



# DENVER INTERNATIONAL AIRPORT

## ACDBE Program Policies & Procedures

*ACDBE PROGRAM*

*POLICY STATEMENT*

**Section 23.1, 23.23**

**Objectives/Policy Statement**

The City and County of Denver (The City) on behalf of the Department of Aviation has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program at Denver International Airport (DEN) in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (C.F.R.) Part 23 (Part 23). DEN is a primary airport and therefore the City has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code (U.S.C.)). The City has signed airport grant assurances that it will comply with 49 C.F.R. 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. Ensure nondiscrimination in the award and administration of opportunities for concessions by the airport receiving DOT financial assistance;
2. Create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. Ensure the City's ACDBE program is narrowly tailored in accordance with applicable law;
4. Ensure only firms that fully meet this Part's eligibility standards are permitted to participate as ACDBEs at DEN;
5. Help remove barriers to the participation of ACDBEs in opportunities for concessions at DEN; and
6. To provide appropriate flexibility to DEN in establishing and providing opportunities for ACDBEs.

Mica Anderson has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Mica Anderson 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 City's Mayor and City Council, the Chief Executive Officer (CEO) of DEN, and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in area. This distribution was disseminated to local chambers, industry partners and publication on flydenver.com.



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Phillip A. Washington, Chief Executive Officer  
Denver International Airport

01/03/2024

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 City will use terms in this program that have the meaning defined in 49 C.F.R. Part 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

DEN is a primary airport and the City as owner is 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 C.F.R. 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, Disadvantaged Business Enterprise Program (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 C.F.R. 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 C.F.R. Part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. 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 C.F.R. Part 26 (§§ 26.101, 26.105, 26.107 and 2 C.F.R. 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 CFR 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.

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 DOT or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 C.F.R. 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 C.F.R. Parts 180 and 1200.

(c) DOT may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 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 City's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review compliance with this Part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the City'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 C.F.R. Part 16 with the FAA Office of Chief Counsel.

### **SUBPART B – ACDBE PROGRAMS**

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

DEN is a large 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 49 C.F.R. Part 23.45(a) of Section 23.21.

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

When the City makes significant changes to its ACDBE program, the City 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):** The following individual is designated as the ACDBELO:

Mica Anderson  
Airport Office Building | 8th Floor  
8500 Peña Boulevard | Denver, CO 80249-6340  
303-342-2411  
[Mica.Anderson@flydenver.com](mailto:Mica.Anderson@flydenver.com)

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that DEN complies with all provision of 49 C.F.R. Part 23. The ACDBELO has direct, independent access to the Chief Executive Officer (CEO) of Denver International Airport 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 four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by FAA or DOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identify contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyze DEN's progress toward attainment and identifies ways to improve progress.

7. Advise the CEO/governing body on ACDBE matters and achievement.
8. Provide ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.
9. Plan and participate in ACDBE training seminars.
10. Act as liaison to the Unified Certification Program (UCP) in the Unified Certification Program (UCP) in Colorado.
11. Provide outreach to ACDBEs and community organizations to advise them of opportunities.
12. Provide periodic reports to City Council, when requested.
13. Update ACDBE Plan.

*In addition, the ACDBE Program Manager will be responsible for the following:*

1. Monitor certification status.
2. Collect and review reports from prime concessionaires with staff.
3. Conduct on-going site visits with staff.
4. Maintain DEN's updated directory on certified ACDBEs and distinguishes them from DBEs.
5. Participate in pre-proposal meetings.

**Directory:** Through the Colorado Unified Certification Program (UCP), a directory identifying all firms eligible to participate as DBEs and ACDBEs is maintained. 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 North American Industry Classification System (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 daily. The City has the Directory available at the following website: <https://coucp.dbesystem.com/FrontEnd/SearchCertifiedDirectory.asp?XID=4315&TN=coucp>

**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 (49 C.F.R. Part 23.25(a)).

*The City and County of Denver, as owner and operator of Denver International Airport, will not 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 contract by 49 C.F.R. Part 23 on the basis of race, color, sex, or national origin. In administering its ACDBE program, The City and County of Denver 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 the respect to individuals of a particular race, color, sex, or national origin.*

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. (49 C.F.R. 23.25(c)).

Overall goal methodology and a description of the race-neutral measures the City will use to meet the goals are described in 49 C.F.R. Section 23.25 and Attachment 5 of this plan. The goals are set consistent with the requirements of Subpart D. 49 C.F.R. 23.25(b), (d).

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 Attachment 5 of this plan. (49 C.F.R. 23.25(e)).

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. 49 C.F.R. 23.25(f).

The City will not use set-asides or quotas as a means of obtaining ACDBE participation. (49 C.F.R. 23.25(g)).

### **Section 23.27 Reporting**

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



determine the City's compliance with Part 23. This data will be retained for a minimum of three years following the end of the concession agreement or other covered contract.

The City will submit to the FAA Regional Civil Rights Office through [FAA.CivilRightsconnect.com](http://FAA.CivilRightsconnect.com), an annual ACDBE participation report on the form as found 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 C.F.R. Part 23 as inserted into concession agreements:

***ACDBE Goal.*** Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than the percent of the total annual Gross Revenue stated on the Summary of Contract Provisions, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will contract with the ACDBEs identified in **Exhibit E** presented with Concessionaire's Proposal and approved by City, or such other ACDBEs certified with the City as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable.

***ACDBE Termination and Substitution.*** Concessionaire will not terminate or substitute an ACDBE listed in its Proposal or previously approved by the City as a substitute without the City's prior written consent. If an ACDBE is terminated by Concessionaire with the City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts to replace such ACDBE in accordance with the procedures of 49 CFR part 26, section 26.53(g) as described in the Concessions Handbook.

***Reporting Requirements.*** Concessionaire shall submit to the City regular ACDBE Utilization Reports, in accordance with the procedures described in the Concessions Handbook. Concessionaire further agrees to submit any other report(s) or information that the City is required by law or regulation to obtain from Concessionaire, or which the City may request relating to Concessionaire's operations.

***Monitoring.*** The City will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant the City access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records,

*records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant the City access to the Premises under this agreement for purposes of such monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, the City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.*

**Other Requirements.** *Concessionaire agrees to comply with Federal, State, and Local Disadvantage Business Programs as fully set forth in the ACDBE Commitment Form. Concessionaire's failure to comply with Federal, State, and Local Disadvantage Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition all other remedies available to City, City may, in its sole discretion, terminate this Agreement.*

**Non-Compliance.** *In the event of Concessionaire's non-compliance with the ACDBE Program or failure to either meet the ACDBE goal set forth in Section 9.02 or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.*

1. The City 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 C.F.R. 26.107.
2. The City will consider similar action under the City's 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. (49 C.F.R. 26.37). See Attachment 3.

