

# **ROSWELL INTERNATIONAL AIR CENTER**

Roswell, New Mexico

2016 - 2018  
Disadvantaged Business Enterprise  
(DBE Program)

Prepared for  
City of Roswell, New Mexico  
and the Federal Aviation Administration



**ARMSTRONG**

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**POLICY STATEMENT**

**Section 23.1, 23.23      Objectives/Policy Statement**

The Roswell International Air Center, hereafter referred to as the Sponsor, 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 Sponsor 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 Sponsor has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Sponsor 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.

Scott Stark, Air Center Manager, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, he 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 Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor 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. The Sponsor accomplished this by advertising on the local website.

  
\_\_\_\_\_  
Steve Polasek, City Manager

June 24, 2016  
\_\_\_\_\_  
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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The Sponsor 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 Sponsor 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 Sponsor 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 Sponsor’s 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 Sponsor’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 [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the Sponsor 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 Sponsor is a *non-hub primary* airport required to have an ACDBE program.

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

When the Sponsor 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 Sponsor is committed to operating its ACDBE program in a nondiscriminatory manner.

The Sponsor'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:

**Scott Stark, Air Center Manager**

1 Jerry Smith Circle  
Roswell, NM 88203

Office:575-347-5703  
Mobile: 575-317-9533  
[s.stark@roswell-nm.gov](mailto:s.stark@roswell-nm.gov)

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Sponsor complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Manager 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 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 Sponsor's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Provides ACDBEs with information and assistance.
10. Acts as liaison to the Unified Certification Program (UCP) in New Mexico.
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
12. Maintains the Sponsor's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The Sponsor through the New Mexico 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. The directory is available at the following website:

<https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot>

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

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

The Sponsor 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 Sponsor'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 Sponsor 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 Sponsor 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 Sponsor 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.

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

### **Section 23.29 Compliance and Enforcement Procedures**

The Sponsor 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 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. (26.37)

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

The UCP certifies firms for the ACDBE concession program. 23.39(f)

### **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 23.41 Basic Overall Goal Requirement**

*The Sponsor* 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 Sponsor consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability



of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

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

**Section 23.45 Overall Goals**

The 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:

<b>Primary Airport Size</b>	<b>Region</b>	<b>Date Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
<b>Non-Hubs</b>	<b>All regions</b>	<b>October 1, 2016</b>	<b>2016/2017/2018</b>	<b>October 1, 2018 (2018/2019/2020)</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)

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 and 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor'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 responsive.

**Scott Stark, Air Center Manager**

1 Jerry Smith Circle  
Roswell, NM 88203  
Office:575-347-5703  
Mobile: 575-317-9533  
[s.stark@roswell-nm.gov](mailto:s.stark@roswell-nm.gov)

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 Sponsor treats bidder/offeror's compliance with good faith effort requirements as a matter of responsiveness.

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 five (5) days of being informed by the Sponsor that it is not responsive 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:

**Sharon Coll, City Clerk**  
425 N Richardson Ave.  
Roswell, NM 88201  
(575) 637-6202  
[s.coll@roswell-nm.gov](mailto:s.coll@roswell-nm.gov)

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 Sponsor 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.

The Sponsor will provide written consent only if there is concurrence that the prime contractor has good cause to terminate an ACDBE. Good cause includes the following circumstances:

1. The listed ACDBE subcontractor fails or refuses to execute a written contract.
2. The listed ACDBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
3. The listed ACDBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
4. An ACDBE owner dies or becomes disabled with the result that the listed ACDBE contractor is unable to complete its work on the contract.

