

**Port of Oakland**  
**Airport Concession**  
**Disadvantaged Business Enterprise**  
**(ACDBE) Program**

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Port of Oakland  
530 Water Street  
Oakland, CA 94607

## **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

### **I. POLICY (Sections 23.23)**

The Port of Oakland (“Port”) is committed to a program for the participation of Airport Concession Disadvantaged Business Enterprises (“ACDBEs”) in Port concession related contracting opportunities (the “Program”) in accordance with 49 Code of Federal Regulations (C.F.R.) Part 23, effective April 21, 2005, as may be amended (“Regulations”). It is the policy of the Port to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of concession related contracting opportunities at the Port’s Oakland International Airport (the “Airport”). It is the intention of the Port to create a level playing field on which ACDBEs can compete fairly for concession related contracting opportunities.

The Board of Port Commissioners is responsible for establishing the ACDBE policy of the Port. The Executive Director of the Port is responsible to ensure adherence to this policy. The DBE Liaison Officer, who reports directly to the Deputy Executive Director, in coordination with the Executive Director and the Director of Aviation, is responsible for the development, implementation and monitoring of the ACDBE Program in a nondiscriminatory manner, as provided in Section I(D) below. It is the expectation of the Board of Port Commissioners and the Executive Director that all Port personnel shall adhere to the spirit, as well as the provisions and procedures of this Program.

This policy will be circulated to all Port personnel and to members of the business community that perform or are interested in performing work on Port concession related contracts. The complete ACDBE Program and the overall ACDBE goal analysis are available for review at the office of the Port’s DBE Liaison Officer, 530 Water Street, Oakland, CA 94607.

This policy will be submitted to the Federal Aviation Administration for approval pursuant to the Regulations. This policy will be modified by the Port to the extent required to obtain such approval.

If there are any questions or need for further information regarding this Program, please contact the Director of the Social Responsibility Division, Bernida Reagan, by telephone at (510) 627-1296 or by fax at (510) 451-1656.

**DATE:** August 23, 2005 \_\_\_\_\_

**JERRY A. BRIDGES**  
**Executive Director, Port of Oakland**

**A. Objectives (Section 23.1)**

The objectives of this Program are the following:

1. To ensure nondiscrimination in the Port’s award and administration of opportunities for concessions at the Airport;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions at the Airport;
3. To ensure that the ACDBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
4. To ensure that only firms meeting the eligibility requirements of this Program are permitted to participate as ACDBEs at the Airport;
5. To remove barriers to participation of ACDBEs in opportunities for concessions at the Airport;
6. To provide appropriate flexibility to the Port in establishing and providing opportunities for ACDBEs at the Airport;
7. To administer the Program in close coordination with the various divisions and departments within the Port so as to facilitate the successful implementation of this Program.

**B. Applicability (Sections 23.5 and 23.21)**

The Port, a recipient of federal financial assistance from the Federal Aviation Administration (“FAA”) of the United States Department of Transportation, is required to implement an ACDBE Program in accordance with the “Regulations, which are incorporated herein by this reference. The Program outlined herein applies to all Airport concessions, management agreements and other agreements covered by the Regulations (collectively “concession related contracts”). In the event of any conflicts or inconsistencies between the Regulations and this Program, the Regulations shall prevail.

**C. DEFINITIONS (Section 23.3)**

Any terms used in this Program that are defined in 49 C.F.R. 23.3 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

1. **Airport Concession Disadvantaged Business Enterprise (ACDBE)**

An ACDBE means a concession that is a for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

## **2. Car Dealership**

An establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pick-up trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized NAICS code 441110.

## **3. Concession**

One or more of the types of for-profit businesses listed as follows: 1) a business located on the Airport that is engaged in the sale of consumer goods or services to the public under an agreement with the Port, another concessionaire, or the owner or lessee of a terminal, if other than the Port. 2) a business conducting one or more of the following covered activities, even if does not maintain an office, store, or other business location on the Airport, as long as the activities take place on the Airport: management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the Airport, or a business that provides goods and services to concessionaires. The conduct of an aeronautical activity is not considered a concession.

## **4. Concessionaire**

A concessionaire is firm that owns and controls a concession or a portion of a concession.

