

ACDBE PROGRAM
POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The City of Columbia has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The City of Columbia is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City of Columbia has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City of Columbia 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 Purchasing Agent has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity: Purchasing Agent, Lynn Cannon, 701 E Broadway Columbia, MO 65201 is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Columbia in its financial assistance agreements with the Department of Transportation.

The City of Columbia has disseminated this policy statement to the City Council and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area via the City of Columbia website.



City Manager



Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 23.3 Definitions

The City of Columbia 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 City of Columbia 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 23.7 Provisions Remain in Effect

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

Section 23.9 Non-discrimination Requirements

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

In administering its ACDBE program, the City of Columbia will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The City of Columbia acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The City of Columbia will include the following assurances in all concession agreements and management contracts it executes with any firm:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race,

color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

Section 23.11 Compliance and Enforcement

The City of Columbia will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200).

The City of Columbia will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

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

The City of Columbia compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The following enforcement actions apply to firms participating in the City of Columbia 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 ACDBE 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 City of Columbia's ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the City of Columbia 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 City of Columbia is a Non-hub Primary airport required to have an ACDBE program.

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

Until the City of Columbia'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 Columbia Regional Airport.

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

Section 23.23 Administrative Provisions

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

The City of Columbia'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:

*Lawrence Luck, Purchasing Agent, 701 E Broadway, Columbia, MO
65201, 573-474-7375, Lawrence.Luck@como.gov*

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the City of Columbia complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the City Manager of the City of Columbia 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 access to staff, including administrative and senior administrative assistants, consulting engineers through Public Works, the City Law Department, Contract Compliance, and Airport Operations 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 City of Columbia's progress toward attainment and identifies ways to improve progress by consulting with airport staff.
7. Participates in pre-bid meetings.
8. Advises the City Manager on ACDBE matters and achievement.
9. 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).
10. Participates in ACDBE training seminars in conjunction with the Director Supplier Diversity Program. .
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities in conjunction with the Director Supplier Diversity Program.

12. Utilizes the MO Dot (MRCC) Directory of certified ACDBEs.

Directory: The City of Columbia through the Missouri 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 at least annually. We make the Directory available as follows:

http://www.modot.org/business/contractor_resources/External_Civil_Rights/mrcc.htm

The Directory may be found in Attachment 2 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

- The City does not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connections with the award and performance of any contract covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.
- In administering its ACDBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with the respect to individuals of a particular race, color, sex or national origin.
- The City will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c)).

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

If the City 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 5 of this plan (23.25 (e)).

The City will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBE's.

The City 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.

Section 23.29 Compliance and Enforcement Procedures

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that UCP 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).

SUBPART C – CERTIFICATION AND ELIGIBILITY

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

The City of Columbia utilizes the Unified Certification Program (UCP) administered by the State of Missouri, which will make ACDBE certification decisions on behalf of the City.

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 verify the UCP still lists the ACDBE as certified.

Section 23.35

The personal net worth standard used in determining eligibility for purposes of Part 23 is determined by the UCP MO DOT certification process as prescribed by regulations.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

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

Section 23.43 Consultation in Goal Setting

The City of Columbia 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 sponsor 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:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large/Medium Hubs	All regions	October 1, 2014	2015/2016/2017	October 1, 2017 (2018/2019/2017)
Small Hubs	All regions	October 1, 2015	2016/2017/2018	October 1, 2018 (2019/2020/2021)
Non-Hubs	All regions	October 1, 2017	2017/2018/2019	October 1, 2019 (2020/2021/2022)

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

The 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 car rentals, the goal calculations, and the data we relied on can be found in *Attachment 5* to this program.

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

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

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

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

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

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City of Columbia will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
(23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the City of Columbia 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 Columbia concession specific goals. Specifically:

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

Lawrence Luck, Purchasing Agent is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as **Responsive**.

