

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement


Brownsville South Padre Island International Airport 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. Brownsville South Padre Island International Airport 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). Brownsville South Padre Island International Airport has signed airport grant assurances that it will comply with 49 CFR part 23.

It is the policy of Brownsville South Padre Island International Airport 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;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions our airport(s);
6. To promote the use of ACDBEs in all types of concessions activities at our airport(s);
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
8. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

Gustavo Hernandez has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Gustavo Hernandez, ACDBELO 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 Brownsville South Padre Island International Airport in its financial assistance agreements with the Department of Transportation.

Brownsville South Padre Island International Airport 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 distribution was accomplished by posting it on the City and Airport's websites.


Angel Ramos (Doc 11-2024 10:33 CST)
Angel Ramos, Airport Director

12/17/2024
Date

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

Brownsville South Padre Island International Airport 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

Brownsville South Padre Island International Airport 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

Brownsville South Padre Island International Airport 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, Brownsville South Padre Island International Airport 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.

Brownsville South Padre Island International Airport will include the following assurances in all concession agreements and management contracts it executes with any firm:

“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.

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

Brownsville South Padre Island International Airport acknowledges that the compliance and enforcement provisions of 49 CFR part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under part 23 in the same way that they apply to FAA recipients and programs under part 26.

ACDBE PROGRAM

Section 23.21 ACDBE Program Updates

Brownsville South Padre Island International Airport is the operator of at least one primary airport and is required to have an ACDBE program. This ACDBE program is applicable to the following airport(s):

- Brownsville South Padre Island International Airport

Although the program applies to all of the above airports, Brownsville South Padre Island International Airport will submit a separate goal methodology for each primary airport.

Prior to implementing significant changes to this ACDBE program, Brownsville South Padre Island International Airport will provide the amended program to FAA for review and approval.

Section 23.23 Administrative Provisions

Policy Statement: Brownsville South Padre Island International Airport is committed to operating its ACDBE program in a nondiscriminatory manner. The Policy Statement is elaborated on the first page of this program.

Brownsville South Padre Island International Airport will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. Brownsville South Padre Island International Airport will also encourage prime concessionaires to use such institutions.

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

Gustavo Hernandez, Accountant
700 Amelia Earhart Dr
Brownsville, TX 78521
Telephone Number
Gustavo.hernandez@brownsvilletx.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that Brownsville South Padre Island International Airport

complies with all provision of 49 CFR part 23. The ACDBELO has direct, independent access to Angel Ramos, Airport Director concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of consultant engineers to assist in the administration of the program. The duties and responsibilities include the following:

1. Works with all departments to set overall annual goals.
2. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
3. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
4. Analyzes Brownsville South Padre Island International Airport's progress toward attainment and identifies ways to improve progress.
5. Acts as liaison to the Unified Certification Program (UCP) in Texas.
6. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
7. Maintains the Brownsville South Padre Island International Airport's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: Texas 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 Directory clearly specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

Brownsville South Padre Island International Airport will not use set-asides or quotas as a means of obtaining ACDBE participation.

Brownsville South Padre Island International Airport will seek ACDBE participation in all types of concession activities.

Brownsville South Padre Island International Airport will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. Brownsville South Padre Island International Airport will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)):

- 1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part.
- 2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate.

- 3) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

Brownsville South Padre Island International Airport will also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures we will implement, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
 - a. In setting concession-specific goals for concession opportunities other than car rental, Brownsville South Padre Island International Airport will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is *de minimis* availability for direct ownership arrangement participation for that concession opportunity.
 - b. In setting car rental concession-specific goals, Brownsville South Padre Island International Airport will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, Brownsville South Padre Island International Airport is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
 - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, Brownsville South Padre Island International Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
 - d. If the goal applies to purchases or leases of goods and services from ACDBEs, Brownsville South Padre Island International Airport will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
 - e. When a concession-specific goal is set, Brownsville South Padre Island International Airport will require competitors to make good faith efforts to meet this goal. A competitor 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.
 - f. The administrative procedures applicable to contract goals in part 26, § 26.51 through 26.53. apply with respect to concession-specific goals.
 - g. In setting car rental concession-specific goals, Brownsville South Padre Island International Airport will not require a car rental company to change its corporate structure to provide for participation via direct

ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, Brownsville South Padre Island International Airport is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.

