



**PORT OF OAKLAND**

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**OAKLAND INTERNATIONAL AIRPORT  
Airport Concession Disadvantaged  
Business Enterprise Program**

## ACKNOWLEDGEMENTS

The Port of Oakland, Social Responsibility Division gratefully acknowledges the cooperation and contribution of staff of the Divisions of Aviation, Engineering, Finance, Legal and Executive Office.

For individuals with sensory disabilities, this document is available in Braille, large print, on audiocassette or computer disk. To obtain a copy of this document in one of these alternate formats, please contact:

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**OAKLAND INTERNATIONAL AIRPORT**  
**Airport Concession Disadvantaged Business Enterprise Program**

**Policy Statement (§ 23.1)**

The Oakland International Airport, a part of the City of Oakland, acting by and through its Board of Port Commissioners (referred to herein as the Port or Airport) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the US Department of Transportation (DOT), 49 CFR Part 23. The Port is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Port has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Port to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also the Port's policy to:

- Ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- Create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- Ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport;
- Help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport; and,
- Provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Jean Banker, Deputy Executive Director, has been delegated as the Port's ACDBE Liaison Officer (ACDBELO). In that capacity, Ms. Banker is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the priority as compliance with all other legal obligations incurred by the Port in its financial assistance agreements with the DOT.

The Port has disseminated this policy statement to the Port's Board of Port Commissioners and of the components under the Port's organization. The Port has mailed this policy statement to ACDBE and non-ACDBE Concessionaire communities in our area.

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OMAR BENJAMIN, EXECUTIVE DIRECTOR

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DATE

## **I. Applicability of Regulations (§ 23.5)**

The Port has established this Airport Concession Disadvantaged Business Enterprise (ACDBE) Concession Program and Plan (Concession Plan) as part of the Port's ACDBE Program in accordance with regulations of the United States Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 23, Subpart B, as may be amended (Regulations). All applicable aspects of the Port's Disadvantaged Business Enterprise (DBE) Program, provided under separate cover and incorporated by reference, will also apply to its ACDBE Concession Plan.

The Port, as a recipient of Federal grants for airport development authorized under the Airport Improvement Program (AIP), and as a condition of its grant agreement, has signed an assurance that it will comply with the provisions of 49 CFR Part 23 and is required to implement an ACDBE Plan in accordance with the Regulations, which are incorporated herein by this reference. The Plan outlined herein applies to all Airport concessions and management agreements covered by the Regulations. In the event of any conflicts or inconsistencies between the Regulations and this Plan, the Regulations shall prevail.

Through this Plan, the Port strives to create a level playing field on which ACDBEs can compete fairly for concession related contracting opportunities. Accordingly, the Port has developed this Concession Plan, which will be reviewed annually and updated as appropriate.

## **II. Objectives (§ 23.1)**

This part seeks to achieve several objectives:

- A. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance:
- B. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- C. To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- D. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;

- E. To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and,
- F. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

### **III. Definitions (§ 23.3)**

Any terms used in this plan that are defined in 49 CFR 23.3 or elsewhere in the Regulations shall have the meaning set for in the Regulations. Some of the most common terms are defined in Appendix A.

### **IV. Non Discrimination and Assurance Requirements (§ 23.9)**

The Port will not exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession related contracts on the basis of race, color, sex, or national origin.

The following non-discrimination language will be included in all concession related contracts the Port executes with any firm:

- “(1) This agreement is subject to the requirements of the US Department of Transportation’s Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

### **V. Enforcement Provisions (§ 23.11)**

The compliance and enforcement provisions of Part 26 (§ 26.101 and 26.105 through 26.109) apply to this part in the same way they apply to FAA recipients and programs under Part 26.

### **VI. Guidance, Interpretations, Exemptions and Waivers (§ 23.13)**

Only guidance and interpretations consistent with this part 23 and issued after April 21, 2005, express the official position and view of the

Department of Transportation's (DOT) Federal Aviation Administration (FAA).