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

**Section 23.31, The City will use the procedures and standards of 49 C.F.R. Part 26, except as provided in Part 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.**

The City is a member of a Unified Certification Program (UCP) administered by the Colorado Department of Transportation and will make certification decisions on behalf of the City and County of Denver for ACDBEs.

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 City will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

**Section 23.33** The City 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 company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

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

The City 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. (49 C.F.R. Part 23.3)

An individual's personal net worth includes only an individual's 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 City 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 City 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 City is not obligated to certify a Part 26 DBE as an ACDBE if the firm does not perform work relevant to the concessions program. (49 C.F.R. 23.37).

The City recognizes that the provisions of Part 26, Sections 26.83(c) (2-6) do not apply to certifications for purposes of Part 23. The City will follow provisions of 23.39 (a) through (i). The City will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. will analyze the ownership of stock of the firm, if it is a corporation. will analyze the bonding and financial capacity of the firm. will determine the work history of the firm, including any concession contracts or other contracts it may have received. 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. 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. will ensure that the ACDBE firm meets the applicable size standard. (49 C.F.R. 23.39(a)(b)).

The City 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 City recognizes that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of Part 23 is governed by 49 C.F.R. 26.73(h). (49 C.F.R. 23.39(c)(d)).

The City will use the certification standards of Part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (49 C.F.R. 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, DEN may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. DEN 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. (49 C.F.R. 23.39(e))

The City will use the Uniform Application Form (Attachment 4) found in Appendix F to Part 26 with additional instruction as stated in 49 C.F.R. 23.39(g).

### **Section 26.83 Procedures for Certification Decisions**

#### Re-certifications 49 C.F.R. 26.83(a) & (c)

The City will ensure the UCP reviews the eligibility of ACDBEs that we certified, to make sure that they will meet the standards of Subpart C of Part 23 and Subpart E of Part 26. The City will complete this review no later than three years from the most recent certification date of each firm.

For firms that the City has certified or reviewed and found eligible under Part 23/26, the City will again review their eligibility three years from the anniversary date of each firm's most recent certification. These reviews will include the following components: Reviews of appropriate records, contracts, financial information, joint venture agreements, certification information and other relevant information deemed necessary.

#### "No Change" Affidavits and Notices of Change – 49 C.F.R. 26.83(j)

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

The UCP also requires all ACDBE owners certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of Part 26.83(j). The text of this affidavit is the following:

I, \_\_\_\_\_, swear (or affirm) that there have been no material changes in \_\_\_\_\_’s circumstances affecting its ability to meet the size, disadvantaged status, ownership or control requirements of 49 CFR Parts 23 and 26, except for changes about which I have provided written notice to the City and County of Denver (“the City”) pursuant to 49 Code of Federal Regulation (CFR) §26.83(i). I swear that this firm continues to be owned and controlled by disadvantaged individuals and that the personal net worth of all the owners whose ownership is relied upon for Airport Concession Disadvantaged Business Enterprise (“ACDBE”) status does not exceed \$1,320,000 (after deducting equity in primary residence and applicant business).

I further affirm that the firm continues to meet the overall gross receipts cap and/or other applicable size standards of 49 CFR Part 23, and \_\_\_\_\_’s average annual gross receipts [as defined by Small Business Administration (“SBA”) rules] over the previous three fiscal years do not exceed \$56.42 million.

Specify the firm’s gross receipts for the last 3 years. (Submit complete copies of the firm’s Federal tax returns for any year not already on file. If there are affiliates or subsidiaries of the applicant firm or owners, including joint ventures in which the firm or an affiliate of the firm is a participant, you must submit complete copies of these firm’s Federal tax returns for the most recent tax year, if they have not been previously submitted).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firm(s) \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firm(s) \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firm(s) \$ _____

I have submitted the size and gross receipts documentation to support this affidavit.

I further attest that \_\_\_\_\_ has not been denied ACDBE certification by any other agency. I acknowledge that the City hereby reserves the right to make inquiries in order to verify any information relating to the firm’s application and status as an eligible ACDBE.

I agree that the City will be notified in writing within 30 days of any changes in ownership and/or control of the firm and/or any changes to the personal net worth of the presumed disadvantaged owner(s) and/or any changes to the firm’s size that would impact the firm’s eligibility to remain in the program.

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

The UCP will notify all currently certified ACDBE firms of these obligations thirty days prior to the anniversary of their certification due date. This notification will inform ACDBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 23 and 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 23 and 26 eligibility requirements (e.g. personal net worth), the obligation to submit a notice of change applies.

### **Section 26.85 Interstate Certification**

When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for ACDBE certification, the City as State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. In any situation in which the City, as State B, chooses not to accept State A’s certification of a firm as provided, the City, as State B, will require the firm to provide the information in paragraphs (c)(1) through (4) of Section 26.85 and will follow the procedures defined in Section 26.85 .

### **Section 26.86 Denials of Initial Requests for Certification**

If the City denies a firm’s application or decertifies it, it may not reapply until twelve months have passed from action.

### **Section 26.87 Removal of a DBE’s Eligibility**

In the event the City proposes to remove an ACDBE’s certification, the City will follow procedures consistent with 26.87. Attachment 7 to this program sets for these procedures in detail.

#### **Informal Hearing (26.87(d))**

Firms may request an informal hearing of the finding if they make a written request within thirty (30) days of receipt of the notice.

The applicant should make this request in writing to the following:

Mica Anderson, Senior Director, Commerce Hub  
Airport Office Building | 8th Floor,

8500 Peña Boulevard  
Denver, CO 80249-6340  
[mica.anderson@flydenver.com](mailto:mica.anderson@flydenver.com)

To ensure separation of functions in a de-certification, the City will request that another member of the UCP will serve as the decision-maker in de-certification proceedings. The City has established an administrative “firewall” to ensure that any assigned party will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

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

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

## **SUBPART D – GOALS, GOOD FAITH 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 three years do not exceed \$200,000, 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 years do not exceed



\$200,000, DEN does not need to submit an overall goal for concessions other than car rentals. The City understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

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

**Section 23.45 Overall Goals**

Denver International Airport is a large hub primary airport. As a condition of eligibility for FAA financial assistance, the City will submit its overall goals according to the following schedule:

**49 CFR Part 23 Primary Airports -- 3-Year Overall ACDBE Goals DUE: OCTOBER 1**

Airport Size	Region	Due	Period Covered	Next Goal Due
Large/Medium Hubs	All	2023	2024/2025/2026	2026 (2027/2028/2029)

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

The City will establish overall goals in accordance with the 2-Step process as specified in 49 C.F.R. 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 49 C.F.R. Part 26, §26.39.

