

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>* see below</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No: Fund _____ Department _____ Unit _____ RSRC _____
 Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact.

C. Departmental Fiscal Review: C. M. Sumner

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 N. Dixon 8/13/12
 OFMB
 8/9/12
 8/5/12

 Dr. J. Jacobson 8/16/12
 Contract Dev. and Control
 8-16-12 B. Check

B. Legal Sufficiency:

 Anne Welymont 8/17/12
 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION NO. R-2012-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING AN AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR THE PALM BEACH COUNTY DEPARTMENT OF AIRPORTS; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO MAKE ADJUSTMENTS TO THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Palm Beach County ("County"), through its Department of Airports ("Department"), owns and operates the Palm Beach International Airport, Palm Beach County Park Airport, Palm Beach County Glades Airport, and the North County General Aviation Airport (hereinafter collectively referred to as the "Airports"); and

WHEREAS, the County has accepted financial assistance from the United States Department of Transportation for the development and improvement of the Airports, and as a condition of receiving this assistance, the County has signed assurances that it will comply with 49 CFR Part 23; and

WHEREAS, the County is required to adopt an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program pursuant to 49 CFR Part 23.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. ACDBE Program.

The Board of County Commissioners ("Board") hereby adopts the ACDBE Program attached hereto as Attachment "1" ("ACDBE Program") and authorizes the County Administrator or his designee to execute the Policy Statement set forth in the ACDBE Program and transmit the ACDBE Program to the Federal Aviation Administration for approval. The Director of the Department of Airports shall be considered a designee of the County Administrator for purposes of this Resolution.

Section 2. Administration of ACDBE Program.

Except as otherwise directed by the County Administrator, the Department of Airports shall be responsible for the administration and implementation the ACDBE Program on behalf of the County, which shall include submission of required reports and goals to the Federal Aviation Administration. The County Administrator or his designee shall be authorized to make adjustments to the ACDBE Program from time to time to ensure compliance with 49 CFR Part 23; document changes in Departmental procedures or polices; or as otherwise required or recommended by the Federal Aviation Administration, the Unified Certification Program for the State of Florida, or applicable federal regulations, policies, guidance documents, or orders. Any changes to the ACDBE

Program shall be filed in the Minutes of the Clerk of the Board and be subject to approval by the Federal Aviation Administration as provided in 49 CFR Part 23.

Section 4. Severability.

If any section, paragraph, sentence clause or word of this Resolution is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Resolution.

Section 5. Repeal of Conflicting Resolutions. Any prior resolutions in conflict with this Resolution shall be repealed to the extent of such conflict.

Section 6. Effective Date.

This Resolution shall be effective upon adoption.

(Remainder of page intentionally left blank.)

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

The Chairman thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2012.

- Commissioner Shelley Vana, Chair -
- Commissioner Steven L. Abrams, Vice-Chairman -
- Commissioner Karen T. Marcus -
- Commissioner Paulette Burdick -
- Commissioner Burt Aaronson -
- Commissioner Jess R. Santamaria -
- Commissioner Priscilla A. Taylor -

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Anne Delgant
Assistant County Attorney

ATTACHMENT "1"
ACDBE PROGRAM



PALM BEACH COUNTY DEPARTMENT OF AIRPORTS

Palm Beach International Airport

Airport Concession Disadvantaged Business Enterprise Program

Revision Date: September 2012

**Airports Business Affairs Division
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Phone: (561) 471-7403/Fax (561) 471-7427**

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

Palm Beach County (the "County"), a political subdivision of the State of Florida, owns and operates the Palm Beach International Airport ("PBIA"). The County, by and through its Department of Airports (the "Department"), 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 (this "Program" or "ACDBE Program"). PBIA is a primary airport and has received federal funds authorized for airport development. The County has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Department to ensure that ACDBEs, as defined in 49 CFR Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also the Department's policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions at PBIA;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the eligibility standards of 49 CFR Part 23 are permitted to participate as ACDBEs at PBIA;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at PBIA; and
6. To provide appropriate flexibility to PBIA in establishing and providing opportunities for ACDBEs.

The Deputy Director of the Department's Airports Business Affairs Division has been designated as the DBE Liaison Officer for the Department and will be responsible for implementing all aspects of this Program in that capacity. Implementation of this Program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the Department of Transportation.

The Department has disseminated this policy statement to the Palm Beach County Board of County Commissioners and all of the components of the organization. The Department will make this statement available to ACDBE and non-ACDBE concessionaire communities in Palm Beach County.

Director, Department of Airports

Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

The objectives are found in the Policy Statement on the first page of this Program.