- h. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, Brownsville South Padre Island International Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
 - i. If the goal applies to purchases or leases of goods and services from ACDBEs, Brownsville South Padre Island International Airport will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
 - j. When a concession-specific goal is set, Brownsville South Padre Island International Airport will require competitors to make good faith efforts to meet this goal. A competitor 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.
 - k. The administrative procedures applicable to contract goals in part 26, § 26.51 through 26.53. apply with respect to concession-specific goals.
- 2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.
 - 3. With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

Brownsville South Padre Island International Airport requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

Section 23.26 Fostering Small Business Participation

Brownsville South Padre Island International Airport has created a small business element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as Attachment 11 to this ACDBE Program. The program elements will be actively implemented to foster small business participation. Brownsville South Padre Island International Airport acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program.

Brownsville South Padre Island International Airport will submit an annual report on small business participation obtained through the use of this small business element. The report must be submitted in the format acceptable to the FAA based on a schedule established and posted to the agency's website, available at https://www.faa.gov/about/office_offices/acr/bus_ent_program.

Section 23.27 Reporting

Brownsville South Padre Island International Airport 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.

Brownsville South Padre Island International Airport will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

Brownsville South Padre Island International Airport will create and maintain active participants list information and enter it into a system designated by the FAA. Brownsville South Padre Island International Airport will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession opportunities.

- a. Firm name;
- b. Firm address including ZIP code;
- c. Firm status as an ACDBE or non-ACDBE;
- d. Race and gender information for the firm's majority owner;
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

Brownsville South Padre Island International Airport will collect the data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. Brownsville South Padre Island International Airport will enter this data in FAA's designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded.

The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to DOT's Departmental Office of Civil Rights each year. Brownsville/South Padre Island International Airport, if a certifying member of the state UCP, ensures the collection and reporting of the following information in the UCP directory:

- 1) The number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by gender and ethnicity (Black

- American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
- 2) The number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
 - 3) The number of decertified firms;
 - i) Total in-state and out-of-state firms decertified;
 - ii) Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;
 - iii) Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
 - 4) Number of in-state and out-of-state ACDBEs summarily suspended;
 - 5) Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and
 - 6) Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

Section 23.29 Compliance and Enforcement Procedures

Brownsville South Padre Island International Airport will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR part 23.

1. Brownsville South Padre Island International Airport 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 49 CFR § 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 4).

CERTIFICATION AND ELIGIBILITY

Section 23.31 Certification Standards and Procedures

Brownsville South Padre Island International Airport is a non-certifying member of the Texas Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. Texas UCP will use the certification standards of Subpart C of Part 23 to determine the eligibility of firms to participate as ACDBEs in airport concessions contracts. To be certified as an ACDBE, a firm must meet all certification eligibility standards. Certifying Texas UCP members make all certification decisions based on the facts as a whole.

The Texas UCP directory of eligible ACDBEs specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

For information about the certification process or to apply for certification, firms should contact:

Texas Department of Transportation
Office of Civil Rights
125 E. 11th Street
Austin, TX 78701-2483
<https://www.txdot.gov/about/contact-us.html>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

Section 23.33 Business Size Standards

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm's previous five (5) fiscal years.
2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.
4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in [13 CFR 121.104\(a\)](#)) of affiliates are included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

Section 23.35 Personal Net Worth Limits

The personal net worth standard used in determining eligibility for purposes of part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

Section 23.37 Firms Certified as DBEs

Certifying members of Texas UCP will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, certifying Texas UCP members will ensure that the disadvantaged owners of a

DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program.