The Secretary of Transportation, Office of the Secretary of Transportation and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and view of the DOT and FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

*"The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23."*

## **VII. Concession Policy**

It shall be the policy of the Port to actively promote and take all necessary and reasonable steps to foster participation by ACDBEs in the Port's airport concession activities (See Policy Statement, page 4 of this document).

## **VIII. Administrative Requirements (§ 23.23)**

- A. *Dissemination of Policy Statement and Concession Plan:* The Port shall issue a signed and dated Policy Statement throughout the Port and to the business community, including ACDBEs and non-ACDBEs that perform work on concession related contracting opportunities. The entire Plan will be posted on the Port's website at [www.portofoakland.com](http://www.portofoakland.com).
- B. *DBE Liaison Officer (DBELO):* Pursuant to 49 CFR part 23.23, the Plan shall be administered by the Disadvantaged Business Enterprise Liaison Officer (DBELO), who shall be appointed by and have direct access to the Executive Director of the Port on ACDBE issues. The DBELO shall be the primary person responsible for implementing all aspects of this Plan, and will work closely with the Aviation Division, Engineering Division, Finance Division and Legal Division of the Port for making decisions related to concession contracting opportunities. The designated DBELO in the Port's DBE Program shall oversee and be responsible for implementation of this Concession Plan.
- C. *Active Participants Directory:* The DBELO shall refer interested persons to the California Unified Certification Program (CUCP) database for a list of all firms eligible to participate as ACDBEs in this plan. The CUCP database includes every firm's named,

address, phone number, and type of work the firm has been certified to perform as an ACDBE. The CUCP is revised on a bi-weekly basis with updated information for contractors and the public to access at the following website address: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

## **IX. Implementation (§ 23.25)**

The Port shall submit to the Federal Aviation Administration (FAA) Western-Pacific Region Civil Rights Officer, its overall goals and a description of the methodology used in establishing them, as per this Concession Plan.

To ensure that ACDBEs have the maximum opportunity to compete in concession agreements, the Port shall:

- A. Include a program narrative describing the types of measures the Port will take to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.
- B. Provide for setting goals consistent with the requirements in the Regulations.
- C. To the extent practicable, seek to obtain ACDBE participation in all types of Concession activities and not concentrate participation in one category or a few categories to the exclusion of others.
- D. Include race-neutral measures that will be undertaken in obtaining as much as possible ACDBE participation needed to meet the overall goals through such measures, including but not limited to:
  1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
  2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
  3. When practical, structuring concession activities so as to encourage and facilitate participation of ACDBEs;
  4. Providing technical assistance to ACDBEs in overcoming limitations, i.e., bonding or financing.

5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about the Port's ACDBE program will affect the procurement process; and,
  6. Providing information regarding the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.
- E. Review and update this Concession Plan as needed;
- F. Ensure that any amendment that would result in significant change to this Concession Plan is approved by the FAA Western-Pacific Region Civil Rights Officer before implementation.

**X. ACDBE Certification (§ 23.31, 23.33, 23.35, 23.37, and 23.29)**

The Port is signatory to the Memorandum of Understanding (MOU) establishing the California Unified Certification Program (CUCP), the State's reciprocal regional ACDBE certification program. As such, the Port utilized the CUCP database to identify certified firms as it is not one of the certifying agencies for the CUCP.

The Port will count toward its overall ACDBE participation goals only those businesses that have been certified by the CUCP as ACDBEs and identified on the CUCP database.

**XI. Goal Requirements (§ 23.41, 23.43, 23.45, 23.49, and 23.51)**

***Overall Goal***

The Port shall establish two separate overall ACDBE goals as prescribed in 49 CFR 23 Subpart D. The first is for car rentals and the second is for concessions other than car rentals. Each goal will cover a three-year period. The goals will be reviewed annually to ensure they continue to fit the circumstances appropriately. Any significant adjustments will be reported to the FAA.

