



City of
Philadelphia

Philadelphia International Airport Concession Disadvantaged Business Enterprise Program

October 2020



Nonstop Local Flavor

PHL PHILADELPHIA
INTERNATIONAL AIRPORT



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US Department of Transportation Federal Aviation Administration
Airport Concession Disadvantaged Business Enterprise Program
49 CFR Part 23

City of Philadelphia Department of Commerce, Philadelphia International Airport

POLICY STATEMENT

The City of Philadelphia, on behalf of the Philadelphia International Airport, has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Philadelphia International Airport is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City of Philadelphia (the City) has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airports;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airports; and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Kathleen Padilla, Deputy Director of Aviation for Diversity and Inclusion, City of Philadelphia, Philadelphia International Airport, Executive Offices, Terminal D & E, 3rd Floor, Philadelphia, PA 19153, (215) 937-1801, Kathleen.Padilla@phl.org, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Ms. Padilla 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 City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to various City Departments and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area.

1. Copies of the policy statement will be made available to all of the agencies/organizations consulted during the development of the ACDBE goal methodology.
2. This statement, as part of our overall plan, will be posted on PHL's website.

Rochelle Cameron, CEO
Philadelphia International Airport

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 City 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 City of Philadelphia's Philadelphia International Airport is a large-hub primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

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

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

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

Section 23.11 Compliance and Enforcement

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

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

The City'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 City's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the City's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the City's compliance with this part at any time, including but not limited to, reviews of paperwork, on site reviews, and review of the City'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 City may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

The Philadelphia International Airport is a large hub-primary airport, required to have an ACDBE program.

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

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large/Medium Hubs	All regions	October 1, 2017	2018/2019/2020	October 1, 2020 (2021/2022/2023)

Until the City's new ACDBE program is submitted and approved, we will continue to implement our 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 the Philadelphia International Airport. When the City makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The City is committed to operating its ACDBE program in a nondiscriminatory manner. The City's Policy Statement is elaborated on the first page of this program.

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

Kathleen Padilla, Deputy Director of Aviation for Diversity and Inclusion
City of Philadelphia
Philadelphia International Airport
Executive Offices, Terminals D & E, 3rd Floor
Philadelphia, PA 19153
(215) 937-1801
Kathleen.Padilla@phl.org

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the City complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Chief Executive Officer, Rochelle Cameron, 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 is assisted as may be required by appropriate members of the Airport staff, as well as the City's legal counsel to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals).
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the PHL Chief Executive Officer on ACDBE matters and achievement.
9. 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).
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Unified Certification Program (UCP) in Pennsylvania.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

Directory: The Pennsylvania Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory in real time. The Directory is available at: <https://paucp.dbesystem.com>. Sample pages from the directory may be found in **Attachment 2** to this program document.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

We will follow all federal, state and local nondiscrimination laws, as well as comply with all of the City's policies and procedures designed to ensure nondiscrimination. These laws, policies and procedures include but are not limited to: Title VI and the regulations found at 49 CFR Part 23 and 26.

The City 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 City's overall goal methodology and a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and **Attachment 4 and 5** of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d)).

If the City projects that race-neutral measures alone are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and **Attachment 4 and 5** of this plan. (23.25(e))

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

Section 23.27 Reporting

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

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

Section 23.29 Compliance and Enforcement Procedures

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (**See Attachment 3**). (26.37)
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made

to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by the following:

- The City will utilize the legal instrument of a contract clause to ensure compliance with the bid specifications. After award of the contract, the ACDBELO will conduct such audits and reviews as necessary to ensure the Airport that the concessionaire is in compliance. The City will use tools such as those similar to the reporting form in **Attachment 3** to support monitoring efforts.
 - Prime concessionaires must also report to the ACDBELO when an ACDBE is terminated for any reason.
 - The ACDBELO will make prompt compliance determinations regarding its prime concessionaires. Documentation of noncompliance will include the specific areas in which the concessionaire/sub-concessionaire failed to comply. In these instances, appropriate legal action consistent with the ACDBE and other contract provisions will be taken.
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 Unified Certification Program (UCP)

The City is a member of the Unified Certification Program (PAUCP), administered by the State of Pennsylvania. The UCP will make ACDBE certification decisions on behalf of the City. The UCP 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 UCP's directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.

The UCP 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 company's is 1,500 employees, and for ACDBE automobile dealers is 350 employees. (23.33)

The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

Section 23.35

We recognize that Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (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 personal net worth 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 personal net worth 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)

The UCP will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, the UCP 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. The UCP is 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)

The UCP recognizes that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. The UCP will follow the provisions of 23.39 (a) through (i). The UCP will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. The UCP will analyze the ownership of stock of the firm, if it is a corporation. The UCP will analyze the bonding and financial capacity of the firm. The UCP will determine the work history of the firm, including any concession contracts or other contracts it may have received. The UCP 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. The UCP 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. The UCP will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b))

The UCP acknowledges 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. The UCP recognizes 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))

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

Section 26.83 Procedures for Certification Decisions

Re-assessments 26.83(a) & (c)

The City will ensure the UCP assesses the eligibility of ACDBEs that we certified, to make sure that they will meet the standards of Subpart C of Part 23 and Subpart E of Part 26. The reassessment date will coincide with the last day of the month in which the firm was certified. For example, a firm certified on January 5, 2004, the reassessment date will be January 31, 2007.

Annual Affidavits and Notices of Change (26.83(j))

The UCP requires all ACDBEs owners to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

The UCP also requires all ACDBE owners we have certified to submit every year, on the anniversary date of their certification, an affidavit meeting the requirements of 26.83(j).

The UCP requires ACDBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The UCP will notify all currently certified ACDBE firms of these obligations approximately 60 days prior to the ACDBE's anniversary date. The ACDBE will be sent a letter requesting an annual affidavit to be completed and returned to the certifying participant by the given date listed in the letter. If that timeline passes and the requested information is not received, a second appealable letter will be sent stating that the PA UCP proposes to remove the firm's eligibility for failure to cooperate with the certification process in accordance with 49 CFR Part 26.109. The letter also states that a timely response (30 days) will stay the PA UCP's decision to remove the firm's eligibility. If there is no response to the second letter, a third letter will be sent stating the DBE's eligibility has been removed for failing to cooperate and this decision may be appealed to the US DOT. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 23/26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

In compliance with Section 26.85 the PAUCP's Interstate Certification Application and procedures are include on the UCP's website at <https://www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do>. In instances where there is an appeal to the airport certification's staff determination to deny or remove an interstate certification, the local appeals officer will be Tam Tran, City of Philadelphia Assistant Solicitor.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until six (6) months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event the UCP proposes to remove an ACDBE's certification, it will follow procedures consistent with 26.87. Consistent with Section 26.87 of Part 26, firms subject to removal of eligibility for any reason will be afforded the opportunity to participate in an informal administrative due process hearing. A stenographer will be present and a verbatim transcript will be made. The hearing will be conducted in a similar fashion to the initial denial proceedings with the addition of the stenographer and the transcript. Firms wishing to obtain copies of the transcript will be asked to contact the certifying participant that generated the proceeding. Section 26.87 hearings will be conducted during regularly scheduled hearings. However, a special hearing may be convened on an as-needed basis and in the event of a conflict of interest involving any Committee members or other circumstances.

To ensure separation of functions in a de-certification, the UCP have determined that the PA UCP Disadvantaged Business Enterprise (DBE) Certification Appeals Committee will serve as the decision-maker in de-certification proceedings. In accordance with 49 CFR Part 23 and Part 26, the PA UCP affords firms denied certification or facing the removal of eligibility an administrative due process hearing in a manner consistent with state law. The UCP has established an administrative "firewall" to ensure that the PA UCP DBE Certification Appeals Committee will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding). Every voting Committee member involved in the removal of eligibility proceeding will originate from an office or personnel that did not take part in any action leading to or seeking to implement the removal of eligibility and does not take direction from an office of personnel involved in the initial action that gave rise to the proceeding. The Committee will act on behalf of the entire PA UCP and all PA UCP members will honor its determinations.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of ACDBEs (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

Attachment 8 includes the PAUCP's Appeals Process.

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The City 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 City will review the goals annually to make sure the goal continues to fit the City's circumstances. The City will report any significant overall goal adjustments to the FAA.

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

The City'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 City consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

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

Section 23.45 Overall Goals

The Philadelphia International Airport is a **large-hub primary** airport. As a condition of eligibility for FAA financial assistance, the City will submit its overall goals according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large/Medium Hubs	All regions	October 1, 2017	2018/2019/2020	October 1, 2020 (2021/2022/2023)

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the City will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i))

The City 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 City 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 § 26.39 of this part.

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in **Attachment 4** to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in **Attachment 5** to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodologies in **Attachments 4 and 5** to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

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

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

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

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City 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 City 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/offers 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 City's concession specific goals.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The ACDBELO, Deputy Director of Aviation for Diversity and Inclusion, Kathleen Padilla, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The City will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

In our solicitations for concession contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the City, at the time provided in paragraph (b)(3) of this section:
 - i. The names and addresses of ACDBE firms that will participate in the contract;
 - ii. A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - iii. The dollar amount of the participation of each ACDBE firm participating;
 - iv. Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and

- v. Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - vi. If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City.

Administrative reconsideration (26.53(d))

Within seven (7) business days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Keith J. Brune, A.A.E., Deputy Director of Aviation
Operations and Facilities
Philadelphia International Airport
Executive Offices, Terminal D/E, 3rd Floor
Philadelphia, PA 19153
(215)
Keith.brune@phl.org

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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder 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 City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract

with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

Before transmitting to us its request to terminate and/or substitute an ACDBE sub-concession, the prime concession must give notice in writing to the ACDBE sub-concession, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concessionaire must give the ACDBE five (5) days to respond to the prime concession's notice and advise us and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why we should not approve the prime

concession's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

The City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for ACDBE firms put forward by offerors in negotiated procurements.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime

concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57(b) Goal Shortfall Accountability

If the awards and commitments shown on the Airport's Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable the City to fully meet its goal for the new fiscal year. The City will submit the analysis and the corrective plan within 90 days of the end of the fiscal year to the FAA for review and approval.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.73 Privately-Owned or Leased Terminal Buildings

The Airport does not have any privately-owned or leased terminal buildings.

Section 23.75 Long-Term Exclusive Agreements

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

Section 23.79 Geographic Preferences

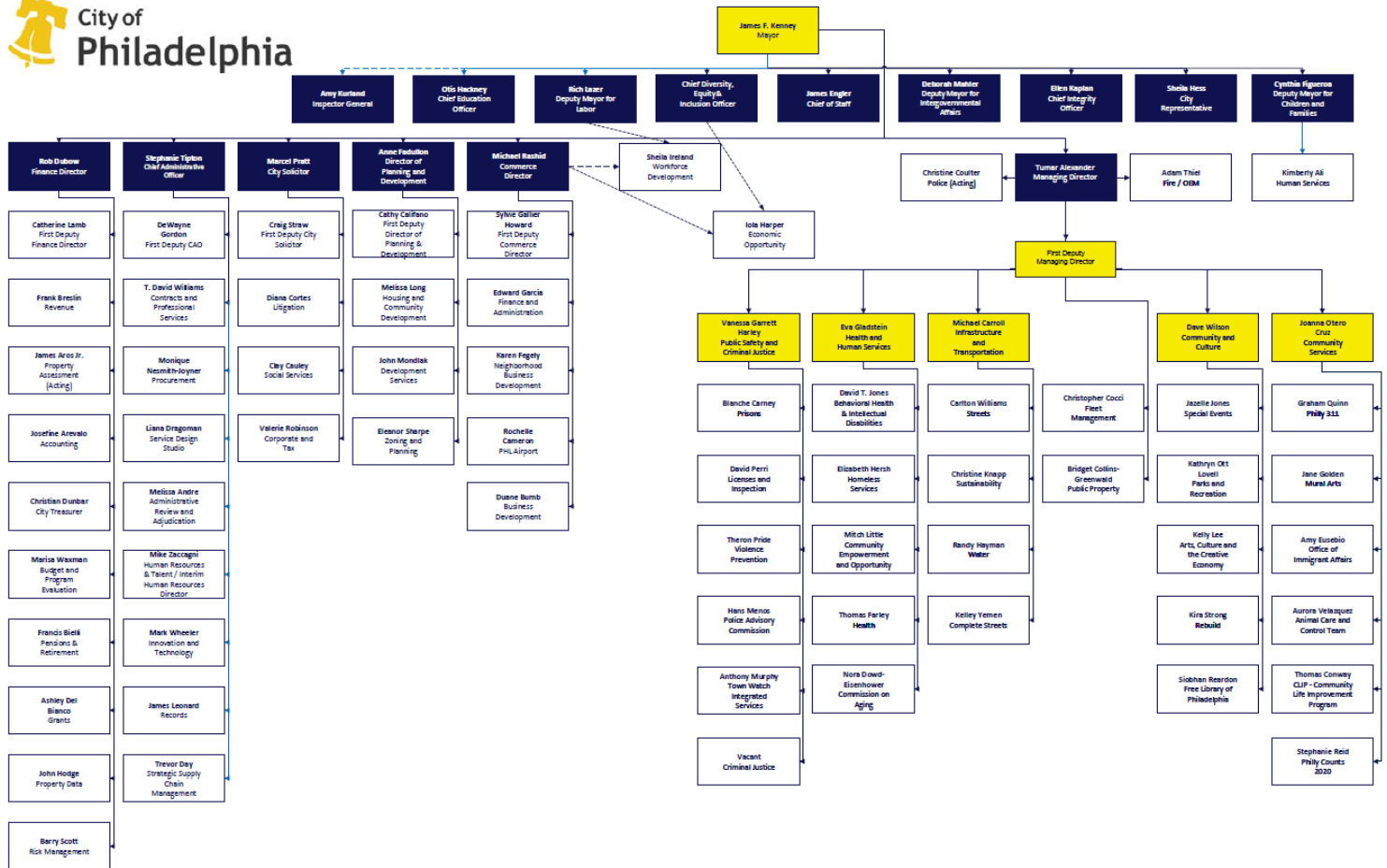
We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at the Philadelphia International Airport.