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

Information to be submitted (26.53(b))

In our solicitations for concession contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of ACDBE firms that will participate in the contract;
 - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

- (iii) The dollar amount of the participation of each ACDBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section: *responsiveness*.

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by The City of Columbia that it is not *responsive* because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Michele Nix, Director of Finance, 701 E. Broadway, Columbia, MO 65201, 573-874-7368, Michele.nix@como.gov/. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

The City of Columbia will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

Before transmitting to us its request to terminate and/or substitute an ACDBE sub-concession, the prime concession must give notice in writing to the ACDBE sub-concession, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concession must give the ACDBE five days to respond to the prime concession's notice and advise us and the concessionaire of the reasons, if any, why it

objects to the proposed termination of its sub-concession and why we should not approve the prime concession's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

The City of Columbia will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Columbia 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 0 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;
- (3) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

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

This section does not currently apply to City of Columbia Regional Airport. The current leaseholder is not subject to the provisions of this section. Should the lessee begin activities that would require compliance with this section, the City of Columbia will ensure application of this section.

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA 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 link
Attachment 10	Regulations: 49 CFR Part 23 link https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl
Attachment 11	Goals and Elements for Privately-Owned or Leased Terminal Buildings

Attachment 1



Attachment 2

**Missouri ACDBE Directory
Web link to ACDBE directory**

[http://www.modot.org/business/contractor_resources/External Civil Rights/mrcc.htm](http://www.modot.org/business/contractor_resources/External_Civil_Rights/mrcc.htm)

Attachment 3

Monitoring and Enforcement Mechanisms

The City of Columbia 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 Airport has the right to investigate concessionaire and its subcontractor(s) for ACDBE compliance.
3. The Airport will report to the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the ACDBE 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.
4. The Airport may cancel or suspend the concession agreement if the concessionaire is not in compliance with the ACDBE program or its certification.

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 City of Columbia 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 implement the following additional monitoring and compliance procedures:
 - A. The Purchasing Agent or designated staff member shall attend the post award project meeting, i.e., preconstruction or kickoff meeting. Note: In some instances of professional services contracts, a post award meeting may not be held. At this meeting the staff discusses any ACDBE questions and/or procedures and ascertains any corrections or adjustments in the project schedule.
 - B. The Purchasing Agent or designated staff member determines a schedule for random on-site monitoring based upon the work that the ACDBE is to perform and the contract schedule. This on-site monitoring verifies the

work performed by the ACDBE, as only work performed by the ACDBE counts.

- C. On-site monitoring will be performed by contract compliance officer, aviation staff, project managers and other designated staff. Observations of the onsite visit will be documented on a monitoring checklist form. The form is to be completed, signed and dated by the staff person conducting the site visit.

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

A concessionaire or ACDBE who fails to comply with any portion of this section of the policy, and whose failure to comply continues for a period of 30 calendar days after the concessionaire or ACDBE receives written notice of such non-compliance from the ACDBELO, shall be subject to any or all of the following penalties:

- A. Withholding of all future payments under the eligible project until it is determined that the concessionaire is in compliance with the ACDBE policy.
- B. Cancellation of the eligible project.
- C. A determination by the ACDBELO that an ACDBE has failed to:
 - (1) Comply with policy on brokering services shall subject the offending party to the possible revocation of its certification as an ACDBE for a period not to exceed three years;
 - (2) If the concessionaire is an ACDBE, a denial or revocation of their certification as a DBE/ACDBE will be conducted for a period not to exceed three years;
- D. Refusal of participation on all future contracts or subcontracts with the City for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed.
- E. The ACDBELO may require such reports, information and documentation from bidders, contractors, DBE's, ACDBEs, user departments and the head of any department or office of the City reasonably necessary to determine compliance with the requirements of this chapter.
- F. Criminal sanction for fraud.