***Calculation of Overall Goals***

When calculating the overall goal a thorough analysis of concession opportunities will be conducted. Appropriate Port staff including Airport Properties and the Social Responsibility Division will perform the analysis. The objective of this analysis is to estimate the percentage of the concession opportunity that would be performed by ACDBEs in the absence of discrimination and its effects.

Each overall concession goal will be based on the availability of ready, willing, and able ACDBEs relative to all businesses ready, willing and able to participate in our ACDBE program.

Each overall ACDBE participation goal shall be calculated as a percentage of the estimated gross receipts that will be earned by all pertinent concession operating at the Airport during the relevant three-year period.

Each overall ACDBE participation goal shall be based on a review of the following:

- A. The concession opportunities anticipated during the relevant three-year period;
- B. The identification of opportunities that have the greatest potential for ACDBE participation; and,
- C. Past results of the Port's efforts to contract with ACDBEs and the reasons for the high or low level of those results.

When calculating car rental ACDBE overall goals, only those car rental operators located on airport properties will be considered.

***Race/Gender-Neutral Methods***

The Port will use race and gender neutral methods to meet overall goals. This includes and is not limited to:

- A. Structuring concession activities so as to encourage and facilitate the participation of ACDBEs when practical;
- B. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Port's ACDBE Program will affect the procurement process;
- C. Assisting in overcoming limitations in bonding and financing through referrals to regional Surety Bond and Financing/Loan Guarantee Programs;
- D. Providing technical assistance in orienting small business to concession and management opportunities at the Airport through the Internet and facilitating introductions to the Port's and other U.S. DOT recipients' contracting activities, through various Small Business Conferences and Hispanic Chamber, Black Caucus, Black Board of Trade and Commerce, and Asian

Business Chamber sponsored events and conferences as well as monthly breakfasts and other outreach activities;

- E. Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of ACDBEs;
- F. Ensuring the distribution of the CUCP Database to the widest feasible universe of potential concessionaires and management services contractors by listing the CUCP website location in the RFPs/RFQs; and
- G. Providing business development assistance to ACDBEs through referrals to regional Surety Bond and Financing/Loan Guarantee Programs, the Port's Owner Controlled Insurance Program and referrals to the East Bay Small Business Development Center and other assistance agencies.

### ***Public Participation and Outreach Methods/Overall Goals***

The Port will advertise its overall goals and concessions plan, in accordance with the Regulations, for a 45-day comment period. The Port will ensure a wide distribution, including and not limited to, the following: minority, women, small/local and general contractor business groups, community organizations, trade association representing concessionaires currently located at the Airport, existing concessionaires, and other officials or organizations which could be expected to have information concerning the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for ACDBEs, and the Port's efforts to establish a level playing field for the participation of ACDBEs.

Comments will be recorded, analyzed and incorporated where possible into the final concession plan prior to submission to the FAA for approval.

## **XII. Information Retention and Reporting Requirements (§ 23.27, 23.51 and 23.57)**

### ***Record Retention***

As a recipient the Port will retain sufficient basic information regarding program implementation and the award and performance of agreements and contracts to enable the FAA to determine compliance with this part. All data will be retained for a minimum of three years following the end of the concession agreement or other covered contracts.

### ***Active Participants List***

Additionally, the Port will require all concession related contractors proposing on a concession-related opportunity to return, at the time of proposal date, the following information about the contract participants:

- A. Firm Name
- B. Firm address and telephone number
- C. Firm status as an ACDBE or non-ACDBE
- D. Age of the firm
- E. Type of work
- F. Estimated gross receipts of the firm or estimated total contract value

The Port will use this information to maintain and update its Active Participant List. This list will be augmented by any concession expressing an interest in doing business at the Airport:

The Port will also take the following measures to ensure nondiscriminatory participation of ACDBEs in non-concession and other activities:

- A. Signing of non-discriminatory clauses in lessee's contracts;
- B. Seeking ACDBE participation in all types of concession activities;
- C. Stating all race neutral efforts that will be undertaken to achieve the overall goals; and
- D. Requiring all 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.