ATTACHMENTS

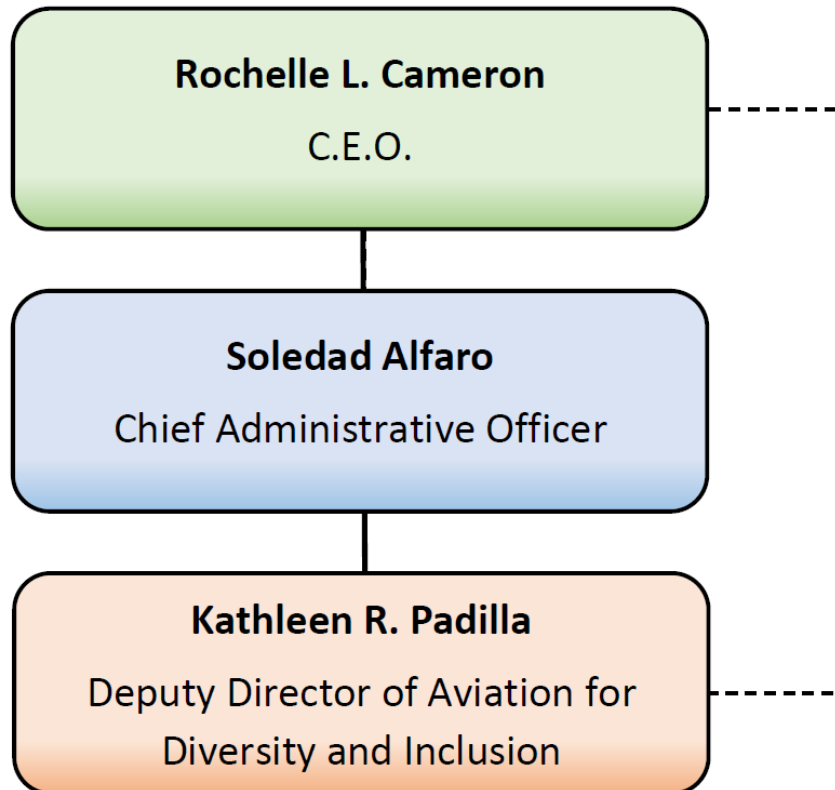
Attachment 1	City of Philadelphia/Philadelphia International Airport Organizational Chart
Attachment 2	Sample Page from DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculations for Car Rental Concessions
Attachment 5	Overall Goal Calculations for Other than Car Rental Concessions
Attachment 6	Forms for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	PAUCP Appeals Process

Attachment 1

CITY OF PHILADELPHIA/
PHILADELPHIA INTERNATIONAL AIRPORT
ORGANIZATIONAL CHART



PHL Airport



Attachment 2

SAMPLE PAGE FROM DBE DIRECTORY



Pennsylvania Unified Certification Program

Vendor Certification

Search our database of DBE/ACDBE certified vendors

[Search for Certified Firms](#)

System Training

Learn how to fully utilize our system with a live trainer

[Training and Events](#)

Get DBE Certified or Manage your DBE Certification

Click on a partner logo to apply or manage (e.g. request code expansion, submit annual affidavit) your certification. If your firm is applying for the first time, you may apply with any of the certifying partners listed below. Previous applicants must submit to the partner you originally applied with.



Business & Contact Information

BUSINESS NAME	22 Group, LLC	
OWNER	Ms. Caroline Harper	
ADDRESS	757 Public Road Bethlehem, PA 18015-3962	Map This Address
PHONE	610-417-8690	
EMAIL	LH22GroupLLC@gmail.com	
WEBSITE	http://22-group.com	

Certification Information

CERTIFYING AGENCY	Pennsylvania Department of Transportation
CERTIFICATION TYPE	DBE - Disadvantaged Business Enterprise
CERTIFIED BUSINESS DESCRIPTION	Remediation services including soil remediation field services sample collection analytical review transportation and disposal services lab pack services soil test drilling core drilling and test boring

Commodity Codes

Code	Description
NAICS 237310	Highway, Street, and Bridge Construction
NAICS 237990	Other Heavy and Civil Engineering Construction

Attachment 3

MONITORING AND ENFORCEMENT
MECHANISMS

The Airport has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to [12 Pa. Code § 131.61](#).

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

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

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

1. The Airport will insert the following provisions into concessions agreements and management contracts at the next lease renewal:
 - A. The ACDBELO and/or its designee will conduct reviews of attainments versus commitments, on an as-needed basis. This review will ensure the actual attainments of the ACDBE, as committed at contract award.
2. The Airport will implement the following additional monitoring and compliance procedures, consistent with concession contract provisions:
 - A. The Airport has the right to inspect books and records of the ACDBE concerning operations at the Airport, directly or indirectly, at the discretion of the Airport.
3. The Airport will implement its compliance and monitoring procedures as follows:
 - A. All concessions will be required to submit, to the Airport, monthly revenue reports. The Airport performs annual reconciliations and periodic revenue audits. Concessionaires will submit the ACDBE Attainment Reports annually.
 - B. The City will use the attached monitoring and enforcement form in **Attachment 3** to conduct such audits. The form will be signed by the ACDBELO or the ACDBELO's designee.

**PHILADELPHIA INTERNATIONAL AIRPORT
ACDBE PROGRAM – MONITORINE & REPORTING FORM**

CONCESSION	Concession Type Ownership Goods & Services	Proof of Certification	Affidavit/ No Change/ Change	Random Employee Interview Verifying Ownership	Quarterly Sales Report Date	Managing Entities Meeting Minutes	On Site Visit Date

Philadelphia International Airport – Authorized Signature

Date Prepared

Federal Fiscal Year & Quarter

**PHILADELPHIA INTERNATIONAL AIRPORT
ACDBE PROGRAM – MONITORINE & REPORTING FORM**

Philadelphia International Airport – Authorized Signature

Date Prepared

Federal Fiscal Year & Quarter

Attachment 4

OVERALL GOAL CALCULATION FOR CAR
RENTAL CONCESSIONS



**METHODOLOGY for Establishing the FY 2021 – FY 2023 Airport Concession
Disadvantaged Business Enterprise (ACDBE)
Car Rental Goal
The City of Philadelphia's Division of Aviation
Philadelphia, PA**

In fulfillment of the requirements of Title 49 Code of Federal Regulations Part 23 (49 CFR Part 23), the City of Philadelphia's Division of Aviation has developed a proposed Overall Goal for FY 2021 – FY 2023 for Car Rental concessions.

I. Amount of Goal

The Philadelphia International Airport's (PHL) overall goal for car rental concessions during the period beginning October 1, 2020 and ending September 30, 2023 is the following: **2.05%** of the total expenditures of car rental operations at the Airport.

If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Airport will submit an appropriate adjustment to the overall goal. This will be submitted to the Federal Aviation Administration (FAA) Civil Rights office for approval at least 90 days before executing the new concession agreement (23.45(i)).

The Airport has determined that its market area for car rental concessions is the regional, comprising the seven counties that surround the airport. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions-related revenues are located.

A. Projected Concessions Opportunities: October 1, 2020 - September 30, 2023

Concessions revenue opportunities for the 3-year period are based upon the expenditures by the car rental agencies at the airport for the previous three fiscal years. The table below describes the goods and services expenditures of car rental concessions for the most recent years based on submitted annual reports.

Table 1: Expenditures for Car Rental Concessions for FY 2017—2019

Fiscal Year	Dollar Amount
FY 2017	\$201,640,702
FY 2018	\$34,097,199
FY 2019	\$48,050,633
TOTAL	\$283,788,534

Based on the information provided in the table above, the total amount of gross expenditures for the preceding three years for car rental concessions is \$283,788,534. The dollar value of goods /services expenditures is projected to be flat over the next 3 years. Therefore, a growth adjustment was not made to the car rental concessions

projections.

B. Determination of Market area

The market area is normally defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located, and the geographical area in which the substantial majority of concessions-related revenues are generated. However, the Airport is defining its market by the geographical area in which the substantial majority of companies (*with whom the car rental concessions at the Airport make expenditures*) are located, and the area where the substantial majority of expenditures are made.

Based upon a list of current car rental concessionaires at the airport, the market area for car rental concessions at the Airport was determined to be the seven counties surrounding the Airport: Philadelphia, Delaware, Bucks, Montgomery, and Chester in Pennsylvania and Burlington and Camden in New Jersey. The car rental concessions all maintain local operations at the airport, but many expenditures are made with vendors and corporations that are based in other cities in the region.

II. Methodology used to Calculate Overall Goal

A. Goods and Services

The Airport can meet the percentage goal by counting the purchase from ACDBEs of goods and services used in car rental concessions business conducted at the airport. The dollar value from purchases of goods and services from ACDBEs is added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) is added to the denominator.

B. Management Contract or Subcontract

The Airport can meet the percentage goal by counting any car-rental concessions operated through a management contract or subcontract with an ACDBE. The Airport, and the car-rental concessions at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While the Airport realizes that this appears to go against the normal rules and rationale for goal-setting, the Airport understands that this method is nevertheless required by statute.

C. Step 1: 23.51 (c)

The Airport determined the base figure for the relative availability of car rental ACDBEs. The base figure was calculated as follows:

In order to determine the relative availability of ACDBEs in the area of car rental concessions, the availability of DBE car rental concessions in the market area must be compared to the overall availability of all car rental concessions in the market area. The US Census Bureau's 2017 County Business Patterns database was utilized. The table below describes the relative availability of ACDBEs based on review of UCP directories and FAA Civil Rights Connect. The result is a Step 1 base goal for car rental ACDBEs of 3.11%.

Table 2: Determination of Relative Availability of ACDBEs (Car Rental)

Concession Type	NAICS Code	Potential ACDBE Firms	All Firms	% of ACDBE Firms Available
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	0	196	0.00%
Service Establishment Equipment and Supplies Merchant Wholesalers	423850	16	88	18.18%
Other Building Finishing Contractors	238390	21	121	17.36%
Hardware Manufacturing	332510	2	3	66.67%
Motor Vehicle Towing	488410	8	148	5.41%
Insurance Agencies and Brokerages	524210	37	2199	1.68%
Locksmiths	561622	3	59	5.08%
Other Personal and Household Goods Repair/Maint.	811490	0	119	0.00%
Janitorial Services	561720	122	1094	11.15%
General Automotive Repair	811111	9	1648	0.55%
Stationery and Office Supplies Merchant Wholesalers	424120	2	93	2.15%
New Car Dealers	441110	1	279	0.36%
Tire Dealers	441320	0	213	0.00%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	1	646	0.15%
Automotive Glass Replacement Shops	811122	0	53	0.00%
Automotive Oil Change and Lubrication Shops	811191	1	48	2.08%
Direct Property and Casualty Insurance	524126	2	211	0.95%
Total		225	7,218	3.11%

Source:

1. 2017 County Business Patterns, U.S. Census Bureau
2. City of Philadelphia Office of Economic Opportunity Registry

3. Pennsylvania UCP Directory
4. State of New Jersey Unified Certification Program Business Directory
5. FAA Civil Rights Connect

D. Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, the Airport examined evidence to determine whether or not the base figure needs to be adjusted in order to arrive at the overall goal.

