

**49 CFR PART 23 ACDBE PROGRAM  
VALLEY INTERNATIONAL AIRPORT**

**POLICY STATEMENT**

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

The City of Harlingen, TX (City) 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 City owns and operates Valley International Airport (HRL or Airport), which 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). The City has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City 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 Assistant Director of Aviation has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Assistant Director of Aviation 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 City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the Valley International Airport Board (Airport Board) and all of the components of the Airport's organization. Copies were distributed to the Airport's ACDBE and non-ACDBE concessionaire communities via email and posted on the Airport's web-site.

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Marv Esterly, Director of Aviation

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Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

The objectives are stated in Section 23.1, 23.23 Objectives/Policy Statement.

### **Section 23.3 Definitions**

The City will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable. Part 23 is available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rgn=div5>. Part 26 is available at <https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>.

### **Section 23.5 Applicability**

The City operates Valley International Airport (HRL or the Airport), designated by the Federal Aviation Administration (FAA) as a primary airport and is 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 City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

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

The City 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 City 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 City 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 City’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 City’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 [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the City 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 non-hub primary airport required to have an ACDBE program.

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

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

This ACDBE program will be implemented at Valley International Airport.

We have established separate ACDBE goals for non-car rental concession and car rental concessions at Valley International Airport each primary airport (Attachment 4 and Attachment 5.)

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

### **Section 23.23 Administrative Provisions**

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

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

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

Bryan Wren  
Assistant Director of Aviation  
3002 Heritage Way, Harlingen TX 78550  
956-430-8605  
bryan@flythevalley.com

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

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
3. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
4. Participates in pre-bid meetings.
5. Advises the CEO/governing body on ACDBE matters and achievement.

Directory: The City relies on the Texas Unified Certification Program (UCP), to maintain a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, 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 at least annually. The Directory available as follows at the URL below. (26.31).

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=7775&TN=txdot>

The Directory can also be obtained by request to the following:

Texas Department of Transportation  
Civil Rights Division  
125 E. 11th Street  
Austin, TX 78701-2483

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

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

The City 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 City'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 Attachments 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

As with the City's Part 26 Program the City is committed to obtaining as much ACDBE participation through race-neutral measures as possible. Listed below are examples of the race-neutral measures employed by the City in obtaining ACDBE participation.

1. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate.
2. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process.
3. Publishing information to firms (ACDBE and non-ACDBE) on our website, in a newspaper of general circulation and in industry-specific publications, regarding the types of concession services and agreements that are being advertised by the City.

If the City 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 in the Non-Car Rental Concession Goals for Valley International Airport; see Attachments 4 and 5 of this plan. (23.25(e))

Examples of the race-conscious measures the City will utilize are set forth below.

1. Establishing concession specific goals for particular concession opportunities
  - a. If the goal applies to purchases and/or leases of goods and services, we 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.

- b. To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
  - c. The administrative procedures applicable to contract goals in 49 CFR Part 26, §26.51-53 will apply to concession specific goals.
2. With the prior approval of the FAA, we will employ other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

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

### **Section 23.27 Reporting**

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

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

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

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See

Attachment 3). (26.37)

3. The City Aviation Department (Department) has the responsibility of ensuring that airport concessionaires, subconcessionaires and subcontractors are in compliance with contract requirements and stated goals. The Department generally accomplishes this objective by monitoring and review of utilization plans and reports during the contract period, and final documentation of utilization and payments to concessionaires, subconcessionaires and suppliers.

Currently, car rental and non-car rental concessions are satisfying the City's ACDBE participation requirements through purchase of goods and services. The City expects this approach to continue, and the specific mechanisms included below reflect this approach.