### ***Counting and Tracking ACDBE Participation (Sections 23.29, 23.53 and 23.55)***

ACDBE participation for rental car concessions will only be counted in accordance with the requirements of Section 23.53 of the Regulations. In doing so, the Port will count the entire amount of cost charged by an ACDBE for repairing vehicles and the fee or commission charged by an ACDBE to manage a car rental concession as long as the costs and fees are reasonable and not excessive as compared with fees customarily allowed for similar services. The Port will not count any fees paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty. Finally, for car rental concessions, the Port will count the participation of ACDBEs providing goods and services towards the Port's rental car concession goals.

ACDBE participation for non-car rental concessions will only be counted when it results from a "commercially useful function," as defined in 49 CFR

26.55(c), except that the requirements of 26.55(c)(3) do not apply to concessions. The total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE shall be counted towards the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, then none of the gross receipts earned by the non-ACDBE will be counted.

When an ACDBE performs as a sub concessionaire or a subcontractor for a non-ACDBE, only the portion of the gross receipts earned by the ACDBE under its sub agreement will be counted. Moreover, when an ACDBE performs as a participant in a joint venture, only the portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces will be counted toward the ACDBE goals.

The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service will be counted, provided that the Port determines that it is reasonable and not excessive as compared with fees customarily allowed for similar services. The total cost of goods obtained from an ACDBE manufacturer and the total cost of goods purchased or leased from an ACDBE "regular dealer," as defined in 49 CFR 26.55(e)(2)(ii), will be counted towards the ACDBE goals.

Goods purchased from an ACDBE, which is neither a manufacturer nor a regular dealer, will only be counted as follows:

- A. The entire amount of fees or commissions charged for assistance in the procurement of the goods will be counted, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the goods themselves will be counted.
- B. The entire amount of fees or transportation charges for the delivery of goods required for a concession will be counted, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
- C. If a firm has not been certified as an ACDBE in accordance with the requirements of the Regulations, that firm's participation will not be counted toward ACDBE goals.
- D. Work performed or gross receipts earned by a firm after its eligibility has been removed will not count toward ACDBE goals, unless the ACDBE firm certified as of April 21, 2005 is decertified because one or more of its disadvantaged owners do

not meet the personal net worth criterion or the firm exceeds business size standards of the Regulations during the performance of a contract or other agreement, for the remainder of the term of the contract or other agreement (but not extensions or renewals).

- E. Costs incurred in connection with the renovation, repair or construction of a concession facility will not be counted.
- F. The ACDBE participation of car rental companies will not be counted toward the non-rental car concession goals.

#### Required Contract Provision (§ 23.29)

The Port will include in all concession related agreements the following language per 49 CFR 23.29:

*“Concessionaire has advised the Port that it will use the ACDBEs listed on attached Exhibit “ “ in providing the services described thereon. Concessionaire agrees that within 60 days after the expiration of each calendar quarter during the term of this Agreement, it will provide a report to the Port, in a form acceptable to the Port, describing the gross receipts of each ACDBE described on attached Exhibit “ “(and each substitute ACDBE obtained pursuant to paragraph (C) below), or in the case of a rental car concession, the dollar value of vehicles and other goods and services purchased by the Concessionaire from each such ACDBE, in each case calculated in accordance with the requirements of 49 CFR Part 23.*

*Concessionaire agrees that it will also submit within the same period described in (A) above a report to the Port, in a form acceptable to the Port, describing the Concessionaire’s total gross receipts for the entire contract, or in the case of a rental car concession, the total dollar value of vehicles and other goods and services purchased by the Concessionaire. Concessionaire will have no right to terminate an ACDBE for convenience without the Port’s prior written consent. If an ACDBE is terminated by the Concessionaire with the Port’s consent or because of the ACDBE’s default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25(e)1(III) and (iv), and 49 CFR 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental care concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.”*

The Concessionaire’s breach of its obligations under (A), (B), or (C) above shall be a default by Concessionaire under Section \_\_\_\_ (the default

provisions) above and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Agreement.

