

Fargo Hector International Airport

**AIRPORT CONCESSIONS DISADVANTAGED
BUSINESS ENTERPRISE (ACDBE) PROGRAM**

49 CFR PART 23

July 15, 2011

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

The Municipal Airport Authority of the City of Fargo has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Municipal Airport Authority of the City of Fargo 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 Municipal Airport Authority of the City of Fargo has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Municipal Airport Authority of the City of Fargo to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at Fargo's Hector International Airport;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to Fargo's Hector International Airport in establishing and providing opportunities for ACDBEs.

The Executive Director of the Municipal Airport Authority of the City of Fargo has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Executive Director 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 Municipal Airport Authority of the City of Fargo in its financial assistance agreements with the Department of Transportation.

The Municipal Airport Authority of the City of Fargo has disseminated this policy statement to the Members of the Municipal Airport Authority and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by posting on fargoairport.com.

Signed copy on file in Airport Authority office

8/26/11

Shawn A. Dobberstein, A.A.E, Executive Director

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 Municipal Airport Authority of the City of Fargo will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The Municipal Airport Authority of the City of Fargo is the owner of Hector International Airport, a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

The Municipal Airport Authority of the City of Fargo will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

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

The Municipal Airport Authority of the City of Fargo will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

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

Section 23.11 Compliance and Enforcement

The Municipal Airport Authority of the City of Fargo will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The Municipal Airport Authority of the City of Fargo 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.

The Municipal Airport Authority of the City of Fargo 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.

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

Any person who knows of a violation of this part by the Municipal Airport Authority of the City of Fargo may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the Municipal Airport Authority of the City of Fargo's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other 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 C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.

- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (e) 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 Municipal Airport Authority of the City of Fargo's ACDBE program or otherwise violates applicable Federal statutes.

SUBPART B – ACDBE Programs

Section 23.21 ACDBE Program Updates

Since the Municipal Airport Authority of the City of Fargo owns and operates a primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the Municipal Airport Authority of the City of Fargo will submit its ACDBE program and overall goals to FAA according to the following schedule: The FAA ADO notified us we changed from a nonhub to small hub during 2010.

Type of Airport	Initial Program and Goal Due	Second Goal Due	Subsequent Goals Due
Nonhub Primary	October 1, 2007	October 1, 2010	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that was in effect before April 21, 2005, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Fargo's Hector International Airport. However, if applicable, we will establish separate ACDBE goals at each location. When the Municipal Airport Authority of the City of Fargo makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The Municipal Airport Authority of the City of Fargo is committed to operating its ACDBE program in a nondiscriminatory manner. The Municipal Airport Authority of the City of Fargo's Policy Statement is elaborated on the first page of this program.

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

Shawn A. Dobberstein, A.A.E., Executive Director
 PO Box 2845
 Fargo, ND 58108-2845
 Phone: (701) 241-1501 Email: shawn@fargoairport.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Municipal Airport Authority of the City of Fargo complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the members of

the Municipal Airport Authority 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 assistance of a staff of up to three personnel to assist in the administration of the program. The duties and responsibilities include the following

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Sets overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the Municipal Airport Authority of the City of Fargo's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Members of the Municipal Airport Authority on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in North Dakota.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the UCP's updated directory on certified ACDBEs and DBEs.

Directory: The Municipal Airport Authority of the City of Fargo through the North Dakota (North Dakota Department of Transportation) Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP revises the Directory annually. We make the Directory available as follows: A copy of the Directory is available for viewing at the Executive Director's office; the Directory website is provided to interested persons via www.dot.nd.gov – enter DBE into the Search icon and click Go.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The Municipal Airport Authority of the City of Fargo will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a): The Hector International Airport ACDBELO reviews bid proposal documents prior to advertising concessionaires and reviews results of bid/proposal process for concessions at Fargo's Hector International Airport prior to award of the concession. Non discriminatory participation is also reviewed annually as part of the goal setting process.

