BELLINGHAM INTERNATIONAL AIRPORT - Airport Concession Disadvantaged Business Enterprise (ACDBE) PROGRAM POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The Port of Bellingham (the "Port") has established this Airport Concession Disadvantaged Business Enterprise ("ACDBE") program for the Bellingham International Airport in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Port is the owner/operator of BLI, a primary commercial service airport and a recipient of federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Port has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Port 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 an equitable and non-discriminatory business environment in which ACDBEs can compete fairly for opportunities for airport concessions;
- 3. To ensure that the ACDBE program is structured in accordance with applicable law:
- 4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
- 5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
- 6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

The Airport's Terminal Operations Supervisor has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Terminal Operations Supervisor 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 Port in its financial assistance agreements with the Department of Transportation.

The Port has disseminated this policy statement to the Port of Bellingham Commission and all of the components of the organization. The Port has distributed this statement to ACDBE and non-ACDBE concessionaire communities in the area in Airport Newsletters, on the Port's website, and in Requests for Proposals for concessionaire opportunities at the Airport.

Rob Fix, Executive Director

1

SUBPART A - GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

The Port will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The Port is the owner/operator of a primary commercial service airport and is the sponsor of federal airport funds authorized for airport development after January 1988 as authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

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

In administering its ACDBE program, the 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 the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

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

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

- (1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it

enters and cause those businesses to similarly include the statements in further agreements."

Section 23.11 Compliance and Enforcement

49 CFR Part 23

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

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

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

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

The following enforcement actions apply to firms participating in the Port's ACDBE program:

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

- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. § 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Port's ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by the Port may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B - ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

Since Bellingham International Airport is a non-hub primary airport, the Port is required to have an ACDBE program.

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

Until the Port's new ACDBE program is submitted and approved, it will continue to implement its ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Bellingham International Airport.

When the Port makes significant changes to its ACDBE program, it will provide the amended program to the FAA for approval prior to implementing the changes.

į,

Section 23.23 Administrative Provisions

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

The Port's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): The Port has designated the following individual as its ACDBELO:

Jonathon Perout
Terminal Operations Supervisor
4255 Mitchell Way, Suite 206
Bellingham, WA 98226
360-671-5674 x206
jonathonp@portofbellingham.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Port complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Port's Executive Director and Director of Aviation 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 three fellow supervisors to assist in the administration of the program. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- 2. Reviews third party contracts and purchase requisitions for compliance with this program.
- 3. Works with all relevant divisions to set overall annual goals.
- 4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- 5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- 6. Analyzes the Port's progress toward attainment and identifies ways to improve progress.
- 7. Participates in pre-bid meetings.
- 8. Advises the Aviation Director and Port Executive Director on ACDBE matters and achievement.
- 9. Chairs the ACDBE Advisory Committee.

- 10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
- 11. Plans and participates in ACDBE training seminars.
- 12. Acts as liaison to the Uniform Certification Program (UCP) in the State of Washington.
- 13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
- 14. Maintains the Port's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The Port, through the 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 is available on the Washington State Office of Minority and Women's Business Enterprises ("OMWBE") website: https://omwbe.diversitycompliance.com.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The Port will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The Port's overall goal methodology and a description of the race-neutral and race-conscious measures it will use to meet the goals are established based on the schedule described in Subpart D of this document.

The Port will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f))

The Port will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25(g)).

Section 23.27 Reporting

The Port 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.

After adoption of this Plan, the Port will submit, to the FAA Regional Civil Rights Office, an annual ACDBE participation report no later than March 1 for the preceding Federal Fiscal Year.

Section 23.29 Compliance and Enforcement Procedures

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

- 1. The Port will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- 2. The Port will monitor and enforce work committed to ACDBEs at contract award and ensure that work is actually performed by ACDBEs. Actual ACDBE attainments will be tracked via spot checks of monthly sales reporting on no less than a quarterly basis.
- 3. We will keep a written certification on file showing that we have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at the Airport for the purpose of determining compliance with all requirements of 49 CFR Part 23.
- 4. In our reports of ACDBE participation to the FAA, the Port will show both commitments and attainments as required by the DOT reporting form.

SUBPART C - CERTIFICATION AND ELIGIBILITY

Section 23.31 Certification

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

The OMWBE is the UCP that certifies ACDBE firms for the Port's concession program. The UCP's directory of eligible DBEs specifies whether a firm is certified as an ACDBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

The Port will review ACDBEs on an annual basis to ensure that they are currently certified as an ACDBE by the OMWBE.