Section 23.3 Definitions

The Department has adopted the definitions contained in Section 23.3 for this Program. Unless context indicates otherwise, the term "Section" shall refer to sections of 49 CFR Part 23 and 49 CFR Part 26; the term "Part 23" shall refer to 49 CFR Part 23; and the term "Part 26" shall refer to 49 CFR Part 26. For purposes of this Program, the "Department" shall have the meaning set forth in the Policy Statement and "DOT" shall refer to the United States Department of Transportation. The term "DBE Program" shall refer to the Department's Disadvantaged Business Enterprise Program established in accordance with 49 CFR Part 26 on January 24, 2012 (County Resolution No. R-2012-0059).

Section 23.5, 23.21 Applicability

PBIA is a primary airport and the recipient of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code. The County, by and through the Department, also owns and operates the following general aviation airports: the North County General Aviation Airport, the Palm Beach County Park Airport and the Palm Beach County Glades Airport. No concession activities occur at the general aviation airports; therefore, this Program does not apply to these airports. Notwithstanding the foregoing, the Department will make appropriate outreach efforts to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity at the general aviation airports.

Section 23.9 Non-discrimination Requirements

The Department 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 accordance with applicable County ordinances, concessionaires are also prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity and expression.

In administering its ACDBE Program, the Department 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 Department acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE grant assurances.

The Department 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 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 statement in further agreements.

Section 23.11 Compliance and Enforcement

The Department will comply with and is subject to the provisions of 49 CFR Parts 23 and 26. The Department understands that failure to comply with the requirements of 49 CFR Parts 23 and 26 may subject the Department to enforcement action under §26.105 or appropriate program sanctions, such as suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until the deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122, and regulations implementing them.

The Department understands that any person who knows of a violation of 49 CFR Part 26 by a recipient of Federal Aviation Administration ("FAA") funds may file a complaint under 14 CFR Part 16 with the FAA Office of Chief Counsel.

The Department acknowledges that the enforcement actions provided under 49 CFR § 26.107, as now or hereafter amended, apply to firms participating under this Program.

Section 23.21 ACDBE Program

PBIA is a medium hub primary airport subject to the requirements of 49 CFR Part 23. Accordingly, the Department acknowledges that it is required to maintain an ACDBE program for PBIA. When the Department makes any significant changes to this Program, the Department will provide the amended program to the FAA for approval before implementing the changes.

Section 23.23 Administrative Provisions

The Department is committed to operating this Program in a nondiscriminatory manner. The Department's Policy Statement can be found on the first page of this Program.

The Department has designated the following individual as its ACDBE Liaison Officer (DBELO):

Laura Beebe, Deputy Director
Airports Business Affairs Division
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Phone: (561) 471-7403/Fax (561) 471-7427
E-mail: laura.beebe@pbia.org

In that capacity, the DBELO is responsible for implementing all aspects of the ACDBE Program managed by the Department and ensuring that the Department complies with all provisions of 49 CFR Part 23. The DBELO has direct, independent access to the County Administrator concerning matters related to this Program. The current organizational chart displaying the DBELO's position in the organization is found in Exhibit "A" to this Program.

The DBELO is responsible for developing, implementing and monitoring this Program, in coordination with other appropriate officials. The DBELO has an adequate staff to assist in the administration of this Program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.

2. Reviews third party contracts and purchase requisitions for compliance with this Program.
3. Sets overall and contract goals in accordance with 49 CFR Part 23 for the Department.
4. Ensures that bid notices and requests for proposals are available to ACDBEs.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals).
6. Analyzes the Department's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-solicitation meetings.
8. Advises the Department Director on ACDBE matters and achievement.
9. Provides ACDBEs with information and assistance as requested.
10. Participates in ACDBE training seminars.
11. Acts as liaison to the Uniform Certification Program for the State of Florida ("UCP").
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

The Florida Department of Transportation maintains a directory identifying all firms eligible to participate as ACDBEs as part of the Florida Unified Certification Program (the "DBE Directory"). The DBE Directory lists the firm's name, address, telephone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The DBE Directory is updated by the certifying members of the Florida Unified Certification Program and is available on the internet at:

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>.

Certifying members are required to update the DBE Directory regularly and list each type of work for which a firm is eligible to be certified by using the most specific NAICS code(s) available to describe each type of work.

The DBE Directory can be sorted by NAICS code, work location and physical location. Interested parties may contact the Equal Opportunity Office at 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747 to obtain a current copy of the DBE Directory.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The Department will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities:

1. The Department will identify opportunities for ACDBEs on concession and management agreements in accordance with the requirements of 49 CFR Part 23.
2. The Department will review the contract size, term and specifications to ensure that ACDBEs will have an equitable opportunity to compete for concession opportunities.

3. The Department will not, directly or through contractual or other arrangements, use criteria or methods of administration that are likely to have the effect of defeating or substantially impairing accomplishment of this Program.
4. The Department will include the assurances set forth in 49 CFR § 23.9 in all concession and management agreements that it executes.

The Department 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.