## **5. Direct Ownership Arrangement**

A direct ownership arrangement is a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

## **6. Local Geographic Preference**

A local geographic preference is any requirement that gives an ACDBE located in one place (e.g., the Port's local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at the Airport.

**7. Indian Tribe**

An Indian tribe is any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation (as defined in the Regulations), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides.

**8. Management contract or subcontract**

A management contract or subcontract is an agreement with the Port or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the Port. The business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at the Airport, and be engaged in the sale of consumer goods or provision of services to the public.

**9. Material Amendment**

A material amendment is a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement (including, without limitation, the grant of additional options to renew) or a substantial increase in the scope of the concession privilege.

**10. Native Hawaiian**

A Native Hawaiian is any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

**11. Native Hawaiian Organization**

A Native Hawaiian Organization is any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians.

**12. Personal Net Worth**

Personal net worth is the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the following: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of \$3 million. An individual's personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse.

### **13. Small Business Concern**

A small business concern is a for-profit business that does not exceed the size standards of 49 CFR 23.23.

### **14. Socially and Economically Disadvantaged Individuals**

A socially and economically disadvantaged individual is any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- a. Any individual determined by the Port to be a socially and economically disadvantaged individual on a case-by-case basis.
- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  1. Black Americans (including persons having origins in any of the Black racial groups of Africa);
  2. Hispanic-American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
  3. Native-American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
  4. Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Pilau), or Vietnam;

5. Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
6. Woman; or
7. A member of any additional group whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration's designation becomes effective.

**15. Race-Neutral**

A measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

**16. Race-Conscious**

A measure or program that is specifically focused on assisting only ACDBEs, including women-owned ACDBEs. For the purpose of the Regulations, race-conscious measures include gender-conscious measures.

**D. Prohibited Discrimination (Section 23.9)**

The Port will never exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession related contracts on the basis of race, color, sex, or national origin.

In administering this Program, the Port 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 this Program with respect to individuals of a particular race, color, sex, or national origin.

The following nondiscrimination language will be included in all concession related contracts the Port executes with any firm after April 21, 2005:

This agreement is subject to the requirements of the US 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.

No material amendment to a concession related contract that was executed by the Port prior to April 21, 2005 shall be entered into by the Port without complying with the requirements of Section 23.71.

**E. Active Participants Directory (Section 23.23(a))**

The Social Responsibility Division shall refer interested persons to the Unified Certification Program (UCP) database for a list of all firms eligible to participate as ACDBEs in this Program. The UCP database includes every firm's name, address, phone number, type of work the firm has been certified to perform as an ACDBE. The UCP database is revised on a bi-weekly basis with updated information for contractors and the public to access at the following url address: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

**II. ADMINISTRATIVE REQUIREMENTS**

**A. Dissemination of Policy Statement (Section 23.23)**

The Port shall issue a signed and dated Policy Statement throughout the Port and to the business community, including ACDBEs and non- ACDBEs that perform work on concession related contracting opportunities. The entire Program will be posted on the Port's website at [www.portofoakland.com](http://www.portofoakland.com) and hard copies will be made available to the public upon request.

**B. Duties of the DBE Liaison Officer (Sections 23.23)**

Pursuant to 49 CFR 23.23, the Program shall be administered by the Disadvantaged Business Enterprise Liaison Officer ("DBE Liaison Officer"), who shall be appointed by and have direct access to the Executive Director of the Port on ACDBE issues. The DBE Liaison Officer will be the primary person responsible for implementing all aspects of this Program, and will work closely with all other divisions of the Port, including Legal, Aviation, and others who are responsible for making decisions relative to the Port's concession related contracting opportunities.

The DBE Liaison Officer's specific duties and responsibilities are attached as Exhibit A and incorporated herein.

The Director of Aviation is responsible for the implementation of the Program in coordination with DBE Liaison Officer.

### **C. Over-Concentration (Sections 23.25(c))**

If the DBE Liaison Officer determines that ACDBE participation is over-concentrated in certain types of work or contracting opportunities, the DBE Liaison Officer will develop appropriate measures to address the over-concentration. The DBE Liaison Officer will seek approval of such measures from the FAA and, at that time, the measures will become a part of this Program. Currently, the Port is unaware of any types of work or contracting opportunities that have an over-concentration of ACDBE participation.