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

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

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachment 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 49 C.F.R. 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.

The City will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. 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 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 City 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, proposer/offerors must make good faith efforts to meet the goal. A proposer/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 C.F.R. Part 26. The procedures applicable to 49 C.F.R. Sections 26.51 and 26.53, regarding contract goals apply to concession specific goals. Specifically:

## **Section 26.53 Good Faith Efforts Procedures**

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

The obligation of the proposer/offeror is to make good faith efforts. The proposer/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 49 C.F.R. Part 26.

The ACDBELO or designee is responsible for determining whether a proposer/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The City will ensure that all information is complete and accurate and adequately documents the proposer/offeror's good faith efforts before we commit to the performance of the contract by the proposer/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, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

In solicitations for concession contracts for which a contract goal has been established, the successful Proposer is required to submit the following forms (Attachment 6) and information with its Proposal. Failure to submit or complete the forms as required, may deem the Proposer nonresponsive.

1. ACDBE Commitment Form
2. ACDBE Letter of Intent
3. Proof of current ACDBE certification in the appropriate NAICS Code(s)
4. ACDBE Good Faith Effort Checklist \*to be submitted only if the goal is not met)

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

Within five business days of being informed by the City that it is not *responsive* because it has not documented sufficient good faith efforts, a proposer/offeror may request administrative reconsideration. Proposers/offerors should make this request in writing to the following reconsideration official:

Adrina Gibson, Chief Officer  
Division of Small Business Opportunity (DSBO)  
Work: (720) 913-1701 | Cell: (720) 682-0842  
[adrina.gibson@denvergov.org](mailto:adrina.gibson@denvergov.org)

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

As part of this reconsideration, the proposer/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 proposer/offeror will have the opportunity to meet with the reconsideration official. They will also not be subject, with respect to the matter, to direction from the office or personnel who did take part in these actions to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City will send the proposer/offeror a written decision on reconsideration,

explaining the basis for finding that the proposer/offeror 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. The City 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 City 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.

The City will provide such written consent only if it 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 C.F.R. Parts 180, 215 and 1,200 or applicable state law;
6. The City 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 City 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 the City 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 City, 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 the City and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why the City should not approve the prime concession's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the City 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 the City requests documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within seven days, which may be extended for an additional seven 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 City 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 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 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 office may issue a termination for default proceeding.

**Sample Proposal/Bid Specification:**

**I-11 Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation**

**ACDBE Program at Denver International Airport**

The City is committed to ensuring that (ACDBEs), as defined in 49 C.F.R. Part 23, have maximum opportunity to participate in the performance of concession opportunities at Denver International Airport (DEN). DEN has developed and implemented an ACDBE program in compliance with 49 C.F.R. Part 23. As stated in DEN's Policy Statement:

- To ensure nondiscrimination in the award and administration of opportunities for concessions at DEN;
- To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- To ensure that DEN's ACDBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
- To ensure that only firms that fully meet the eligibility requirements of the Regulations are permitted to participate as ACDBEs at DEN;
- To help remove barriers to the participation of ACDBEs in opportunities for concessions at DEN; and
- To provide appropriate flexibility in establishing and providing opportunities for ACDBEs at DEN.

**ACDBE Goal Requirement**

An ACDBE concession specific goal of \_\_\_% of annual Gross Revenue has been established for this concession opportunity. Concessionaire shall make good faith efforts, as defined in Appendix A, 49 C.F.R. Part 26, to maintain a minimum of \_\_\_% participation throughout the term of the Agreement. Proposer(s) are required to make good faith efforts to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. In accordance with the Federal Regulation, 49 C.F.R. Part 23, a direct ownership arrangement means a joint venture (JV), partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession. Failure to



meet the ACDBE goal or to demonstrate good faith efforts to achieve the ACDBE goal, at the sole discretion of DEN, may cause Proposer(s) to be considered non-responsive.

It is policy to ensure that the selected Proposer complies with the ACDBE regulation, 49 C.F.R. Part 23, throughout the term of the agreement. In accordance with the ACDBE Program, the selected Proposer will be required to cooperate with and to provide all information requested by in order to allow for the effective monitoring of the selected Proposer's ACDBE participation in the contract.

- Selected Proposer(s) agrees that it shall make good faith efforts to meet the ACDBE participation goal throughout the term of the agreement.
- Selected Proposer(s) agrees that it shall submit a monthly report, in a form acceptable to, describing total gross receipts for the contract and for each ACDBE participant.
- Selected Proposer(s) shall have no right to terminate or substitute an ACDBE without the prior written consent of the City. If an ACDBE is terminated after the City has consented or because of the ACDBE's default, then the selected Proposer(s) must make a good faith effort, in accordance with the requirements of 49 C.F.R. Section 23.25(e)(1)(iii) and (iv), and 49 C.F.R. Section 26.53, to find another ACDBE to meet the stated ACDBE goal. Any substituted ACDBE must be certified in the NAICS code appropriate for the trade of the contract.
- Failure to comply with the ACDBE Regulations, including ACDBE program and monitoring procedures, shall be a default under selected Proposer(s) Agreement and shall entitle to exercise any contractual or legal remedies, up to and including termination of the Agreement.

Any firm listed as an ACDBE participant for this opportunity must be certified in the appropriate NAICS code by the State of Colorado.

A list of ACDBE certified vendors can be found at: [The Colorado Unified Certification Program Directory](#).

### **Meeting ACDBE Goal**

A Proposer may meet its ACDBE participation goal commitment utilizing any combination of options stated below, all of which require proof of ACDBE certification by the CUCP pursuant to 49 C.F.R. Part 23. The amount and type of participation proposed will become a firm commitment in any final executed agreement(s). ACDBE participation will be monitored continually throughout the term of the agreement. Proposers agree, as an express condition of performance, to comply with the requirements of 49 C.F.R Part 23 and the appropriate provisions under any final executed agreement(s).