If the ACDBELO determines that evidence is available indicating that fraud or other unlawful activity has been committed:

- A. By an ACDBE certification applicant;
- B. By a certified ACDBE or majority concessionaire falsely reporting the utilization of ACDBE; or
- C. By an individual or firm attempting to benefit from or participate in the DBE/ACDBE program, through fronting activity, false representation of a commercially useful function, or other fraudulent or unlawful activity,

The matter shall be referred to the appropriate legal authorities and the City Counselor's Office for prosecution. In the event a conviction or guilty plea is obtained stemming from such criminal prosecution, the business entity and principals shall be barred from participation in City contracts for a minimum of one year and a maximum of three years to be determined by the Purchasing Agent/ACDBELO.

Alleged violations of the DBE program shall be addressed as set forth in this Section.

Potential violations during bid or proposal process

Bidders and Proposers that submit bids or proposal on a contract or proposal shall not:

- A. Make any false statements or material misrepresentations regarding any matter relevant to the DBE Program; or
- B. Fail to comply with the goal and good faith effort obligations set forth in the DBE/ACDBE Program; or
- C. List an DBE/ADCBE intended to serve as a conduit to satisfy an DBE/ACDBE participation goal; or
- D. Commit any other violations of the DBE/ACDBE Program, or rules and guidelines promulgated there under.

Potential violations during contract performance

A concessionaire that has been awarded a contract based upon a stated level of ACDBE participation shall not, at any time before or during the performance of such contract:

- A. Make any false statements of material misrepresentations regarding any matter relevant to the DBE/ACDBE Program; or
- B. Fail to in fact utilize an ACDBE that was originally listed at bid opening or proposal submission in order to satisfy contract goals, unless the Proposer or Bidder:

1. Substitutes another ACDBE performing the same commercially useful function at the same dollar amount without prior approval of the ACDBELO; or
2. Fails to allow an ACDBE functioning as a subcontractor, joint venture, supplier, or manufacturer, to perform the commercially useful function, the value of which was originally counted for that ACDBE in awarding the contract, unless the bidder or proposer shows that the ACDBE failed to perform in a reasonably satisfactory manner; or
3. Modifies or eliminates all or a portion of the scope of work attributable to an ACDBE upon which the contract was awarded, unless directed by the City; or
4. Terminates an ACDBE originally utilized as a subcontractor, joint venture, supplier, or manufacturer in order to be awarded the contract without replacing such ACDBE with prior approval, with another ACDBE performing the same commercially useful function and dollar amount; or
5. Participates in a conduit relationship with an ACDBE scheduled to perform work on the contract; or
6. Commits any other violations of the ACDBE Program, or rules and guidelines promulgated thereunder.

Investigation of Violations and Unfair Practices

ACDBEs shall report any alleged ACDBE Program violations or unfair practices involving the ACDBE Program with three (3) business days after the ACDBE first became aware of the act or omission in question. The ACDBELO may reject, as untimely, any report submitted after such date.

The ACDBELO shall not accept reports of violations or unfair practices that are submitted more than thirty (30) calendar days after the ACDBE first became aware of the act or omission in question.

- A. The ACDBELO is empowered to receive and investigate complaints and allegations by ACDBEs, third parties and/or City personnel, and/or to initiate its own investigations regarding compliance with the requirements and obligations of the DBE/ACDBE Programs and the rules and guidelines promulgated thereunder. In the event the MBE/DBE Program office determines in its sole discretion that an investigation is warranted, the ACDBELO shall notify the party being investigated. Upon written notice of such investigation, the affected party shall be obligated to cooperate fully with the investigation and shall have a continuing burden of providing complete,

truthful information to the ACDBELO and of otherwise proving compliance with the requirements and obligations of the DBE/ACDBE Program.

B. A violation of the ACDBE Program in the bid or proposal phase of a contract shall be grounds for disqualifying such Bidder or Proposer from further consideration for contract award. If the violation involves bad faith or dishonesty or may otherwise be indicative of the Bidder's or Proposer's qualification to perform certain future contracts, the City may consider such violation in awarding such future contracts.