1. Past Participation

The Airport evaluated the current capacity of ACDBEs to perform work in car-rental concessions program by measuring the volume of work ACDBEs have performed in the past. Specifically, expenditures that were made available by the car rental agencies at the airport were assessed.

Table 3: Philadelphia International Airport ACDBE Accomplishments for FY 2015 - FY 2019

FISCAL YEAR	ACDBE goal	ACDBE achievement	Over/under
FY 2015	3.92%	0.58%	-3.34%
FY 2016	3.92%	0.32%	-3.60%
FY 2017	3.92%	1.00%	-2.92%
FY 2018	1.17%	3.59%	2.42%
FY 2019	1.17%	5.53%	4.36%
	MEDIAN	1.00%	

Source: Uniform Report of ACDBE Participation, Philadelphia International Airport (FY 2015-2019)

The median ACDBE accomplishment for each of the reporting periods as shown above is **1.00%**, compared to the Step 1 DBE base figure for the airport of **3.11%**.

2. Disparity Studies

The City of Philadelphia commissioned a disparity study in 2019 for city and Metro- area contracts. The disparity study looked at availability versus utilization of DBEs in the Philadelphia Metropolitan Statistical Area (MSA) for public works contracts; personal and professional services contracts; and services, supplies, and equipment contracts. The study determined that DBEs for services, supplies and equipment contracts were under-utilized. However, the study did not address concessions related to car rental specifically, so the data in the study were not used to make an adjustment to the base figure.

The Commonwealth of Pennsylvania commissioned two disparity studies in 2017. The first focused on the availability versus utilization of small diverse businesses (minority-owned, women-owned, veteran-owned, disabled-owned and LGBT-owned) in contracts with the Department of General Services. The second disparity study primarily focused on DBEs in contracts with the

Pennsylvania Department of Transportation (Penn DOT). Contracts for these studies included construction, construction-related engineering, professional services, goods and support services. The studies determined that small diverse businesses and DBEs were under-utilized. However, neither study addressed concessions related to car rental specifically, so the data in the studies were not used to make an adjustment to the base figure.

3. Goal of another recipient

PHL did not base its base figure on the goal of another recipient.

4. Additional evidence from related fields

There was no evidence found either in the disparities studies or through subsequent research that provided additional insight or empirical data on disparities in the ability of ACDBEs to get the financing, bonding and insurance or on employment, self-employment, education, training and union apprenticeship programs that could be factored into a Step 2 adjustment.

E. Adjustment of the Step 1 Base Figure

The Airport will adjust the Step 1 DBE base figure of 3.11% by adding it to the median percentage of ACDBE past participation (1.00%) for a total of 4.11%, and averaging this total, for a final adjusted overall goal of **2.05%**. The reason the Airport chose to adjust the base figure using these data was because past participation by ACDBEs indicated that the base figure overestimates ACDBE capacity at the Airport. In order to reflect as accurately as possible the ACDBE participation that the Airport would expect in the absence of discrimination, the Airport has adjusted the base figure of 3.11%. The overall goal for car rental concessions is **2.05%**.

III. Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA Civil Rights office, the Airport conducted a stakeholder meeting on September 23, 2020 with business advocacy organizations and ACDBE and non-ACDBE concessions businesses via Zoom. The list of attendees, presentations from these consultations, and feedback received are provided as an attachment to this document.

IV. Breakout of Estimated Race-Neutral & Race-Conscious Participation (23.51)

The Philadelphia International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport uses the race neutral measures listed below to increase ACDBE participation. The Airport understands that it will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;

4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Establishing a business development program (see 49 CFR Part 26:35), technical assistance program or taking other steps to foster ACDBE participation in concessions.

The Airport estimates that, in meeting its overall goal of 2.05%, it will obtain 0% from race neutral participation and 2.05% through race-conscious measures.

The reasons for this projected split is that the historical information on ACDBE participation on car rental concessions showed that the Airport did not have any race neutral participation in the previous three-year period. Additionally, the median results of past performance shows that the Airport underachieved its overall goal by 2.92%. Therefore, the Airport expects to meet its overall goal using race-conscious means.

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if the Airport uses concession-specific goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and the Airport will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to the following:

- ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures
- ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal
- ACDBE participation on a prime contract exceeding a concession specific goal
- ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award

The Airport will maintain data separately on ACDBE achievements in those contracts with and without concession-specific goals, respectively.

APPENDIX: STAKEHOLDERS SESSIONS

On Wednesday, September 23, 2020, PHL hosted a stakeholder's consultation session with business advocacy organizations and ACDBE and non-ACDBE concessions businesses via Zoom.

As part of the session, Kathy Padilla, Director of PHL's Office of Business Diversity, gave an overview of PHL's ACDBE goals, attainments, and the goal-setting process. Denise Bailey of Milligan & Company, LLC, serving as consultant to PHL, provided the details of the ACDBE goal setting process for the upcoming Federal Fiscal Year 2021-2023 ACDBE goal-setting. The presentation and list of attendees are attached.

At the conclusion of the presentations, PHL and Milligan staff answered questions on the goal-setting and received feedback. Included in the presentation, provided to all attendees, was an email address to which attendees could send additional comments.

The following is a synopsis of the questions and answers provided during the stakeholder session.

- Can merchants be invited to the Airline stakeholder meetings so that they know what gate changes/usage projections are discussed?
 - A - PHL will check on the invitees to that meeting. It is likely that they cannot accommodate all merchants and that communications from those meetings would typically go to MarketPlace PHL merchants through MarketPlace.
- Will the slides be made available?
 - A - Yes, they will be emailed after the session.
- What could be done to make the goals higher?
 - A - A few things have direct impact on the goal, namely the availability of DBEs or those eligible as DBEs (so an increase in those would have an increasing impact) and, as seen in this goal-setting, higher past participation. This is an overall goal and it includes NAICS categories related to food, beverage, and retail. However, the goal was "weighted down", because there is less availability in some of the other NAICS categories such as advertising. Typically, there is a higher goal for concessions agreements than advertising.

The percentage used is an aggregation of NAICS codes related to food and beverage and retail operations, which is higher. The base figure decreased once the other NAICS categories were added. Also, there is a difference between the goal, which is required by FAA, and the achievement. For this current fiscal year, PHL has achieved 39.8%, more than double the goal. Great consideration is taken to maximize the goal as much as possible, however with concessions, there is an opportunity to exceed the goal and PHL has done so every year. There is not nearly as much flexibility in the DBE contracting goal, which is mostly capital development, so it is bit more difficult to exceed the goal. One of the factors in developing the goal is the number of firms that are certified. We do not solely use firms that are certified in the Pennsylvania Unified Certification Program (PA UCP). Firms located in counties in New Jersey were also included in the goal calculation, because in the next few years, a certain

percentage of those firms may become certified in the PA UCP and we want to ensure that there aren't any unnecessary restrictions. One of the best ways to increase the goal is to certify more firms in the ACDBE arena, as this is the starting point for the analysis.

- Is the PA UCP only a directory for DBEs?
 - No, the directory is for DBEs and ACDBEs. The PA UCP does not include firms that are not certified according to the standards set by 49 CFR Part 26. This is different from the OEO directory.
- Are MBEs captured as part of the goal calculation?
 - Yes, a percentage of MWBEs in the OEO directory are captured in the goal calculation, but a certain percentage of those firms could become certified as DBEs. In *Tips for Goal-Setting in the Disadvantaged Business Enterprise*, created by the USDOT, explains that the calculations should not be restricted by only using firms that are currently certified. Instead, find sources of potential DBEs, because the goal is for three years and some of those firms may become certified within that timeframe.

One of the best ways to increase the number of certified firms is to encourage certification among firms that are certified in the OEO directory and have not been certified as DBEs. One barrier to doing so, however, is the rigorous process in order to become certified, but another barrier is the lack of understanding around all of the different types of certifications out there. Many firms don't know the difference. PHL is currently in the process of adding this information on their website to assist people in understanding the differences. The information will also include the different standards for certification, as the DBE program is a program for small businesses, therefore they must meet the personal net worth and business size standards. Firms must also maintain their certification by sending in documentation to confirm continued eligibility annually.

- How is 'if, but for' captured in goal setting? For instance, there may be a minority bakery that cannot scale to a size necessary to have a location at the airport, how are they included?
 - A - If they are in one of the databases under one of the applicable NAICS codes, they would likely be included in the analysis for goal-setting unless there is some indication they are not ready, willing, or able. As part of the analysis, disparity studies are reviewed, because they discuss why there is a disparity. The difficulty in using disparity studies that are conducted regionally, and in particular ACDBEs, is that they don't tend to focus on retail businesses. The OEO disparity study focuses on the City's contracts, but there are not a lot of retail related contract data to extrapolate. The lack of nation-wide empirical data that focuses on the retail marketplace is very small. This has been discussed at the Transportation Research Board where a number of studies are conducted. USDOT requires that in order to factor disparity study data into our goal analysis, it must be converted into a number.
- Are the goals subdivided by ethnic groups?
 - A - No, the goals are represented as a DBE goal and are not further subdivided, per the regulations.

PHL 2021-2023 Goal-Setting Stakeholder Consultation Meeting
Attendees
Wednesday, September 23, 2020

Name	Email Address	Organization
M. Denise Bailey	dbailey@milligancpa.com	Milligan & Company LLC
Biba Atta	hatta@milligancpa.com	Milligan & Company LLC
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Erin Zwiercan	erin@jackduggans.com	Jack Duggan's PHL Inc
Rupinder Singh	rupi.singh@yahoo.com	MCDONALD'S
Stephanie Jordan	stephanie.jordan@phl.org	PHL/Office of Business Diversity
Maureen Herczeg	tuk82743@temple.edu	Temple University SBDC
Gina Murray	gmurray@paturndpike.com	Pa Turnpike Commission
Jenee Oliver	joliver@flypittsburgh.com	Pittsburgh International Airport
Stacy French	stacy.french@phl.org	PHL/Office of Business Diversity
Crystal Mayer	crystal.mayer@phl.org	PHL/Office of Business Diversity
Marjorie Chance	marjorie.chance@yahoo.com	PHL Airport
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Robin Gibson	r_gibson@fraport-usa.com	Airport Minority Advisory Council (AMAC)
Jolly Sikka	jollysikka@gmail.com	Ramy Enterprises, Inc.
Raghu Tadavarthy	raghu@sevenhillsinc.com	Seven Hills Inc
Chermaina Roundtree	croundtree@amac-org.com	Airport Minority Advisory Council
Cobi Duncan	cobid777@gmail.com	Philadelphia International Airport
Irfan Mandani	nyic05@yahoo.com	NYIC, Inc.
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Lisa Edmonds	lisa.edmonds@alleghenycounty.us	Allegheny County Department of Equity and Inclusion
Zach Wilcha	zach@thinkiba.com	Independence Business Alliance
Musa Trawally	mtrawally@acanaus.org	African Cultural Alliance
Narasimha Shenoy	nshenoy@asianchamberphila.org	Asian American Chamber of Commerce
Myneca Ojo	mojo@paturndpike.com	Pa Turnpike Commission
Stacy Tezino - Castilow	flixfuel@gmail.com	Flix Premium Fuel, LLC



ACDBE 2021-2023 Goal Setting
Stakeholder Consultation Meeting
September 23, 2020



Agenda

- Overview of ACDBE goal-setting requirement
- Establishing ACDBE goals
- Discussion/Questions

PHL's ACDBE Requirements

- Governing US DOT Regulations
 - 49 CFR Part 23 Participation by Disadvantaged Business Enterprises (DBEs) in Airport Concessions
 - 49 CFR Part 26 Participation by DBEs in Department of Transportation (DOT) Financial Assistance Programs
- PHL Responsibilities
 - Establish Overall Goals (set triennially)
 - Certification
 - Performed by the Pennsylvania UCP (www.paucp.com)
 - Monitoring and Enforcement
 - Reporting

Establishing Overall Goals

- PHL is required to set two overall 3-year ACDBE goals:
 - Car rental concessions
 - Concessions other than car rentals
- Overall goal must be based on demonstrable evidence of the availability of ready, willing, and able ACDBEs relative to all businesses ready, willing and able to participate in the concessions opportunities
- PHL's Current Non-Car Rental Concessions ACDBE Goal is 19.15%, the Car Rental ACDBE Goal is 1.17%
- The full text of the submittal is on PHL's Website at
<https://www.phl.org/drupalbin/media/PHLACDBEOBD18-20.pdf>

ACDBE Goal Setting

- PHL is currently developing its Federal Fiscal Years 2021-2023 ACDBE goals
- Goal-setting is a two-step process
 - 1) Establish a base figure based on the relative availability of ACDBEs to participate in PHL's concessions programs
 - 2) Make any necessary adjustments to the base figure based on local market conditions