Options for meeting the ACDBE goal are:

- 100% ACDBE participation: The business entity is solely owned and operated by an ACDBE firm (letter of intent not necessary).
- Percentage Participation: A designated percentage of the business is owned, operated and/or maintained by an ACDBE through sub-agreement or JV arrangements\*\*.
- Any JV arrangement must meet the requirement of 49 C.F.R. Part 23, the FAA Joint Venture Guidance, and Joint Venture Review and Monitoring Procedures.

\*\* Joint Venture Agreements: For purposes of ACDBE participation, JV means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the JV are commensurate with its ownership interest. considers any entity that is comprised of an ACDBE and one or more other firms to be a JV even if the participants do not identify elsewhere as a JV. JV entities are not certified as ACDBEs.

DEN considers any proposing entity in which joint operation of the contract by firms, one or more of which is an ACDBE firm, to be a JV even if the participants do not identify the agreement as a JV. Accordingly, the proposing JV must submit, with its ACDBE Certification letters, a draft JV agreement (or operating agreement, by-laws, etc.), a completed JV Eligibility Form, a notarized JV Affidavit, a detailed list of roles and responsibilities for each JV partner and any other appropriate documentation of the legal relationship between the JV partners.

### **ACDBE Good Faith Efforts**

Any Proposer who does not demonstrate that they will meet the established ACDBE goal is required to submit, with its Proposal, its good faith efforts. This submission should include all efforts that the Proposer wishes to be considered in the evaluation. DEN will determine, in its sole discretion, if the efforts submitted are sufficient to demonstrate that the Proposer took all necessary and reasonable steps to achieve the ACDBE goal which, by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient ACDBE participation. See 49 C.F.R. Part 23 Section 23.25 and 49 C.F.R. Part 26 Appendix A for Guidance concerning Good Faith Efforts.

### **Submittal Requirements**

Proposers 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.

Proposers will be responsible for submitting all required ACDBE forms and information with its Proposal. Additional information to be included is as follows. Forms may be found in Attachment 1, Part 4 ACDBE and MWBE Forms.

- ACDBE JV Affidavit Form (for JVs only)
- JV Agreement (e.g., LLC Operating Agreement, Partnership Agreements, etc.), if applicable (for JVs only)
- ACDBE Letter of Intent Form
- ACDBE Commitment Form
- ACDBE JV Eligibility Form (for JVs only)
- Proof of Current ACDBE Certification in the appropriate NAICS Code
- Sublease Agreement with ACDBE, if applicable (for ACDBE subleases only)
- ACDBE Good Faith Efforts Checklist (to be submitted only if the goal is not met)

### **Review Process**

The City will conduct a cursory review of JV agreements after the initial submittal of proposals. This review will verify basic requirements, such as ACDBE certification and the submission of a formal JV Agreement, if applicable. Prior to awarding a concession opportunity, the City will conduct a comprehensive review of the JV Agreement and any associated loan or other agreements to ensure full compliance with the provisions outlined in 49 C.F.R. Part 23, the FAA Joint Venture Guidance, and DEN's ACDBE Program Joint Venture Review and Monitoring Procedures. If upon this review deems a JV agreement non-compliant and such non-compliance is not timely remedied, the proposal may be deemed non-responsive and ineligible for award of the opportunity. The JV agreement must be approved and fully executed prior to awarding a concession opportunity. For additional JV guidance, review the Commerce Hub Joint Venture Guidance document on the Commerce Hub's webpage (link included in Other Resources listed below).

### **Other Resources**

- Certification applications may be obtained at:  
<http://business.flydenver.com/bizops/commercehub.asp>.

- Questions regarding the certification process, certified vendors, joint venture agreements, subcontractor agreements, or any other ACDBE questions that arise concerning a concession opportunity should be directed via email to [Revenue-Procurement@flydenver.com](mailto:Revenue-Procurement@flydenver.com).
- DEN Commerce Hub Joint Venture Guidance document may be obtained at: [http://business.flydenver.com/bizops/documents/den\\_Com\\_Hub\\_JV\\_guidance.pdf](http://business.flydenver.com/bizops/documents/den_Com_Hub_JV_guidance.pdf)

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

The City will count the ACDBE purchases against the total purchase of goods and services (ACDBE and non-ACDBE combined).

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

The City will count ACDBE participation toward overall goals other than car rental as provided in 49 C.F.R. 23.55.

### **Section 23.57 (b) Goal shortfall accountability.**

If the awards and commitments on the City's Uniform Report of Participation (found in Appendix A to Part 23) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the City will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- (3) As DEN is a CORE 30 Airport, the City will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval by April 1 following the report submittal. If the FAA approves the report, the City will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
- (4) The City understands the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- (5) The City understands it 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) The City does not submit its analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves the City's analysis or corrective actions; or

(iii) The City does not fully implement:

(A) The corrective actions to which the City committed, or

(B) Conditions that FAA has imposed following review of the City's 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**

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

### **SUBPART E – OTHER PROVISIONS**

#### **Section 23.71 Existing Agreements**

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

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

The City will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. The City understands that a “long-term” agreement is one having a term of longer than five years. 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, will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

