110, 522120	Banking Services	0	8,380
541618	Telecommunications	9	894
541810, 541850 541890	Advertising	8	2,756
Total		76	73,565

The data source or demonstrable evidence used to derive the **numerator** was:

Reference 23.51(c)(2).

http://www.dot.ca.gov/hq/bep/find_certified.htm

The data source or demonstrable evidence used to derive the **denominator** was:

<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

When the numerator was divided by the denominator this resulted in the Step 1 base figure for the overall goal for non-car rental concessions of: 0.10%

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, the County examined evidence to determine what adjustment was needed to the Step 1 base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation the County would expect in the absence of discrimination the County adjusted the base figure by 3.55%. The overall goal for non-car rental concessions is 3.65%

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

Past History Participation

FY	ACDBE Goals			Accomplishments		
	RC	RN	Total	RC	RN	Total
13	0%	0%	0%	0%	5.49%	5.49%
14	0%	0%	0%	0%	2.57%	2.57%
15	0%	0%	0%	0%	3.55%	3.55%
16	0%	5.49%	0%	0%	4.33%	4.33%
17	.45%	5.49%	5.94%	0%	3.27%	3.27%

Arranging this historical data from low to high, (2.57%, 3.27%, 3.55%, 4.33%, and 5.49%) the median is 3.55%.

To arrive at an overall goal, the County added the Step 1 base figure with the Step 2 adjustment figure arriving at an overall goal of 3.65%. The County feels this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period.

Public Participation

Consultation: Section 23.43.

In accordance with Public Participation Regulatory Requirements of 49 CFR Part 23, minority, women, local businesses, chambers, and community organizations within the County's market area will be provided an opportunity to review goal analysis. The County issued the ACDBE plan and goals to approximately eleven (11) community groups and the Airport's website. Comments can be sent to the ACDBE Liaison Officer, Renata Romero at romerore@saccounty.net

OR

Attention: Renata Romero
 Sacramento County Department of Airports
 6900 Airport Blvd.
 Sacramento, CA 95837

Responses had yet to be received at the time this report was submitted to the FAA for approval. If a response is received after this goal program is adopted, it will be forwarded to the FAA for review.

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

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

The County understands that it is expected that the County will actually take these steps, and this is not merely a paper exercise.

1. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate; and
2. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the County's ACDBE program will affect the procurement process; and
3. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

The County estimates that, in meeting the overall goal of 3.65%, the County will obtain 3.65% from race-neutral participation and 0.00% through race-conscious measures.

The following is a summary of the basis of the estimated breakout of race-neutral and race-conscious ACDBE participation:

1. Establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. Negotiate with potential concessionaires to meet goals using ACDBE certified goods and service providers in their concession business.

In order to ensure that the County's ACDBE program will be narrowly tailored to overcome the effects of discrimination, if the County uses concession specific goals the County will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and the County will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goals; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

The County will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 6

ACDBE Certification Application Form

http://www.dot.ca.gov/hq/bep/business_forms.htm

Attachment 8

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 _____ Title _____
(Signature)

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:

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.)