The Municipal Airport Authority of the City of Fargo will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The Municipal Airport Authority of the City of Fargo's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and Attachment 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the Municipal Airport Authority of the City of Fargo projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 4 and 5 of this plan. (23.25(e))

The Municipal Airport Authority of the City of Fargo 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. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(g))

Section 23.27 Reporting

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

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

Section 23.29 Compliance and Enforcement Procedures

The Municipal Airport Authority of the City of Fargo will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. The ACDBE Program will be enforced through inclusion of specific provisions in contracts and enforcement under appropriate federal, state or local laws. If contract goals apply the ACDBELO will investigate and determine good faith efforts.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment 3).
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by annual review by the ACDBELO (part of report, review and goal setting).
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by North Dakota Department of Transportation (NDDOT) which will make certification decisions on behalf of the Municipal Airport Authority of the City of Fargo for ACDBEs.

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

We will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of part 23. Reviews are completed every three years from the anniversary date of each firm's most recent certification, whichever is later. Also, prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.)

We directed all currently certified ACDBEs to submit a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000. We recognize that in calculating personal net worth, the following exclusions apply: 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, to a maximum of \$3 million. Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

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

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

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native

Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

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

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

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

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The Municipal Airport Authority of the City of Fargo 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. The sponsor will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The sponsor'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 sponsor consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

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

Section 23.45 Overall Goals

The Municipal Airport Authority of the City of Fargo owns and operates Fargo's Hector International Airport which is a primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule: The FAA ADO notified us we changed from a nonhub to small hub during 2010.

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Nonhub Primary	October 1, 2007	October 1, 2010	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	

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.

The sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

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

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

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

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

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

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

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable,

through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the Municipal Airport Authority of the City of Fargo 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 Municipal Airport Authority of the City of Fargo will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e) (1) (ii))

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

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

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

The following personnel are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsible. [Airport Executive Director]

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

The Municipal Airport Authority of the City of Fargo treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services 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/supplier 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.

Administrative reconsideration (26.53(d))

Within 30 days of being informed by the Municipal Airport Authority of the City of Fargo that it is not or responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official, Chair of the Board, Municipal Airport Authority of the City of Fargo, PO Box 2845, Fargo, ND 58108-2845, and phone (701) 241-1501. 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 concessionaire 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 concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire 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 Municipal Airport Authority of the City of Fargo will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

If the concessionaire fails or refuses to comply in the time specified, the Municipal Airport Authority of the City of Fargo may issue a termination for default proceeding.

Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the Municipal Airport Authority of the City of Fargo to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of (*annual gross receipts; value of leases and/or purchases of goods and services*) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.73 Privately-Owned or Leased Terminal Buildings *(if applicable)*

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23.

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a "long-term" agreement is one having a term of longer than 5 years. We understand that an "exclusive" agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

We will not use a "local geographic preference", i.e., any requirement that gives an ACDBE located in one place (e.g., *the local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at Fargo's Hector International Airport.

ATTACHMENTS

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

Organizational Chart

Municipal Airport Authority Board of Directors

Executive Director/ACDBE Liaison Officer

Attachment 2

ACDBE Directory

The ACDBE Directory is maintained by the North Dakota Department of Transportation (NDDOT) at the Unified Certification Program (UCP) for the State of North Dakota.

The Directory can be found at the NDDOT website: <http://www.dot.nd.gov/>

For questions about the Directory contact:

Deb Igoe, Director of Civil Rights
Civil Rights Division
Office of Executive Services
North Dakota Department of Transportation
608 E Boulevard
Bismarck, ND 58505-0700
Phone: 701-328-2576 Fax: 701-328-1965
Email: CIVILRIGHTS@nd.gov

Attachment 3

Monitoring and Enforcement Mechanisms

The Municipal Airport Authority of the City of Fargo has available several remedies 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. The Municipal Airport Authority of the City of Fargo also reserves the right to use any remedy under applicable local, state or federal law.

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

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

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

1. We will insert provisions into concessions agreements and management contracts:
2. We will implement the following additional monitoring and compliance procedures:
 - A. Annual review and review at the time of contract award.
3. We will implement our compliance and monitoring procedures as follows:
 - A. Annual review by ACDBELO that may include reviews of records, on-site reviews of concession workplaces, etc.