5. Other documented good cause that you determine compels the termination of the ACDBE subcontractor.

Before transmitting to you its request to terminate and/or substitute a ACDBE subcontractor, the prime contractor must give notice in writing to the ACDBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

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

The concession firm will be required to submit the following information:

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

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

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

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

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

**Section 23.57 (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;

**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 23.75            Long-Term Exclusive Agreements**

We will not enter into a 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**

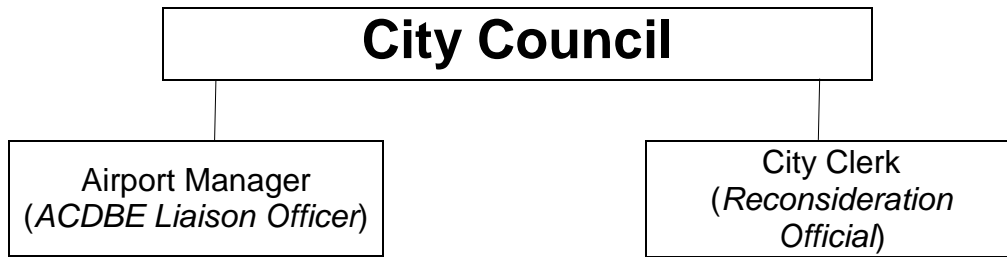
We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

## **ATTACHMENTS**

<u>Attachment 1</u>	Organizational Chart
<u>Attachment 2</u>	New Mexico DBE/ACDBE Directory Link
<u>Attachment 3</u>	Monitoring and Enforcement Mechanisms
<u>Attachment 4</u>	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
<u>Attachment 5</u>	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
<u>Attachment 6</u>	Form 1 & 2 for Demonstration of Good Faith Efforts
<u>Attachment 7</u>	Certification Application Forms
<u>Attachment 8</u>	Procedures for Removal of ACDBEs Eligibility
<u>Attachment 9</u>	Regulations: 49 CFR Part 23
<u>Attachment 10</u>	UCP Agreement

Attachment 1

Organizational Chart





**Attachment 2**

**New Mexico ACDBE Directory Link**

**<https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot>**

### **Attachment 3**

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

The Sponsor 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;

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 Sponsor will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:

*Roswell International Air Center has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with the regulations of the U.S. Department of Transportation, 49 CFR Part 23. The concessionaire is required to participate in the Roswell International Air Center's ACDBE Program underneath this agreement.*

2. We will implement the following additional monitoring and compliance procedures:

- A. *Suspension or debarment proceedings pursuant to 49 CFR Part 23.*
- B. *Enforcement action pursuant to 49 CFR Part 31.*
- C. *Prosecution pursuant to 18 USC 1001.*

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

*The Roswell International Air Center will submit annual ACDBE participation reports to the Federal Aviation Administration and continue to update and review the ACDBE program over the reporting period. The Airport will take measures to ensure nondiscriminatory participation of ACDBE's in concessions and car rental businesses.*

**Attachment 4**

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

**Amount of Goal**

**Name of Recipient:** Roswell International Air Center

**Goal Period:** FY-2016-2017-2018

**Overall Three-Year Goal:** The Roswell International Air Center does not currently participate in any contract concession agreements which average an annual gross revenue of more than \$200,000. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to exceed \$200,000, the Airport will develop an overall goal and submit to the FAA.

**Attachment 5**

**Section 23.45: Overall Goal Calculation for Car Rentals**

**Amount of Goal**

**Name of Recipient:** Roswell International Air Center

**Goal Period:** FY-2016-2014-2018 – October 1, 2015 through September 30, 2018

**Overall Three-Year Goal:** 0.28%, to be accomplished through 0.28% RC and 0% RN

**Market Area for Car Rental Concessionaires:** The Roswell International Air Center has determined that its market area is the State of New Mexico. 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.

**Base of Car Rental Goal**

To calculate the base of the goal the airport 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 (Revenue) for Previous 3 Years - Car Rental Concessions**

<b>Fiscal Year</b>	<b>Concessions Revenue (Excluding Car Rental)</b>
2013	1,442,667
2014	2,002,528
2015	1,904,982
<b>Total</b>	<b>5,350,177</b>
<b>Average</b>	<b>1,783,392</b>

The airport does not anticipate any major changes that would increase or decrease concession revenues over next three years. Therefore, the recipient's base of goal is the average car rental revenue of \$1,783,392.