## **III. DETERMINING, ACHIEVING GOALS AND COUNTING OVERALL ACDBE PARTICIPATION**

The Board of Port Commissioners shall establish separate overall three year goals for the participation of ACDBEs in rental car and non-rental car concession related contracting opportunities pursuant to the Regulations. The overall goal of the Port for rental car concessions shall be expressed as a percentage of the total value of vehicles and other goods and services purchased by the rental car concessions. The overall goal of the Port for non-rental car concessions shall be expressed as a percentage of their total gross receipts. The Port's overall goals represent the amount of ready, willing and able ACDBEs that are available to participate in contracting opportunities and are reflective of the amount of ACDBE participation the Port would expect absent the effects of discrimination. The Port intends to meet the goals to the maximum extent feasible through the race-neutral measures described in Section III(D)(1) below. Where race-neutral measures are inadequate to meet an overall goal, the Port will use race-conscious measures which may include establishing specific contract goals for particular projects with subcontracting opportunities. The Port shall require all businesses subject to ACDBE goals at the Airport (except rental car companies) to make a good faith effort to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs.

### **A. Methodology For Setting Overall ACDBE Goals (Section 23.51)**

The DBE Liaison Officer, in conjunction with the concessions manager and other appropriate Port staff, will conduct a thorough analysis of the relevant contracting markets in which the Port will solicit participation from all firms in applicable industries for the fiscal year. This analysis will include a description of geographical boundaries of the solicitations, the types of work to be contracted and any other indicators that the Port determines to be relevant in defining its contracting markets for the fiscal year. The DBE Liaison Officer will then determine the total available businesses according to the relevant contracting markets. The DBE Liaison Officer may consult a variety of sources including, but not limited to, the Port's Active Participants List, the US Census County Business Patterns Database and relevant disparity studies.

The DBE Liaison Officer will conduct a similar analysis to determine the ACDBEs that are available to participate in the projected contracts for the fiscal year. This analysis will include a description of the available ACDBEs relevant to the geographical boundaries of the solicitations,

the types of work to be contracted, and many other factors deemed relevant. The Port may consult a variety of sources including, but not limited to, the UCP database, the Port's Active Participants List, the US Census County Business Patterns Database, and relevant disparity studies.

To develop the base figure, the DBE Liaison Officer will compare the available ACDBEs in the relevant contracting market to the available businesses in the relevant contracting markets. This calculation may include a weighing factor according to contracting expenditure patterns.

The Port will develop the overall goal for non-rental car concessions based upon the availability of ACDBEs as a percentage of all non-rental car concessions gross receipts. For rental car concessions, the overall goal will be based on the availability of ACDBEs expressed as a percentage of vehicles and other goods and service purchases.

## **B. Projection of Percentage of Overall Goals to Be Achieved Through Race-Neutral and Race-Conscious Measures**

Once the overall goals are proposed, the DBE Liaison Officer will analyze and project the maximum feasible portion of each goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall goal, the remaining portion will be achieved by using race-conscious methods such as establishing contract goals for particular projects that have concession related contracting opportunities. The DBE Liaison Officer shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR 26.51-51 (see 49 CFR 23.25(e)(1)(iv)). When projecting the percentage of the overall goal to be achieved through establishing race-conscious methods, the DBE Liaison Officer shall analyze the actual achievement of the overall goal through race-neutral methods in the current and previous two years. When establishing race-conscious methods during the current fiscal year, the DBE Liaison Officer shall analyze the progress towards achieving the overall goal and increase or reduce the use of race-conscious methods accordingly.

## **C. Publishing and Adopting the ACDBE Goals and Methodology Report**

### **1. ACDBE Goals and Methodology Report**

The DBE Liaison Officer will prepare an ACDBE Goals and Methodology Report for concession related contracts for review by a DBE Review Committee made up of the Port's Social Responsibility Division Director, the Director of Aviation and the Port Attorney. The reports shall document the analysis and methodology, as well as the proposed goals and estimates to be achieved through race neutral-measures. The Committee shall review the report, upon the concurrence of the directors listed above and the Port Attorney, the DBE Liaison Officer shall furnish them to the Executive Director. Upon the Executive Director's approval and recommendation, the proposed overall three year goals will be submitted for public comment. In doing so, the DBE Liaison Officer shall notify all DBE resource and community organizations of the availability of the ACDBE Goals and Methodology Reports for review and comment, and of the Committee and Board meetings at which the ACDBE Goal and

Methodology Reports will be considered. Upon receipt of public comments, the DBE Liaison Officer will prepare a summary report analyzing the public comments and recommending any modifications to the overall goals or methodology and will furnish it to the DBE Review Committee for review and concurrence. The DBE Liaison Officer shall furnish the Executive Director with a final version of the ACDBE Goals and Methodology Report and present it to the Board of Port Commissioners for approval.