Attachment 4

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

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

The Municipal Airport Authority of the City of Fargo's overall goal for concessions other than car rental during the period beginning October 1, 2010 and ending September 30, 2013 is the following: 1% of the total gross receipts for concessions at Fargo's Hector International Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

The concession opportunities anticipated during this goal period are: Food & Beverage operation in December 2010 annual estimated gross revenue of \$1, 100,000. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Municipal Airport Authority of the City of Fargo will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

The Municipal Airport Authority of the City of Fargo has determined that its market area is Cass County of North Dakota and Clay County of Minnesota. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal

Goods and Services

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

Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

Step 1: 23.51(c)

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

$$\text{Base figure} = \frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area}}{\text{All ready, willing and able non-car rental concession firms in the market area}}$$

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

ACDBE Directory – North Dakota Department of Transportation, the single ACDBE listed as a possible concessionaire is LSCO LLC – food equipment

Active Participant List – We do not have an active ACDBE under lease agreement with the Municipal Airport Authority. The last qualifying firm in previous years was Interspace Airport Advertising. The firm was purchased by Clear Channel Airports.

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

Estimated Active Participant List for Cass County of ND and Clay County of MN via Chamber directory and local phone book yellow pages directory:– 54 (food & beverage; coffee, gifts; advertising; arcade)

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: 2%

Show the calculation here.

$$1/54 = 0.02 \text{ base (2\%)}$$

Step 2: 23.51(d)

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 1%. Our overall goal for non-car rental concessions is 1%

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

Past participation – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past. The North Dakota DOT has one certified ACDBE listed.

The reason we chose to adjust our step 2 figure as follows:

Step 2: Past Participation

In the 3 year goal period October 1, 2010 through September 30, 2013 Fargo's Hector International Airport will have one possible concession opportunity to bid. The food and beverage operation could be bid 3 months prior to December 2010 with a goal of the new concessionaire to begin operation January 1, 2011 The previous ACDBE (Interspace Airport Advertising- now known as Clear Channel Airports) no longer qualifies.

To calculate an adjustment based on past experience we take the annual concession gross sales and divided by the gross revenue of the single ACDBE at Fargo's Hector International Airport. This shows that the Fargo Airport would only be able to obtain 1%.

Calculation:

$\frac{\$61,557 \text{ estimated total DBE gross revenue for FY11/12/13 (est. 3\% annual growth)}}{\$6,155,664 \text{ estimated total concession gross revenue for FY11/12/13}} = 0.01 \text{ (1\%)}$

As a result the step 1 goal is adjusted by reducing the goal to their amount that past experience shows we can attain as follows:

.02 Step 1 Base Figure
- .01 Step 2 Adjustment
.01 (1%)

This adjusted goal appears realistically attainable.

Consultation with Stakeholders (23.43)

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

NDDOT – Amy; North Dakota Aeronautics – Brad & Kyle

A summary of the information these stakeholders provided follows:

Clear Channel Airports: This firm does not qualify for ACDBE. (2010 annual gross revenue approximately \$145,000)

Barnstormer Restaurant & Lounge: (701) 356-2124 – The Barnstormer is a single proprietor operation. Pete Haug is the operator and does not qualify as an ACDBE. Mr. Haug plans to retire December 31, 2010. The Airport Authority will request proposals from interested individuals or firms for the food and beverage operation. The Airport Authority owns the majority of the equipment. We are not aware of any qualified ACDBE restaurant/café operators in our area. (2010 annual gross revenue approximately \$1,100,000)

Airport Gift Shop: (701) 241-1590 – Sheryll Clapp is the operator. The North Dakota DBE certification information has been provided to Ms. Clapp for review and comment. She might qualify for status as a WBE but is evidentially unwilling to apply. No opinion was expressed on the proposed ACDBE goal. We are not aware of any qualified ACDBE gift shop operators in our area. (2010 annual gross revenue approximately \$681,000)

