

September 27, 2019

# **Fargo Hector International Airport**

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

**49 CRF PART 23**

**FY 2020, 2021, 2022**

**Municipal Airport Authority of the City of Fargo, ND**  
**ACDBE PROGRAM**  
**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 our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

The Executive Director of the Municipal Airport Authority 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 [www.fargoairport.com](http://www.fargoairport.com).

---

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 and is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

The 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 ACDBE 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:

(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, 26.105, 26.107 and 2 CFR parts 180 and 1200.

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.

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

The 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.

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

eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

(c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.

(d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Municipal Airport Authority of the City of Fargo's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the Municipal Airport Authority of the City of Fargo'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.

## **SUBPART B – ACDBE PROGRAMS**

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

The Municipal Airport Authority of the City of Fargo is a small hub airport 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 23.45(a) of this section.

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

This ACDBE program will be implemented at Fargo's Hector International Airport.

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](mailto: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 Municipal Airport Authority of the City of Fargo concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of staff 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. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes Municipal Airport 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 of the City of Fargo on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.

10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; 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 Unified Certification Program (UCP) 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 distinguishes them from DBEs.

Directory: The Municipal Airport Authority of the City of Fargo through the State of North Dakota (North Dakota Department of Transportation) Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory annually. We make the Directory available as follows: A copy of the Directory is available for viewing in the Executive Director's office; the Directory website is provided to interested persons via <http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-23>.

### **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 concessions, 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 and a description of the race-neutral measures it will use 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 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. (23.25(f))

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

### **Section 23.27 Reporting**

We will retain sufficient basic information about 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.

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 and 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). (26.37)

3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by ACDBEs. This mechanism will provide 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. The Municipal Airport Authority of the City of Fargo is the member of a Unified Certification Program (UCP) administered by the North Dakota Department of Transportation. The UCP will meet all of the requirements of this section.

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

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

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

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

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

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her

September 27, 2019

ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

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

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

We will presume that a firm that is certified as an ACDBE 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 perform 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. We will report any significant overall goal adjustments to the FAA.

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

The Recipient's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

### **Section 23.43 Consultation in Goal Setting**

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

| <b>Primary Airport Size</b> | <b>Region</b>      | <b>Date Due</b>        | <b>Period Covered</b> | <b>Next Goal Due</b>                        |
|-----------------------------|--------------------|------------------------|-----------------------|---|
| <b>Large/Medium Hubs</b>    | <b>All regions</b> | <b>October 1, 2017</b> | <b>2018/2019/2020</b> | <b>October 1, 2020<br/>(2021/2022/2023)</b> |
| <b>Small Hubs</b>           | <b>All regions</b> | <b>October 1, 2018</b> | <b>2019/2020/2021</b> | <b>October 1, 2021<br/>(2022/2023/2024)</b> |
| <b>Non-Hubs</b>             | <b>All regions</b> | <b>October 1, 2016</b> | <b>2017/2018/2019</b> | <b>October 1, 2019<br/>(2020/2021/2022)</b> |

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

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)

The sponsor will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

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

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 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 (Also include this language in the DBE goal attachment) (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 it does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the 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 Municipal Airport Authority of the City of Fargo's 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 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,

September 27, 2019

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 **1%** 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 23.57 (b) Goal shortfall accountability.** If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

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

## **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**

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

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

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

### **Section 23.79 Geographic Preferences**

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

### **ATTACHMENTS**

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

September 27, 2019

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

Members of the Municipal Airport Authority of the City of Fargo, ND

Airport Executive Director/ACDBE Liaison Officer

September 27, 2019

## **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 Director can be found at the NDDOT website:

<http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-23>

<http://www.dot.nd.gov/>

For questions about the Directory contact:

Ramona Bernard  
Director Civil Rights Division  
Office of Executive Services  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

Phone: 701-328-2576

Fax: 701-328-0343

Email: [rbernard@nd.gov](mailto:rbernard@nd.gov)

### **Attachment 3**

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

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

1. Breach of contract action, pursuant to the terms of the contract;
2. The Municipal Airport Authority of the City of Fargo also reserves the right to use any remedy under applicable local, state and 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 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The 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:

We will insert provisions into concessions agreements and management contracts.

1. We will implement the following additional monitoring and compliance procedures:
  - A. Annual review
  - B. Review at the time of contract award.