Section 23.39 Other ACDBE Certification Requirements

The provisions of § 26.83(c)(1) of 49 CFR part 26 do not apply to ACDBE certifications. Instead, in determining whether a firm is an eligible ACDBE, Certifying Texas UCP members will take the following steps:

- 1) Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. Certifying Texas UCP members will review those persons' résumés and/or work histories, and maintain a complete audio recording of the interviews. Certifiers will also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the certifying Texas UCP member will keep in its files.
- 2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;
- 3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;
- 4) Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;
- 5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- 6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;
- 7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and
- 8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of part 26.

In reviewing the Declaration of Eligibility required by § 26.83(j), Certifying Texas UCP members will ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

For purposes of this part, the term prime contractor in § 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of § 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.63(c)(1).

Certifying Texas UCP members will use the Uniform Certification Application found in part 26 of this chapter without change. If Texas UCP seeks to supplement the form by

requesting specified additional information consistent with part 23 and part 26, the Texas UCP will first seek written approval of the concerned Operating Administration.

Certifying Texas UCP members will require every applicant to clearly state that it is applying for certification as an ACDBE and complete all of section 5.

Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Overall Goals

Brownsville South Padre Island International Airport 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. Brownsville South Padre Island International Airport will submit any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding three (3) years do not exceed \$200,000, Brownsville South Padre Island International Airport is not required to develop and submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding three (3) years do not exceed \$200,000, Brownsville South Padre Island International Airport is not required to develop and submit an overall goal for concessions other than car rentals. Brownsville South Padre Island International Airport understands that "revenue" means total revenue generated by concessions, not the revenue received by the airport from concessions agreements.

Brownsville South Padre Island International Airport'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

Brownsville South Padre Island International Airport 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.

The requirements of this section do not apply if no new concession opportunities will become available during the goal period. However, Brownsville/South Padre Island International Airport will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

Section 23.45 Overall Goals

Overall goals will be submitted to the FAA for approval. The overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA's website.

The goals must be submitted every three years based on the published schedule. 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.

Brownsville South Padre Island International Airport will establish overall goals in accordance with the 2-Step process as specified in § 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).

Brownsville South Padre Island International Airport will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that Brownsville South Padre Island International Airport's goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral "split." In such a case, the adjusted goal is binding on Brownsville South Padre Island International Airport.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

Brownsville South Padre Island International Airport will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR § 23.53.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during

the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, Brownsville South Padre Island International Airport will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, Brownsville South Padre Island International Airport will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. Brownsville South Padre Island International Airport will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform Brownsville South Padre Island International Airport in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

Section 23.55 Counting ACDBE participation for Concessions Other than Car Rentals

Brownsville South Padre Island International Airport will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR § 23.55.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, Brownsville South Padre Island International Airport will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, Brownsville South Padre Island International Airport will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. Brownsville South Padre Island International Airport will not count the former ACDBE's participation toward ACDBE goals beyond the termination date for the agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform Brownsville South Padre Island International Airport in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

Section 23.57 Goal shortfall accountability.

If the awards and commitments on the Uniform Report of ACDBE participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- 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;
- As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

FAA may impose conditions as part of its approval of Brownsville South Padre Island International Airport's analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

Brownsville South Padre Island International Airport may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- Brownsville South Padre Island International Airport does not submit the analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of § 23.57;
- FAA disapproves the analysis or corrective actions; or
- Brownsville South Padre Island International Airport does not fully implement:
 - a. The corrective actions to which we have committed, or
 - b. Conditions that FAA has imposed following review of our analysis and corrective actions.
 - c. If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set-asides

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

OTHER PROVISIONS

Section 23.71 Existing Agreements

If permitted by the existing agreement, Brownsville South Padre Island International Airport 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

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

Section 23.75 Long-Term Exclusive Agreements

Brownsville South Padre Island International Airport 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 more than 10 years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

Brownsville South Padre Island International Airport may enter into a long-term, exclusive concession agreement only under the following conditions:

- 1) Special local circumstances exist that make it important to enter such agreement; and
- 2) FAA approves Brownsville South Padre Island International Airport’s plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, Brownsville South Padre Island International Airport will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