Valley Video: Arcade/Game Room – (701) 306-9105 – Mr. Steen is the operator. He did not respond to inquiries for comments regarding the process. We are not aware of any vending companies qualified as ACDBEs in North Dakota. (2010 annual gross revenue is approximately \$8,000)

Deb Igoe, NDDOT Director of Civil Rights, is a primary contact for DBE questions.
digoe@nd.gov (701) 328-2576

Shawn Dobberstein spoke to Amy at the NDDOT office of Civil Rights to discuss the current DBE director and lack of certified ACDBE firms listed in the directory. We discussed what the NDDOT could do to assist Fargo's Hector International Airport as the UCP for North Dakota. Brad Field and Kyle Wanner were consulted regarding their role in the DBE process. Kyle's organization is the NDAC and is more involved with the FAA-Assisted contract portion of the DBE program versus the ACDBE process.

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

The Municipal Airport Authority of the City of Fargo will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Municipal Airport Authority of the City of Fargo uses the following race-neutral measures to increase ACDBE participation. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. Advertising in the Fargo Forum newspaper and on the airport website to inform ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
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 the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Work through the UCP (North Dakota Department of Transportation) to provide assistance for the program or taking other steps to foster ACDBE participation in concessions.

We estimate that, in meeting our overall goal of 1%, we will obtain 1% from race-neutral participation and 0% through race-conscious measures.

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

1. The Fargo Airport was able to achieve 8.78% of non car rental cumulative ACDBE participation in 2006 using race neutral methods. We attained 39.9% in 2008; 8.3% in 2009 and 9.8% 2010. The individuals or firms used in these calculations no longer qualify as ACDBE. As a result we expect that our goal of 1% can be attained by race neutral methods.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal: *List what you will use (examples as stated in 23.25(e)):*

1. We will establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. With prior FAA approval, other methods that takes a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited

to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

Amount of Goal

The Municipal Airport of the City of Fargo's overall goal for car rentals during the period beginning October 1, 2010 and ending September 30, 2013 is the following: 0% of the total gross receipts of car rental operations at Fargo's Hector International Airport. This goal is based upon the fact that we do not have any eligible car rental concessionaires in our market area. We are not able to identify any prospective concessionaires for the car rental business. We will make a good faith effort to pursue opportunities to meet the goal. We will continue to consult with the ND DOT, airports in our region and other publications to find prospects.

We do not have any car rental agreements expiring during this goal period. Enterprise car rental controls our Enterprise, Alamo and National operations. Four (4) car rental concessionaires had entered into a non-exclusive agreement with the Airport Authority in September 2001 that expires in December 2027. Their concession term coincides with the franchise owner's ground lease for a cooperative car rental service facility the owners constructed in 2002. Since that time, Enterprise and Alamo entered our car rental operation. Alamo is co-branded with National. Dave Micklin from the FAA in Washington, DC was consulted prior to entering into the non-exclusive, long term lease agreement with the concessionaires back in 2001. Our six car rental agencies reported collective annual gross revenue of \$8,076,080 in 2010. We anticipate annual revenues to increase slightly during the next three years. Due to the non-exclusive nature of our lease agreements, we entertain interest from other car rental agencies that are interested in establishing an airport operation provided we have the space in the terminal building and parking spots available for their rental inventory. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Municipal Airport Authority of the City of Fargo will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

The Municipal Airport Authority of the City of Fargo determined that its market area for car rental agencies is North Dakota, Minnesota, South Dakota, and Montana. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses at the airport. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator. We encourage each agency to purchase goods and services from certified DBE firms as listed in the ND DOT DBE directory.

Step 1: 23.51(c)

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

$$\text{Base figure} = \frac{\text{Ready, willing, and able car rental ACDBEs in the market area}}{\text{All ready, willing and able car rental firms in the market area}}$$

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

ACDBE Director – North Dakota Department of Transportation (NDDOT) which is the UCP.