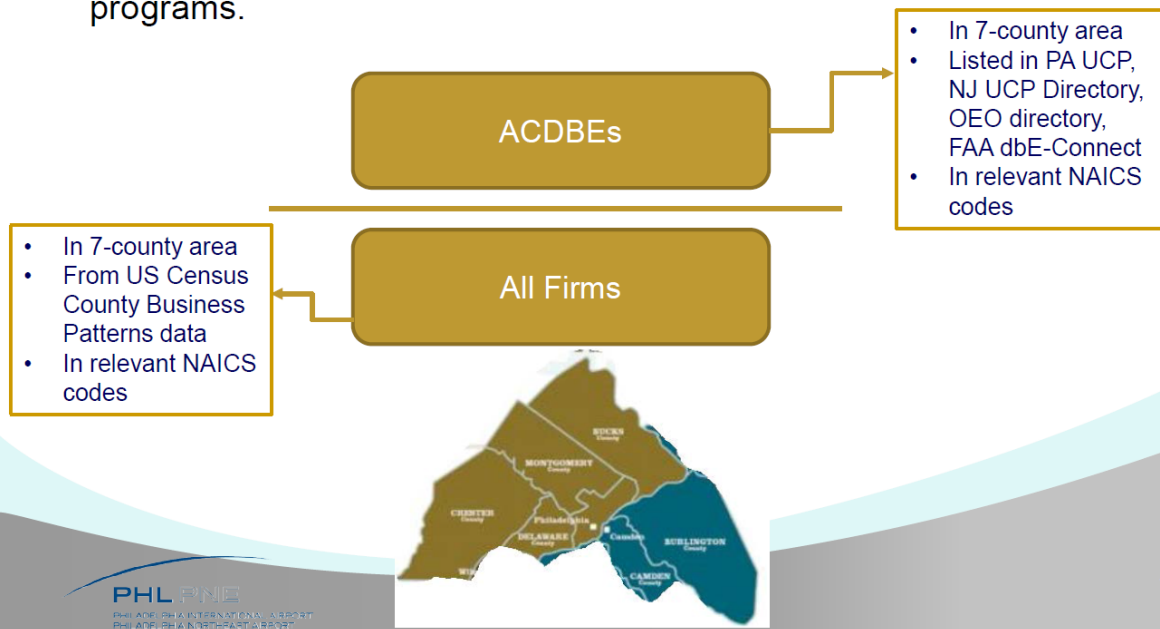
PHL's Base Figure - Non-Car Rental

Estimate Concessions Non-Car Rental Projections Federal Fiscal Year
2021 – 2023

ACTIVITY	PROJECTED PERCENTAGE OF NON-CAR RENTAL CONCESSIONS FOR FY 2021- FY 2023
Advertising	2.19%
Cable Television	0.53%
Food & Beverage	47.23%
Hotel	12.73%
Passenger Services	10.55%
Retail & RMUs	26.77%
	100%

PHL's Base Figure - Non-Car Rental

- Based on projected opportunities, determine the % of ACDBEs compared to all firms that can participate in PHL's concessions programs.



PHL's Base Figure - Non-Car Rental

- Relevant NAICS Codes identified

NAICS Codes	Description
541850	Advertising
515210	Cable Television
722310	Food Services
722330	Mobile Food Services
721110	Hotels
454210	Nonstore Retailers
517911	Telecommunications
812199	Spa Services
812990	Personal and Laundry Services
466120	Health and Personal Care Stores
443142	Electronics Stores
523130	Commodity Contracts

NAICS Codes	Description
446130	Optical Goods Stores
448120	Clothing and Accessories
448140	Family Clothing Stores
448210	Shoe Stores
448310	Jewelry Stores
448320	Luggage and Leather Good Stores
453220	Miscellaneous Store Retailers
517210	Telecommunications Resellers
531312	Nonresidential Property Managers
541611	Admin. Mgmt. and General Management
451211	Book Stores
451212	Magazines / News Stands

PHL's Base Figure - Non-Car Rental

- Calculate Step 1 Results

Activity	ACDBE	All Firms	Relative Availability	Weight	Weighted Relative Availability
Advertising	22	32	68.75%	2.19%	1.51%
Cable Television	0	3	0.00%	0.53%	0.00%
Food & Beverage	532	2676	19.88%	47.23%	9.39%
Hotel	1	366	0.27%	12.73%	0.03%
Passenger Services	25	720	3.47%	10.55%	0.37%
Retail & RMUs	563	4950	11.37%	26.77%	3.04%

14.34%

Adjusting PHL's Base Figure - Non-Car Rental

After Step 1, determine what adjustment, if any, is needed to the base figure. Consider:

- Past ACDBE participation
- Evidence from disparity studies
- Any available evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete

Adjusting PHL's Base Figure - Non-Car Rental

- Past participation of ACDBEs was determined to be the only relevant adjustment to consider.
- For the **current goal**, past participation used was:

Fiscal Year	ACDBE Achievement
FY2015	25.30%
FY2016	26.36%
FY 2017	28.26%
FY 2018	31.17%
FY 2019	33.53%

Regulations require using the median (or middle) past participation percentage

Adjusting PHL's Base Figure - Non-Car Rental

Calculate the Overall Goal by *averaging* the results of Step 1 (14.34%) with Step 2 (28.26%)

$$\frac{14.34\% + 28.26\%}{2} = 21.30\%$$

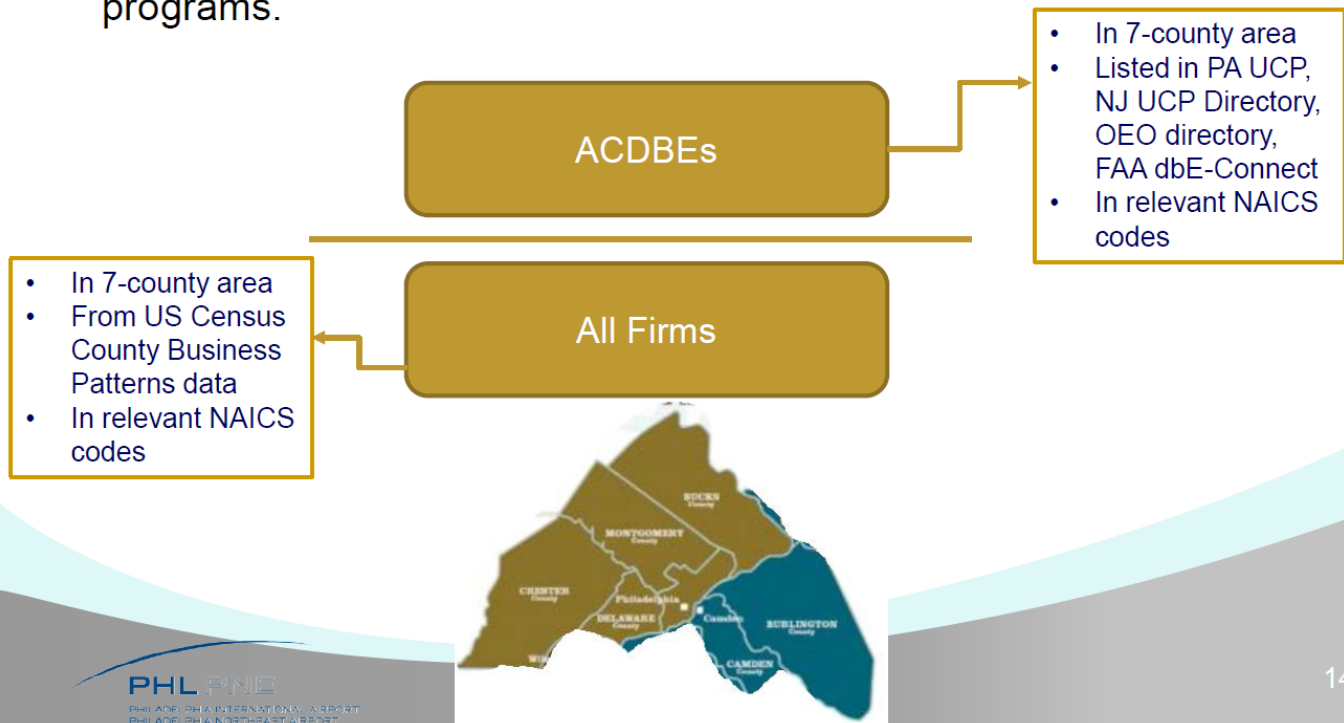
PHL's Car Rental ACDBE Goal

Similar process, but focuses on

- Expenditures by car rental agencies
- ACDBE participation supporting those expenditures, typically in areas such as:
 - Sign installation
 - Janitorial services
 - Janitorial equipment and supplies
 - Towing
 - Insurance
 - Key and lock services
 - Auto repair

PHL's Base Figure - Non-Car Rental

- Based on projected opportunities, determine the % of ACDBEs compared to all firms that can participate in PHL's concessions programs.



PHL's Base Figure - Car Rental

- Calculate Step 1 Results

Concession Type	NAICS Code	Potential ACDBE Firms	All Firms	% of ACDBE Firms Available
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	0	196	0.00%
Service Establishment Equipment and Supplies Merchant Wholesalers	423850	16	88	18.18%
Other Building Finishing Contractors	238390	21	121	17.36%
Hardware Manufacturing	332510	2	3	66.67%
Motor Vehicle Towing	488410	8	148	5.41%
Insurance Agencies and Brokerages	524210	37	2199	1.68%
Locksmiths	561622	3	59	5.08%
Other Personal and Household Goods Repair/Maint.	811490	0	119	0.00%
Janitorial Services	561720	122	1094	11.15%
General Automotive Repair	811111	9	1648	0.55%
Stationery and Office Supplies Merchant Wholesalers	424120	2	93	2.15%
New Car Dealers	441110	1	279	0.36%
Tire Dealers	441320	0	213	0.00%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	1	646	0.15%
Automotive Glass Replacement Shops	811122	0	53	0.00%
Automotive Oil Change and Lubrication Shops	811191	1	48	2.08%
Direct Property and Casualty Insurance	524126	2	211	0.95%
Total		225	7,218	3.11%

Adjusting PHL's Base Figure - Car Rental

- Past participation of ACDBEs was determined to be the only relevant adjustment to consider.
- For the **current goal**, past participation used was:

Fiscal Year	ACDBE Achievement
FY 2015	.58%
FY 2016	.32%
FY 2017	1%
FY 2018	3.59%
FY 2019	5.53%

Regulations require using the median (or middle) past participation percentage

Adjusting PHL's Base Figure - Car Rental

Calculate the Overall Goal by *averaging* the results of Step 1 (3.11%) with Step 2 (1%)

$$\frac{3.11\% + 1.00\%}{2} = 2.05\%$$

Public Participation

- PHL is required to communicate with the public in two ways for ACDBE goal-setting
 - Consultative process with stakeholders
 - Today
 - Publishing of goals on its website
- Please ask us your questions now, or send comments on the goal and/or methodology by 9/29 to:

Dbaily@Milligancpa.com

Discussion/Questions

Attachment 5

OVERALL GOAL CALCULATION FOR OTHER THAN CAR RENTAL CONCESSIONS



**METHODOLOGY for Establishing the FY 2021 – FY 2023 Airport Concession
Disadvantaged Business Enterprise (ACDBE)
Non-Car Rental Goal
The City of Philadelphia's Division of Aviation
Philadelphia, PA**

In fulfillment of the requirements of Title 49 Code of Federal Regulations Part 23 (49 CFR Part 23), the City of Philadelphia's Division of Aviation has developed a proposed Overall Goal for FY 2021 – FY 2023 for Non-Car Rental concessions.

I. Amount of Goal

The Philadelphia International Airport's (PHL) overall goal for concessions other than car rental (i.e. non-car rental) during the period beginning October 1, 2020 and ending September 30, 2023 is the following: 21.30% of the total gross receipts for concessions at the Airport. The following are not included in the total gross receipts for concessions:

- (a) The gross receipts of car rental operations
- (b) The dollar amount of a management contract or subcontract with a non-ACDBE
- (c) The gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and
- (d) Any portion of a firm's estimated gross receipts that will not be generated from a concession.

When new concession opportunities arise prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 90 days before executing the new concession agreement (23.45(i)).

The Airport has determined that its market area is **regional (see Table 1 below)**. This is the geographical area in which the majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions-related revenues are located. Though there are a number of firms in various concession types who have local operations but are based out-of-state, the majority of concessionaires come from the region including counties listed below in Table 1.