**XIII. ACDBE Set-Asides (§ 23.61)**

As stated in 49 CFR Part 23.61, the Port will not use quotas or set asides for ACDBE participation.

**XIV. Long-Term Exclusive Concession Agreements (§ 23.75)**

The Port shall not enter into long-term exclusive agreements for the operation of Concessions, unless special local circumstances exist that make it important to enter such agreement, and assurances have been provided to the FAA Western-Pacific Region Civil Rights Officer that there will be adequate ACDBE participation throughout the term of the long-term exclusive agreement.

For these purposes, a long-term exclusive agreement is one having a term in excess of five (5) years, and the determination of whether an agreement is exclusive shall be made in accordance with 49 CFR 23.107.

Should the Port request approval of a long-term exclusive agreement, the Port shall submit the following information to the FAA Western-Pacific Region Civil Rights Officer:

- A. A description of the special local circumstance(s) that warrant a long-term exclusive agreement, e.g., a requirement to make certain capital improvements to a leasehold facility; and
- B. A copy of the draft and final leasing and subleasing agreement;
- C. Documentation the ACDBE participants are properly certified;
- D. A description of the type of business or businesses to be operated;
- E. Information on the investment required on the part of the ACDBE and any unusual management or financial arrangement between the prime concessionaires;
- F. Information on the estimated gross receipts and net profit to be earned by the ACDBE.

***Required Elements of a Long-Term Exclusive Agreement***

Each long-term exclusive agreement(s) shall provide:

- A. That the extent of ACDBE participation will be reviewed prior to the exercise of each renewal option to consider whether an increase or decrease is warranted;

- B. That any ACDBE that is unable to perform successfully will be replaced by another ACDBE, if the remaining term of the agreement makes this feasible;
- C. That the ACDBE participation will be in an acceptable form, such as a sublease, joint venture or partnership;
- D. Documentation that the ACDBE participant(s) are properly certified;
- E. A description of the type of business(es) to be operated, location, storage and delivery space, etc., and other amenities that will increase the ACDBE's chance to succeed;
- F. Information on the investment required by the ACDBE and any unusual management or financial arrangements between the prime concessionaire and the ACDBE; and,
- G. Information on the estimated gross receipts and net profit expected to be earned by the ACDBE.

#### **XV. Submission of Information Regarding Concession Agreements**

For each concession agreement, the following information will be submitted to the FAA Western-Pacific Region Civil Rights Officer, together with any additional information requested:

- A. Name of firm;
- B. Type of business (e.g., bookstore, car rental, baggage carts, etc.);
- C. Beginning and expiration dates of agreement, including options to renew;
- D. For new agreements, method of solicitation proposed by the Port (e.g., request for proposals, invitation for bids);
- E. Dates that material amendments will be made to the agreement (if known);
- F. Estimated gross receipts for each goal period established in this concession plan;
- G. Identification of those concessionaires that have been certified as ACDBEs; and,
- H. An indication of those concessions having potential for participation by ACDBEs.

#### **XVI. Publication of Overall Goals**

Every three years, the Port will publish a public notice announcing the proposed overall ACDBE participation goals under this Concession Plan, in accordance with the public notice procedures set forth in the Regulations. In addition, the Port will publish any significant changes to the goal within the three-year period.