For non-car rental concessions, the Department:

- a. Conducts annual reviews, which include reviews of contract compliance, and other issues related to contract administration and the ACDBE program; and
- b. Obtains and reviews certified annual reports of ACDBE utilization and/or purchases from ACDBEs; and

For car rental concessions, the Department:

- a. Obtains and reviews certified annual reports of purchases from ACDBEs; and
- b. Meets regularly with rental car companies (individually and on a group basis) to review compliance with contract requirements; and

HRL's off-site concessions (ATMs, advertising, etc.) are not currently subject to ACDBE participation requirements and do not currently include ACDBE participation in their HRL activities. Should this situation change in the future, the City will develop appropriate monitoring and enforcement mechanisms and revise this ACDBE program to include these mechanisms.

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

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

The City relies on the Unified Certification Program (UCP) administered by the State of Texas for certification and eligibility determinations, in the first instance. 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, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. We will review eligibility during the RFP process, prior to making a selection.

We 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 is 1,500 employees and for ACDBE automobile dealers it is 350 employees.

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

*We recognize 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)

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, we understand that before certifying such a firm, the certifying agency will ensure that the disadvantaged owners of a DBE firm certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to accept the certification of a part 26 DBE firm as an ACDBE if the firm does not perform work relevant to the Airport's concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. Rather the provisions of 23.39(a) through (i) apply. A UCP has been established in Texas. Under 23.39(f), the Texas UCP, rather than the City, is responsible for certifying firms for the ACDBE concession program.

We acknowledge 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. 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)).

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

Under 23.39(f), we will refer any firm seeking to apply for ACDBE certification to the City to the Texas UCP to obtain appropriate application forms and instructions.

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

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

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

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand 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 City consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

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

**Section 23.45 Overall Goals**

The City operates a non-hub primary airport. As a condition of eligibility for FAA financial assistance, the City will submit its overall goals according to the following schedule:

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

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the City will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

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

The City 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 § 26.39 of this part.

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in *Attachment 5* to this program.

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

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

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

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

The City 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.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We 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.

We 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 City 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 City 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 City's concession specific goals. Specifically:

### **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.

Bryan J Wren, Assistant Director of Aviation, 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 Responsible.

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

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

In our solicitations for concession contracts for which a contract goal has been established, we 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 recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of ACDBE firms that will participate in the contract;
  - (ii) 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;
  - (iii) The dollar amount of the participation of each ACDBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and

- (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). 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; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

Under sealed bid procedures, no later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration (26.53(d))

Within seven (7) business days of being informed by the City that it is not responsible 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: Marv Esterly, Director of Aviation, 3002 Heritage Way, Harlingen, TX 78550, (956) 430-8605, marv@flythevalley.com. 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the 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 City 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. We will require the concessionaire to notify the ACDBELO

immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

We will provide such written consent only if we agree, for reasons stated in our 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 1200 or applicable state law;
- (6) We have determined that the listed ACDBE subcontractor 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 contractor can substitute another ACDBE or non-ACDBE concession after contract award.

Before transmitting to us 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concession 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 concession's 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.

The City 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 we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary, at the request of the concessionaire, and the City shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

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.

If the concessionaire fails or refuses to comply in the time specified, our 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 determination 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 City of Harlingen, TX to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of \_\_\_\_ percent of (*annual gross receipts; value of leases and/or purchases of goods and services*) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

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

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

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

We 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 our 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, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- (3) *We will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review*
- (4) *We understand 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 measures.*
- (5) *We understand 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) *We do not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;*
  - (ii) *FAA disapproves our analysis or corrective actions; or*

*(iii) We do not fully implement:*

*(A) The corrective actions to which we have committed, or*

*(B) Conditions that FAA has imposed following review of our analysis and corrective actions.*

*(C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.*

### **Section 23.61 Quotas or Set-asides**

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

## **SUBPART E – OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

We 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. We 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**

There are currently no privately-owned or leased terminal buildings at the Airport. If a privately owned or leased building begins operating at the Airport, we will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23.