C. A violation of the ACDBE Program by a Concessionaire shall constitute a material breach of the contract, and shall entitle the City to:

- 1) Exercise all rights and remedies that it may have at law or at equity for material breach of the contract;
- 2) Exercise all rights and remedies that it may have under the contract, including but not limited to termination of the contract and any other rights set forth in Section below; and
- 3) Any other rights or remedies set forth under this policy.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

Remedies for Violation of ACDBE Program

The parties further agree that in addition to any other remedies the City may have at law under an agreement for material breach, the City shall be entitled to exercise any one or more of the following remedies if the Contractor violates the ACDBE Program:

- A. Terminate contract for default;
- B. Suspend contract for default;
- C. Withhold all payments due to the concessionaire under the contract until such violation has been fully cured or the City and the concessionaire have reached a mutually agreeable resolution;
- D. Assess liquidated damages as provided in the contract;
- E. Offset any liquidated damages and/or any amounts necessary to cure any violation of the ACDBE Program from any retainage being held by the City on the contract, or from any other amounts due to the concessionaire under the contract.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

Liquidated Damages

The City and the concessionaire acknowledge and agree that the City will incur costs if the concessionaire violates the ACDBE Program in one or more of the ways set forth below. The parties further acknowledge and agree that the costs the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the concessionaire agrees to pay the City liquidated damages at the rates set forth below for each specified violation of the ACDBE Program. The concessionaire further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation:

- A. Failing to utilize an ACDBE that was originally listed at bid opening or proposal submission in order to satisfy contract goals, or failing to allow such ACDBE to perform a commercially useful function, in violation of sections of the ACDBE Program: 100% of the amount originally counted for the ACDBE at bid opening or proposal submission;
- B. Modifying or eliminating all or a portion of the scope of work attributable to an ACDBE upon which the contract was awarded, in violation of the ACDBE Program: 100% of the amount of work modified or eliminated;
- C. Terminating an ACDBE originally listed/utilized as a subcontractor, joint venture, supplier, or manufacturer in order to be awarded the contract without obtaining prior approval for replacing such ACDBE with another ACDBE performing the same commercially useful function and dollar amount: 100% of the amount originally counted for the ACDBE at bid opening or proposal submission;
- D. Participating in a conduit relationship with an ACDBE scheduled to perform work on contract: 100% of the amount counted for the ACDBE at bid opening or proposal submission;
- E. Failing to provide any documentation or written submissions required under the ACDBE Program within the time period set forth therein: \$50 per day for each day that such documentation or written submission is overdue.

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)*

City of Columbia Gross Receipts other than car rentals do not exceed the \$200,000 threshold.

Name of Recipient: **City of Columbia, Missouri**

_____ N/A _____

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the City of Columbia 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)).

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

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

Name of Recipient: City of Columbia (Missouri)

Goal Period: FY October 1, 2016 – September 30, 2018

Overall Three-Year Goal:

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

(Note: the overall goal may be disclosed as a cumulative amount or an average of the three years)

The City of Columbia has determined that its market area is the seven counties including Boone and the counties that touch Boone County, Missouri.

Market Area for Car Rental Concessionaires

Market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the Airport is located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. The City of Columbia determined that its market area includes Boone County and the seven counties surrounding and bordering Boone County.

Company	Type of Concession	City	State	Nationwide
No certified ACDBE firms in service area				

Base of Car Rental Goal

To determine the base of the goal, the City of Columbia considered the previous 3 years of gross concession receipts.

Gross Receipts* (Revenue) for Previous 3 Years - Car Rental Concessions

Fiscal Year	Concessions Revenue (Excluding Car Rental)
2013	1,493,000
2014	1,757,000
2015	1,909,000
Total	5,159,000
Average	1,719,667

- Based upon Hertz actual figures and Enterprise estimates

The rental car companies were unable, at the present time, to provide future estimates for gross receipts.