The Department's ACDBE goals shall be set in a manner consistent with the requirements of 49 CFR Part 23, Subpart D. The Department's overall goal methodology for goal period of October 1, 2011 through September 30, 2014 can be found in the following reports "Overall ACDBE Goal Setting Methodology for Concessions other than Car Rentals" and "Overall ACDBE Goal Setting Methodology for Car Rental Concessions" approved by the FAA on October 5, 2011 (the "Goal Reports"). The Goal Reports further detail the race-neutral measures the Department will take to meet its overall goals. Copies of these reports will be made available to interested parties upon request to the DBELO.

If the Department projects that race-neutral measures, standing alone, will not be sufficient to meet the overall goals, it will use race-conscious measures as described in 49 CFR § 23.25(e) and the Goal Reports.

The Department will require businesses subject to ACDBE goals at PBIA (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. The Department will not use set-asides or quotas as a means of obtaining ACDBE participation.

Section 23.27 Reporting

The Department will retain sufficient basic information about implementation of this Program, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine compliance with 49 CFR Part 23. This data will be retained for a minimum of three (3) years following the end of the concession agreement or other covered contract.

On or before March 1st of each year, the Department will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of 49 CFR Part 23, covering the preceding fiscal year (October 1st through September 30th).

Section 23.29 Compliance and Enforcement Procedures

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

1. The Department will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with this Program, so that DOT can take the appropriate 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).
2. If the Department has reason to believe that a concessionaire is in violation of this Program, the Department may, in addition to pursuing any other available legal remedy, terminate the concession agreement or suspend the concessionaire from proposing or bidding on future solicitations, unless concessionaire demonstrates its compliance with the terms of this Program or its good faith efforts to comply.

3. The Department will adopt policies and procedures for the implementation of appropriate mechanisms to ensure compliance with the requirements of 49 CFR Part 23 by all participants in this Program, which shall include provisions to be included into concession and management agreements, monitoring and enforcement procedures to verify the work committed to ACDBEs is actually performed by the ACDBEs. The current policy can be found in Exhibit "B", as may be amended from time to time by the Department.
4. In the Department's reports to the FAA, the Department will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION, ELIGIBILITY, DENIAL AND REMOVAL OF CERTIFICATION

Sections 23.31 – 23.39 Certification Process

Certification

The County is a member of the UCP administered by the Florida Department of Transportation. The Florida Unified Certification Program Agreement was approved by DOT on March 25, 2004. The Agreement and subsequent Procedure Memoranda are maintained by the Florida Department of Transportation.

Except as provided in 49 CFR § 23.31, the Department will use the procedures and standards of 49 CFR Part 26 and the Department's DBE Program to certify ACDBEs to participate in its concession program and such standards are incorporated herein as long as the Department remains a certifying member of the UCP. In the event the Department becomes a non-certifying member of the UCP, the provisions of this Program set forth in this Subpart C related to certification, eligibility, denial and removal of certification shall no longer be applicable.

The Department will charge reasonable application fees for processing certification and continuing eligibility applications consistent with the fees established for the DBE Program. No additional fee will apply to a request to certify a currently certified DBE firm as an ACDBE.

Eligibility

1. The DBE Directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of 49 CFR Part 26 and/or as an ACDBE for purposes of 49 CFR Part 23.
2. The Department reviews the following information annually on all currently certified ACDBEs: (i) Affidavit of Continuing Eligibility; (ii) personal net worth statement, and (iii) the previous year's business and personal tax returns.
3. The Department will use the size standards set forth in 49 CFR § 23.33 to determine the eligibility of ACDBEs.
4. The Department will use the personal net worth standard set forth in 49 CFR § 23.35 and will recognize the exclusions to personal net worth set forth in 49 CFR § 23.3.
5. The Department will presume that a firm that is certified as a DBE under 49 CFR Part 26 is eligible to participate as an ACDBE; provided that the personal net worth standard set forth in 49 CFR § 23.35 is also satisfied. Before certifying such a firm, the Department will ensure that the disadvantaged owners are able to control the firm with respect to its activity in the concessions program. In addition, the Department

acknowledges that it is not required to certify a firm certified under 49 CFR Part 26 as an ACDBE if the firm does not do work relevant to an airport concessions program.