- 1) A description of the special local circumstances that warrant a long-term, exclusive agreement;
- 2) A copy of the solicitation;
- 3) ACDBE contract goal analysis developed in accordance with this part;
- 4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;

- 5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
- 6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
- 7) Final long-term exclusive concession agreement, subleasing or other agreements;
 - a) In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, Brownsville South Padre Island International Airport will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
 - b) In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, Brownsville/South Padre Island International Airport will submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:
 - i. A description of the special local circumstances that warrant the holdover;
 - ii. Anticipated date for renewal or re-bidding of the agreement;
 - iii. The method to be applied for renewal or re-bidding of the agreement;
 - iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

Section 23.77 Preemption of Local Requirements

In the event that a State or local law, regulation, or policy differs from the requirements of this part, Brownsville South Padre Island International Airport will, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of 49 CFR part 23. However, nothing in part 23 preempts any State or local law, regulation, or policy enacted by the governing body of Brownsville South Padre Island International Airport, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with part 23.

Section 23.79 Geographic Preferences

Brownsville South Padre Island International Airport will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g., our local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport(s).

ATTACHMENTS

| | |
|---------------|--|
| Attachment 1 | Organizational Chart |
| Attachment 2 | DBE/ACDBE Directory |
| Attachment 3 | Active Participants List Collection Form |
| Attachment 4 | Monitoring and Enforcement Mechanisms |
| Attachment 5 | Overall Goal Methodology – Concessions Other Than Car Rental |
| Attachment 6 | Overall Goal Methodology – Car Rental |
| Attachment 7 | Form 1 & 2 for Demonstration of Good Faith Efforts |
| Attachment 8 | Certification Application Forms |
| Attachment 9 | Texas 's UCP Agreement |
| Attachment 10 | Regulations: 49 CFR part 23 |
| Attachment 11 | Race-Neutral Small Business Element |

Attachment 1

Organizational Chart



Attachment 2

Texas's Directory of Certified DBE/ACDBE Firms

<https://txdot.txdotcms.com/FrontEnd/searchcertifieddirectory.asp?TN=txdot>

ATTACHMENT 3

Active Participants List Collection Form

| Firm Name | Firm Address (including ZIP code) | ACDBE or Non-ACDBE Status | NAICS Code(s) of Scope(s) Bid | Race/Gender of Majority Owner | Age of Firm | Annual Gross Receipts |
|-----------|--------------------------------------|---------------------------|-------------------------------|---|---|---|
| | | | | <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million |
| | | | | <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million |
| | | | | <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million |

Attachment 4

Monitoring and Enforcement Mechanisms

Brownsville South Padre Island International Airport has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as follows

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

2. Breach of contract action, pursuant to Texas State Sec. 2260.051.
3. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:
 - a. Suspension or debarment proceedings pursuant to 49 CFR Part 26.
 - b. Enforcement action pursuant to 49 CFR Part 31.
 - c. Prosecution pursuant to 18 USC 1001.

The Brownsville South Padre Island International Airport 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:

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 Brownsville

South Padre Island International Airport 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 purchases of goods and services has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A of 49 CFR Part 26 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.

When a goal is established pursuant to the Sponsor's ACDBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found in Attachment 6 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements.

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

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.

We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 3). (26.37)

Attachment 5

Overall Goal Calculation for Concessions Other Than Car Rentals

To be submitted separately

Attachment 6

Overall Goal Calculation for Car Rentals

To be submitted separately

Attachment 7

Demonstration of Good Faith Efforts - Forms 1 and 2

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

The undersigned bidder/respondent has satisfied the ACDBE requirements of the concession **[*bid/RFP/RLI*]** in the following manner:

- ☐ Bidder/respondent has met the ACDBE goal
The bidder/offeror is committed to a minimum of _____ % ACDBE participation in this opportunity.