Table 1: Market Area for Non-Car Rental Concessions at PHL

COUNTIES	
Bucks PA	Delaware PA
Burlington NJ	Montgomery PA
Camden NJ	Philadelphia PA
Chester PA	

A. Projected Concessions Opportunities: October 1, 2020 – September 30, 2023

Based on data provided by the Airport's Revenue Department, the table below projects what percentage each type of concession represents of the entire non-car rental concessions activities at PHL for 2020 – 2023. The base figure was calculated using the table below:

Table 2: Projected Percentage of Non-Car Rental Concessions FY2021-FY2023

ACTIVITY	PROJECTED PERCENTAGE OF NON-CAR RENTAL CONCESSIONS
	FY 2021-FY 2023
Advertising	2.19%
Cable Television	0.53%
Food & Beverage	47.23%
Hotel	12.73%
Passenger Services	10.55%
Retail & RMUs	26.77%
	100.00%

Source: Airport; compiled by Milligan

II. Methodology used to Calculate Overall Goal

A. Direct Ownership

Because PHL calculates its concession-specific goal based on ACDBE participation through a direct ownership arrangement with an ACDBE, it calculates the goal as a percentage of the total estimated annual gross receipts from the concessions.

B. Management Contract or Subcontract

The Airport can meet the percentage goal by counting any non-car rental concessions operated through a management contract or subcontract with an ACDBE. The Airport, and the concessionaires at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of concession activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While the Airport realizes that this appears to go against the normal rules and rationale for goal-setting, the Airport understands that this method is nevertheless required by statute.

C. Step 1: 23.51 (c)

The Airport determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

The Step 1 DBE Base Figure was determined by dividing the number of ACDBE firms available by the total number of all firms available to determine the relative availability of ACDBEs for each concession type. That relative availability was multiplied by the percentage of total estimated portion of revenue to determine the weighted availability of ACDBEs in the Airport's market area for each concession type as indicated in **Table 3** below. The result is a Step 1 base goal for "all other" (i.e. non-car rental) ACDBEs of **14.34%**.

Table 3: Determination of Relative Availability of ACDBEs (Non-Car Rental)

Concession Activity	NAICS codes	ACDBE Firms	/	All Firms	Relative Availability	x	Weight of Estimated Gross Receipts	=	Weighted Availability
Advertising	541850	22	/	32	68.75%		2.19%	=	1.51%
Cable Television	515210	0	/	3	0.00%		0.53%	=	0.00%
Food & Beverage	531312, 541611, 722310, 722330	532	/	2676	19.88%		47.23%	=	9.39%
Hotel	721110	1	/	366	0.27%		12.73%	=	0.03%
Passenger (vending prepaid phone cards, spa shoe shine, carts, payphones)	454210, 517911, 523130, 812199, 812990	25	/	720	3.47%		10.55%	=	0.37%
Retail and RMUs	443142, 446120, 446130, 448120, 448140, 448210, 448310, 448320, 451211, 451212, 453220, 531312, 541611	563	/	4950	11.37%		26.77%	=	3.04%
Weighted Step 1 Base Figure:									14.34%

Source:

1. 2017 County Business Patterns, U.S. Census Bureau
2. City of Philadelphia Office of Economic Opportunity Registry
3. Pennsylvania UCP Directory
4. State of New Jersey Unified Certification Program Business Directory
5. FAA Civil Rights Connect

D. Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, the Airport examined evidence to determine whether or not the base figure needs to be

adjusted in order to arrive at the overall goal.

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

1. Past Participation

The Airport evaluated the current capacity of ACDBEs to perform work in the concessions program by measuring the volume of work ACDBEs have performed in the past.

The historical ACDBE accomplishments at the Airports in recent years were examined relative to the above consideration (i). Specifically, the annual "Uniform Report of ACDBE Participation" for each of the reporting periods listed below was assessed. Notice the annual ACDBE percent accomplishment for each year reported, and the total amount of ACDBE participation for the three-year period.

Table 4: Philadelphia International Airport ACDBE Accomplishments for FY 2015—FY 2019

FISCAL YEAR	ACDBE goal	ACDBE achievement	Over/under
FY 2015	16.45%	25.30%	8.85%
FY 2016	16.45%	26.36%	9.91%
FY 2017	16.45%	28.26%	11.81%
FY 2018	19.15%	31.17%	12.02%
FY 2019	19.15%	33.53%	14.38%
	MEDIAN	28.26%	

Source: Uniform Report of ACDBE Participation, Philadelphia International Airport (FY 2015-2019)

The median ACDBE accomplishment for the previous three-year reporting period as shown above is **28.26%**, compared to the Step 1 DBE base figure for the airport of **14.34%**.

The Airport will adjust the Step 1 ACDBE base figure of 14.34% by adding it to the ACDBE participation noted in Table 4 above (28.26%) for a total of 42.6% and averaging this total, for a final adjusted overall goal of **21.3%**.

2. Disparity Studies

The City of Philadelphia commissioned a disparity study in 2019 for city and Metro-area contracts. The disparity study looked at availability versus utilization of DBEs in the Philadelphia Metropolitan Statistical Area (MSA) for public works contracts; personal and professional services contracts; and services, supplies, and equipment contracts. The study determined that DBEs for services, supplies and equipment contracts were under-utilized. However, the study did not address concessions related to non-car rental specifically, so the data in the study were not used to make an adjustment to the base figure.

The Commonwealth of Pennsylvania commissioned two disparity studies in 2017.

The first focused on the availability versus utilization of small diverse businesses (minority-owned, women-owned, veteran-owned, disabled-owned and LGBT-owned) in contracts with the Department of General Services. The second disparity study primarily focused on DBEs in contracts with the Pennsylvania Department of Transportation (PennDOT). Contracts for these studies included construction, construction-related engineering, professional services, goods and support services. The studies determined that small diverse businesses and DBEs were under-utilized. However, neither study addressed concessions related to non-car rental specifically, so the data in the studies were not used to make an adjustment to the base figure.

3. Goal of another recipient

PHL did not base its base figure on the goal of another recipient.

4. Additional evidence from related fields

There was no evidence found either in the disparities studies or through subsequent research that provided additional insight or empirical data on disparities in the ability of ACDBEs to get the financing, bonding and insurance or on employment, self-employment, education, training and union apprenticeship programs that could be factored into a Step 2 adjustment.

E. Adjustment of the Step 1 Goal

The reason the Airport chose to adjust the base figure using these data was because past participation by ACDBEs indicated that the step 1 goal underestimates ACDBE capacity at the Airport. In order to reflect ACDBE participation the Airport would expect in the absence of discrimination as accurately as possible, the Airport has adjusted the base figure of 14.34%. This results in an overall goal for non-car rental concessions of **21.3%**.

III. Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA Civil Rights office, the Airport conducted a stakeholder meeting on September 23, 2020 with business advocacy organizations and ACDBE and non-ACDBE concessions businesses via Zoom. The list of attendees, presentations from these consultations, and feedback received are provided as an attachment to this document.

IV. Breakout of Estimated Race-Neutral & Race-Conscious Participation (23.51)

The Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport uses the race-neutral measures below to increase ACDBE participation. The Airport understands that it will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.

USDOT's Tips for Goal-Setting note that, "the amount by which you exceeded your overall goals in past years can be a useful tool in helping you project the race/gender-neutral participation you can expect in the future." It further notes that, "Your projected split will probably be more accurate if you use past participation data from more than one year."

With this in mind, PHL reviewed the amount that it exceeded its goals for the past five years and identified the median year as the basis for the race-neutral projection for the upcoming period. PHL's ACDBE goal for FY 2015 through FY 2017 was 16.45%. In FY 2015, the goal was exceeded by 8.85 percentage points; in FY 2016, the goal was exceeded by 9.91 points; and in FY 2017, the goal was exceeded by 11.81 percentage points.

PHL's ACDBE goal for FY 2018 and FY2019 was 19.15%. In FY 2018, the goal was exceeded by 12.02 points and 14.38 points in FY 2019. The median excess achievement for the five previous fiscal years is 11.81 percentage points over the goal. Using that as the race-neutral projection for the upcoming three years yields a race-neutral portion of the goal of 9.49% and 11.81% to be met using race-conscious means.

Table 4: Philadelphia International Airport ACDBE Accomplishments for FY 2015—FY 2019

FISCAL YEAR	ACDBE goal	ACDBE achievement	Over/under
FY 2015	16.45%	25.30%	8.85%
FY 2016	16.45%	26.36%	9.91%
FY 2017	16.45%	28.26%	11.81%
FY 2018	19.15%	31.17%	12.02%
FY 2019	19.15%	33.53%	14.38%
	MEDIAN	28.26%	

Source: Uniform Report of ACDBE Participation, Philadelphia International Airport (FY 2015-2019)

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, if the Airport uses concession-specific goals, it will adjust the

estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to the following:

- ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures
- ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal
- ACDBE participation on a prime contract exceeding a concession specific goal

The Airport will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

APPENDIX: STAKEHOLDERS SESSIONS

On Wednesday, September 23, 2020, PHL hosted a stakeholder's consultation session with business advocacy organizations and ACDBE and non-ACDBE concessions businesses via Zoom.

As part of the session, Kathy Padilla, Director of PHL's Office of Business Diversity, gave an overview of PHL's ACDBE goals, attainments, and the goal-setting process. Denise Bailey of Milligan & Company, LLC, serving as consultant to PHL, provided the details of the ACDBE goal setting process for the upcoming Federal Fiscal Year 2021-2023 ACDBE goal-setting. The presentation and list of attendees are attached.

At the conclusion of the presentations, PHL and Milligan staff answered questions on the goal-setting and received feedback. Included in the presentation, provided to all attendees, was an email address to which attendees could send additional comments.

The following is a synopsis of the questions and answers provided during the stakeholder session.

- Can merchants be invited to the Airline stakeholder meetings so that they know what gate changes/usage projections are discussed?
 - A - PHL will check on the invitees to that meeting. It is likely that they cannot accommodate all merchants and that communications from those meetings would typically go to MarketPlace PHL merchants through MarketPlace.
- Will the slides be made available?
 - A - Yes, they will be emailed after the session.
- What could be done to make the goals higher?
 - A - A few things have direct impact on the goal, namely the availability of DBEs or those eligible as DBEs (so an increase in those would have an increasing impact) and, as seen in this goal-setting, higher past participation. This is an overall goal and it includes NAICS categories related to food, beverage, and retail. However, the goal was "weighted down", because there is less availability in some of the other NAICS categories such as advertising. Typically, there is a higher goal for concessions agreements than advertising.

The percentage used is an aggregation of NAICS codes related to food and beverage and retail operations, which is higher. The base figure decreased once the other NAICS categories were added. Also, there is a difference between the goal, which is required by FAA, and the achievement. For this current fiscal year, PHL has achieved 39.8%, more than double the goal. Great consideration is taken to maximize the goal as much as possible, however with concessions, there is an opportunity to exceed the goal and PHL has done so every year. There is not nearly as much flexibility in the DBE contracting goal, which is mostly capital development, so it is bit more difficult to exceed the goal. One of the factors in developing the goal is the number of firms that are certified. We do not solely use firms that are certified in the Pennsylvania Unified Certification Program (PA UCP). Firms located in counties in New Jersey were also included in the goal calculation, because in the next few years, a certain

percentage of those firms may become certified in the PA UCP and we want to ensure that there aren't any unnecessary restrictions. One of the best ways to increase the goal is to certify more firms in the ACDBE arena, as this is the starting point for the analysis.

- Is the PA UCP only a directory for DBEs?
 - No, the directory is for DBEs and ACDBEs. The PA UCP does not include firms that are not certified according to the standards set by 49 CFR Part 26. This is different from the OEO directory.
- Are MBEs captured as part of the goal calculation?
 - Yes, a percentage of MWBEs in the OEO directory are captured in the goal calculation, but a certain percentage of those firms could become certified as DBEs. In *Tips for Goal-Setting in the Disadvantaged Business Enterprise*, created by the USDOT, explains that the calculations should not be restricted by only using firms that are currently certified. Instead, find sources of potential DBEs, because the goal is for three years and some of those firms may become certified within that timeframe.

One of the best ways to increase the number of certified firms is to encourage certification among firms that are certified in the OEO directory and have not been certified as DBEs. One barrier to doing so, however, is the rigorous process in order to become certified, but another barrier is the lack of understanding around all of the different types of certifications out there. Many firms don't know the difference. PHL is currently in the process of adding this information on their website to assist people in understanding the differences. The information will also include the different standards for certification, as the DBE program is a program for small businesses, therefore they must meet the personal net worth and business size standards. Firms must also maintain their certification by sending in documentation to confirm continued eligibility annually.