### **Section 23.79 Geographic Preferences**

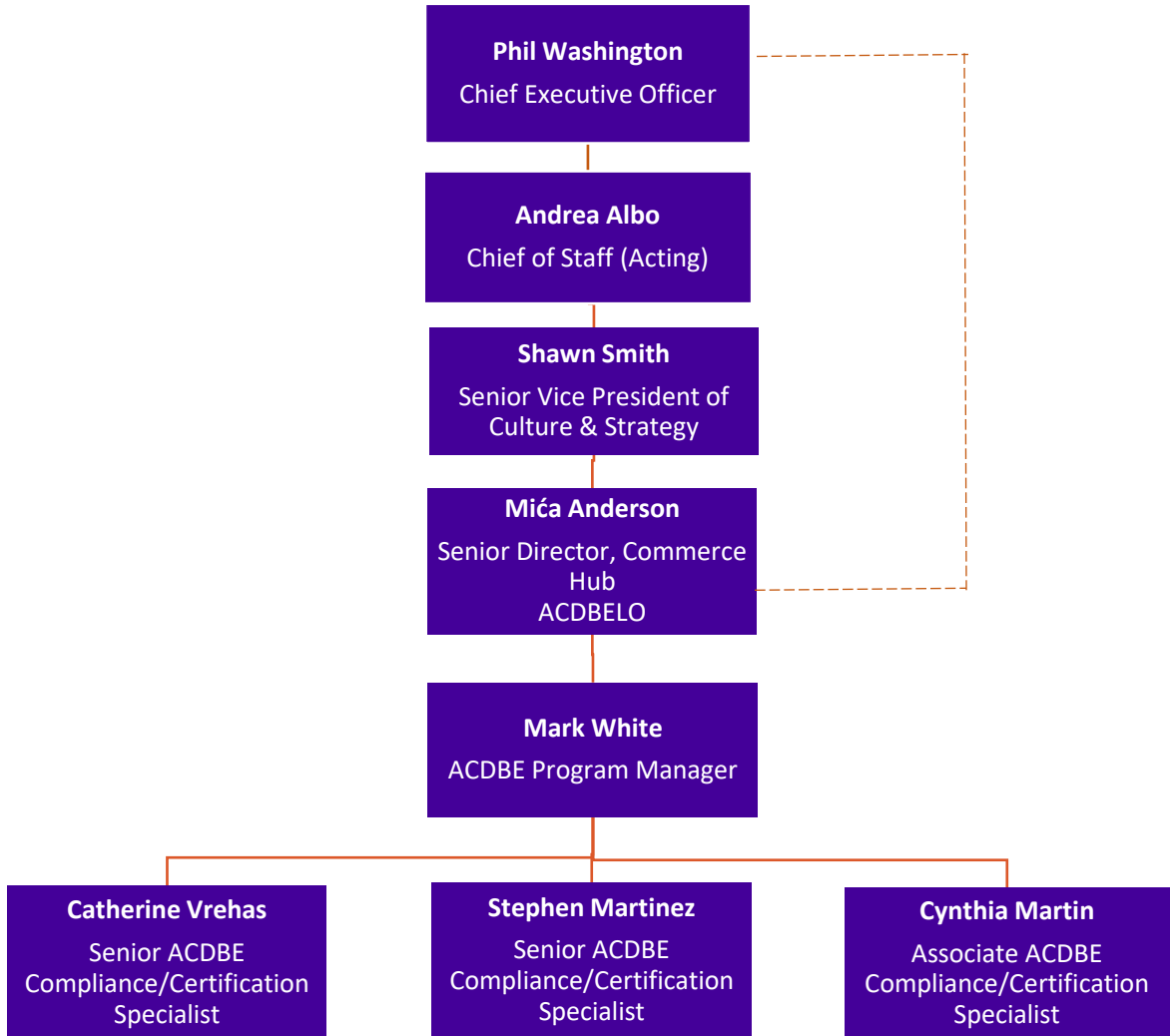
The City will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., Colorado) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

### **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Certification Application Forms
Attachment 5	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Demonstration of Good Faith Efforts and other Required Forms
Attachment 7	Procedures for Removal of ACDBEs Eligibility
Attachment 8	Regulations: 49 CFR Part 23
Attachment 9	Colorado UCP Agreement

**Attachment 1**

Organizational Chart



## **Attachment 2**

DBE/ACDBE Directory

The DBE/ACDBE Directory can be found at the following website:  
<https://coucp.dbesystem.com/directory.asp>



### Attachment 3

#### Monitoring and Enforcement Mechanisms

The City has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Eligibility for DEN's Excellence In Service incentive program for concessionaires;
3. DEN's policy regarding ineligibility to submit proposals on new RFPs if in noncompliance;
4. Termination of contract; and
5. Assessing sanctions and penalties.

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.

Contractual Provisions and Remedies: DEN's standard concession contract provisions subject to the ACDBE program provide that noncompliance remedies for such breach. These provisions include the following:

1. **ACDBE Obligation.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23.
2. **Other Agreements.** The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters into and cause those businesses to similarly include the statements in further agreements.
3. **ACDBE Participation in This Agreement.** Concessionaire has represented that it is qualified as an Airport Concession Disadvantaged Business Enterprise (ACDBE) under 49 CFR Part 23 of the regulations of the U.S. Department of Transportation and hereby covenants to remain so

throughout the term of this Agreement. Concessionaire's status as a certified ACDBE constitutes \_\_\_% ACDBE participation and satisfies all DBE obligations of this agreement.

**Attachment 4**

Certification Application Forms

The application for ACDBE certification can be obtained from the following website:

<https://denver.mwdbe.com/>

**Attachment 5**

Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation

Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation

Overall goals calculation, consultation, and breakout of estimated race-neutral and race-conscious participation can be obtained at the following website: <https://flyden.sharefile.com/d-s4a40d419915c4b66b17a2f0ef795e116>

## **Attachment 6**

### Demonstration of Good Faith Efforts and other Required Forms

Demonstration of Good Faith Efforts for purposes of assessing proposers/offerors good faith efforts in solicitation documents include the following:

- [ACDBE Commitment Form](#)
- [Letter of Intent](#)
- [Letter of Intent – Good and Services](#)
- [ACDBE Joint Venture Eligibility](#)
- [ACDBE Joint Venture Affidavit](#)

**Attachment 7**

Procedures for Removal of ACDBEs Eligibility



# ACDBE Suspension and Decertification

## Standard Operating Procedures



<b>Author(s)</b>	CM	<b>Status</b>	Approved
<b>Version</b>	1.1	<b>Date</b>	12.14.2022
<b>Approved</b>	MA	<b>Approval Date</b>	12.19.2022





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## Purpose

The Commerce Hub's responsibility to the ACDBE Program at DEN is to ensure that participating firms meet FAA/USDOT eligibility guidelines on a continued basis. Once an ACDBE firm is determined to be ineligible, it will be suspended and/or decertified.