Methodology used to Calculate Overall Goal

Due to the size of administrative staff and work load, the car rental lease agreements have not been updated to include ACDBE participation. However, to comply with Part 23, the City of Columbia has requested any ACDBE information available from airport car rental concessionaires. From the information received from those concessionaires, there is 0% ACDBE participation in goods and services at the Airport.

Market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the Airport is located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. The City of Columbia determined that its market area includes Boone County and the seven counties surrounding and bordering Boone County.

To show the lack of ACDBE firms providing goods and services in the car rental concessions market area, the City of Columbia researched probable goods and services providers that car rental concessionaires would procure. This is shown in the following Table: Determination of Relative Availability of ACDBE's (Car Rental Concessionaires)

2012 NAICS code	Meaning of 2012 NAICS code	TOTALS	ACDBE Firms
234	Professional and commercial equipment and supplies merchant wholesalers	34	0
23430	Computer and computer peripheral equipment and software merchant wholesalers	5	0
23850	Service establishment equipment and supplies merchant wholesalers	2	0
24120	Stationery and office supplies merchant wholesalers	4	0
24210	Drugs and druggists' sundries merchant wholesalers	14	0
24720	Petroleum and petroleum products merchant wholesalers (except bulk stations and terminals)	3	0
41110	New car dealers	47	0
4230	Specialized freight (except used goods) trucking, long-distance	19	0
48410	Motor vehicle towing	10	0
42110	Couriers and express delivery services	8	0
44210	Insurance agencies and brokerages	220	0
42210	Consumer electronics and appliances rental	11	0
41110	Offices of lawyers	187	0
41211	Offices of certified public accountants	56	0
41380	Testing laboratories	4	0
41611	Administrative management and general management consulting services	46	0
41612	Human resources consulting services	2	0
51491	Repossession services	2	0
5162	Security systems services	11	0
51621	Security systems services (except locksmiths)	8	0
51710	Exterminating and pest control services	17	0
51720	Janitorial services	87	0
21999	All other miscellaneous ambulatory health care services	21	0
11111	General automotive repair	95	0
11121	Automotive body, paint, and interior repair and maintenance	42	0
11122	Automotive glass replacement shops	11	0
11211	Consumer electronics repair and maintenance	2	0
12320	Dry cleaning and laundry services (except coin-operated)	11	0
1233	Linen and uniform supply	3	0
	TOTALS	982	0

Sources:

1. U.S. Department of Commerce, 2015 County Business Pattern, available from <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t/>
2. Missouri Department of Transportation, Office of External Civil Rights, Missouri Regional Certification Committee, Disadvantaged Business Enterprise Search

As shown in the table above, there are currently no ACDBE firms in the market area of Boone County or the surrounding 7 counties.

Step 1: 23.51(c)

We determined the Step 1 base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

$$\underline{\underline{0 \text{ ACDBE}/982 \text{ concessions} = 0\%}}$$

[Step 1 was determined by dividing the total number of ACDBEs by the total of all concessions in the market area.]

Numerator: Ready, willing, and able non-car rental ACDBEs in the market area

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

When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for car rental concessions of: 0%

Step 2: 23.51(d)

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

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

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

There is no historical ACDBE data to reference to make an adjustment to the Step 1 base figure therefore the City of Columbia is adopting its Step 1 base figure as its overall goal for this 3-year goal period.

PUBLIC PARTICIPATION

Consultation: Section 23.43.

Prior to submitting this goal to the FAA, City of Columbia consulted with small business stakeholders by holding two separate diversity outreach meetings this year on, March 22 and June 5. The City of Columbia Purchasing and Supplier Diversity staff conducted these meetings along with representatives of Shelter Insurance, the Missouri Department of Transportation (MODOT), and the Missouri Procurement Technical Assistance Centers (MOPTAC) to discuss opportunities for disadvantaged business enterprises (DBE) and ACDBE's. These meetings also provided opportunities to explain to small businesses the differences, for example, between being certified as a women-owned business enterprise (WBE) versus a DBE or ACDBE. MOPTAC also provided information about the free consultation services to assist small businesses to become certified as an ACDBE or DBE. Between the two meetings, 20 small businesses (MBE, WBE, and Disabled Veterans owned businesses) and other interested individuals attended.