- ☐ Bidder/respondent has not met the ACDBE goal
The bidder/respondent is committed to a minimum of _____ % ACDBE participation in this opportunity and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/respondent's firm: _____

Bidder/Respondent Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/respondent's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of ACDBE firm: _____

Name & title of ACDBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Role to be performed by ACDBE firm:

| Description of Work | NAICS | Projected Dollar Amount / % | Joint Venture/Subtenant/Supplier* |
|---------------------|-------|-----------------------------|-----------------------------------|
| | | | |
| | | | |
| | | | |

**For suppliers only, state how the ACDBE will perform (e.g., regular dealer, manufacturer, broker). Count only fees and commissions if the supplier performs as a broker.*

The undersigned bidder/respondent is committed to utilizing the above-named ACDBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/respondent understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into an agreement ACDBE firm identified above that reflects the type and amount of participation listed. Bidder/respondent understands that upon submitting this form, it may not substitute or terminate the ACDBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Respondent's Authorized Representative

Date: _____

The undersigned ACDBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for ACDBE participation therefore.

Signature of ACDBE's Authorized Representative

Date: _____

If the bidder/respondent does not receive award of the prime concession opportunity, all representations in this Letter of Intent shall be null and void.

Submit this page for each ACDBE participant.

Attachment 8

ACDBE Certification Application Form

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

State's UCP Agreement

Texas UCP Agreement can be found here:

<http://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html>

Attachment 10

Regulations: 49 CFR part 23

ACDBE program regulations are found in Title 49 of the Code of Federal Regulations, part 23. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-23>

Attachment 11

Small Business Element

1. Objective/Strategies

(1) Establish a race-neutral small business set-aside for certain concession opportunities. Brownsville South Padre Island International Airport will document the rationale for selecting small business set-aside concession opportunities which may include consideration of size and availability of small businesses to operate the concession.

(2) Consider the concession opportunities available through all types of concession models.

(3) On concession opportunities that do not include ACDBE contract goals, require all concession models to provide subleasing opportunities of a size that small businesses, including ACDBEs, can reasonably operate. Concessionaires be required to demonstrate subleasing opportunities. They will notify Brownsville South Padre Island International Airport so they can conduct or support outreach activities to showcase the opportunity.

(4) Identify alternative concession contracting approaches to facilitate the ability of small businesses, including ACDBEs, to compete for and obtain direct leasing opportunities. Brownsville South Padre Island International Airport will allow short-term leases for “pop-up” locations, supported by the airport, concessionaires and the airport.

2. Definition

- ACDBE firms should be identified as eligible for participation in the small business element unless there is a micro-small business program element in place.
- Small business size standard should be consistent with 49 CFR § 23.33. Lower size limits may be feasible and could be advisable in some cases (e.g., as part of a tiered program).
- Personal Net Worth standards – should be consistent with 49 CFR Part 23 thresholds.
- Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

3. Verification

- Brownsville South Padre Island International Airport will diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.

4. Monitoring/Record Keeping

- Brownsville South Padre Island International Airport will track and monitor participation by ACDBEs and other small businesses that results from the implementation of this small business element. Participation will be reported annually as part of the Uniform Report of ACDBE Participation
- The information will be organized in the DBELO's office.
- SB element will be monitored annually.

5. Assurances

- This small business element is authorized under State law;
- Certified ACDBEs that meet the size criteria established under this element are presumptively eligible to participate therein element;
- There are no geographic preferences or limitations imposed on any concession opportunities included in this small business element;
- There are no limits on the number of concession opportunities awarded to firms participating in this element but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
- Brownsville South Padre Island International Airport will take aggressive steps to encourage those minority and women owned firms that are eligible for ACDBE certification to become certified; and
- This element is open to small businesses regardless of their location. There is no local or other geographic preference as part of this small business element.






BRO_ACDBE_Program_20240828

Final Audit Report

2024-12-17

| | |
|-----------------|--|
| Created: | 2024-12-17 |
| By: | Katrina Akau (katrina.akau@woolpert.com) |
| Status: | Signed |
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