## References

- **Recipient** – Refers to the agency receiving funding from the FAA for the ACDBE program. For the purpose of this Standard Operating Procedure (SOP) document, the recipient is the Denver International Airport (DEN).
- **DBE** – Disadvantaged Business Enterprise (DBE). In certain instances, the rules and regulations for the DBE program, 49 CFR part 26, applies to the ACDBE program as well. Therefore, when DBEs are referenced in this SOP, it is with regards to situations where 49 CFR part 26 applies.
- **DOT** – Department of Transportation

## Suspension (49 CFR 26.88)

### **49 CFR 26.88(e)**

Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

### **49 CFR 26.88 (f)**

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

### **49 CFR 26.88(g)**

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required (*There are however procedures that must be completed in B2G – see Voluntary Withdrawal Procedures*). If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

## ***Reasons an ACDBE Firm may be Suspended***

### **49 CFR 26.88 (a)**

A recipient shall immediately suspend a DBE's certification without adhering to the requirements in [§ 26.87\(d\) of this part](#) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

### **49 CFR 26.88 (b)**

- (1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in [§ 26.87\(d\)](#) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by [§ 26.83\(i\) of this part](#) or fails to timely file an affidavit of no change under [§ 26.83\(j\)](#).
- (2) In determining the adequacy of the evidence to issue a suspension under [paragraph \(b\)\(1\)](#) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

### **49 CFR 26.88 (c)**

The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

## **Informal Hearing Request**

### **Hearing - 49 CFR 26.87(d):**

When you notify a firm that there is reasonable cause to remove its eligibility, as provided in 49 CFR 26.87 (a), (b), or (c), you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

- (1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
- (2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under [§ 26.89](#), you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

## Standard Operating Procedures

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- (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

### **Separation of functions - 49 CFR 26.87(e)**

You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

- (1) Your method of implementing this requirement must be made part of your DBE program.
- (2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
- (3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

### ***Informal Hearing Procedures***

To schedule an informal hearing, the firm must contact the team member designated as the contact person in the *Proposal to Remove Eligibility* letter within thirty (30) calendar days from the date of the letter.

The firm may instead elect to present information and arguments in writing, without going to a hearing to the designated email address within thirty (30) calendar days from the date of the letter.

Upon receipt of an informal hearing request:

1. DEN legal must be informed
2. Another certifying agency such as CDOT or DSBO must then review all information (internal documents/findings as well as all information disputing the findings and the original documents submitted with the application by the applicant).
3. The certifying agency conducting the hearing would then schedule a meeting with the applicant and hear their objections (these are recorded).
4. After the meeting, the certifying agency conducting the hearing will either agree with the original findings (based on the record as a whole) or overturn the decision based on the information/argument for denial, provided by the applicant.
5. The applicant must be sent a letter of findings by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE OR via email (with read/receipts) in accordance with USDOT Covid-19 Guidance.

## [Decertification \(49 CFR 26.87\)](#)

### ***Reasons an ACDBE Firm may be Decertified***

#### **Failure to maintain certification - 49 CFR 26.87(f)**

If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your

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certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under [paragraph \(i\)](#) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under [§ 26.109\(c\)](#).

**Ineligibility complaints - 49 CFR 26.87(a)**

- (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in [§ 26.109\(b\)](#).
- (2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
- (3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**Recipient-initiated proceedings - 49 CFR 26.87(b)**

If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**DOT directive to initiate proceeding - 49 CFR 26.87(c)**

- (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove

## Standard Operating Procedures

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the firm's certification.

- (2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
- (3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by [paragraph \(b\)](#) of this section.

### **Grounds for decision - 49 CFR 26.87(f)**

You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available to you at the time the firm was certified;
- (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
- (4) A change in the certification standards or requirements of the Department since you certified the firm;
- (5) Your decision to certify the firm was clearly erroneous;
- (6) The firm has failed to cooperate with you (see [§ 26.109\(c\)](#));
- (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see [§ 26.73\(a\)\(2\)](#)); or
- (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by [paragraph \(g\)](#) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in [paragraph \(d\)](#) of this section.

## Removal of Eligibility Procedures

### ***B2G Decertification Options***

- **Decertify:** A decision is made by the certifying agency to remove a certified firm's ACDBE certification due to its failure to comply with FAA/USDOT certification rules and regulations. If a firm is decertified, it must wait one year before reapplying and the decertification status will be reported to the US DOT decertification database.
- **Withdraw:** A certified firm voluntarily withdraws its ACDBE certification. A firm that voluntarily withdraws their ACDBE certification can reapply at any time.

*(B2G provides two additional decertification options, “Revoke” and “Graduate” – these options do not apply to the ACDBE program and should not be selected.)*

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## **Voluntary Withdrawals**

Some firms will choose to voluntarily withdraw their certification. In this instance, request they submit their request to withdraw in writing. Upon receipt of their request, do the following:

1. In B2G, open their profile.
  - 1.1. Click on the **Certs** tab
  - 1.2. Under **Current Certifications**, click on **Edit** next to their ACDBE certification
  - 1.3. Click on **Alternate Actions** in the horizontal navigation bar
  - 1.4. Click on the **PROCESS** button next to DECERTIFY
  - 1.5. Select **Withdraw**
    - 1.5.1. Enter a comment in the **Reason** box.
    - 1.5.2. Attach written request
  - 1.6. Click **Review**
  - 1.7. Click **Save**

## **Suspension**

**49 CFR 26.88(d):** When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE **OR** via email (with read/receipts) in accordance with USDOT Covid-19 Guidance.

1. Draft a *Suspension and Proposed Removal of Eligibility* letter indicating the reason(s) for the suspension and proposed removal of eligibility. (see Exhibit A for an example Suspension and Proposed Removal of Eligibility letter for reference). The letter must outline related FAA/USDOT rules and regulations and summarize how the firm is non-compliant. Also include background information outlining attempts on the part of our department to obtain necessary information to ensure continued eligibility with ACDBE requirements.
    - 1.1. Once the letter has been drafted, email a copy of the draft to the ACDBE Program Manager and DEN legal.
    - 1.2. Once the letter has been approved by both the ACDBE Program Manager and DEN legal, email the letter with read/receipts turned on to the ACDBE firm.
      - 1.2.1. Carbon copy (Cc) the Commerce Hub compliance staff, as well as the Division of Small Business Opportunity (DSBO) Division Manager if the ACDBE also holds local certifications that may be impacted by their ACDBE decertification.
  2. In B2G:
    - 2.1. In the left menu bar, under **Search**, click on **Certified Vendors**.
-

- 2.2. Under **Search Parameters**, type in the business name and click **Enter** (on your keyboard) or the **Search** button.
- 2.3. Click on the business name
- 2.4. Click on **Certifications**
- 2.5. In the **Current Certifications** section, click on **Edit**
- 2.6. In the horizontal menu bar, select the **Alternate Actions** tab
- 2.7. Next to **SUSPEND** – click **Process**
- 2.8. Click on the **Suspend Record** button
- 2.9. Enter the number of days the firm is to be suspended
- 2.10. Add Comments
- 2.11. Attach *Suspension and Proposed Removal of Eligibility* letter
- 2.12. Click **Review**
- 2.13. Click **Save**