- How is 'if, but for' captured in goal setting? For instance, there may be a minority bakery that cannot scale to a size necessary to have a location at the airport, how are they included?
 - A - If they are in one of the databases under one of the applicable NAICS codes, they would likely be included in the analysis for goal-setting unless there is some indication they are not ready, willing, or able. As part of the analysis, disparity studies are reviewed, because they discuss why there is a disparity. The difficulty in using disparity studies that are conducted regionally, and in particular ACDBEs, is that they don't tend to focus on retail businesses. The OEO disparity study focuses on the City's contracts, but there are not a lot of retail related contract data to extrapolate. The lack of nation-wide empirical data that focuses on the retail marketplace is very small. This has been discussed at the Transportation Research Board where a number of studies are conducted. USDOT requires that in order to factor disparity study data into our goal analysis, it must be converted into a number.
- Are the goals subdivided by ethnic groups?
 - A - No, the goals are represented as a DBE goal and are not further subdivided, per the regulations.

PHL 2021-2023 Goal-Setting Stakeholder Consultation Meeting
Attendees
Wednesday, September 23, 2020

Name	Email Address	Organization
M. Denise Bailey	dbailey@milligancpa.com	Milligan & Company LLC
Biba Atta	hatta@milligancpa.com	Milligan & Company LLC
Joanne Plessas	joanne@good2gophilly.com	GOOD 2 GO II INC.
Kathy Padilla	kathleen.padilla@phl.org	PHL/Office of Business Diversity
Erin Zwiercan	erin@jackduggans.com	Jack Duggan's PHL Inc
Rupinder Singh	rupi.singh@yahoo.com	MCDONALD'S
Stephanie Jordan	stephanie.jordan@phl.org	PHL/Office of Business Diversity
Maureen Herczeg	tuk82743@temple.edu	Temple University SBDC
Gina Murray	gmurray@paturndpike.com	Pa Turnpike Commission
Jenee Oliver	joliver@flypittsburgh.com	Pittsburgh International Airport
Stacy French	stacy.french@phl.org	PHL/Office of Business Diversity
Crystal Mayer	crystal.mayer@phl.org	PHL/Office of Business Diversity
Marjorie Chance	marjorie.chance@yahoo.com	PHL Airport
Michelle Flamer	michelle.flamer@phila.gov	City of Philadelphia Law Department
Deneen Wilson	deneen.wilson@phl.org	PHL/Office of Business Diversity
Liz Robertson	liztwist@aol.com	CL Twist LLC
Robin Gibson	r_gibson@fraport-usa.com	Airport Minority Advisory Council (AMAC)
Jolly Sikka	jollysikka@gmail.com	Ramy Enterprises, Inc.
Raghu Tadavarthy	raghu@sevenhillsinc.com	Seven Hills Inc
Chermaina Roundtree	croundtree@amac-org.com	Airport Minority Advisory Council
Cobi Duncan	cobid777@gmail.com	Philadelphia International Airport
Irfan Mandani	nyic05@yahoo.com	NYIC, Inc.
Jill Dresnin	jill.wrightfoodservices@gmail.com	Wright Food Services, LLC
Lisa Edmonds	lisa.edmonds@alleghenycounty.us	Allegheny County Department of Equity and Inclusion
Zach Wilcha	zach@thinkiba.com	Independence Business Alliance
Musa Trawally	mtrawally@acanaus.org	African Cultural Alliance
Narasimha Shenoy	nshenoy@asianchamberphila.org	Asian American Chamber of Commerce
Myneca Ojo	mojo@paturndpike.com	Pa Turnpike Commission
Stacy Tezino - Castilow	flixfuel@gmail.com	Flix Premium Fuel, LLC



ACDBE 2021-2023 Goal Setting
Stakeholder Consultation Meeting
September 23, 2020



Agenda

- Overview of ACDBE goal-setting requirement
- Establishing ACDBE goals
- Discussion/Questions

PHL's ACDBE Requirements

- Governing US DOT Regulations
 - 49 CFR Part 23 Participation by Disadvantaged Business Enterprises (DBEs) in Airport Concessions
 - 49 CFR Part 26 Participation by DBEs in Department of Transportation (DOT) Financial Assistance Programs
- PHL Responsibilities
 - Establish Overall Goals (set triennially)
 - Certification
 - Performed by the Pennsylvania UCP (www.paucp.com)
 - Monitoring and Enforcement
 - Reporting

Establishing Overall Goals

- PHL is required to set two overall 3-year ACDBE goals:
 - Car rental concessions
 - Concessions other than car rentals
- Overall goal must be based on demonstrable evidence of the availability of ready, willing, and able ACDBEs relative to all businesses ready, willing and able to participate in the concessions opportunities
- PHL's Current Non-Car Rental Concessions ACDBE Goal is 19.15%, the Car Rental ACDBE Goal is 1.17%
- The full text of the submittal is on PHL's Website at
<https://www.phl.org/drupalbin/media/PHLACDBEOBD18-20.pdf>

ACDBE Goal Setting

- PHL is currently developing its Federal Fiscal Years 2021-2023 ACDBE goals
- Goal-setting is a two-step process
 - 1) Establish a base figure based on the relative availability of ACDBEs to participate in PHL's concessions programs
 - 2) Make any necessary adjustments to the base figure based on local market conditions

PHL's Base Figure - Non-Car Rental

Estimate Concessions Non-Car Rental Projections Federal Fiscal Year
2021 – 2023

ACTIVITY	PROJECTED PERCENTAGE OF NON-CAR RENTAL CONCESSIONS FOR FY 2021- FY 2023
Advertising	2.19%
Cable Television	0.53%
Food & Beverage	47.23%
Hotel	12.73%
Passenger Services	10.55%
Retail & RMUs	26.77%
	100%

PHL's Base Figure - Non-Car Rental

- Based on projected opportunities, determine the % of ACDBEs compared to all firms that can participate in PHL's concessions programs.



PHL's Base Figure - Non-Car Rental

- Relevant NAICS Codes identified

NAICS Codes	Description
541850	Advertising
515210	Cable Television
722310	Food Services
722330	Mobile Food Services
721110	Hotels
454210	Nonstore Retailers
517911	Telecommunications
812199	Spa Services
812990	Personal and Laundry Services
466120	Health and Personal Care Stores
443142	Electronics Stores
523130	Commodity Contracts

NAICS Codes	Description
446130	Optical Goods Stores
448120	Clothing and Accessories
448140	Family Clothing Stores
448210	Shoe Stores
448310	Jewelry Stores
448320	Luggage and Leather Good Stores
453220	Miscellaneous Store Retailers
517210	Telecommunications Resellers
531312	Nonresidential Property Managers
541611	Admin. Mgmt. and General Management
451211	Book Stores
451212	Magazines / News Stands

PHL's Base Figure - Non-Car Rental

- Calculate Step 1 Results

Activity	ACDBE	All Firms	Relative Availability	Weight	Weighted Relative Availability
Advertising	22	32	68.75%	2.19%	1.51%
Cable Television	0	3	0.00%	0.53%	0.00%
Food & Beverage	532	2676	19.88%	47.23%	9.39%
Hotel	1	366	0.27%	12.73%	0.03%
Passenger Services	25	720	3.47%	10.55%	0.37%
Retail & RMUs	563	4950	11.37%	26.77%	3.04%

14.34%

Adjusting PHL's Base Figure - Non-Car Rental

After Step 1, determine what adjustment, if any, is needed to the base figure. Consider:

- Past ACDBE participation
- Evidence from disparity studies
- Any available evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete

Adjusting PHL's Base Figure - Non-Car Rental

- Past participation of ACDBEs was determined to be the only relevant adjustment to consider.
- For the **current goal**, past participation used was:

Fiscal Year	ACDBE Achievement
FY2015	25.30%
FY2016	26.36%
FY 2017	28.26%
FY 2018	31.17%
FY 2019	33.53%

Regulations require using the median (or middle) past participation percentage

Adjusting PHL's Base Figure - Non-Car Rental

Calculate the Overall Goal by *averaging* the results of Step 1 (14.34%) with Step 2 (28.26%)

$$\frac{14.34\% + 28.26\%}{2} = 21.30\%$$

PHL's Car Rental ACDBE Goal

Similar process, but focuses on

- Expenditures by car rental agencies
- ACDBE participation supporting those expenditures, typically in areas such as:
 - Sign installation
 - Janitorial services
 - Janitorial equipment and supplies
 - Towing
 - Insurance
 - Key and lock services
 - Auto repair

PHL's Base Figure - Non-Car Rental

- Based on projected opportunities, determine the % of ACDBEs compared to all firms that can participate in PHL's concessions programs.



PHL's Base Figure - Car Rental

- Calculate Step 1 Results

Concession Type	NAICS Code	Potential ACDBE Firms	All Firms	% of ACDBE Firms Available
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	0	196	0.00%
Service Establishment Equipment and Supplies Merchant Wholesalers	423850	16	88	18.18%
Other Building Finishing Contractors	238390	21	121	17.36%
Hardware Manufacturing	332510	2	3	66.67%
Motor Vehicle Towing	488410	8	148	5.41%
Insurance Agencies and Brokerages	524210	37	2199	1.68%
Locksmiths	561622	3	59	5.08%
Other Personal and Household Goods Repair/Maint.	811490	0	119	0.00%
Janitorial Services	561720	122	1094	11.15%
General Automotive Repair	811111	9	1648	0.55%
Stationery and Office Supplies Merchant Wholesalers	424120	2	93	2.15%
New Car Dealers	441110	1	279	0.36%
Tire Dealers	441320	0	213	0.00%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	1	646	0.15%
Automotive Glass Replacement Shops	811122	0	53	0.00%
Automotive Oil Change and Lubrication Shops	811191	1	48	2.08%
Direct Property and Casualty Insurance	524126	2	211	0.95%
Total		225	7,218	3.11%

Adjusting PHL's Base Figure - Car Rental

- Past participation of ACDBEs was determined to be the only relevant adjustment to consider.
- For the **current goal**, past participation used was:

Fiscal Year	ACDBE Achievement
FY 2015	.58%
FY 2016	.32%
FY 2017	1%
FY 2018	3.59%
FY 2019	5.53%

Regulations require using the median (or middle) past participation percentage

Adjusting PHL's Base Figure - Car Rental

Calculate the Overall Goal by *averaging* the results of Step 1 (3.11%) with Step 2 (1%)

$$\frac{3.11\% + 1.00\%}{2} = 2.05\%$$

Public Participation

- PHL is required to communicate with the public in two ways for ACDBE goal-setting
 - Consultative process with stakeholders
 - Today
 - Publishing of goals on its website
- Please ask us your questions now, or send comments on the goal and/or methodology by 9/29 to:

Dbaily@Milligancpa.com

Discussion/Questions

Attachment 6

FORMS FOR DEMONSTRATION OF
GOOD FAITH EFFORTS

ATTACHMENT B

INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS RELATING TO PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES IN CITY AIRPORT CONCESSIONS CONTRACTS

1. Policy

This invitation and proposal is issued under the Regulations of the U.S. Department of Transportation ("U.S. DOT"), 49 C.F.R. Parts 23 and 26, as amended. It is the policy of the City of Philadelphia and U.S. DOT that airport concession disadvantaged business enterprises ("ACDBE(s)"), as defined in 49 CFR Part 23, as amended, shall have a fair opportunity to participate in the performance of airport concessions contracts. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 and 26, which concerns participation by airport concessionaire disadvantaged business enterprises (ACDBEs) in the concession activities of airports receiving Federal financial assistance from the Federal Aviation Administration, which funds were authorized and issued under Title 49 of the United States Code since 1988. All forms, information and documentation submitted are subject to the penalties of 18 U.S.C.S. 1001 relating to false statements and 18 Pa.CS.A 4904 relating to unsworn falsification to authorities.

2. 49 CFR Part 23 Nondiscrimination and Assurances

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Proposer agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The successful proposer 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.

3. ACDBE Participation

There is no numeric ACDBE Goal established for this Request for Proposal ("RFP"), but Proposers are required to use good faith efforts to include ACDBE participation in this proposal. Proposers are required to submit the following with their proposal:

- a. A Schedule For Participation demonstrating any ACDBE participation commitments that Proposer has achieved; or
- b. A Request For Good Faith Efforts Review, demonstrating that Proposer has made good faith efforts to include ACDBEs in its proposal.

The Schedule For Participation or, when necessary, a Request For Good Faith Efforts Review, becomes part of the Proposer's proposal and is an element of responsiveness to the proposal. **The failure to submit either a Schedule For Participation or a Request For Good Faith Efforts Review shall result in rejection of the proposal.** The City reserves the right to permit the proposer to submit a Request For Good Faith Efforts Review at any time prior to award of a contract in order to evaluate whether the proposer made good faith efforts.