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

Section 23.35 Eligibility

The Personal Net Worth ("PNW") standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

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

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

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

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

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

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not perform work relevant to our concessions program. (23.37)

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b))

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d))

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i))

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e))

We will use the Uniform Application Form found in Appendix F to part 26 with additional instruction as stated in 23.39(g).

49 CFR Part 23 September 4, 2018

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The Port 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. The Port will report any significant overall goal adjustments to the FAA.

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

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

Section 23.43 Consultation in Goal Setting

The Port will consult 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 its overall goals, the Port will identify the stakeholders that were consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

The sponsor is the owner/operator of Bellingham International Airport, a non-hub primary airport as of Calendar Year 2018. Because the Airport was still classified as a small hub airport in 2017, the Port is required to submit goals for FAA fiscal year 2019. Beginning for FAA Federal fiscal year 2020, as a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Non-Hubs	All regions	October 1, 2019	2020/2021/2022	October 1, 2022 (2023/2024/2025)

If a new concession opportunity arises during a period of 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 its overall goal to the FAA Civil Rights Office for approval, no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

The Port as sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship).

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

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

This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

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

49 CFR Part 23

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

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

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

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

If the concession specific goal applies to purchases and/or leases of goods and services, the Port will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to

49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the Port's concession specific goals. Specifically,

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

The ACDBELO is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

The Port will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before the Port commits to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

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

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

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

Administrative reconsideration (26.53(d))

Within 5 days of being informed by the Port that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official:

Sunil Harman, Director of Aviation 4255 Mitchell Way, Suite 206 Bellingham, WA 98226 360-671-5674 sunilh@portofbellingham.com 49 CFR Part 23 September 4, 2018

The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

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

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

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

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

If the concessionaire continues to fail to comply, the Port may issue a termination for default of Agreement.

Sample Proposal/Bid Specification:

The requirements of 40 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the Port and Bellingham 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.

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.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program at Bellingham International Airport actively encourages small, local, and disadvantaged business participation in the Airport's concession opportunities. Eligible companies can become certified as an ACDBE. Applications for certification can be made through the Washington State Office of Minority and Women's Business Enterprises at www.omwbe.wa.gov or toll free at (866) 208-1064. Please note in your proposal if your operation includes ACDBE participation.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

The Port will count ACDBE participation toward overall goals for car rentals as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57(b) Goal shortfall accountability

If the awards and commitments on the Port's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, it will:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems that have been identified in the analysis to enable the Port to fully meet its goal for the new fiscal year;
- (3) As an airport that does not meet the criteria of 49 CFR 23.57(b)(3)(i), the Port will retain analysis and corrective actions in the Port's records for three years and make it available to the FAA, on request, for their review.
- (4) The Port understands the FAA may impose conditions as part of its approval of the Port's analysis and corrective actions including, but not limited to, modifications to the Port's overall goal methodology, changes in the Port's race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- (5) The Port understands it may be regarded as being in noncompliance with this part, and therefore subject to the remedies in section 23.11 of this part and other applicable regulations, for failing to implement the Port's ACDBE program in good faith if any of the following things occur:
 - (i) The Port does not submit its analysis and corrective actions to the FAA in a timely manner as required under Paragraph (3) of this section;
 - (ii) The FAA disapproves the Port's analysis or corrective actions; or
 - (iii) The Port does not fully implement:
 - (A) The corrective actions to which it has committed; or
 - (B) Conditions that the FAA has imposed following review of the Port's analysis and corrective actions.
 - (C) If information coming to the attention of the FAA demonstrates that current trends make it unlikely that the Port, as Bellingham International Airport, will achieve ACDBE awards and commitments that would be necessary to allow the Port to meet its overall goal at the end of the fiscal year, the FAA may require the Port to make further good faith efforts, such as modifying its 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

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

SUBPART E - OTHER PROVISIONS

Section 23.71 Existing Agreements

The Port will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. It will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.75 Long-Term Exclusive Agreements