No comments have been received.

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

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

1. *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. *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. *Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

We estimate that, in meeting our overall goal of, we will obtain 0% from race-neutral participation and 0% 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: *measures we will use from 23.25(e).*

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 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

ACDBE Certification Application Form

Visit the Missouri Department of Transportation, External Civil Rights Division, for more information about how to apply to become certified as a Disadvantage Business Enterprise (DBE) and Airport Concession DBE.

www.modot.org/ecr/index.htm

[http://contribute.modot.mo.gov/business/contractor_resources/External Civil Rights/DBE program.htm](http://contribute.modot.mo.gov/business/contractor_resources/External_Civil_Rights/DBE_program.htm)

Attachment 8

Procedures for Removal of ACDBEs Eligibility

The City of Columbia is a sub-recipient partner of the Missouri Regional Certification Committee (MRCC), Unified Certification Partners administered by the Missouri Department of Transportation. The MRCC meets the requirements of this section (26.87).

The City of Columbia relies on the UCP procedures for removal of ACDBE's which are the following:

For Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has submitted a personal net worth statement that shows that an individual's personal net worth exceeds \$1.32 million there will be no administrative re-consideration of the decision to decertify the firm.

In circumstances where a certified firm fails to cooperate fully and promptly as required in 49 CFR Part 26 its certification will be removed pursuant to 49 CFR 26.87. The MRCC will hold an administrative hearing to determine removal of eligibility. The MRCC decisions are appealable to the USDOT. A firm may be removed from the group hearings if the required information is submitted to the certifying agency a week prior to the scheduled hearing date.

Pursuant to 49 CFR Part 26, when a Certifying Partner makes a preliminary determination to remove the eligibility of a firm currently certified, the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The denying Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR Part 26. These procedures for removal of eligibility also apply to a firm which exceeds business size standards, as determined by the Certifying Partner.

The denying Certifying Partner will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the Certifying Partner at the time of its certification of the firm. The Certifying Partner will base such decision only on one or more of the following:

- Changes in the firm's circumstances since the certification
- Information or evidence not available at the time of certification
- Information that was concealed or misrepresented by the firm in previous certification actions
- Change in the certification standards or requirements of USDOT since the firm was certified

- A documented finding that the agency's determination to certify the firm was factually erroneous
- Violation of any provision of 49 CFR Part 26 that specifically authorizes removal of eligibility

The Certifying Partner will provide the firm written notice of the decision and the reasons, including specific references to the evidence in the record that supports the decision. The notice will inform the firm of the consequences of the Certifying Partner's decision and of the availability of an appeal to the MRCC. The firm must exhaust all administrative avenues at the local level prior to appeal to the USDOT. Therefore, if the firm chooses to appeal to the MRCC it maintains the right to appeal to the USDOT, however, if the firm chooses not to appeal to the MRCC, it cannot appeal to the USDOT.

Legal counsel may accompany the firm during the MRCC hearing, however the controlling owner shall be prepared to speak on behalf of the firm, respond to questions or otherwise make a presentation. Reasonable accommodations will be made for those with disabilities with 48 hour notice to the MRCC. A written decision by the MRCC setting forth the grounds and reasoning for the decision will be mailed to the applicant firm within a reasonable time from the date the MRCC considered the appeal. The Decertifying Partner will enter the decertification into the USDOT's Office of Civil Rights' Ineligibility online database.