4. Counting ACDBE Participation

The Schedule For Participation (if any) must contain the name and address of each ACDBE, a detailed description of the work (including a supply effort) to be performed by each named ACDBE and the percentage and dollar amount of participation. An entity wishing to participate as a joint venture ACDBE shall also complete and submit all required joint venture information forms available at the City of Philadelphia DBE Program Office. The listing of an ACDBE on the Schedule For Participation or a Schedule For Partial Participation accompanying a Request For Good Faith Efforts Review, constitutes a representation by the Proposer that the ACDBE is certified under the Pennsylvania Uniform Certification Program ("PaUCP"), as indicated below, and capable of completing the subcontract with its own work force and that the Proposer has made a binding commitment, in writing, with such firm prior to submission of the proposal. A copy of the binding commitment must be submitted with the Proposal. The written commitment must describe the work to be formed by the ACDBE, which must be a commercially useful function as required by 49 CFR Parts 23 and 26. Such a listing is also a representation that if the Proposer is selected, the Selected Proposer will subcontract with the listed ACDBE(s) for the work described and dollar/percentage amount(s) set forth in the proposal submission and produce a copy of the executed subcontract within thirty (30) days of the execution of a concession agreement between City and the Proposer or submit a request for Good Faith Efforts Review if the Proposer is unable to execute a subcontract with the ACDBE.

- a. Any ACDBE listed on the Schedule For Participation or the Schedule For Partial Participation accompanying a Request For Good Efforts Review **must be certified by the PaUCP before the time of proposal submission.** Proposers may list on the Schedule For Participation **only** firms that are currently certified as an ACDBE for the work described in their written commitment. The PaUCP maintains a directory of certified ACDBEs classified according to NAIC codes. This Directory is accessible online at www.paucp.com. Proposer shall not receive credit towards ACDBE participation or good faith efforts by using other certification directories (e.g., OEO Directory of Certified Firms, Pennsylvania Department of General Services BMWBO Directory).
- b. Pursuant to 49 CFR Part 23.55, if a firm is determined to be an eligible ACDBE, the dollar value of the contract awarded to the ACDBE is counted toward ACDBE participation as follows:

- i. **Commercially Useful Function:** Only expenditures to the ACDBE that relate to a commercially useful function performed by the ACDBE under the ACDBE's contract with the Proposer are counted toward ACDBE participation. An ACDBE is considered to perform a commercially useful function in accordance with 49 CFR Part 23.55 when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved.
- ii. **Joint Ventures:** Only that portion of the total dollar value of a contract with a joint venture equal to the percentage of ACDBE ownership and control in the joint venture is counted toward ACDBE participation. The ACDBE joint venture partner must be responsible for a clearly defined portion of the work and must share in the risks and profits of the joint venture commensurate with its ownership interest in the joint venture as required by 49 CFR Part 23 and the FAA's Joint Venture Guidance (July 2008).
- iii. **Management Contract:** The total dollar value an ACDBE earns under a management contract may be counted toward ACDBE participation.
- iv. **Subconcessionaire or Subcontractor:** When an ACDBE performs under a subconcessionaire agreement or a subcontract with a non-ACDBE, only that portion of the monies earned by the ACDBE under its subagreement may be counted toward ACDBE participation.
- v. **Bona Fide Services:** The entire amount of fees or commissions charged by an ACDBE for Bona Fide services may be counted toward ACDBE participation, as long as the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
- vi. **Goods:**
 - (1) **Manufacturers and Regular Dealers:** One hundred percent (100%) of the expenditures for goods required under the contract and obtained from an ACDBE manufacturer, as defined in 49 CFR 26.55(e)(1)(ii), or purchased or leased from an ACDBE regular dealer, as defined in 49 CFR 26.55(e)(2)(ii).
 - (2) **Other goods suppliers:** For an ACDBE that is neither a manufacturer or a regular dealer, count toward ACDBE participation the entire amount of fees or commissions for assistance in the procurement of goods for the concession and the entire amount of fees or transportation charges for the delivery of goods to the concession, as long as such fees, commissions or charges are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

- c. **Build-Out Costs Are Not Counted:** Pursuant to 49 CFR 23.55 (k), costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the “build-out”) are not counted toward ACDBE participation.

5. Good Faith Efforts Review and Proposer Appeal

- a. If the Proposer does not make any ACDBE participation commitments, it must file a Request For Good Faith Efforts Review as indicated above, documenting its good faith efforts to include ACDBE participation commitments in the proposal. Good faith efforts are those efforts undertaken by Proposer which, by their scope, intensity and appropriateness, can reasonably be expected to achieve ACDBE participation. Factors to be considered shall include, but not be limited to, soliciting interest of ACDBEs at pre-proposal meetings; negotiating in good faith with interested ACDBEs; providing interested ACDBEs with adequate information about the plans, specifications, and requirements of the contract in an expeditious manner; and, selecting portions of work or material needs consistent with the available ACDBE subcontractors and suppliers.
- b. If the City determines that the Proposer failed to make good faith efforts the Proposer will be notified and may file a written appeal for administrative reconsideration to the City within forty-eight (48) hours of the date of notification; Proposer is not permitted to submit new or additional documentation of good faith efforts in connection with its appeal. Reconsideration will be made by a City official who did not participate in the original determination that Proposer failed to make good faith efforts. The result of the reconsideration process is final and is not administratively appealable to the U.S. Department of Transportation.

6. Post Award Obligation

All contractors and subcontractors are hereby advised that their compliance with the requirements for participation by ACDBEs is material to the contract. Failure to carry out the requirements herein constitutes a substantial breach of contract and may result in termination of the contract, suspension, being barred from proposing on and/or participating in City and, after notification to the U.S. DOT, U.S. DOT funded contracts for up to three (3) years, and/or any other remedy available in law or equity.

- a. The successful Proposer is required to make good faith efforts to replace an ACDBE subcontractor that is unable to perform successfully with another ACDBE. All such substitutions require the prior written approval of the City. Similarly, in the event the successful Proposer's contract is increased by change order (sometimes referred to as a modification) and/or amendment, the successful Proposer is required to make good faith efforts to include ACDBE participation on such change order or amendment.
- b. The successful Proposer is required to make prompt payment to each subcontractor for satisfactory performance of its contract. Any delay or

postponement of payment may occur only for good cause following written approval of the Procurement Department and the Division of Aviation. This provision applies to both ACDBE and non-ACDBE subcontractors. In the event that successful Proposer is found to be in noncompliance with this directive, the City may exercise appropriate legal remedies which may include termination of contract, suspension and debarment of Proposer. Any issue or dispute, which may affect the prompt payment of subcontractors, should be brought to the attention of the Airport contract manager, as well as to the attention of the City of Philadelphia DBE Program Liaison Officer in situations involving ACDBE subcontractors, before a state of noncompliance is reached.

7. Post Award Compliance Monitoring

The City reserves the right to conduct post-award compliance reviews to ensure that contractors are in compliance with the contract requirements for ACDBE participation. The successful Proposer agrees to cooperate with the City in its compliance monitoring efforts and to submit, within the time limits prescribed by the City, all documentation that may be requested by the City, including, but not limited to, copies of subcontracts with ACDBEs, purchase orders, monthly ACDBE reports, canceled checks, etc. Unreasonable failure or refusal to furnish information or to cooperate in any compliance review shall constitute a substantial breach of contract.

SCHEDULE FOR PARTICIPATION BY
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBEs)

Proposal Number:

Name of Proposer

ACDBE	Detailed Description of Work or Supply Effort or Joint Venture responsibilities	ACDBE Participation	
		Dollar Amount \$ <small>(or ownership % for joint ventures)</small>	Type of Contract
<div style="border-bottom: 1px solid black; padding: 2px;">Name</div> <div style="border-bottom: 1px solid black; padding: 2px;">Address</div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; padding: 2px;"> <div style="border-bottom: 1px solid black; padding: 2px;">Contact Person</div> <div style="border-bottom: 1px solid black; padding: 2px;">Phone</div> </div>			
<div style="border-bottom: 1px solid black; padding: 2px;">Name</div> <div style="border-bottom: 1px solid black; padding: 2px;">Address</div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; padding: 2px;"> <div style="border-bottom: 1px solid black; padding: 2px;">Contact Person</div> <div style="border-bottom: 1px solid black; padding: 2px;">Phone</div> </div>			

PLEASE NOTE:

1. If the Proposer is an ACDBE, it is still required to complete this form and must describe, in detail, the work that it will perform, with its own workforce and the dollar amount of the fees, charges or commissions for the work or goods (if a manufacturer or regular dealer) and the type of contract or a description of joint venture responsibilities and the percentage of joint venture ownership held by the ACDBE.
2. A binding commitment must have been achieved with the ACDBE for the detailed work and dollar amount of participation as reflected by the ACDBE's quotation listed on this Schedule for Participation.
3. ACDBEs listed above must be certified by the PaUCP prior to proposal opening in order to count towards ACDBE participation. For each ACDBE listed above, attach a copy of their listing in the PaUCP directory.

Request For Good Faith Efforts Review

REQUEST FOR GOOD FAITH EFFORTS REVIEW

Name of Proposer: _____

Proposal Number: _____

Date: _____

I, _____, have not been able to achieve participation from any Airport Concession Disadvantaged Business Enterprises (ACDBEs). I represent, under penalty of law and as evidenced by the attached documentation, that I have made good faith efforts prior to proposal opening to achieve ACDBE participation in accordance with the criteria set forth in 49 C.F.R. Section 26.53, but have been unable to achieve such participation for the following reasons*:

*You may attach supplemental pages and documentation if necessary.

Request For Good Faith Efforts Review

REQUEST FOR GOOD FAITH EFFORTS REVIEW
SCHEDULE FOR Partial PARTICIPATION
BY
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

Proposal Number		Name of Proposer	
ACDBE	Detailed Description of Work or Supply Effort or Joint Venture responsibilities	ACDBE Participation	
		Dollar Amount \$ <small>(or ownership % for joint ventures)</small>	Type of <u>Contract</u>
Name			
Address			
Contact Person Phone			
Name			
Address			
Contact Person Phone			

PLEASE NOTE:

1. If the Proposer is an ACDBE, it is still required to complete this form and must describe, in detail, the work that it will perform, with its own workforce and the dollar amount of the fees, charges or commissions for the work or goods (if a manufacturer or regular dealer) and the type of contract or a description of joint venture responsibilities and the percentage of joint venture ownership held by the ACDBE.
2. A binding commitment must have been achieved with the ACDBE for the detailed work and dollar amount of participation as reflected by the ACDBE's quotation (and the percentage of ownership for ACDBE joint venture owners) listed on this Schedule for Participation.
3. ACDBEs listed above must be certified by the PaUCP prior to proposal opening in order to count towards ACDBE participation. For each ACDBE listed above, attach a copy of their listing in the PaUCP directory.

Request For Good Faith Efforts Review

Name of Proposer: _____ Proposal
Number: _____

A. CONTRACTOR'S ADVERTISEMENTS FOR PARTICIPATION

Have you advertised in general circulation media, trade association publications and minority or female focused media concerning subcontracting opportunities in general? If so attach copies of all such advertisements published by you within the past six months. If copies are not available, explain why and state the text of the advertisement(s) and the publications where they were printed.

B. NOTIFICATION TO ACDBEs

- (1) Did you contact in writing any certified Airport Concession Disadvantaged Business Enterprise(s) to solicit their participation in this contract? If so, attach dated copies of all such solicitations.
- (2) Identify by name, address, date and telephone number each certified Airport Concession Disadvantaged Business Enterprise that you contacted orally, and name the person with whom you spoke. If your company maintains a telephone log, please attach relevant entries.

Request For Good Faith Efforts Review

Name of Proposer: _____ Proposal
Number: _____

C. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES UNAVAILABLE TO PARTICIPATE IN CONTRACT

Of those Airport Concession Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which were interested in the contract but which were unavailable to work on this contract or were unable to prepare a quote. State the reasons for the unavailability of each ACDBE. The attached certification of unavailability form should be completed by the ACDBE and submitted for each unavailable firm whenever possible.

D. INFORMATION AND ASSISTANCE PROVIDED TO AIRPORT CONCESSION DISADVANTAGED BUSINESSES

Of those Airport Concession Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which you provided with plans, specifications and requirements of the contract. Detail all assistance you provide to interested certified ACDBEs and all efforts at negotiation to specific sub-proposals below.

I HEREBY VERIFY THAT THE FOREGOING STATEMENTS ARE TRUE. THIS VERIFICATION IS MADE SUBJECT TO THE PENALTIES SET FORTH IN 18 Pa.C.S.A. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES, AND 18 U.S.C.S. 1001, RELATING TO FALSE STATEMENTS. I UNDERSTAND THAT THIS REQUEST FOR GOOD FAITH EFFORTS REVIEW WILL BE CONSIDERED AND APPROVED OR DISAPPROVED SOLELY ON THE BASIS OF THE INFORMATION HEREIN PROVIDED.