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

We will not enter into long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of longer than 5 years. We understand that an

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

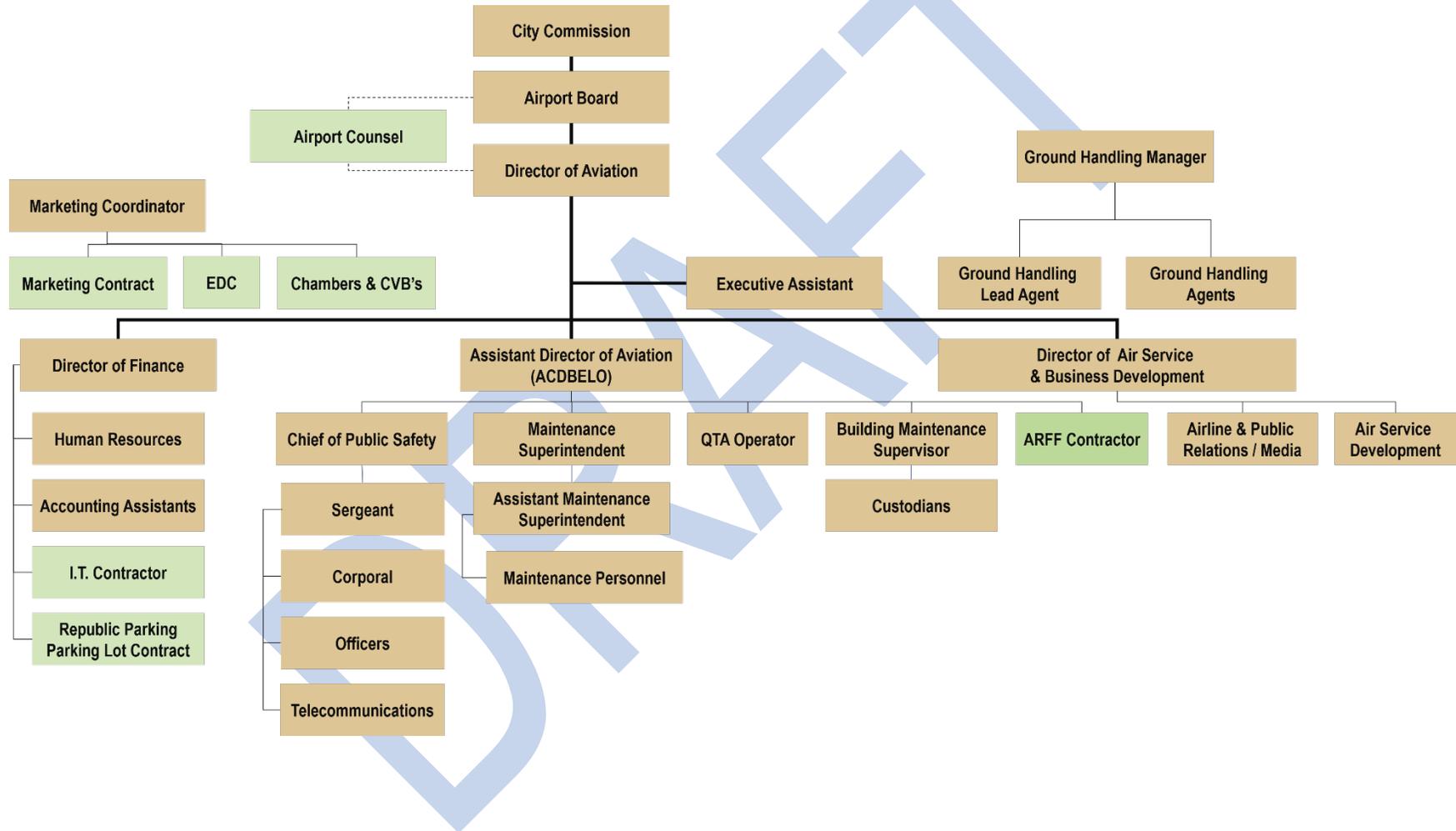
### **Section 23.79 Geographic Preferences**

We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., Cameron or Hidalgo County) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at our airport.