6. The Department acknowledges that the provisions of 49 CFR § 26.83(c)(2) through (c)(6) do not apply to ACDBE certification under 49 CFR Part 23 and will utilize the provisions of 49 CFR § 23.39 in determining whether a firm is eligible to participate as an ACDBE.
7. The Department acknowledges that the term "prime contractor" for purposes of 49 CFR Part 23 includes a firm holding a prime contract with an airport concessionaire to provide goods and services to the concessionaire or a firm holding a prime concession agreement with a recipient.
8. The Department understands that, with respect to firms owned by Alaska Native Corporations ("ANC") the provisions of 49 CFR § 26.73(i) do not apply under 49 CFR Part 23 and that the eligibility of ANC-owned firms is governed by 49 CFR § 26.73(h).
9. In instances when the eligibility of a firm is removed after the firm has entered into a concession agreement because the firm has exceeded the size standard or the owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible ACDBE, the Department will continue to count the concessionaire's participation toward the ACDBE goals during the remainder of the term of the current concession agreement. The Department will not count the firm's participation toward the ACDBE goals beyond the termination date of the concession agreement in effect at the time of decertification (e.g., in the case where the agreement is extended, or an option for continued participation beyond the current term of the agreement is exercised).
10. The Department will utilize the Uniform Application Form found in Appendix F of 49 CFR Part 26, subject to the provisions of 49 CFR § 23.39(g).
11. The Department will utilize the certification standards of 49 CFR Part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Denial and Removal of Certification

The Department will utilize the policies and procedures set forth in the Department's DBE Program in the event the Department denies a firm's application for certification or removes the firm's eligibility to participate in the ACDBE program.

Certification Appeals

The Department will utilize the policies and procedures set forth in the Department's DBE Program for the appeal of ACDBE certification decisions.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The Department will establish separate overall ACDBE goals for car rentals and for concessions other than car rentals. The overall goals will cover a three-year period and the Department will review the overall goals annually to make sure that the goals continue to fit the Department's circumstances appropriately. The Department will report any significant adjustments to the overall goals to the FAA. The Department's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation with Stakeholders

The Department will consult with stakeholders prior to submitting its overall goals to the FAA. Stakeholders will include minority and women's business groups, community organizations, trade associations representing concessionaires located at PBI as well as existing concessionaires, 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 Department's efforts to increase participation of ACDBEs.

Section 23.45 Overall Goal Submission

PBI is a medium hub primary airport. The Department will submit its overall goals for PBI on or before October 1 every three (3) years in accordance with the schedule set forth in § 23.45. The Department will submit its next overall goal reports on or before October 1, 2013 for fiscal years 2014, 2015 and 2016.

If a new concession opportunity arises at a time that falls between the normal submission dates above, and the estimated annual gross revenues are anticipated to be Two Hundred Thousand Dollars (\$200,000) or more, the Department will submit an appropriate adjustment to its overall goal to the FAA for approval at least six (6) months before executing a new concession agreement.

Sections 23.47, 23.49, 23.51 Setting Overall Goals

The Department will establish its overall goals in accordance with the requirements of 49 CFR Part 23, including 49 CFR § 23.47, 23.49 and 23.51. A description of the methodology used to calculate the Department's most recent overall goals can be found in the Goal Reports, including the breakout of estimated race-neutral and race-conscious participation.

Section 23.25 Concession Specific Goals

The Department will meet the maximum feasible portion of the overall goals by using race-neutral means of facilitating ACDBE participation, which may include locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires; notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate; when practical, structuring concession activities so as to encourage and facilitate participation of ACDBEs; ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how this Program will affect the procurement process; and providing information concerning the availability of ACDBEs to competitors to assist them in obtaining ACDBE participation.

Concession specific goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means. The Department will establish concession specific goals only on those concessions that have direct ownership arrangement (except car rentals), sublease or subcontracting possibilities. The Department acknowledges that it need not establish a concession specific goal on every such concession and that the size of the concession specific goals will be adapted to the circumstances of each concession (e.g., type and location of concession, and availability of ACDBEs).

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the Department will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

If the concession specific goal applies to purchase and/or leases of goods and services, the Department will calculate the goal by dividing the estimated dollar value of such purchase and/or leases from ACDBEs by the total estimated dollar value of all purchase to be made by the concessionaire.

Section 23.25 Good Faith Efforts

Demonstration of Good Faith Efforts (Sections 23.25; 26.53)

To be eligible to be awarded a concession that has a concession specific ACDBE goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so by either obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26. The Department acknowledges that the procedures set forth in 49 CFR § 26.51 and § 26.53, regarding contract goals apply to the Department's concession specific goals.

The Airports Business Affairs Division staff will be responsible for determining whether a bidder/offeror, who has not met the concession specific goal, has documented sufficient good faith efforts to be regarded as responsive.

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

Solicitation Documents (Section 26.53)(a) – (c)

The Department treats a bidder/offeror's compliance with good faith effort requirements as a matter of responsibility prior to committing to the performance of the concession agreement by the bidder/offeror.

Each solicitation for which a concession specific goal has been established will require the successful bidder/offeror to submit the following information prior to contract award:

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 an ACDBE subcontractor whose participation it submits to meet a concession specific 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 concession specific goal is not met, evidence of good faith efforts.