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

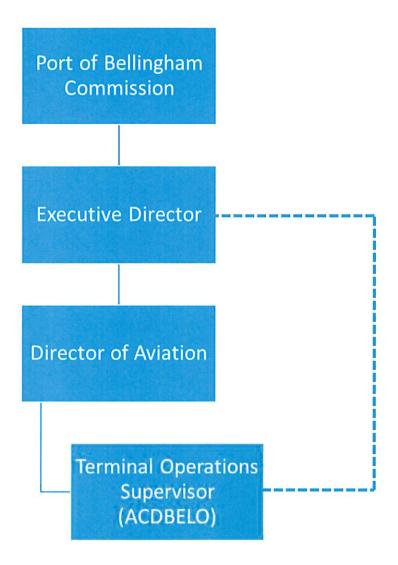
Section 23.79 Geographic Preferences

The Port will not use a "local geographic preference", i.e., any requirement that gives an ACDBE located in Washington an advantage over ACDBEs from other places in obtaining business as, or with, a concession at Bellingham International Airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Washington State ACDBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Demonstration of Good Faith Efforts
Attachment 5	ACDBE Certification Application
Attachment 6	Regulations: 49 CFR Part 23

Attachment 1
Organizational Chart



Attachment 2

Washington State ACDBE Directory

The current ACDBE directory can be found at: https://omwbe.diversitycompliance.com.

Attachment 3

Monitoring and Enforcement Mechanisms

The Port has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, breach of contract action, pursuant to the terms of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:

- 1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200
- 2. Enforcement action pursuant to 49 CFR part 31; and
- 3. Prosecution pursuant to 18 USC § 1001.

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

1. The Port will insert the following provisions into concessions agreements after approval of this Program:

It is the policy of the Port to support participation of ACDBEs, as defined in 49 CFR Part 21, in concession activities at the Airport. To the extent Concessionaire is required to operate the Premises, or a portion thereof, as or through an ACDBE, Concessionaire agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Concessionaire is a certified ACDBE. Likewise, at all times during the term of this Agreement, Concessionaire shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, and rules and regulations and shall timely file any and all applications, together will supporting documentation, necessary to maintain such certification. In the event that Concessionaire is certified as an ACDBE and that certification is necessary to satisfy the requirements of this section, prior to any change in ownership, control or organization of Concessionaire, Concessionaire shall (in addition to any requirements that may be imposed by other parts of this Agreement) similarly obtain ACDBE certification for Concessionaire as so changed and provide the Port with proof of the same. If Concessionaire shall at any time cease to be so certified, the Port may, at its sole option, terminate this Agreement on not less than ninety (90) days advance written notice to Concessionaire. In the event the Concessionaire satisfies the requirements of this Section through subtenants, a joint venture partner, or a contractor, the same requirements shall apply with respect to such subtenant, joint venture partner, or

contractor, specifically including the potential consequences as to the loss of certification.

It is the policy of the Port to ensure that ACDBEs, as defined in 49 CFR Part 23 and other small businesses have an equal opportunity to receive and participate in DOT-assisted contracts. The Port encourages Concessionaire to make every reasonable effort to maximize the contracting opportunities for ACDBEs and other small businesses in the architectural, engineering and construction of the Premises, and in the procurement of goods and services necessary for the operation of the concession at the Airport.

The Port will regularly review revenue reports to access ACDBE participation, as reported as provided by concessionaires.

- 2. The Port will verify, on an annual basis, the status of the ACDBEs certification eligibility with the OMWBE.
- 3. The ACDBELO will maintain records of ACDBE participation in monthly Airport Stakeholder meetings held by the Port's Aviation Division.

Attachment 4

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

The undersigned bidder/offeror has satisfied the r specification in the following manner (please chec	
The bidder/offeror is committed to a utilization on this contract.	minimum of % ACDBE
The bidder/offeror (if unable to meet committed to a minimum of% ACDBE submitted documentation demonstrating go	utilization on this contract and
Name of bidder/offeror's firm:	•
State Registration No.	
By	Title
(Signature)	Title

49 CFR Part 23 September 4, 2018

FORM 2: LETTER OF INTENT Name of bidder/offeror's firm: Address: City: _____ State: ____ Zip: ____ Name of ACDBE firm: Address: _____ City: ______ State: ____ Zip: ____ Telephone: Description of work to be performed by ACDBE firm: ______ -----_____ The bidder/offeror is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$ _____. Affirmation The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above. Ву ___ (Title) If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each ACDBE subcontractor.)

25

Attachment 5

ACDBE Certification Application Form

ACDBE Certification may be obtained on the OMWBE website at https://omwbe.diversitycompliance.com.

Attachment 6

Regulations: 49 CFR Part 23

49 CFR Part 23 can be found at the <u>Government Publishing Office's website</u>. A copy may also be obtained from the Airport Administration Office. Request a copy by calling 360-671-5674 x7 or by stopping by the Airport Administration Office during regular business hours.