### **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	State’s UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23
Attachment 11	Goals and Elements for Privately-Owned or Leased Terminal Buildings

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



**Attachment 2**

**Texas DBE Directory**

**Address**

Texas Department of Transportation  
Civil Rights Division  
125 E. 11th Street  
Austin, TX 78701-2483

**Web Link**

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=4306&TN=txdot>

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### **Attachment 3**

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

The City relies primarily on breach of contract remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

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

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

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

1. We will insert the following provisions into concessions agreements and management contracts:
  - A. The right to terminate the concession agreement as to any or all of the work effective at a time specified by the City. The right to terminate may include acceleration of rents due for the remainder of the unexpired term.
  - B. The right to deem the contractor non-responsible in future concession agreements or contracts awarded by the City.
  - C. Concessionaires must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least 3 years after expiration of contract. Full access to records on each project must be granted to the City, federal or state authorities.
  - D. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR §26.107.
  - E. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. (26.37).
  - F. As provided in 49 CFR §§26.29(d) and 26.53 (f)(3), the City may impose reasonable penalties, including administrative fines, for noncompliance with ACDBE requirements. The City may also seek recovery of reasonable court costs, attorneys' fees, and disbursements associated with enforcing the City's ACDBE program.

2. We will implement the following additional monitoring and compliance procedures for non-rental car concessions:
  - A. Conduct annual reviews, which include reviews of contract compliance, and other issues related to contract administration and the ACDBE program; and
  - B. Obtain and review certified annual reports of ACDBE utilization and/or purchases from ACDBEs.
3. We will implement the following additional monitoring and compliance procedures for rental car concessions:
  - A. Obtain and review certified annual reports of purchases from ACDBEs;
  - B. Meet regularly with rental car companies (individually and on a group basis) to review compliance with contract requirements.
4. We will implement our compliance and monitoring procedures as follows:
  - A. The ACDBELO will have overall responsibility for implementing compliance and monitoring procedures, including review and approval of required reports. The ACDBELO has available to assist one additional staff. Should the need arise for additional resources or expertise, the City will engage a third-party consultant.
  - B. Where applicable, the concessionaire must, within 5 working days after the agreement is executed by all parties, execute a formal sub-concession agreement or purchase order with the ACDBEs which were proposed, all in accordance with the terms of the contractor's proposal and ACDBE assurances, and must promptly submit to the City at that time a copy of the ACDBE sub-concession agreement or purchase orders, each showing acceptance of the subcontract or purchase order by the ACDBE.
  - C. As described in Sections 2.B, and 3.A above, the concessionaire must report periodically on all expenditures made to achieve compliance with ACDBE requirements. The ACDBELO or support staff will review these reports. If the reports indicate that a concessionaire is not meeting its contractual obligations, ACDBE assurances or other requirements for ACDBE utilization, the ACDBELO will initiate one or more of the remedial measures outlined in this Attachment.

## **Attachment 4**

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

**Amount of Goal** *(Total for three years) \$33,140 (submit if average annual gross receipts exceed \$200,000)*

**Name of Recipient:**

City of Harlingen, TX

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**Goal Period:** October 1, 2022 through September 30, 2024

**Overall Three-Year Goal:** (Annual Average)

*0.73%, to be accomplished through 0.32% RC and 0.41% RN*

**Methodology used to Calculate Overall Goal:**

The Airport in conducting this goal-setting process is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

**Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

The City has determined that its market area is Cameron and Hidalgo Counties.

**Base of Goal**

To calculate the base goal, the City considered the most recent three years of gross concession receipts for which data is available and the projected potential revenue (gross receipts) for the goal period.