Administrative Reconsideration (Section 26.53(d))

Within five (5) days of being informed by the Department that a bidder/offeror is not responsible because it has not documented sufficient good faith efforts, the bidder/offeror may request administrative reconsideration in writing to the following: Palm Beach County Office of Small Business Assistance, 50 South Military Trail Ste. 209, West Palm Beach, FL 33415. The Office

of Small Business Assistance ("OSBA") will designate a staff member knowledgeable of 49 CFR Parts 23 and 26 to be the reconsideration official.

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. OSBA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror 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 DOT.

Replacement of ACDBE Firms (Section 26.53(f))

Prime concessionaires will not be permitted to terminate an ACDBE that was included in the prime concessionaire's bid/offer (or an approved substitute ACDBE firm) without the Department's prior written consent. This includes, but is not limited to, instances in which the prime concessionaire seeks to perform work originally designated for an ACDBE subcontractor with its own forces or those of an affiliate, a non-ACDBE firm or another ACDBE firm. The Department will only provide written consent if it agrees that the prime concessionaire has good cause to terminate the ACDBE firm as provided in Section 26.53(f).

Before transmitting the request to terminate and/or substitute an ACDBE, the prime concessionaire will be required to give notice in writing to the ACDBE, with a copy to the Department, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concessionaire will be required to give the ACDBE five (5) days to respond to the prime concessionaire's notice and advise the Department and prime concessionaire of the reasons, if any, why it objects to the proposed termination of its contract and why the Department should not approve the prime concessionaire's action. If required in a particular case as a matter of necessity, such as safety, the Department may provide a response period of less than five (5) days.

In addition to post-award terminations, these provisions shall apply to pre-award deletions or substitutions of ACDBE firms put forward by bidders/offerors in negotiated procurements.

Failure to comply with these requirements shall be considered a default of the concession agreement, entitling the County to exercise all legal remedies available under the contract and at law.

Section 23.53 Counting ACDBE Participation Car Rental Goals

The Department will count ACDBE participation toward overall and contract goals for car rental concessions as provided in 49 CFR 23.53.

Section 23.55 County ACDBE Participation for Concessions Other than Car Rentals

The Department will count ACDBE participation toward overall and contract goals for concessions other than car rentals as provided in 49 CFR 23.55.

Section 23.57 Failure to Meet Overall Goals

If the awards and commitments shown on the Department's Uniform Report of Awards and Commitments and Payments at the end of the fiscal year are less than the overall goal applicable to that fiscal year, the Department will do the following in order to be regarded as implementing the ACDBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the Department's awards and commitments in that fiscal year.
2. Establish specific steps and milestones to correct the problems the Department has identified in its analysis.

If required, the Department will submit the analysis and corrective actions to the FAA for approval. The Department will retain copies of the analysis and corrective actions, if any, in its records for three (3) years.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Sections 23.11, 26.109 Confidentiality

The Department will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Department will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Section 23.75 Long-term Exclusive Agreements

The Department will comply with the provisions of 49 CFR § 23.75, related to long-term exclusive leases.

Section 23.79 Geographic Preferences

The Department will not use a local geographic preference in the award of concessions.

EXHIBITS

Exhibit "A"	Organizational Chart
Exhibit "B"	DOA PPM # AF-F-36

Exhibit "A" to ACDBE Program
Organizational Chart

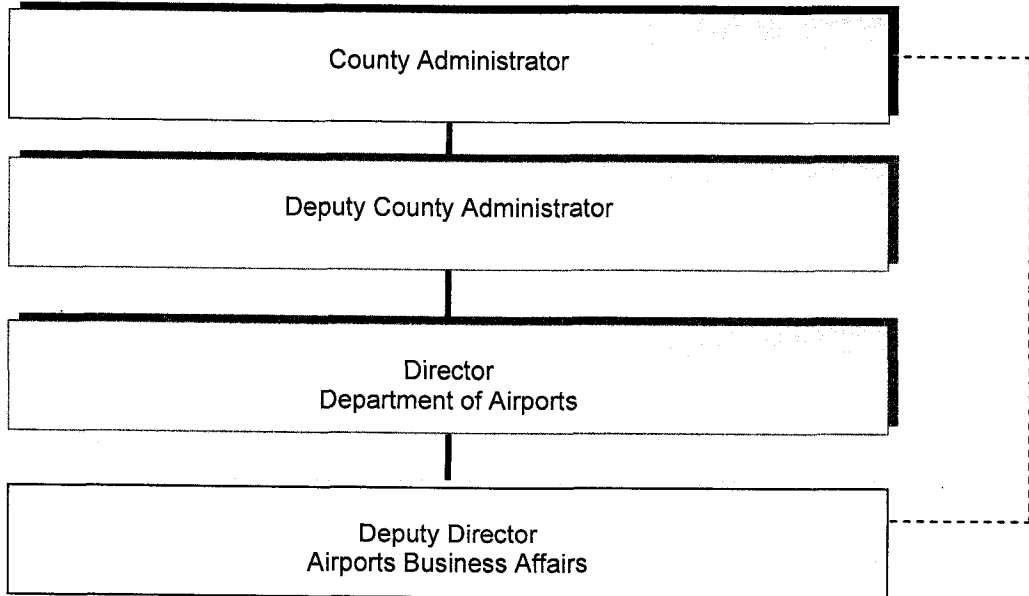


Exhibit "B" to ACDBE Program
DOA PPM # AF-F-36

**INTEROFFICE MEMORANDUM
PALM BEACH COUNTY
DEPARTMENT OF AIRPORTS**

TO: Airports Business Affairs Division/Planning & Development Division, Department of Airports