## **Decertification**

### **Notice of decision - 49 CFR 26.87(g)**

Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under [§ 26.89](#). You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

### **Status of firm during proceeding - 49 CFR 26.87(i)**

- (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

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*(If decertification actions are being initiated due to Failure to Maintain the ACDBE certification, see Expired NCA Removal Process SOP.) For all others, follow the procedures below:*

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1. If after sending **Suspension – Proposed Removal of Eligibility letter**, the firm does not respond or utilize any of the options provided to remedy its ACDBE certification, you may proceed to decertify them.
  - 1.1. Draft a *Removal of Eligibility* letter. (see Exhibit B for an example *Removal of Eligibility* letter for reference).
    - 1.1.1. Notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE OR via email (with read/receipts) in accordance



with USDOT Covid-19 Guidance. Carbon copy (Cc) the Commerce Hub compliance staff, as well as the Division of Small Business Opportunity (DSBO) Division Manager if the ACDBE also holds local certifications that may be impacted by their ACDBE decertification.

## 2. In B2G

- 2.1. Under **Current Certifications**, click on **Edit** next to their ACDBE certification
- 2.2. Click on **Alternate Actions** in the horizontal navigation bar
- 2.3. Click on the **PROCESS** button next to DECERTIFY
- 2.4. Select **Decertify**
- 2.5. Comment in the **Reason box**.
- 2.6. Attach a copy of the *Removal of Eligibility* letter.
- 2.7. Click **Review**
- 2.8. Click **Save**

### Effects of removal of eligibility - 49 CFR 26.87

When you remove a firm's eligibility, you must take the following action:

#### 49 CFR 26.87(j)

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

## Certification Appeals

### ***Availability of appeal - 49 CFR 26.87(k)***

When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

### ***Process for certification appeals to the DOT 49 CFR 26.89***

#### **49 CFR 26.89(a)**

- (1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.
- (2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
- (3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

#### **49 CFR 26.89(b)**

Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

#### **49 CFR 26.89 (c)**

If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

#### **49 CFR 26.89 (d)**

When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

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**49 CFR 26.89 (e)** The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

**49 CFR 26.89 (f)**

As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

- (1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
- (2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.
- (3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
- (4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
- (5) The Department does not uphold your decision based on grounds not specified in your decision.
- (6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
- (7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this

section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

- (8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

**49 CFR 26.89 (g)**

All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

***Actions to take following DOT certification appeal decision - 49 CFR 26.91*****49 CFR 26.91 (a)**

If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

**49 CFR 26.91 (b)**

If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

- (1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.
- (2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.
- (3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.
- (4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.
- (5) If the Department affirms your determination, no further action is necessary.

**49 CFR 26.91 (c)**

Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.



## Appendix

### ***Appendix A - Suspension – Proposed Removal of Eligibility Letter Example***

Today 22, 2022

Jenna Jones  
**FIRM NAME, LLC**  
123 Airport Blvd.  
City, State 12345

#### **Notice of Suspension and Proposed Removal of Eligibility: Airport Concession Disadvantaged Business Enterprise (ACDBE)**

Dear Mrs. Jones:

The City and County of Denver's Department of Aviation (the "City") values its ACDBE partners and is committed to running an ACDBE program that helps these businesses thrive and succeed at Denver International Airport. In doing so, the City must uphold the integrity of its ACDBE program by ensuring compliance with all applicable Federal regulations. Unfortunately, after repeated requests, the City has not received information required to maintain ACDBE eligibility from **FIRM NAME, LLC** and must now act accordingly.

Therefore, effective on the date of this Notice, the City formally suspends **FIRM NAME, LLC's** ACDBE certification and proposes removing **FIRM NAME, LLC's** eligibility as an ACDBE in the Colorado Unified Certification Program ("CUCP"). This decision is based on a thorough review of the record and pursuant to the provisions of the U.S. Department of Transportation Rules and Regulations, 49 C.F.R. Part 26, §§ 26.73(c), 26.83(j) and 26.109(c), attached. Be advised that, pursuant to 49 C.F.R. §26.88(f), **FIRM NAME, LLC** will not be considered an ACDBE on any new contracts while suspended.

The specific reasons for this suspension and proposed removal are as follows:

- On October 20, 2020, **FIRM NAME, LLC** was sent an email through the Certification/Compliance Management System, requesting information necessary to complete the review of **FIRM NAME, LLC's** continued eligibility as an ACDBE.
- On December 28, 2020, a second request was sent to **FIRM NAME, LLC** through the Certification/Compliance Management System, requesting information necessary to complete the review of **FIRM NAME, LLC's** continued eligibility as an ACDBE.
- On January 5, 2021, a third request was sent to **FIRM NAME, LLC** through the Certification/Compliance Management System, requesting information necessary to complete the review **FIRM NAME, LLC's** continued eligibility as an ACDBE.



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- In addition to emails that were sent through the Certification/Compliance Management system, several voice messages were left at the phone number on file in the Certification/Compliance Management System.

As of today, **FIRM NAME, LLC** has not submitted the required documents. Due to **FIRM NAME, LLC's** failure to submit the information required under 49 C.F.R. Part 26, § 26.83(j) and lack of cooperation in accordance with 49 C.F.R. Part 26 §§ 26.73(c) and 26.109(c), the City has reasonable cause to propose removing **FIRM NAME, LLC's** eligibility.

You have the right to an informal hearing if you believe relevant facts have not been considered. To schedule an informal hearing, you must contact Mark White at the following email address and telephone number within ten (10) calendar days from the date of this letter.

Mark White  
ACDBE Assistant Director of Business Development  
Denver International Airport – Commerce Hub  
8500 Peña Blvd  
Denver, CO 80249  
(303) 342-2185  
[Mark.White@flydenver.com](mailto:Mark.White@flydenver.com)

You may instead elect to present information and arguments in writing, without going to a hearing. To do so, you must submit the information and arguments in writing to the email address above within ten (10) calendar days from the date of this letter.

Alternatively, you may submit all required information listed below, which may result in lifting of the suspension and withdrawal of the proposed removal. To do so, please log in to the B2Gnow application portal and submit all information listed below no later than ten (10) calendar days from the date of this letter.