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

<b>Fiscal Year</b>	<b>Non-Car Rental Concessions Revenue (Gross Receipts)</b>
2018	\$1,064,787
2019	\$1,412,861
2020	\$1,035,828

\* FY 2020 is the last full year for which data is available.

The City estimates that gross revenues to existing concessions will increase by 25.0% in FY 2021, due to (1) the recovery of passenger traffic from the COVID-19 pandemic; and (2) the introduction of new service at the Airport. We estimate that gross revenues to existing concessions will grow by an average of 8% over the three following years (fiscal year 2022 – fiscal year 2024, the goal period) due to inflation and increased passenger traffic. As shown in the table below, gross revenues during the goal period are projected to total \$4,539,661, which is the City’s base goal for non-rental car concessions.

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<b>Fiscal Year</b>	<b>Percentage Change From Prior Year</b>	<b>Non-Car Rental Concessions Revenues</b>
2021	25.0%	\$1,294,785
2022	8.0%	\$1,398,368
2023	8.0%	\$1,510,237
2024	8.0%	\$1,631,056
<b>FY 2022-2024 Total</b>	--	<b>\$4,539,661</b>

The concession opportunities anticipated during this goal period are:

Food and Beverage and News and Gifts with estimated gross revenues of \$4,539,661.

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 City 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**

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

**Management Contract or Subcontract**

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. However, we do not anticipate

opportunities for ACDBE management contracts or subcontracts during the goal period. Nevertheless, should an ACDBE management contract or subcontract be executed at the Airport, we, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. *While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.*

**Step 1:** 23.51(c)

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

**Numerator:** Ready, willing, and able non-car rental ACDBEs in the market area  
\_\_\_\_\_ divided by \_\_\_\_\_

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

The data source or demonstrable evidence used was the Texas State DBE/ACDBE UCP directory, current ACDBE participants and Census Bureau data.

<b>Concession Activity</b>	<b>NAICS / SIC code/s</b>	<b>ACDBE Firms</b>	<b>All Firms</b>	<b>% Availability</b>
Miscellaneous Non-Durable Goods Wholesalers	424990	0	39	0.00%
Food & Beverage Stores & Supplies	445 / 722330	0	341	0.00%
Food Service Contractors	722310	0	25	0.00%
Snack & Non-Alcoholic Beverage Bars	722515	0	140	0.00%
Electronics Stores	443142	0	71	0.00%
Health and Personal Care Stores	446	0	369	0.00%
Clothing & Clothing Accessory Stores	448	0	557	0.00%
Book Stores & News Dealers	4512	0	10	0.00%
Gift, Novelty & Souvenir	453220	0	58	0.00%
Other Support Activities for Air Transportation	448190	0	5	0.00%
Insurance Agencies & Brokerages	524210	0	458	0.00%
<b>Totals</b>		<b>0</b>	<b>2,073</b>	<b>0.00%</b>

When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of: **0.00%**.

**Step 2: 23.51(d)**

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0.73%. Our overall goal for non-car rental concessions is 0.73%.

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

**Past History Participation**

*Data used to determine the adjustment to the base figure was the median of historical ACDBE accomplishments.*

In FY 2018, the Airport awarded non-car rental concession contracts to a new concessionaire. The City considers the ACDBE participation achievements of this concessionaire a more reliable basis for making an adjustment based on historical accomplishments, even though it includes only three years of data. The table below shows the historical participation achievements.

Fiscal Year	RC	RN	Total Achievement
2018	0.32%	0.41%	0.73%
2019	0.32%	0.39%	0.71%
2020	0.32%	0.45%	0.77%

Arranging this historical data from low to high, 0.71%, 0.73%, and 0.77%, the median is 0.73% which is our Step 2 figure.