## **2. Adoption of the Total Overall Goals**

Following review of the ACDBE Goals and Methodology Report, the Board of Port Commissioners shall adopt separate three year goals for rental car and non-rental car concession related opportunities, which shall include a projection of the portion of the goals that can be achieved through race-neutral and race-conscious measures. Unless required by the Regulations to be submitted earlier, an ACDBE Goals and Methodology Report shall be submitted to FAA every three years from the first date of submission.

### **D. Achieving the Overall Goals (Section 23.25)**

The Port shall achieve the overall goals for ACDBE participation through a combination of race-neutral measures and race-conscious measures such as the establishment of contract goals for concession related contracting opportunities. The Port shall not use quotas or set-asides for ACDBE participation in the Program, which are prohibited by Section 23.61, or any local geographic preference, which is prohibited by Section 23.79.

#### **1. Race-Neutral Methods**

The Port intends to use race-neutral methods to the maximum extent feasible to achieve its overall goal. ACDBE participation that is obtained on contracts that have no specific ACDBE goal, or where ACDBE's status in awarding a contract is not considered shall be considered race-neutral ACDBE participation. In addition, the Port will use the following measures as appropriate:

- a. Structuring concession activities so as to encourage and facilitate the participation of ACDBEs when practical; and
- b. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the Port's ACDBE Program will affect the procurement process; and
- c. Assisting in overcoming limitations in bonding and financing through the Surety Bond and Financing/Loan Guarantee Program; and
- d. Providing technical assistance in orienting small business to concession and management opportunities at the Airport through the Internet and facilitating introductions to the Port's and other U.S. DOT recipients' contracting activities, through various Small Business Conferences and Hispanic Chamber, Black

- Caucus, Black Board of Trade and Commerce, and Asian Business Chamber sponsored events and conferences as well as monthly breakfasts and other outreach activities; and
- e. Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of ACDBEs; and
  - f. Ensuring the distribution of the California UCP Database to the widest feasible universe of potential concessionaires and management services contractors by listing the Caltrans website location in the RFPs/RFQs; and
  - g. Providing business development assistance through the Port's Surety Bond and Financing/Loan Guarantee Program, the Owner Controlled Insurance Program and referrals to the East Bay Small Business Development Center and other assistance agencies.

## **2. Race-Conscious Methods; Contract Goals**

Unless the Port determines that other race-conscious methods should be used, the Port shall establish contract-specific ACDBE participation goals when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The goals shall be established by the Port, and substantiated by information furnished by the DBE Liaison Officer. The contract-specific goal shall apply to the percentage of ACDBE participation calculated based on purchases of vehicles or other goods and services, for rental car concessions, and based on total gross receipts for non-rental car concessions, and shall be set forth in the RFQ/RFP solicitation's ACDBE Provisions. The Port is not required to establish a contract-specific goal for every contracting opportunity. For each contract the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

- (a) The projected portion of the overall goals that will be met by establishing contract-specific goals;
- (b) The progress toward achieving the overall goals;
- (c) The full range of activities in the proposed contract;
- (d) The availability of ACDBEs for the types of work involved in the performance of the proposed contract;
- (e) The unique conditions of the contract that might affect the ability of the concession related firm to coordinate, utilize or incorporate other concession related firms into the project;
- (f) The effect that the contract-specific goal might have on the time of completion; and

- (g) If the objective of the contract-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, the goal will be calculated as a percentage of the total estimated annual gross receipts from the concession; and
- (h) If the goal applies to purchases and/or leases of goods and services, the goal will be calculated 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; and
- (i) Concessions (except car rental companies), notwithstanding any of the above, shall make good faith efforts to explore all available options to meet goals to the maximum extent practicable, through direct ownership arrangements with ACDBEs; and
- (j) Any other relevant criteria.