2. We will implement our compliance and monitoring procedures as follows:

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 average annual gross receipts exceed \$200,000)*

**Name of Recipient:** Municipal Airport Authority of the City of Fargo, ND

**Goal Period:** FY-2020-2021-2022 – October 1, 2019 through September 30, 2022

**Overall Three-Year Goal:**

1%, to be accomplished through 1% RC and 0% RN

The Municipal Airport Authority of the City of Fargo's overall goal for concessions other than car rental during the period beginning October 1, 2019 and ending September 30, 2022 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 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 Municipal Airport Authority of the City of Fargo has determined the 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. The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

**Base of Goal**

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

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

| <b>Fiscal Year</b> | <b>Non-Car Concessions Revenue (Gross Receipts)</b> |
|--------------------|---|
| 2016               | \$2,517,416   |
| 2017               | \$5,793,799   |
| 2018               | \$6,035,931   |
|                    |   |
|                    |   |
|                    |   |

The Municipal Airport Authority of the City of Fargo estimates that revenues to existing concessions will grow by 2% over the next three years due to inflation and increased passenger traffic.

$\$6,035,931 \times 2\% (\$120,719) = \$6,156,650$   
 $\$6,156,650 \times 2\% (\$123,133) = \$6,279,783$   
 $\$6,279,783 \times 2\% (\$125,596) = \$6,405,379$   
 $\$6,156,650 + \$6,279,783 + \$6,405,379 = \$18,841,812$   
 \$18,841,812 is the recipient's base goal for non-car rental

No concession lease agreements expire during this goal period. Our news and gift shop concession lease agreement was recently extended for another 5 year period.

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

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

**Methodology used to Calculate Overall Goal**

**Goods and Services**

We 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 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. *While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.*

### Step 1: 23.51(c)

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

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

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

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

ACDBE Directory – North Dakota Department of Transportation, the single ACDBE listed as a possible concessionaire is Ankit, LLC novelty and gift items

The North Dakota Department of Transportation ACDBE Directory is our only source since each DBE must be certified by the North Dakota DOT to be considered.

Active Participant List – We do not have an active ACDBE under lease agreement with the Municipal Airport Authority of the City of Fargo. 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:

September 27, 2019

Estimated Active Participant List for Cass County of North Dakota and Clay County of Minnesota via Chamber directory and local phone book yellow pages directory – 196 (food & beverage; coffee; gifts; advertising; arcade)

When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of: 2 %

$$1/196 = 0.0051 \text{ base } (.51\%)$$

**Step 2: 23.51(d)**

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

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

We will try to increase participation to 1% based on potential outreach to certified ACDBEs in other states. We will encourage them to become certified in the State of North Dakota.

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

**Past participation** – We evaluated the current capacity of ACDBEs to perform work on our concession program by measuring the volume of work ACDBEs have performed in the past. The North Dakota DOT has one certified ACDBE listed for the type of concession opportunities we have available at Fargo’s Hector International Airport. We are not aware of any certified ACDBE companies or individuals that would be interested in operating a concession at this time. We continue to encourage any interested companies and individuals to get certified by the NDDOT.

To calculate and adjustment based on past experience we take the annual concession gross sales and divided the gross revenue of the single ACDBE at Fargo’s Hector International Airport. This shows that the Fargo Airport would not be able to obtain 2% and would be challenged to attain 1%.

Calculation:

$$\frac{\$188,412 \text{ est. total ACDBE gross revenue for FY20/21/22 (est. 2\% annual growth)}}{\$18,841,812 \text{ estimated total concession gross revenue for FY20/21/22}} = 0.01 \text{ (1\%)}$$

September 27, 2019

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

.0051 Step 1 Base Figure  
- .0949 Step 2 Adjustment  
.01 (1%)

The adjusted goal appears to be a more realistic attainable goal if we are able to find a certified DBE to participate in one of our concession programs or another new concession option that might be able to be added if space is available.

The Municipal Airport Authority of the City of Fargo is not aware of any applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.

## **PUBLIC PARTICIPATION**

**Consultation:** Section 23.43.

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

North Dakota Aeronautics Commission, NDDOT, FMWF Chamber of Commerce

A summary of the information these stakeholders provided follows:

Clear Channel Airports: (610) 674-6093 - This firm does not qualify for ACDBE. (2018 gross revenue approximately \$179,980)

SkyDine/Hungry's Restaurant Inc.: (701) 356 2124 – The Food and Beverage concession have been operating since January 1, 2011. No ACDBE firms/individuals submitted a proposal per the RFP that was publically advertised. We are not aware of any qualified or certified ACDBE restaurant/café operators in our area. (2018 annual gross revenue approximately \$1,608,474)