Per DOT guidance, if the Step 1 base figure is under 1 percent the goal should be adjusted upward to 1%. However, given the complete unavailability of ACDBEs in the Airport's market area, we do not consider a 1% goal to be achievable at this time. The DOT guidance indicates that an overall goal could be set by averaging the Step 1 figure with the Step 2 figure. In our case this would result in an overall goal of 0.36%. Given the historical participation of ACDBEs at HRL, under the current concession contract, we believe that we can achieve the median of historic participation reflected above. Therefore, the City is establishing an overall goal of 0.73% for FY 2022, 2023 and 2024.

We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period. There are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.

## PUBLIC PARTICIPATION

**Consultation:** Section 23.43.

### **§23.43 What are the consultation requirements in the development of recipients' overall goals?**

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not 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 recipient's efforts to increase participation of ACDBEs.

Prior to submitting this goal to the FAA, the City consulted with the following stakeholders:

- A. Tailwind, HRL, LLC
- B. Catco Business Consulting
- C. LoaDebar
- D. Leslie Saunders Insurance Agency, Inc.
- E. Rio Grande Valley Hispanic Chamber of Commerce
- F. Corpus Christi Black Chamber of Commerce
- G. Women's Chamber of Commerce of Texas
- H. Airport Minority Advisory Council

The consultation was done by mass e-message.

A summary of the information these stakeholders provided is as follows:

OR

No comments have been received.

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

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The City uses the following race-neutral measures. These methods reflect the reality that HRL is a non-hub airport with relatively limited concession revenue opportunities and the reality that there are no ACDBE firms currently certified in the Airport's market area.

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
2. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor'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.

We estimate that, in meeting our overall goal of 0.73%, we will obtain 0.41% from race-neutral participation and 0.32% through race-conscious measures.

The Airport's current food and beverage and news and gift contracts were based on a solicitation that included a 0.32% ACDBE participation goal. These contracts will be in effect during the period for which our overall goal is established. Therefore, we are treating participation up to the 0.32% figure as resulting from race-conscious measures.

Historic ACDBE participation has exceeded the ACDBE participation goal included in our concession contracts. Therefore we are treating the portion of the goal that exceeds the specific participation goal in our current concession contracts as deriving from race-neutral measures,

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the race-conscious measures listed below to meet the overall goal. These methods reflect the reality that HRL is a non-hub airport with relatively limited concession revenue opportunities and the reality that there are no ACDBE firms currently certified in the Airport's market area.

1. We will establish concession-specific goals for particular concession opportunities.
2. With prior FAA approval, we will use other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession. Specifically, we will include purchases of goods and services from certified ACDBE firms in counting ACDBE participation.

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

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

## Attachment 5

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

#### **Section 23.45: Overall Goal Calculation for Car Rental Company Concessions**

**Amount of Goal \$10,527 for the three-year goal period**

**Name of Recipient:**

City of Harlingen, TX (Valley International Airport)

**Goal Period:** October 1, 2022 through September 30, 2024

**Overall Three-Year Goal:**

*0.64%, to be accomplished through 0.00% RC and 0.64% RN*

**Methodology used to Calculate Overall Goal:**

The Airport in conducting this goal-setting process is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

**Goal Based on Goods and Services Purchases - Determination:**

Upon review of the market, 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/services from ACDBEs. This is due to the fact that no certified ACDBE car rental companies exist within the market. As such, the City has structured the goal entirely in terms of the purchases of goods and services.

We determined the goal based on outreach for the purchases of goods and services from certified ACDBE firms and/or potential ACDBE firms in the market area. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goods and services goal. We will continue to consult and work with the Texas DOT & UCP, our car rental concessionaires at the Airport, similarly situated airports in our region, minority and women businesses in the State, minority serving institutions, local pro-business organizations, and targeted media publications to find prospective ACDBE firms. We will work with our car rental companies to strategize outreach to Texas DOT & UCP certified ACDBEs that may be able to provide car rental goods and

services, to encourage current vendors who may be eligible for ACDBE certification to apply, and to encourage firms already working at the airport but certified as ACDBE in other states, to apply via the interstate certification process. The Texas DOT & UCP is aware of this requirement and is on board to assist and process certifications as required by 49 CFR Subpart C.