**E. Awarding Contracts with Contract-Specific Goals**

Any proposed contractor that fails to demonstrate that it achieved the contract-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract.

**F. Eligibility of Proposals for Contract Award**

The DBE Liaison Officer shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 C.F.R. 26.53(b). Proposers who also meet the contract-specific ACDBE goal or demonstrates sufficient good faith efforts (a “responsive” proposer) shall be eligible for the contract award. Should the DBE Liaison Officer determine that additional information is needed to evaluate a proposer’s submission with regard to the ACDBE requirements, the DBE Liaison Officer shall request said proposer to submit the required information; or may contact the listed ACDBEs directly.

**G. Evaluation of ACDBE Certification Status**

The Port shall require that any ACDBEs listed by proposers for participation in the contract be certified as eligible ACDBEs by the California UCP. The DBE Liaison Officer shall review the Proposer’s ACDBE Report to confirm each firm’s certification status. The Port will accept ACDBE certifications according the California UCP MOU Article 5.

**H. Determination of Amount of ACDBE Participation**

The DBE Liaison Officer shall review the percentage of total estimated gross receipts (or the total estimated value of the purchases of vehicles and other goods and services for car rental

concessions) reported on the Proposer's ACDBE Report for accuracy and shall compare it to the contract-specific goal established for the contract.

**I. Determination of Good Faith Efforts**

If the amount of ACDBE participation does not meet the contract-specific goal, the DBE Liaison Officer shall review the good faith efforts report submitted by the proposer. The DBE Liaison Officer shall determine whether the proposer has made a good faith effort to meet the contract-specific goal in accordance with 49 CFR Part 23.25(e)1(iii) and (iv), and 49 CFR Part 26.53, which are incorporated herein.

**J. Proposer's Right to Administrative Reconsideration**

In the event that the DBE Liaison Officer determines that the proposer under review has not met the contract-specific goal and has not demonstrated good faith efforts, the DBE Liaison Officer will notify the proposer in writing. The notification shall include the reasons for the determination and that the proposer has the right, within the time period provided in the notification, to submit further written documentation or appear before the DBE Review Committee for reconsideration. The DBE Review Committee shall provide the proposer with a written decision on reconsideration, explaining the basis for its determination.

In the event that the DBE Review Committee finds that the proposer has not met the contract goal or demonstrated good faith efforts, the DBE Liaison Officer will recommend that said proposer be found not responsive and evaluate the other proposers to determine eligibility for contract award.

**K. ACDBE Substitution**

The Port will require that a prime concessionaire not terminate for convenience an ACDBE listed in the ACDBE Report and then perform the work of the terminated ACDBE by itself or by an affiliate without written prior consent of the Port. When an ACDBE is terminated or fails to complete its work on the contract for any reason, the prime concessionaire must make good faith efforts to find another ACDBE to substitute for the original ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same dollar amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated to the extent needed to meet the established contract goal. The Port will include in each prime concessionaire contract a provision for appropriate administrative remedies or default that the Port will invoke if the prime concessionaire fails to comply with these requirements, including the right to terminate the contract.

**L. Recommendation for Award**

Following the recommendation of the proposer, the DBE Liaison Officer shall prepare a report on the proposer's compliance with the ACDBE requirements for review by the Executive Director and for presentation to the Board of Port Commissioners at the time the contract award

is considered. The decision of the Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to the execution of the contract as approved by the Port Attorney.

**M. Counting and Tracking ACDBE Participation (Sections 23.53 and 23.55)**

ACDBE participation for rental car concessions will only be counted in accordance with the requirements of Section 23.53 of the Regulations. In doing so, the Port will count the entire amount of cost charged by an ACDBE for repairing vehicles and the fee or commission charged by an ACDBE to manage a car rental concession as long as the costs and fees are reasonable and not excessive as compared with fees customarily allowed for similar services. The Port will not count any fees paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty. Finally, for car rental concessions, the Port will count the participation of ACDBEs providing goods and services towards the Port's rental car concession goals.