The car rental concession opportunities anticipated during this goal period are:

*Good and Services such as Insurance, Automobiles, Automotive Repairs, Car Washes, and Janitorial Services.*

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 Sponsor 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**

**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 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 and potential ACDBEs in the market area.

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

NAICS	Type of Concession	Total ACDBE's/ Potential ACDBE's	Total All Firms
811192	Car Washes	1	108
441110	New Car Dealer	0	144
561720	Janitorial Services	3	282
811111	General Automotive Repair	0	470
524210	Insurance	1	753
<b>Total</b>		<b>5</b>	<b>1757</b>
<b>Step 1 =</b>		<b>Numerator/Denominator x (100) =</b>	<b>0.28 %</b>

The data source or demonstrable evidence used to derive the **numerator** was the New Mexico Department of Transportation (NMDOT) DBE Certified Directory. There were no ACDBE firms certified to perform the anticipated concessions under the provided NAICS codes. The number of available ACDBEs was augmented by using DBE firms certified under the same NAICS codes. These DBE firms were located at the NMDOT DBE Directory at the following link:

<https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot>

The data source or demonstrable evidence used to derive the **denominator** was the Census Bureau's County Business Pattern (CBP) data base at the following link:

<http://www.census.gov/programs-surveys/cbp.html>

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 0.28%.

**Step 2: 23.51(d)**

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

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

**Past History Participation**

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

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.

Our overall goal for non-car rental concessions is **0.28%**

**PUBLIC PARTICIPATION**

**Consultation:** Section 23.43.

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

- Western New Mexico University Small Business Development Center
- Minority Business Development Center
- Women's Economic Self-Sufficiency Team
- New Mexico Native American Business Enterprise Center

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

No comments have been received.

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

The Sponsor will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Sponsor 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. *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 0.28%, we will obtain 0% from race-neutral participation and 0.28% through race-conscious measures.

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

The Sponsor does not have a history of ACDBE participation or over-achievement of goals to reference and expects to obtain its ACDBE participation through a conscious effort to attain ACDBE participation. Therefore, we are applying the entire goal of 0.28% to race-conscious participation.

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.*

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.





April 26, 2016

Western New Mexico University  
Small Business Development Center  
P.O. Box 2672  
Silver City, New Mexico 88062

Minority Business Development Center  
718 Central Avenue SW  
Albuquerque, New Mexico 87102

Women's Economic Self-Sufficiency Team  
WESST Enterprise Center  
609 Broadway Boulevard NE  
Albuquerque, New Mexico 87102

New Mexico Native American Business Enterprise Center  
2401 12<sup>th</sup> Street NW, Suite 5-South  
Albuquerque, New Mexico 87104

RE: DBE Program and Goal Setting

We are assisting the Roswell International Air Center at Roswell, New Mexico with the task of developing an ACDBE Program which includes developing goals for concessionaires and car rentals, meeting the requirements of Federal Law, 49 CFR Part 23.

We are sending you this letter as part of the consultation requirements. If you have any input for our use in preparing these programs or developing goals, please provide it to us at your earliest convenience. We will be hosting a consultation teleconference on May 4, 2016 at 10:00 am. To join the conference call, please dial the number (605)475-3220 and enter the access code 494259#. If you know of other organizations that might wish to comment or provide input to us, please provide that information as well.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lara VanEvery", is written over the typed name.

ARMSTRONG CONSULTANTS, INC.