FROM: Laura Beebe, Deputy Director, Airports Business Affairs/DBE Liaison Officer
Department of Airports

SUBJECT: Airport Concession Disadvantaged Business Enterprise Program
Policies and Procedures Manual

DOA PPM #: AF-F-036

DATE: August 6, 2012

PURPOSE:

The purpose of this Memorandum is to establish specific procedures for Airport Concession Disadvantaged Business Enterprise (ACDBE) Program as required by 49 CFR Part 23 and the ACDBE Program for the Palm Beach County Department of Airports.

AUTHORITY:

49 CFR Part 23
49 CFR Part 26
DOA ACDBE Program
FAA Airport Sponsor Assurances

POLICY:

It is the policy of the Department to ensure that ACDBEs, as defined in 49 CFR Part 23, have an equal opportunity to receive and participate in concession opportunities.

PROCEDURES:

A. Concession Specific Goals

1. The Department will establish concession specific goals to meet any portion of the overall 3-year ACDBE goals approved by the Federal Aviation Administration ("FAA"), which it does not project being able to meet using race and gender neutral means.

2. The purpose of establishing ACDBE goals is so that, over the period to which the goal applies, the goals will cumulatively result in meeting any portion of the overall goal that is not projected to be met through race and gender neutral means.

3. The Department will establish concession specific goals only on those concessions that have direct ownership arrangement (except car rentals), sublease or subcontracting possibilities. The Department acknowledges that it need not establish a concession specific goal on every such concession and that the size of the concession specific goals will be adapted to the circumstances of each concession (e.g., type and location of concession, and availability of ACDBEs).

4. ACDBE concession specific goals will be established in accordance with the requirements of 49 CFR Part 23.

B. Documentation of Good Faith Efforts (49 CFR § 23.25; 49 CFR § 26.53)

1. When an ACDBE concession goal has been established, the Department will only recommend the award of contracts to a bidder/offeror that makes a good faith effort to meet the goal. The Department will make the determination that a bidder/offeror has made a good faith effort if the bidder/offeror either: (i) documents that it has obtained enough ACDBE participation to meet the goal; or (ii) documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough ACDBE participation to do so.

2. If the bidder/offeror does document adequate good faith efforts to achieve a concession specific goal, the Department will not recommend the denial of the award of the concession on the basis that the bidder/offeror failed to meet the goal. The Department will use Appendix A to 49 CFR Part 26 as guidance in determining whether or not a bidder/offeror has demonstrated adequate good faith efforts.

3. Sample solicitation language is attached hereto as Attachment "A" for solicitations where a concession specific goal has been established.

4. The Department will require the successful bidder/offeror in each solicitation for which a concession specific goal has been established to submit the following information prior to recommending the award of the concession agreement to the Board of County Commissioners:

- (a) The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
- (b) A description of the work that each ACDBE will perform;
- (c) The anticipated percentage of ACDBE participation of each ACDBE firm/supplier participating;
- (d) Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet the goal;
- (e) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
- (f) If the goal is not met, evidence of good faith efforts.

5. Sample solicitation forms are attached hereto as Attachment "B" for solicitations where a concession specific goal has been established.

6. Due to the complexity and diversity of concession opportunities, the Department may modify the sample solicitation language and forms included in this PPM, as deemed necessary, to conform to the specific concession opportunity.

7. The Department will make the initial determination whether or not a prime concessionaire has demonstrated good faith efforts to achieve a concession specific goal. Within five (5) days of being informed by the Department that a bidder/offeror has not documented sufficient good faith efforts to achieve the goal, a bidder/offeror may request administrative reconsideration in writing to the following: Palm Beach County Office of Small Business Assistance, 50 South Military Trail Ste. 209, West Palm Beach, FL 33415. The Office of Small Business Assistance ("OSBA") will designate a staff member knowledgeable of 49 CFR Parts 23 and 26 to be the reconsideration official. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document

sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. OSBA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror 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 DOT.

C. Compliance and Enforcement Procedures (49 CFR § 23.29)

1. Concessionaires shall be required to submit progress reports to ensure that ACDBE attainments (i.e., payments actually made to ACDBE firms) are consistent with the commitments.

2. The progress reports shall document the concessionaire's gross revenues and gross revenues earned by ACDBEs under the concession agreement and any payments made for goods and/or services from ACDBEs during the preceding quarter.