We have the following car rental agencies operating at the airport: Avis; Hertz/Dollar; Enterprise/National.

After collaboration and discussion with the Airport, car rental company concessionaires at the Airport stated that the goods and services they may need in the goal period are as follows:

- Automobile Parts;
- Oil Change Services;
- Office Supplies;
- Auto Repair Services;
- Automobile Body and Upholstery Repair Services;
- Insurance Services;
- Tires;
- Landscaping Services;
- Paint, Varnish & Supplies;
- New Car Dealers;
- Electronics Stores;
- Auto Glass Replacement;
- Motor Vehicle Towing;
- Auto Oil Change and Lubrication;
- Advertising;
- Other Business Support Services; and
- Locksmiths.

### **Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

The City has determined that its market area is Cameron and Hidalgo Counties.

### **Base of Goal**

To calculate the base of the goal, the City considered the previous 5 years of car rental expenditures/purchases and the projected potential car rental expenditures three years into the future, including upcoming new opportunities. Despite repeated efforts, the City

was able to obtain purchase data from only one rental car operator. The City extrapolated the data from that operator to estimate total purchases, based on that operator's share of total rental car operator gross revenue, which is reported to the Airport for billing purposes.

**Expenditures for Previous 3 Years - Car Rental**

<b>Fiscal Year</b>	<b>Car Rental Expenditures/Purchases</b>	<b>% Growth</b>
2017	354,447	126.3%
2018	140,518	-61.4%
2019	232,661	65.6%
2020	197,424	-15.1%
2021	246,043	24.6%
<b>5 Year Average</b>	<b>236,219</b>	

The City estimates expenditures will increase by 8% over the five-year average during the next three years due to inflation and increased passenger traffic, as shown below.

<b>Fiscal Year</b>	<b>Percentage Change From Prior Year</b>	<b>Amount</b>
Prior 5 YR Average		\$469,126
2022	8.0%	\$506,656
2023	8.0%	\$547,189
2024	8.0%	\$590,964
<b>FY 2022-2024 Total</b>		<b>\$1,644,808</b>

The following are not included in this base: non-car rental operations.

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 City 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)).

**Step 1: 23.51(c)**

The data source or demonstrable evidence used was the Texas State DBE/ACDBE UCP directory and the 2019 U.S. Census Bureau Business Patterns Data.

<b>Concession Type</b>	<b>NAICS Code</b>	<b>ACDBE Firms</b>	<b>All Firms in Market Area</b>	<b>% of ACDBE Firms that may be available</b>
Oil Change	811191	1	35	8.33%
Office Supplies	424120/ 453210	0	24	0.00%
Automobile Parts	423120	0	33	0.00%
Paint, Varnish & Supplies	424950	0	5	0.00%
New Car Dealers	44110	0	63	0.00%
Electronics Stores	443124	0	71	0.00%
Auto Repair	811111	0	111	0.00%
Auto Body/Upholstery Repair	811121	0	42	0.00%
Auto Glass Replacement	811122	0	17	0.00%
Tires	423130/ 441320	0	77	0.00%
Motor Vehicle Towing	488410	1	31	3.23%
Auto Oil Change and Lubrication	811191	0	35	0.00%
Insurance	524210	0	458	0.00%
Advertising	541890	0	12	0.00%
Other Business Support Services	561499	0	4	0.00%
Locksmiths	561622	0	3	0.00%
Landscaping Services	561730	5	67	7.46%
<b>Total</b>		<b>6</b>	<b>1,053</b>	<b>0.57%</b>

**Based on the chart above our Step 1 base figure is 0.57%.**

**Step 2: 23.51(d)**

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

Although the USDOT specifies that a Step 1 goal under 1% must be adjusted to at least 1%, given the limited availability of ACDBE suppliers for car rental operators, and the total lack of ACDBE purchases from the single car rental operator reporting data in fiscal years 2017-2021, in order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0.07%. Our overall goal for car rental concessions is 0.64%.