Airport Gift Shop: (701) 365-4886 – Sheryll Clapp is the operator. The North Dakota DBE certification information has been provided to Ms. Clapp for review. No opinion was expressed on the proposed ACDBE goal. The NDDOT lists one certified/qualified ACDBE in their directory. We are not aware of any qualified ACDBE gift shop operators in Cass County of North Dakota or Clay County of Minnesota. (2018 annual gross revenue approximately \$840,882)

September 27, 2019

Games Unlimited II d/b/a Valley Video – (605) 237-1301 – Thomas Graham, Jr. is the owner/operator. We are not aware of any vending companies qualified as ACDBEs in North Dakota or surrounding area. (2018 annual gross revenue is approximately \$3,976)

Innovative Vending Solutions LLC - Massage Chairs – 856-595-2115 – John Merenda is the primary contact for National accounts. (2018 annual gross revenue approximately \$22,721)

Ramona Bernard, NDDOT Director of Civil Rights, is a primary contact for DBE questions along with Denise and Amy who in located in the same office.  
[rbernard@nd.gov](mailto:rbernard@nd.gov) (701) 328-2576; Denise (701) 328-3116; Amy (701) 328-2637

Shawn Dobberstein spoke to Kyle Wanner at the North Dakota Aeronautics Commission. Kyle confirmed how it continues to be a challenge in North Dakota to expand our certified DBE list with individuals or companies that can provide services to airports such as passenger terminal concessions. Kyle's organization is more involved with the FAA-Assisted contract portion of the DBE program versus the ACDBE process. Shawn Dobberstein spoke to Amy at the NDDOT Civil Rights office. (9-16-19 (701-328-3116). She also confirmed the challenge to expand the list of certified ACDBE individuals and companies to participate in available contracts in North Dakota. Their organization, along with other local and state agencies continue to solicit and encourage individuals and firms to become certified in North Dakota in order to be able to bid on available projects and contracts. We discussed what the NDDOT could do to assist Fargo's Hector International Airport as the UCP for North Dakota.

Shawn Dobberstein also spoke to Craig Whitney who is the President/ CEO of the Fargo Moorhead West Fargo Chamber of Commerce. The Chamber provides resources to all types of small businesses. They encourage these small businesses to explore the opportunity to become certified in the State of North Dakota is they qualify to be an ACDBE.

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

The Municipal Airport Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Municipal Airport Authority 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 0% from race-neutral participation and 1% 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 not able to achieve our 1% of non car rental cumulative ACDBE participation in 2016, 2017 or 2018. We do not expect to meet the goal in 2020, 2021 or 2022 using race neutral methods. The previous individuals or firms used in our calculations no longer qualify as an ACDBE. As a result we expect that our goal of 1% might be attained by race-conscious methods.

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

1. We will establish concession-specific goals for particular concession opportunities.
2. We will negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the 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

September 27, 2019

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 Authority of the City of Fargo's overall goal for car rentals during the period beginning October 1, 2019 and ending September 30, 2022 is the following: 1.00%. We will base the goal on their purchases of goods and services from certified ACDBE or potential/ACDBE firms. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at Fargo's Hector International Airport. The process to attain the 1.00% goal for goods and services 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 NDDOT, airports in our region and other publications to find prospects. At this time, the NDDOT DBE Directory lists three certified ACDBE firms that could provide some goods and services to our car rental agencies.

We do not have any car rental agreements expiring during this goal period. We have Alamo, Avis, Budget, Enterprise, Hertz, National and Payless operating at the airport. The agencies reported gross revenues of \$10,871,222 during 2018. We anticipate annual revenues to increase slightly during the next three years. Uber and Lyft operations are impacting car rental and parking lot revenues. Our non-exclusive agreements expire in December 2027. 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 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 the FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

#### **Methodology used to Calculate Overall Goal**

##### **Goods and Services**

We determined the goal based on purchases of goods and services from certified ACDBEs or potential/ACDBE firms. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goal. We will continue to consult with the ND DOT UCP, our car rentals at the airport, airports in our region, minority and women businesses in the State and other publications to find prospects. We will work with our car rental agencies and outreach to ACDBEs for car rental goods and services

and encourage certified ACDBEs to apply for certification in North Dakota so we can count the ACDBE participation in goals and uniform form reports. The ND DOT UCP is aware of this requirement and is on board to assist and process certifications as required. The car rental managers continue to explore opportunities to purchase goods and services from certified ACDBE firms. The car rental managers will assist the Airport Director to encourage ACDBE firms to become certified with the NDDOT.

To meet the goal, they must purchase goods and services from qualifying ACDBE firms who provide a service or goods they need. Services that the car rental companies need are:

Purchase of cars; Purchase of fuel/oil changes; Insurance; Office supplies; Tires and misc. parts; Auto glass repair; Durable goods.