Lara VanEvery

Civil Engineer

**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:

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-----  
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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**

The ACDBE Certification Application can be found at the following website:

<http://dot.state.nm.us/content/dam/form-repository/A-1009CompleteDBECertificationApplicationPackage.PDF>

**Attachment 8**

**Procedures for Removal of ACDBEs Eligibility**

The Airport will rely on the procedures outlined in 49 CFR Part 26.87 pertaining to DBE eligibility available at the following link:

[http://www.ecfr.gov/cgi-bin/text-idx?SID=a0fa9a97c9bc74452f06741aab353957&mc=true&node=se49.1.26\\_187&rgn=dv8](http://www.ecfr.gov/cgi-bin/text-idx?SID=a0fa9a97c9bc74452f06741aab353957&mc=true&node=se49.1.26_187&rgn=dv8)

**Attachment 9**

**Regulations: 49 CFR Part 23**

Regulation 49 CFR Part 23 can be viewed at the following link:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl)

**Attachment 10**

**UCP Agreement**

**AGREEMENT**

FOR

2002 FEB 14 PM 2:33

**NEW MEXICO UNIFIED CERTIFICATION PROGRAM (NMUCP)**

THIS AGREEMENT is made and entered into this 12 day of February, 2002, by and between the undersigned, authorized representatives of the New Mexico State Highway and Transportation Department (NMSHTD), and City of Roswell, Roswell, New Mexico a current or future recipient of United States Department of Transportation (USDOT) funds (USDOT Recipient) from Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA).

WHEREAS, a final rule revising the USDOT's regulations for its Disadvantaged Business Enterprise (DBE) Program was published in the *Federal Register on February 2, 1999*.

WHEREAS, these regulations contained in 49 CFR Part 26, as amended, became effective on March 4, 1999.

WHEREAS, 49 CFR Part 26, Subpart E, as amended, of the Regulation details the requirements for a Unified Certification Program (UCP) including a "one-stop shopping" certification provision intended to enable DBEs, once certified by any one recipient of USDOT funds, to participate in the programs of other recipients.

WHEREAS, all USDOT recipients within each state must sign an agreement establishing a UCP, said agreement is to be submitted by March 3, 2002, for approval by the Secretary of the USDOT, and

WHEREAS, USDOT Recipient wishes to participate in the NMUCP.

**NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. The New Mexico Unified Certification Program (NMUCP) is established for all USDOT Recipients within the State of New Mexico. The NMUCP is detailed in Attachment A to this Agreement. The purpose of the NMUCP is to comply with the requirements contained in 49 CFR Part 26, Subpart E, as amended.

2. NMSHTD, through its Office of Equal Opportunity Programs (OEOP), will take the lead and be responsible for:

a. The certification of DBEs, the removal of DBE eligibility, and the suspension or debarment of DBEs consistent with 49 CFR Part 26, as amended,

b. Administering the requisite procedures for full cooperation with the oversight, review and monitoring activities of USDOT and its Operating Administrations (OA),



c. The maintenance of the NMUCP's DBE Directory (electronic and hard copy), listing certified DBEs, and

d. The implementation of USDOT directives and guidance concerning certification matters.

3. USDOT Recipient agrees to:

a. Be bound by the decisions or actions of the NMUCP concerning this program,

b. Use the Uniform Certification Application as published in the *Federal Register on Tuesday, May 8<sup>th</sup> 2001* (Attachment B), and

c. Commit to ensure that the NMUCP has sufficient resources and expertise to carry out the requirements contained in 49 CFR Part 26 Subpart E, as amended.

4. Upon approval of New Mexico's Uniform Certification Program, the NMSHTD, through the OEOP, will immediately assume and consolidate all certification functions and responsibilities. The NMUCP will be operational not later than 18 months following its approval by USDOT.

USDOT RECIPIENT

By: A. Adit Thomas

Title: Assistant City Manager

Agency: City of Roswell

Recipient: Roswell, New Mexico  
(city, town, county, etc.)

NMSHTD

By: Vern J. Cushman

Title: Chief, OEOP

New Mexico State Highway and Transportation  
Department (NMSHTD)