Name (Signature)

Title:

Request For Good Faith Efforts Review

Name of Proposer: _____
Proposal Number: _____

**CERTIFICATION OF UNAVAILABILITY
OF AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISES**

I, _____
do hereby certify that I am a certified Airport Concession Disadvantaged Enterprise
("ACDBE") under the PaUCP and I was offered an opportunity to participate in the above
referenced proposal

for _____
(Describe Work or Supply Effort Solicited)

by _____
(Name of Prime Proposer's Representative Making Solicitation)

on _____
(Give Date of Solicitation)

but was unavailable to participate/unable to prepare a quote (strike inappropriate term) for
the following reasons:

Name of ACDBE

Signature of Principal of ACDBE

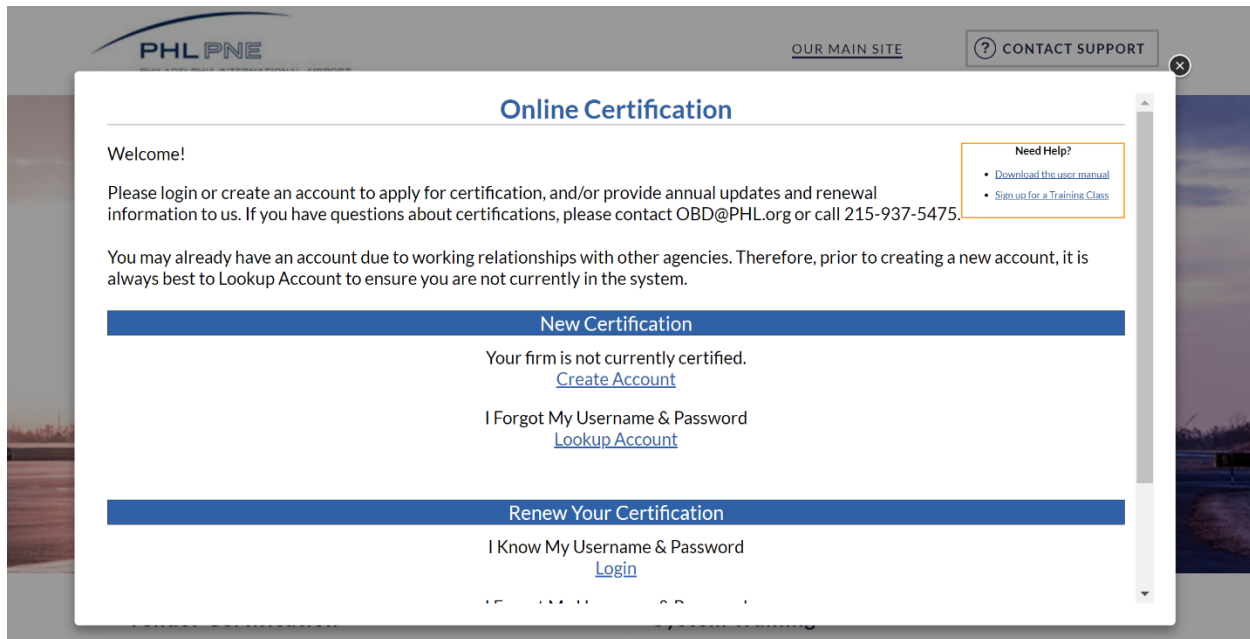
Title

Date

Attachment 7

CERTIFICATION APPLICATION FORMS

Certification application forms may be completed online through the PAUCP's website, <https://phl.dbesystem.com/>. A screen shot of the application screen is shown below.



Attachment 8

PAUCP APPEALS PROCESS

Purpose:

The Pennsylvania Unified Certification Program (PA UCP) Disadvantaged Business Enterprise (DBE) Certification Appeals Committee (Committee) entertains appeals concerning the denial of certification and appeals concerning the removal of eligibility by any of its Certifying Participants (CP). In accordance with the certification standards and procedures of 49 Code of Federal Regulations (C.F.R.), Part 23 (Part 23) and 26 (Part 26), the PA UCP affords firms denied certification or facing the removal of eligibility an administrative due process hearing in a manner consistent with state law. The Committee will act on behalf of the entire PA UCP and all PA UCP members will honor its determinations.

Composition:

The Committee is comprised of nine (9) voting members representing each of the nine (9) organizations in the PA UCP Oversight Committee. One of the nine (9) voting members will serve as Chairperson for a two-year term. A two-year term is necessary to ensure continuity of leadership. All Committee voting members will be appointed for a one-year term by their respective organizations. All Voting Members will be responsible for designating an alternate who can attend the scheduled hearing in their absence. Advisers are available to the Committee on an as-needed basis, including a legal adviser on a rotational basis.

Training:

The PA UCP Oversight Committee is responsible for ensuring that proper training and support is provided to the Committee.

Operating Procedures:

Any firm aggrieved by a denial or removal of eligibility decision will be afforded the opportunity to file an appeal with the Committee. However, consistent with institutional guidance an aggrieved firm will be informed that it does not forfeit the right to take an appeal to US DOT if it first elects to appeal to the Committee. The firm will also be informed that the ninety (90) day appeal right to US DOT set forth in Section 26.89(c) does not start to run until a final decision has been rendered by the Committee. A decision will be deemed final when the firm is advised of the determination in a written letter detailing the Committee's findings and the portions of the record evidence that supported each finding. This letter shall provide the address and time frame for taking an appeal to US DOT. Firms that elect to file an appeal with the Committee as the result of an initial denial decision or removal of eligibility will be given thirty (30) calendar days to do so. Appellants must state their intention and reason(s) for the appeal in writing to the CP that issued the denial or recommended removal of eligibility. That CP will be responsible for notifying the Chairperson of the request so that the firm may be

placed on the agenda. The appellant's letter will be acknowledged by a notice from the Committee informing them as to the date, location, and time for the hearing.

The Committee will conduct its regularly scheduled hearings in Harrisburg, Pennsylvania, at the headquarters of the Pennsylvania Department of Transportation or the Pennsylvania Turnpike Commission. Each proceeding will last approximately sixty (60) minutes. In the event that there are extenuating circumstances, the Committee may afford the appellant additional time.

If an appellant is unable to attend the scheduled meeting, he or she must submit a written explanation and justification for his or her inability to attend the meeting. The DBE regulation set forth in 49 CFR Part 26 requires that appeals for removal of eligibility be heard as soon as possible and does not afford the Committee the discretion to continue a proceeding over an extended period of time. In addition, Part 26 also allows an appellant to present information and arguments in writing in lieu of a hearing. Therefore, while the Committee will review and evaluate every request on a case-by-case basis, it will be unable to grant a continuance in the absence of compelling circumstances.

During each hearing, a presenter from the CP that made the denial determination or removal of eligibility will make a brief presentation outlining the reasons for a given determination. The presenter will be given up to fifteen (15) minutes to make this presentation. The presenter will originate from the CP that made the determination but will not be able to vote or participate in any deliberations at the conclusion of the proceeding.

Following this, the appellant will be given up to fifteen (15) minutes to present its position. Absent a compelling reason, the Committee will consider all record evidence but will not consider new information provided at the time of the proceeding. Following both presentations, the Committee members will be given up to fifteen (15) minutes to seek clarification relating to any points addressed in either presentation. The proceeding will then adjourn and the Committee members will be given up to fifteen (15) minutes to deliberate and make a determination as to the firm's eligibility.

Special Procedures for Removal of Eligibility Proceedings:

Consistent with Section 26.87 of Part 26, firms recommended for denial of recertification or subject to removal of eligibility for any reason will be afforded the opportunity to participate in an informal administrative due process hearing. A stenographer will be present and a verbatim transcript will be made. The hearing will be conducted in a similar fashion to the initial denial proceedings with the addition of the stenographer and the transcript. Firms wishing to obtain copies of the transcript will be asked to contact the CP that generated the proceeding. Section 26.87 hearings will be conducted during regularly scheduled hearings. However, a special hearing may be convened on an as

needed basis and in the event of a conflict of interest involving any Committee members or other circumstances.

A proceeding to remove eligibility may be based upon a written complaint that satisfies the specificity requirements of Part 26. US DOT, a certifying member, or any third party may initiate a proceeding. Consistent with Part 26, the Committee will not accept a general allegation or an anonymous complaint.

Consistent with Section 26.109(b), the Committee will keep the identity of a given complainant confidential at the election of the complainant. If such confidentiality will hinder an investigation or result in a denial of administrative due process to other parties, the Committee will advise the complainant of the need to waive this privilege. Consistent with Section 26.87 of Part 26, the Committee is obligated to ensure that the separation of functions component of an ineligibility proceeding is honored. To this end, every voting member involved in the removal of eligibility proceeding will originate from an office or personnel that did not take part in any action leading to or seeking to implement the removal of eligibility and does not take direction from an office or personnel involved in the initial action that gave rise to the proceeding. Potential conflicts of interest will be anticipated and addressed either by the Committee directly or, upon request by the Committee Chairperson, by the Oversight Committee.

In a Section 26.87 hearing, the firm will be afforded the opportunity to advance arguments against the ineligibility determination and to respond to determinations made by the initiating complainant. Consistent with Section 26.87, a DBE firm will retain its certification status during the pendency of any ineligibility proceeding.

Internal Procedures:

The Committee Chairperson will be responsible for scheduling the hearings and for generating an agenda. The hearing dates will be scheduled in advance. A minimum of two (2) firms should be on the agenda in order to convene a hearing. The starting time of the hearing will be at the discretion of the Chairperson. Appeals must be received at least thirty (30) days prior to the next scheduled hearing in order to be placed on the agenda. The individual presenter will be responsible for generating a background package and for submitting this package to each Committee members no later than ten (10) days prior to the scheduled hearing. This packet will be limited to relevant record evidence and a two-page maximum executive summary.

Committee Dispositions:

Five (5) voting members constitute a quorum. The Committee will meet in an executive session to make a determination following each appeal. Non-legal advisers will be excused from these sessions. The decision to certify or deny will be by a majority vote. In the event of a tie vote, the Chairperson's vote will dictate the outcome of the appeal.

The Chairperson of the Committee will be responsible for generating a letter relative to all Committee dispositions. In the event that a denial or removal of eligibility is upheld, the firm will be provided with a letter delineating the reasons for the denial or removal of eligibility under Part 26 and relating the portions of the record evidence that gave rise to the determination. The firm will be advised of its right to initiate an appeal with US DOT.

In the event that a firm is granted certification or is adjudged to be qualified to remain in the program, a letter informing the firm of Committee's decision will be sent and also indicate that a follow-up letter will be sent by the certifying participant that currently retains the file. The follow up letter to the firm will include all necessary details relative to DBE certification (e.g. certification number, anniversary date, the type(s) of work the firm can perform in the program, etc.).

The Committee will entertain appeals brought by an initial applicant or a DBE facing a removal of eligibility. In either instance, the provisions of Part 26, Subparts D and E will be applied uniformly by the Committee in making a disposition.

Ineligibility decisions will be based upon the criteria set forth in Part 26, Subparts D and E including changes in the firm's circumstances that render it ineligible; information that was not available at the time of the initial certification; a change in the certification standards since the firm was certified; or a documented finding that the certification was factually erroneous. Following an ineligibility proceeding and decision, the Chairperson of the Committee will generate a written notice of the decision setting forth the reasons for the decision and the portions of the record evidence that gave rise to each and every conclusion. The complainant or the concerned operating administration of US DOT will also be provided with this notice. The Chairperson will also advise the firm of its appeal rights to US DOT once the Committee has made an administratively final determination.

The appellant will be notified in writing of the determination of the Committee within fifteen (15) days following the hearing or proceeding. If the firm receives a favorable determination, a follow-up letter will be sent by the certifying participant that currently retains the file. The follow up letter to the firm will include all necessary details relative to DBE certification (e.g. certification number, anniversary date, the type(s) of work the firm can perform in the program, etc.).

Waiting Period for Reapplication:

Any firm that wishes to reapply to the PA UCP following a denial determination may do so six (6) months after the hearing or proceeding date.

Confidentiality for Applicant Submissions:

The Committee members will make every effort to ensure that all documents containing financial information and findings related to an individual review remain confidential,

including, but not limited to, the individual personal net worth statements and accompanying documentation submitted by prospective or existing DBE firms as well as complainants.

Information for US DOT:

If a firm takes their appeal to US DOT, the CP must provide US DOT with a well organized, indexed, and paginated transcript of the entire administrative record within 20 days of the request.

The US DOT Interim Guidance for the pandemic allows virtual hearings. The PA UCP will hold all appeals virtually during the pandemic. This will be reviewed after the pandemic is eliminated.