3. The Department will request copies of all subcontracts, leases, joint venture agreements and other concession-related agreements to the extent applicable to the activity conducted by the ACDBE.

4. The Department will conduct periodic reviews of selected concessionaires, which may include site visits.

D. Counting ACDBE Participation (49 CFR § 23.39(e); 49 CFR § 23.53; 49 CFR § 23.53)

ACDBE certification does not guarantee that an ACDBE firm's work will be counted towards the contract goal. The Department will count ACDBE participation toward an established ACDBE goal for non-car rental concessions in accordance with the requirements of 49 CFR §23.55. The Department will count ACDBE participation toward an established ACDBE goal for car rental concessions in accordance with 49 CFR §23.53.

E. Termination or Substitution of ACDBE Firms (49 CFR § 26.53)

1. A prime concessionaire shall not be permitted to terminate an ACDBE without the Department's prior written consent. This includes, but is not limited to, instances in which the prime concessionaire seeks to perform work originally designated for an ACDBE with its own forces or those of an affiliate, a non-ACDBE or with another ACDBE.

2. Before transmitting a request to terminate and/or substitute an ACDBE, the prime concessionaire must give notice in writing to the ACDBE subcontractor, with a copy to the Department, of its intent to request to terminate and/or substitute, and the reason for the request. The prime concessionaire must give the ACDBE subcontractor five (5) days to: (i) respond to the prime concessionaire's notice; and (ii) advise the Department and the prime concessionaire of the reasons, if any, why it objects to the proposed termination and why the Department should not approve the prime concessionaire's action.

3. In addition to post-award terminations, the provisions of this section apply to pre-award deletions or substitutions of ACDBE firms.

EFFECTIVE DATE: This PPM shall become effective upon approval of the Department Director.

APPROVALS:

Division Director: *Laura Bube* Date: 8-6-12

Department Director: *Paul Kelly* Date: 8/6/12

ATTACHMENTS:

Attachment "A" – Sample Solicitation Language
Attachment "B" – Sample Solicitation Forms

ATTACHMENT "A"
SAMPLE SOLICITATION LANGUAGE

Policy. The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this *(concession agreement/contract)*. It is the policy of Palm Beach County to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this *(concession agreement/contract)*. All firms qualifying under this solicitation are encouraged to submit *(bids/proposals)*. Award of the *(concession agreement/contract)* will be conditioned upon satisfying the requirements of this solicitation. These requirements apply to all firms and suppliers, including those who qualify as an Airport Concession Disadvantaged Business Enterprise (ACDBE).

ACDBE Goal. Palm Beach County has established a minimum ACDBE participation goal of _____ percent (___%) of *(annual gross receipts; value of leases and/or purchases of goods and services)*. *(Bidders/Proposers)* shall use good faith efforts, as defined in Appendix A, 49 CFR Part 26, to satisfy Palm Beach County's ACDBE participation goal. ACDBE participation counted toward meeting the established ACDBE goal will be determined by the Department of Airports in accordance with 49 CFR Part 23.

ATTACHMENT "B"
SAMPLE SOLICITATION FORMS

AF-F-036

**SCHEDULE 1
LIST OF PROPOSED ACDBE FIRMS**

BID/RFP #PB _____

THE PALM BEACH INTERNATIONAL AIRPORT

Name of Prime [Bidder/Proposer]: _____ Phone No.: _____ Fax No: _____

Contact Person: _____ E-mail Address: _____

Address: _____ Prime's Estimated Annual Gross Revenues: \$ _____

Name, Address & Phone No. of ACDBE Firm ⁽²⁾	Description of Type of Work	Classification (Check applicable box)	Estimated ACDBE Participation by Race/Gender ⁽¹⁾				
			Black	Hispanic	Women	Other (Please Specify)	
		<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	_____ %	_____ %	_____ %	_____ %	
		<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	_____ %	_____ %	_____ %	_____ %	
		<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	_____ %	_____ %	_____ %	_____ %	
Total Estimated ACDBE Participation			_____ %	+ _____ %	+ _____ %	+ _____ %	= _____ %

Notes:

- The percentages listed on this form for each ACDBE Firm must be supported by the percentage included on Schedule 2, "Letter of Intent to Perform as an Airports Concession Disadvantaged Business Enterprise", in order to be counted toward attainment of the ACDBE goal.
- It is the obligation of [Bidder/Proposer] to confirm that firms identified on this form must be certified as an ACDBE by the State of Florida's Unified Certification Program. Firms not certified by the State of Florida's Unified Certified Program as an ACDBE will not be counted toward attainment of the goal.

By signing this form the undersigned [Prime Bidder/Proposer] is committing to utilize the above-referenced ACDBE firms. Substitutions of ACDBE firms during the term of the Agreement shall be subject to prior written approval of the Department of Airports.