ACDBE participation for non-car rental concessions will only be counted when it results from a "commercially useful function," as defined in 49 CFR 26.55(c), except that the requirements of 26.55(c)(3) do not apply to concessions. The total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE shall be counted towards the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, then none of the gross receipts earned by the non-ACDBE will be counted.

When an ACDBE performs as a subconcessionaire or a subcontractor for a non-ACDBE, only the portion of the gross receipts earned by the ACDBE under its subagreement will be counted. Moreover, when an ACDBE performs as a participant in a joint venture, only the portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces will be counted toward the ACDBE goals.

The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service will be counted, provided that the Port determines that it is reasonable and not excessive as compared with fees customarily allowed for similar services. The total cost of goods obtained from an ACDBE manufacturer and the total cost of goods purchased or leased from an ACDBE "regular dealer", as defined in 49 CFR 26.55(e)(2)(ii), will be counted towards the ACDBE goals.

Goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer will only be counted as follows:

a. The entire amount of fees or commissions charged for assistance in the procurement of the goods will be counted, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the goods themselves will be counted;

b. The entire amount of fees or transportation charges for the delivery of goods required for a concession will be counted, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

c. If a firm has not been certified as an ACDBE in accordance with the requirements of the Regulations, that firm's participation will not be counted toward ACDBE goals.

d. Work performed or gross receipts earned by a firm after its eligibility has been removed will not count toward ACDBE goals, unless the ACDBE firm certified as of April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of the Regulations during the performance of a contract or other agreement, for the remainder of the term of the contract or other agreement (but not extensions or renewals).

e. Costs incurred in connection with the renovation, repair or construction of a concession facility will not be counted.

f. The ACDBE participation of car rental companies will not be counted toward the non-rental car concession goals.

#### **IV. REQUIRED CONTRACT PROVISIONS (Section 23.29)**

The Port will include in all concession related contracts the language required by Section I(D) above, as well as the reporting requirements, enforcement mechanisms and other means the Port will require to ensure compliance (for specific provisions, see Exhibit B).

The Port has three full-time staff members who will devote the time necessary to monitor and enforce this Program.

#### **V. CERTIFICATION STANDARDS AND PROCEDURES**

##### **A. Unified Certification Program (Sections 23.31, 23.39 and 26.81)**

The Port is signatory to the Memorandum of Understanding (MOU) establishing the, California's statewide Unified Certification Program, a reciprocal regional ACDBE certification program. The Port of Oakland's Board of Port Commissioner's approved the Port's participation with the California UCP on June 4, 2002, resolution #02178. The Port utilizes the California's UCP database to find ACDBE certified firms, located at the following url:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

## **VI. MONITORING AND RECORDKEEPING**

### **A. Active Participants List (Section 23.51(c)(2))**

The Port will require all concession related contractors proposing on concession related opportunities to return, at the time of proposal due date (options apply as to the time this information is required so long as it is prior to the award of the contract), the following information about the contract participants:

- Firm name
- Firm address and telephone number
- Firm's status as an ACDBE or non-ACDBE
- Age of the firm
- Type of work
- Estimated gross receipts of the firm or estimated total contract value

The Port will use this information to maintain and update its Active Participants List (23.51(c)(2)). This list will be augmented by any concession expressing an interest in doing business at the Airport.

### **B. Monitoring Payments to ACDBEs (Sections 23.27 and 23.29)**

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Port or U.S. DOT. This reporting requirement is also extended to any certified ACDBE.

The Port may perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

The Port will also review the quarterly reports submitted by the concessionaires (see Exhibit B) to ensure that the ACDBE participation levels remain in compliance with the contract requirements. This information will be used to provide the statistical data for the achievement reports described below. If the Port determines that the concessionaires are not complying with the contract requirements regarding this program, the Port will implement the contract remedies specified below.

### **C. Reporting to U.S. DOT (Sections 23.21 and 23.27)**

The Port will continue to report ACDBE participation and overall goal setting methods to the FAA as directed. Statistical data will be maintained as prescribed on an annual basis to provide reports to the FAA reflecting the ACDBE participation on the Port's concession related

contracting. These reports will provide information on the Port's achievements in attaining ACDBE participation through race neutral and race conscious methods.

**D. Contract Remedies (Section 23.29)**

The Port will monitor compliance of its contractors on concession related contracts with the requirements of the Regulations and the Program. The Port may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to termination of the contract in whole or in part.