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

Active Participant List – none (0) No car rental companies have qualified as DBE's in the past RFP's. No car rental concessions are qualified as DBE's in North Dakota. We have not been able to identify any qualified car rental DBE's in our geographical area.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of: 0 %

Calculation

**Base Figure 0 = 0 Ready, willing and able car rental ACDBEs in the market area
all ready, willing and able car rental companies in the market area (6
already operate at the airport and do not qualify)**

Step 2: 23.51(d)

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%. Our overall goal for car rental concessions is 0%.

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

1. Difference in market area. The market area has a low density of car rental concessionaires.
2. Past participation – We evaluated the current capacity of ACDBEs to perform work in our car rental concessions program by measuring the volume of work ACDBEs have performed in the past. The alternative of using estimated dollar value of purchases made by car rentals was considered.

The reason we chose to adjust our figure using this data was because:

We have not found any car rental companies that will qualify as ACDBEs in our region. Our car rental agencies are encouraged to purchase goods and services from certified DBE firms as listed in the North Dakota DOT DBE directory. The car rental managers continue to explore opportunities to purchase goods and services from certified DBE firms.

The Municipal Airport Authority of the City of Fargo Airport will adopt the following step 2 adjustment:

Race-neutral measures will be used to assist all small businesses and increase opportunities for all small businesses.

The following race conscious methods were considered for adjustment:

- ACDBE primes or subs when nothing but the low bid is considered (0% for car rentals for Fargo)
- History of exceeding goals (0% for car rentals in Fargo)
- Arranging solicitations in ways to facilitate ACDBE and other small business participation (0%)
- Providing assistance to help ACDBEs and other small businesses to obtain bonding and financing (0%)
- Providing technical assistance to all small businesses (Fargo will apply a 0.02% RN to this effort)
- Ensuring distribution of the DBE directory to all small businesses and others (Fargo will apply a 0.01% RN to this effort)
-

Using the race neutral methods for car rentals goal, the Fargo ACDBE car rental goal is 0%.

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, the Municipal Airport Authority of the City of Fargo consulted with the following stakeholders:

A summary of the information these stakeholders provided follows:

Car Rental concessionaires all uniformly stated that a goal of 1% could not be achieved. Their rationale was that none of them qualify to be DBE's. To make a goal they must purchase goods and services from qualifying DBE firms who provide a service they need. Services they need are:

1. Purchase of Cars
2. Purchase of Fuel/Oil Change

No DBE's sell cars, no DBE's do oil changes, and we cannot locate a DBE that sells fuel in our area. The local manager contacts could not determine any current DBEs that they purchase other services from such as office supplies. Transportation of vehicles is not an option because vehicles are typically delivered directly by the car manufacturer or picked up from a local dealer in Fargo or Minneapolis. If sold the vehicles are typically returned to the manufacturer or sold locally and not transported. The consensus was that a meaningful goal could not be achieved unless vehicles could be purchased from a qualified DBE new car dealer.

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

The Municipal Airport Authority of the City of Fargo will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23*
2. *Notifying ACDBEs of concession opportunities by advertising/web page posting and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Providing technical assistance to ACDBEs in overcoming limitations;*
5. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
6. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*

We estimate that, in meeting our overall goal of 0%, we will obtain 0% from race-neutral participation and 0% through race-conscious measures.

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

1. *See Step 2 of Goal Setting above and*
2. *Fargo's Hector International Airport met its goal in one of the three years in the previous goal period with race neutral methods.(08,09,10)*

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

1. We will establish concession-specific goals for particular concession opportunities
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession

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

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

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

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

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

Attachment 7

Certification Application Forms

Available from North Dakota Department of Transportation, Civil Rights Division at:
<http://www.dot.nd.gov/doing.html>

Attachment 8

Procedures for Removal of ACDBEs Eligibility

Available from North Dakota Department of Transportation, Civil Rights Division at:
<http://www.dot.nd.gov/doing.html>

Attachment 9***

Regulations: 49 CFR Part 23

***Attachment 9 (49 CFR Part 23) is available for public review at the Municipal Airport Authority office as part of this entire document.