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

**Past History Participation**

*Data used to determine the adjustment to the base figure was the percentage of historical ACDBE accomplishments in FY 2016.:*

<i>FY</i>	<i>RC</i>	<i>RN</i>	<i>Total Achievement</i>
2016	0.00%	0.64%	0.64%
2017	0.00%	0.00%	0.00%
2018	0.00%	0.00%	0.00%
2019	0.00%	0.00%	0.00%
2020	0.00%	0.00%	0.00%
2021	0.00%	0.00%	0.00%

*We feel this adjusted goal figure will accurately reflect ACDBE car rental concession participation that can be achieved during this 3-year period. Further, there are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.*

**PUBLIC PARTICIPATION**

**Consultation:** Section 23.43.

**§23.43 What are the consultation requirements in the development of recipients' overall goals?**

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not 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 recipient's efforts to increase participation of ACDBEs.

Prior to submitting this goal to the FAA, the City consulted with the following stakeholders:

National Minority Supplier Development Council <http://www.nmsdc.org/>, Houston Minority Supplier Development Council <https://hmsdc.org>, Airport Minority Advisory Council (AMAC) <http://amac-org.com/>, Women's Business Development Center <https://www.wbdc.org/>, The Women's Business Enterprise National Council (WBENC) <http://www.wbenc.org/>, Texas Association of African American Chamber of Commerce, Women's Business Enterprise Alliance <https://www.wbea-texas.org/about-wbea>; car rental companies at the airport, ACDBE supplier firms that provided goods and services to car rental companies, based on their reports and DBE supplier firms in the categories listed above located in the City's defined market area of Cameron and Hidalgo Counties. The consultation was done by mass email.

A summary of the information these stakeholders provided is as follows:

OR

No comments have been received.

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

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

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs; and
2. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;

We estimate that, in meeting our overall goal of 0.64%, we will obtain 0.64% from race-neutral participation and 0.00% through race-conscious measures.

This estimate is based on the fact that our current rental car concession agreements do not include specific ACDBE goals and will be in effect through the three-year goal period.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.
2. With prior FAA approval, we will use other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

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

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

Attachment 6

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

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

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

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

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

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

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

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

By \_\_\_\_\_ 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:

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

**Affirmation**

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

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

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

(Submit this page for each ACDBE subcontractor.)

**Attachment 7**

**ACDBE Certification Application Form**

The ACDBE Certification Application Form and related documents can be found at <https://www.txdot.gov/business/partnerships/tucp.html>.

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**Attachment 8**

**Procedures for Removal of ACDBEs Eligibility**

The City does not independently certify ACDBEs, but relies on certifications of the Texas UCP. If information raising questions or concerns about an ACDBE's continued eligibility comes to the City's attention, we will forward that information to the Texas UCP with a request for appropriate action.

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**ATTACHMENT 9**

The City does not have an agreement with the Texas UCP, but we rely on Texas UCP certifications to determine ACDBE eligibility and measure ACDBE participation.

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**Attachment 10**

**Regulations: 49 CFR Part 23**

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rgn=div5>

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## **Attachment 11**

### **Goals and Elements for Privately-Owned or Leased Terminal Buildings**

There are currently no privately owned or leased terminal buildings at HRL. Therefore, the requirements of 49 CFR §23.73 do not apply at this time. Should a privately owned or leased terminal begin operations at HRL in the future, the City will comply with section 23.73 for that terminal, including the following:

1. Passing through the applicable requirements of Part 23 to the owner or lessee and ensuring the owner/lessee's compliance with those requirements; and
2. Obtaining from the owner/lessee the goals and other elements of the required Part 23 program, incorporating this information into the City's concession plan and submitting the information to the FAA.

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