By: _____
Signature

Print Name/Title of Person Executing on Behalf of the Prime

Date: _____

*Additional sheets may be used if necessary.

SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE*

BID/RFP # _____

PALM BEACH INTERNATIONAL AIRPORT

Name of Prime [Bidder/Proposer]: _____

Name of ACDBE Firm: _____

The undersigned is certified as an Airport Concession Disadvantaged Business Enterprise by Palm Beach County or the State of Florida's Unified Certification Program. Check one or more classifications as applicable:

- Black Hispanic Women Other (Please Specify) _____
- Prime Contractor Subcontractor/Sublessee Manufacturer Supplier Joint Venture

The undersigned ACDBE firm is prepared to perform the following described work in connection with the above-referenced contract (specify in detail the particular work and/or parts thereof to be performed):

The estimated value of the ACDBE participation is _____ %.

The undersigned will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If the undersigned intends to subcontract any portion of the work described above to another subcontractor, please complete the following:

_____	_____ %	<input type="checkbox"/> ACDBE Certified
(Name of Subcontractor)	(Percentage of work subcontracted)	<input type="checkbox"/> Non-ACDBE
_____	_____ %	<input type="checkbox"/> ACDBE Certified
(Name of Subcontractor)	(Percentage of work subcontracted)	<input type="checkbox"/> Non-ACDBE

The undersigned affirms that it has the resources necessary to perform the work described above without subcontracting the work to another firm, except as noted above. The undersigned ACDBE firm understands that the provision of this form to the Prime [Bidder/Proposer] does not prevent the subcontractor from providing quotations to other [Bidders/Proposers].

Printed Name of ACDBE Firm

By: _____
Signature

Date: _____

*This form must be submitted for each ACDBE firm listed on Schedule 1, "List of Proposed ACDBE Firms". Percentages listed on this form must be consistent with the percentages listed on Schedule 1.

SCHEDULE 3
DEMONSTRATION OF GOOD FAITH EFFORTS TO ACHIEVE ACDBE GOAL

BID/RFP # _____

PALM BEACH INTERNATIONAL AIRPORT

Name of Prime [Bidder/Proposer]: _____

The Airport Concession Disadvantaged Business Enterprise (ACDBE) goal for this Concession Agreement is __%, as determined as a percentage of the successful bidder's annual gross revenues under the Concession Agreement. The undersigned bidder intends to satisfy the requirements of the bid related to ACDBE participation in the following manner:

Check (✓) applicable box and fill in blank(s) below:

- [Bidder/Proposer] commits to a minimum of _____ % ACDBE participation on this Concession Agreement.
- If [Bidder/Proposer] has determined that [Bidder/Proposer] will be unable to meet the ACDBE goal established for this Concession Agreement of _____ %, [Bidder/Proposer] commits to a minimum of _____ % ACDBE participation on this Concession Agreement and will demonstrate its good faith efforts to achieve the established ACDBE goal.

By: _____
Signature

Print Name/Title: _____

Date: _____

The [Bidder/Proposer] must demonstrate that it has made good faith efforts to achieve participation with ACDBE firms. This requires that the [Bidder/Proposer] show that it took all necessary and reasonable steps to secure participation by certified ACDBE firms. Mere pro forma efforts will not be considered as a good faith effort. In addition, the ability or desire of the bidder to perform the work with its own organization does not relieve the bidder of the responsibility to make good faith efforts. The following actions by [Bidders/Proposers] are generally considered a sign of good faith effort. This list is not exclusive or exhaustive, but should be used as a guide in determining good faith.

1. Advertisement in general circulation, trade association and minority focus media concerning ACDBE subcontracting opportunities.
2. Written notice to ACDBE firms allowing sufficient time for reply.
3. Following up with ACDBE firms after initial solicitation.
3. Selecting of portions of work likely to be performed by ACDBE firms.
4. Providing ACDBE firms with adequate information for bidding.
5. Negotiation with interested ACDBE firms.
6. Assisting interested ACDBE firms with bonding, insurance or credit.
7. Working with minority contractor groups and minority business assistance offices to identify available ACDBE firms.

Actions constituting evidence of good faith efforts are described in more detail in Appendix A to Title 49, Code of Federal Regulations, Part 26.

IN THE EVENT [BIDDER/PROPOSER] HAS DETERMINED THAT IT WILL BE UNABLE TO MEET ACDBE GOAL, WRITTEN DOCUMENTATION DEMONSTRATING [BIDDER'S/PROPOSER'S] GOOD FAITH EFFORTS TO ACHIEVE THE ACDBE PARTICIPATION GOAL SHALL BE ATTACHED TO THIS FORM. FAILURE TO PROVIDE THE REQUESTED DOCUMENTATION SHALL RESULT IN THE [BID/PROPOSAL] BEING DETERMINED NONRESPONSIVE TO THE ACDBE REQUIREMENTS.