## **XVII. Good Faith Efforts**

The Port will make good faith efforts to achieve the overall goals established under the Concession Plan. These efforts shall include the following:

- A. Efforts will be made to locate and identify ACDBE businesses that may be interested in participating as concessionaires.
- B. Notifications will be sent to ACDBEs and other organizations of concession opportunities and encouraging them to compete, when appropriate. The Port will:
  - 1. Provide these businesses with announcements of bids or proposals when they are issued;
  - 2. Inform potential concessionaires during pre-solicitation meetings of any ACDBE requirements;
  - 3. Provide information concerning the availability of ACDBEs certified for concessions to potential concessionaires to assist them in meeting ACDBE requirements; and,
  - 4. When practicable, structuring contracting activities so as to facilitate participation of ACDBEs.

## **XVIII. Obligations of Concessionaires and Competitors**

The Port may impose requirements on competitors for concession agreements as a means of achieving the ACDBE Concession Plan goals, provided that the ACDBE participation specified in the solicitation or other request is an eligible arrangement, as defined in 49 CFR Part 23.

When options to renew concession agreements are exercised or when a material amendment is made to the agreement, the Port will assess the potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by the Regulations to obtain a modified amount of ACDBE participation in the renewed or amendment agreement.

The Port will not use a local geographic preference when awarding contracts. A local geographic preference is any requirement that gives an ACDBE located in one place an advantage over an ACDBE from other places in obtaining business at Oakland International Airport.

**XIX. Accomplishments in Achieving ACDBE Goals**

Each annual update of this Concession Plan shall contain an analysis of the accomplishments by the Port toward achieving the previous year's overall ACDBE participation goal under this Concession Plan. Each annual update shall show the effect of those results on the overall level of ACDBE participation in the airport's Concessions and shall, if applicable, include a statement as to why failure to meet the overall goal was beyond the Port's control.

**XX. Appendices**

A. Definitions

## **APPENDIX A**

### **DEFINITIONS (Section 23.3)**

Any terms used in this Program that are defined in 49 C.F.R. 23.3 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

#### **Airport Concession Disadvantaged Business Enterprise (ACDBE)**

A concession that is a for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

#### **Car Dealership**

An establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pick-up trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized NAICS code 441110.

#### **Concession**

One or more of the types of for-profit businesses listed as follows: 1) a business located on the Airport that is engaged in the sale of consumer goods or services to the public under an agreement with the Port, another concessionaire, or the owner or lessee of a terminal, if other than the Port; 2) a business conducting one or more of the following covered activities, even if does not maintain an office, store, or other business location on the Airport, as long as the activities take place on the Airport: management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the Airport, or a business that provides goods and services to concessionaires. The conduct of an aeronautical activity is not considered a concession.

#### **Concessionaire**

A firm that owns and controls a concession or a portion of a concession.

#### **Direct Ownership Arrangement**

A joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

### **Local Geographic Preference**

Any requirement that gives an ACDBE located in one place (e.g., the Port's local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at the Airport.

### **Indian Tribe**

Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation (as defined in the Regulations), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides.

### **Management Contract or Subcontract**

An agreement with the Port or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the Port. The business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at the Airport, and be engaged in the sale of consumer goods or provision of services to the public.

### **Material Amendment**

A significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement (including, without limitation, the grant of additional options to renew) or a substantial increase in the scope of the concession privilege.

### **Native Hawaiian**

Any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

### **Native Hawaiian Organization**

Any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians.

### **Personal Net Worth**

The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the following: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and 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. An individual's

personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse.

### **Small Business Concern**

A for-profit business that does not exceed the size standards of 49 CFR 23.23.

### **Socially and Economically Disadvantaged Individuals**

Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and:

- Any individual determined by the Port to be a socially and economically disadvantaged individual on a case-by-case basis.
- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- Black Americans (including persons having origins in any of the Black racial groups of Africa);
- Hispanic-American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
- Native-American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
- Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam);
- Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
- Woman; or
- A member of any additional group whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration's designation becomes effective.

### **Race-Neutral**

A measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

### **Race-Conscious**

A measure or program that is specifically focused on assisting only ACDBEs, including women-owned ACDBEs. For the purpose of the Regulations, race-conscious measures include gender-conscious measures.