**VII. PUBLIC PARTICIPATION AND OUTREACH EFFORTS (Section 23.43)**

The Port's activities managing public participation and outreach efforts are directed at assisting the Port to solicit public input to set overall ACDBE participation goals.

In establishing overall ACDBE goals, the Port will provide for public participation. This will include:

a. Prior to finalizing the ACDBE Goals and Methodology Report, the Port will consult with the FAA, other FAA grantees, minority, women's and general contractor business groups, community organizations, trade associations representing concessionaires currently located at the Airport, existing concessionaires, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the Port's efforts to establish a level playing field for the participation of ACDBEs.

b. In conjunction with the Port's activities to meet its overall ACDBE goal, the Port will implement various public participation and outreach activities designed to broaden awareness of the ACDBE Program of the Port. The measures described in 49 C.F.R. § 23.25, focusing on race-neutral means will be actively pursued, and the Port will encourage its contractors to make similar outreach efforts to include ACDBE participation in concession related contracting opportunities. In conjunction with other FAA grant recipients and support organizations, the Port will continue to organize and offer training programs for meeting ACDBE eligibility requirements, familiarize potential contractors with Port procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of ACDBEs in the Port's contracting activities.

Exhibit A

**Disadvantaged Business Enterprise Liaison Officer's  
Duties and Responsibilities**

In accordance with 49 C.F.R. §§ 23.23(a) and 26.23 and Section II.B of this Program, the specific duties and responsibilities of the DBE Liaison Officer shall include, but not be limited to the following:

1. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall three year ACDBE goals for concession related contracts;
2. Developing, monitoring and evaluating the ACDBE Program, and preparing supplemental written procedures and guidelines to implement the Program;
3. Conducting race-neutral measures to facilitate the participation of small business concerns, including ACDBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means;\*
4. Participating in the contract proposal and award processes, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-proposal conferences and evaluating proposals for proposer responsiveness, responsibility and good faith efforts;
5. Monitoring specific contract performance and actual ACDBE participation and contract payments;\*
6. Monitoring overall ACDBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of ACDBE participation and reporting to the Executive Director, the Port Board of Port Commissioners , as needed;
7. Participating in the statewide Unified Certification Program in accordance with 49 C.F.R. § 26.81;\*
8. Assisting the Port's DBE Program Review Committee;\*
9. Participating in the Regional Airport Minority Advisory Committee annual conferences and other organizations working on common issues pertaining to the Program issues; and
10. Maintaining all appropriate records and documentation of the Program.

Note: Asterisk (\*) indicates new or revised responsibility in 49 C.F.R. Part 26.

## Exhibit B

### REQUIRED CONTRACT PROVISIONS

#### ACDBE PROGRAM

Listed below are the specific provisions that will be inserted into concession agreements and management contracts per 49 CFR 23.29.

- (a) Concessionaire has advised the Port that it will use the ACDBEs listed on attached Exhibit “ “ in providing the services described thereon. Concessionaire agrees that within 60 days after the expiration of each calendar quarter during the term of this Agreement, it will provide a report to the Port, in a form acceptable to the Port, describing the gross receipts of each such ACDBE described on attached Exhibit “ “ (and each substitute ACDBE obtained pursuant to paragraph (c) below), or in the case of a rental car concession, the dollar value of vehicles and other goods and services purchased by the Concessionaire from each such ACDBE, in each case calculated in accordance with the requirements of 49 CFR Part 23.
- (b) Concessionaire agrees that it will also submit within the same period described in (a) above a report to the Port, in a form acceptable to the Port, describing the Concessionaire’s total gross receipts for the entire contract, or in the case of a rental car concession, the total dollar value of vehicles and other goods and services purchased by the Concessionaire.
- (c) Concessionaire will have no right to terminate an ACDBE for convenience without the Port’s prior written consent. If an ACDBE is terminated by the Concessionaire with the Port’s consent or because of the ACDBEs default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR part 23.25(e)1(iii) and (iv), and 49 CFR part 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.
- (d) The Concessionaires breach of its obligations under (a), (b) or (c) above shall be a Default by Concessionaire under Section\_\_ (the default provisions) above and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Agreement.