- Signed U.S. Federal Income Tax Returns including all schedules, forms and worksheets for **FIRM NAME, LLC** and all affiliate or subsidiaries of the applicant firm or owners, including joint ventures in which the firm or an affiliate of the firm is a participant. If a firm was in business less than three years, then provide the tax returns for the year(s) the firm was in business.

Tax returns and the years needed include, but are not limited to:

- 2021 personal tax returns
  - FIRM NAME, LLC** (2019, 2020 and 2021)
  - ABC Airport Food Services (2019, 2020 and 2021)
  - ABC Institutional, LLC (2019, 2020 and 2021)
- Personal Net Worth Statement



You will be notified in writing of the final decision. If you do not request an informal hearing, submit a response, or otherwise submit the required information above within ten (10) days from the date of this letter, **FIRM NAME, LLC** will be found ineligible to participate in the ACDBE Program and will be removed from the CUCP Directory.

Finally, if you believe that **FIRM NAME, LLC** is currently ineligible, you may voluntarily withdraw **FIRM NAME, LLC** from ACDBE classification by submitting a request in writing to the email address above within ten (10) days.

Sincerely,

Mark White  
ACDBE Assistant Director of Business Development  
Denver International Airport

Cc: Mića Anderson, Senior Director, Commerce Hub  
Brent Larson, Assistant City Attorney  
Steve Martinez, Senior ACDBE Certification Specialist  
Cynthia Martin, ACDBE Program Certification Associate

#### **Cited U.S. Department of Transportation Rules and Regulations Part 26**

##### §26.73(c)

DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

##### §26.83(i)

If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part,





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documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

§26.88(f)

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

26.109(c)

Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).



## ***Appendix B – Removal of Eligibility Letter Example***

Today 2, 2022

Jenna Jones  
**FIRM NAME, LLC**  
123 Airport Blvd.  
City, State 12345

### **Removal of Airport Concession Disadvantaged Business Enterprise Certification Eligibility**

Dear Mrs. Jones:

This letter is to formally advise you that the Denver International Airport (“DEN”) Commerce Hub has removed the ACDBE certification of your firm, **THE FIRM, LLC**. As a result, **THE FIRM, LLC** is no longer eligible to participate as a certified Airport Concession Disadvantaged Business Enterprise (“ACDBE”) in projects at DEN.

On August 22, 2022, the DEN Commerce Hub sent you, via email in accordance with USDOT Covid-19 Guidance, a Notice of Suspension and Proposed Removal of Eligibility (“Notice of Proposal to Remove Eligibility”). The proposed removal was based on the fact that your firm has not submitted the required documentation to support your Annual Affidavit of No Change, as required by 49 CFR part 26, Section 26.83(j). As noted in the Notice of Proposal to Remove Eligibility, a number of attempts have been made to contact you regarding the submission of the required documents needed to complete the annual review. This failure to respond constitutes a lack of cooperation in accordance with 49 CFR Part 26 §§26.73(c) and 26.109(c). Referenced sections of 49 CFR Part 26 are included below.

As stated in the Notice of Proposal to Remove Eligibility, you had the option to request an informal hearing within ten (10) calendar days of that date of the Notice, or elect to present information and arguments in writing, without attending a hearing. You were required to respond to the request by scheduling a hearing or providing information you wished to have considered no later than ten (10) calendar days from the date of the Notice. You were informed that if you chose not to request an informal hearing or respond in writing, your firm would be found ineligible to participate in DEN’s ACDBE Program and be removed from DEN’s ACDBE Directory.

More than ten (10) calendar days have passed since the date of the Notice of Proposal to Remove Eligibility and, as of the date of this letter, your firm has not submitted the required documents or requested an informal hearing. Based upon information currently available to DEN and pursuant to 49 CFR §§26.87(f)(1), the DEN Commerce Hub has determined that your firm does not meet the requirements set forth in the ACDBE regulations and is, thus, ineligible to participate as a certified



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ACDBE under DEN's ACDBE Program, effective from the date of this letter. This does not prohibit the firm from participating as a non-ACDBE in DEN concession opportunities.

Applicable regulations include 49 CFR Section 26.73(c), 49 CFR Section 26.83(j), 49 CFT Section 26.87(f)(6), and 49 CFR Section 26.109(c), which state as follows:

49 CFR Section 26.73(c)

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

49 CFR Section 26.83(j)

If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

49 CFR Section 26.87(f) (6)

Grounds for decision. You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(6) The firm has failed to cooperate with you (see § 26.109(c))

49 CFR Section 26.109(c)

Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE



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firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

In accordance with 49 CFR part 26, §26.89, you may appeal this decision to the U.S. Department of Transportation. Please note that pursuant to Guidance issued by U.S. DOT, the appeal process has changed as a result of the COVID-19 crisis and appeals will not be received via U.S. mail at this time. If you want to file an appeal, you must email it to [S33AppealsManagementRecords@dot.gov](mailto:S33AppealsManagementRecords@dot.gov) within 90 days of the date of this letter. The appeal must include this letter and other pertinent information and provide a full and specific statement as to why our decision is erroneous, what significant fact we failed to consider, or what provisions of 49 CFR Part 26 we did not properly apply. USDOT does not accept notices of intent, partial, or otherwise non-compliant submissions. Additional information regarding the appeal process may be found in §26.89 of 49 CFR part 26.

In accordance with Colorado Unified Certification Program Plan and in compliance with 49 CFR part 26, your firm is eligible to reapply for ACDBE certification one year from the date of this letter. If you have any questions, please do not hesitate to contact me at [Mark.White@flydenver.com](mailto:Mark.White@flydenver.com).

Sincerely,

Mark White  
ACDBE Program Manager  
Denver International Airport – Commerce Hub

Cc: Mića Anderson, Senior Director, Commerce Hub  
Brent Larson, Assistant City Attorney  
Steve Martinez, Senior ACDBE Certification Specialist  
Cynthia Martin, ACDBE Program Certification Associate

**Attachment 8**

Regulations: 49 Code of Regulations (CFR) Part 23

The ACDBE Regulations: 49 CFR Part 23 can be obtained from the following website:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=0248ce3819846318132716c378eef399&mc=true&node=pt49.1.23&rgn=div5>

**Attachment 9**

Colorado Unified Certification Program (UCP) Plan

The Colorado UCP Plan can be obtained at the following website:

<https://www.denvergov.org/files/assets/public/v/1/economic-development/documents/dsbo/colorado-unified-certification-plan-ucp-agreement.pdf>