When a firm is decertified, it is required to wait one (1) year before it may reapply for DBE certification with the MRCC Certifying Partner of record (agency of record). The time period for reapplication begins to run on the date the explanation for decertification is mailed to the applicant firm. A firm remains an eligible DBE during an appeal to the MRCC. If the MRCC makes a final decision to remove the firm's eligibility, that firm is no longer eligible as a DBE firm. The effective date of the MRCC's decision, or expiration of the time period to appeal to the MRCC, is the date the firm's eligibility is removed. The Certifying Partner will enter the denial into the USDOT's Office of Civil Rights' Ineligibility online database.

The firm must submit a written request for appeal to the decertifying Partner within 15 days of the preliminary decision. The letter must specify whether the firm wishes to appeal in writing or appear personally before the MRCC and if they intend to be accompanied by counsel. The MRCC will notify the appellant of the date of the next available MRCC hearing date and the deadline for submission of supporting documentation. Any firm requesting an appeal must submit all supporting documentation to be considered by the MRCC no later than 45 days prior to the scheduled MRCC hearing date. No appeal will be considered unless included on the 35 agenda for the meeting and all agenda items must be finalized 30 days prior to the meeting.

The MRCC will consider written submissions by the applicant firm, including but not limited to, the certification application, the original denial letter, file memoranda prepared by the Certifying Partner, the appeal letter and any other relevant documentation. The information or documentation submitted is limited to the issues raised in the denial letter. No new or additional documentation or information shall be considered by the MRCC without a showing by the appellant that it was not available or, through due diligence, could not have been made available.

The decision by MRCC is final and no further appeals will be heard by the MRCC. The firm may appeal the decision of the MRCC to the Office of the Secretary of Transportation, U.S. Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, S.E., W-35, Washington DC, 20590 within 90 days after receipt of the original denial letter.

Third Party Challenge Ineligibility Complaints

Any person or agency may file a written complaint with the Certifying Partner with notice to the MRCC Partners challenging the eligibility status of a certified firm and specifying the alleged reasons why the firm is allegedly ineligible. The Certifying Partner is not required to accept a general allegation that a firm is ineligible, or an anonymous complaint. The complaint must include supporting information or documentation of the assertion that the firm is ineligible.

The Certifying Partner will make every effort to maintain the confidentiality of the complainants' identities, however, in some cases, it may be necessary to divulge the identity of the complainant in order to continue review of the challenge. If the complainant does not wish to waive confidentiality, it may be necessary to close the case, review or investigation with no further action. ‘

Within 60 days of receiving the information, the Certifying Partner must review its records concerning the firm and any material provided by the firm and the complainant to reach a preliminary decision. If the Certifying Partner determines there is reasonable cause to believe the firm is ineligible, the Certifying Partner will provide written notice, including reasons for determination, to the challenged firm and the complaint of the preliminary decision to find the firm ineligible and immediately initiate a section 26.87 proceeding.

If the Certifying Partner finds reasonable cause does not exist for removal of eligibility, the Certifying Partner will notify the complainant and the challenged firm, in writing, of this determination and the basis for the decision. The Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR Part 26.

A Certifying Partner's recommendation to remove eligibility does not become final until the completion of the appeal to the MRCC or expiration of the 15-day period for requesting an appeal.

Either party may appeal the decision to the MRCC using the same process as set out in the section on Appeals or Hearing Process for Removal of Eligibility.

This process also includes internal MRCC Partner disputes.

Recipient-initiated Proceeding

If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, the Certifying Partner determines that this is reasonable cause to believe that a currently certified firm is ineligible, the Certifying Partner will provide written notice to the firm setting forth the reasons for the proposed determination and that it proposes to find the

firm ineligible and immediately initiate a section 26.87 proceeding. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

USDOT Initiated Challenge

If a USDOT agency determines that information in the certification records or other information available provides reasonable cause to believe that a firm certified by the MRCC does not meet eligibility criteria, the USDOT may direct the MRCC via the Certifying Partner to initiate a proceeding to remove the firm's certification pursuant to 49 CFR 26.87 (c).