Base of goal

To calculate the base of the goal, the Municipal Airport Authority of the City of Fargo considered the previous 3 years of purchases and the projected potential purchases three years into the future.

**Car Rental Companies Goods and Services Purchases - previous 3 Years**

| <b>Fiscal Year</b> | <b>Purchases (Expenditures)<br/>Car Rental</b> | <b>Increase</b> |
|--------------------|--|-----------------|
| <b>2016</b>        | <b>1,168,177</b>                               |                 |
| <b>2017</b>        | <b>2,474,149</b>                               | <b>111.8%</b>   |
| <b>2018</b>        | <b>950,474</b>                                 | <b>(-61.6%)</b> |

We expect that purchases will remain about the same in the next three years.

The data source or demonstrable evidence used for ACDBE Goal Computation was the North Dakota State DBE/ACDBE UCP directory, local listings, FAR Active Participants List and Census Bureau, Blue Book, and Local Chamber of Commerce data.

**Step 1**

| Concession Type               | NAICS Code | ACDBE Firms | All Firms in Market Area | % of ACDBE Firms that may be available |
|-------------------------------|------------|-------------|--------------------------|--|
| Commercial Printing           | 323111     | 1           | 37                       | 2.70%                                  |
| Office Supplies               | 453210     | 1           | 19                       | 5.26%                                  |
| Automobile Parts              | 423120     | 1           | 64                       | 1.56%                                  |
| Driver Services, Non-Trucking | 488990     | 1           | 20                       | 5.00%                                  |
| Car Accessories               | 423990     | 1           | 241                      | 0.41%                                  |
| Insurance                     | 524210     | 1           | 651                      | 0.15%                                  |
| Total                         |            | 6           | 1032                     | <b>0.58%</b>                           |

**Based on the chart above our Step 1 base figure is 0.58%.**

**Step 2: 23.51(d)**

**Past History Participation**

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

| FY | Total Achievement |       |                   |
|----|-------------------|-------|-------------------|
|    | RC                | RN    | Total Achievement |
| 16 | 0.20%             | 0.00% | 0.20%             |
| 17 | 1.00%             | 0.19% | 1.19%             |
| 18 | 1.00%             | 4.20% | 5.20%             |

Arranging this historical data from low to high, 0.20%, 1.19%, 5.20%, the median is 1.19% which is our Step 2 figure.

September 27, 2019

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 0.88%.

Per USDOT, if the Step 1 base figure is under 1% you must adjust the goal upward to at least 1.0% based on planned outreach efforts to certified and potential ACDBEs.

We feel this adjusted goal of 1.00% will accurately reflect ACDBE car rental concession participation that can be achieved during this 3-year period through the purchase of goods and services. Further, there are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs

**Consultation with Stakeholders:** Section 23.43.

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

The State of ND UCP, North Central Minority Development Council <http://www.northcentralmsdc.net>, ACDBE supplier firms that provide goods and services to car rentals across the U.S and the car rental companies at the Airport. The consultation was done by teleconference and mass mailer.

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

Car Rental concessionaires all uniformly stated that a goal of 2.23% might be achieved if they can convince known ACDBE firms, that sell goods and services they need, to become certified with the NDDOT. All current managers and corporate contacts that oversee the Fargo Airport car rental operations are aware of the ACDBE program and will continue to seek opportunities to purchase goods and services from NDDOT certified businesses.

We cannot locate an ACDBE in our region that sell cars, provide oil changes or sell fuel in our area. The local managers could not determine any current ACDBEs that they purchase other services from such as office supplies or car transport. I have encouraged them to seek these options and to have the supplier become certified in the State of North Dakota. The transportation of vehicles is not an option for all of our car rental operators 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. Enterprise has been able to contract with a certified car transportation vendor.

**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.

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 and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
5. *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 2.23%, we will obtain 0% from race-neutral participation and 2.23% through race-conscious measures.

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. We will 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, we will use other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

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

September 27, 2019

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.

September 27, 2019

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)

September 27, 2019

**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**

**ACDBE Certification Application Form**

Available from North Dakota Department of Transportation, Civil Rights Division at:  
<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

**Attachment 8**

**Procedures for Removal of ACDBEs Eligibility**

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

This would be handled by the State of North Dakota Department of Transportation Office of Civil Rights.

**ATTACHMENT 9**

State's UCP Agreement

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

**Attachment 10**

**Regulations: 49 CFR Part 23**

The regulation is available for public review at the Municipal Airport Authority office as part of this entire document or it can be viewed on the following website:

<http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-23>

**Attachment 11**

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

Not applicable at this time.