Appeals to USDOT

A firm, which has been denied initial certification, must appeal directly to the USDOT. Any certified firm who has been notified by an MRCC Certifying Partner of intent to remove eligibility must make an administrative appeal to the MRCC before appealing to the USDOT pursuant to 49 CFR 26.89.

A complainant in an ineligibility complaint to the MRCC may appeal to USDOT if the MRCC does not find reasonable cause to propose removing the firm's eligibility. Pending the USDOT decision, the MRCC's decision remains in effect. If a firm wants to file an appeal, it must send a letter to USDOT within 90 days of the date of the MRCC's final decision, including information concerning why the MRCC's decision should be reversed.

An appellant firm challenging certification denial or removal by the MRCC must submit a letter with the name and address of any other USDOT grantee that currently certifies the firm, of any other grantees that may have rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or of any other grantee with which an application for certification or action to remove eligibility is pending.

The MRCC will maintain a complete verbatim record of the hearing. If there is an appeal to USDOT, the MRCC will provide a transcript of the hearing to USDOT and, on request, to the firm at a reasonable cost to cover MRCC's expenses. The MRCC will retain the original record of the hearing.

Any party that appeals the MRCC's decision to USDOT will be requested by USDOT to promptly provide all information requested. The MRCC agrees to provide to USDOT the complete administrative record within 20 days of its request unless USDOT extends this time period. USDOT will make its decision based solely on the entire administrative record without conducting a hearing. When the MRCC provides information to USDOT, the same information will be made available to the firm and to any third-party complainant involved, consistent with applicable law.

USDOT may affirm the MRCC's decision unless it determines, based on the entire administrative record, that the decision is not supported by substantial evidence or is inconsistent with the substantive or procedural provisions concerning certification. If USDOT determines that the MRCC's decision was unsupported, USDOT may reverse the MRCC's decision and direct the MRCC to certify the firm or to remove its eligibility. The MRCC will take the action directed by

USDOT immediately upon receiving written notice. USDOT is not required to reverse the MRCC's decision if it determines a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear, USDOT may remand the record to the MRCC with instructions seeking clarification or augmentation of the record before making a finding.

USDOT will not uphold the MRCC's decision based on grounds not specified in the MRCC's decision. USDOT's decision will be based on the status and circumstances of the firm on the date of the decision, which was appealed. USDOT will provide written notice of its decision to the MRCC, the firm, and the complainant in an ineligibility complaint. The notice will include the reasons for USDOT's decision. It is USDOT's policy to make a decision within 180 days of receiving the complete administrative record. All decisions by USDOT are administratively final and are not subject to petitions for reconsideration.

MRCC Actions Following USDOT Decision

Pursuant to 49 CFR 26.91, the decisions of USDOT are binding on all agencies within the MRCC.

If USDOT determines that the MRCC erroneously certified a firm, the MRCC must remove the firm's eligibility on receipt of the determination without further proceedings. If USDOT determines that the MRCC erred in a finding of no reasonable cause to remove the firm's eligibility, the USDOT will remand the case to the MRCC to determine whether the firm's eligibility should be removed.

If USDOT determines that the MRCC erroneously declined to certify or erroneously removed eligibility of the firm, the MRCC must certify the firm effective on the date of receipt of the written notice from USDOT. If USDOT affirms the MRCC's determination, no further action is necessary.

If the MRCC receives information on a firm's eligibility decision made by USDOT, related to any other USDOT agency, UCP or recipient, the MRCC will take the USDOT decision into account in any certification action involving the firm.

ATTACHMENT 9

State's UCP Agreement

The State of Missouri's MRCC Policies and Procedures can be found at

http://www.modot.org/business/contractor_resources/External_Civil_Rights/documents/UCPPolicyDLA2pdf.pdf

Attachment 10

Regulations: 49 CFR Part 23

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

Attachment 11

Goals and Elements for Privately-Owned or Leased Terminal Buildings

Not applicable at this time.