



City of  
**Philadelphia**

# Philadelphia International Airport Concession Disadvantaged Business Enterprise Program

October 2023



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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 Aviation, 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.

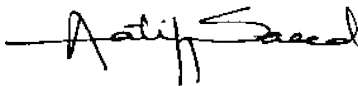
It is the policy of the City to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

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.

M. Denise Bailey, Deputy Director of Aviation for Business Diversity and Accessibility, City of Philadelphia, Philadelphia International Airport, International Plaza 2, Suite 400, Philadelphia, PA 19113, (215) 937- 1801, [Denise.Bailey@phl.org](mailto:Denise.Bailey@phl.org), has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Ms. Bailey 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 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 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.



\_\_\_\_\_  
Chief Executive Officer  
City of Philadelphia Department of Aviation

9/27/2023

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, 2023	2024/2025/2026	October 1, 2026 (2027/2028/2029)

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:

M. Denise Bailey  
 Deputy Director of Aviation for Business Diversity and Accessibility  
 Philadelphia International Airport  
 International Plaza 2; Suite 400  
 Philadelphia, PA 19113  
 (215) 937-1801  
[Denise.Bailey@phl.org](mailto:Denise.Bailey@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, Atif Saeed, 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. Additionally, we will ensure that ACDBEs are included in solicitation notifications and capacity-building and networking efforts by the Airport and our stakeholders.



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 Personal Net Worth**

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**

#### **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.

#### **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://paucp.dbesystem.com/>. 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 Sharron Williams, City of Philadelphia Deputy City 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 twelve (12) 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: [S33AppealsManagementRecords@dot.gov](mailto:S33AppealsManagementRecords@dot.gov). 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:

<b>Primary Airport Size</b>	<b>Region</b>	<b>Date Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
<b>Large/Medium Hubs</b>	<b>All regions</b>	<b>October 1, 2023</b>	<b>2024/2025/2026</b>	<b>October 1, 2026 (2027/2028/2029)</b>

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 Business Diversity and Accessibility, M. Denise Bailey, 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., Chief Operating Officer  
Philadelphia International Airport  
2 International Plaza, Suite 400  
Philadelphia, PA 19113  
[Keith.Brune@phl.org](mailto: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 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**

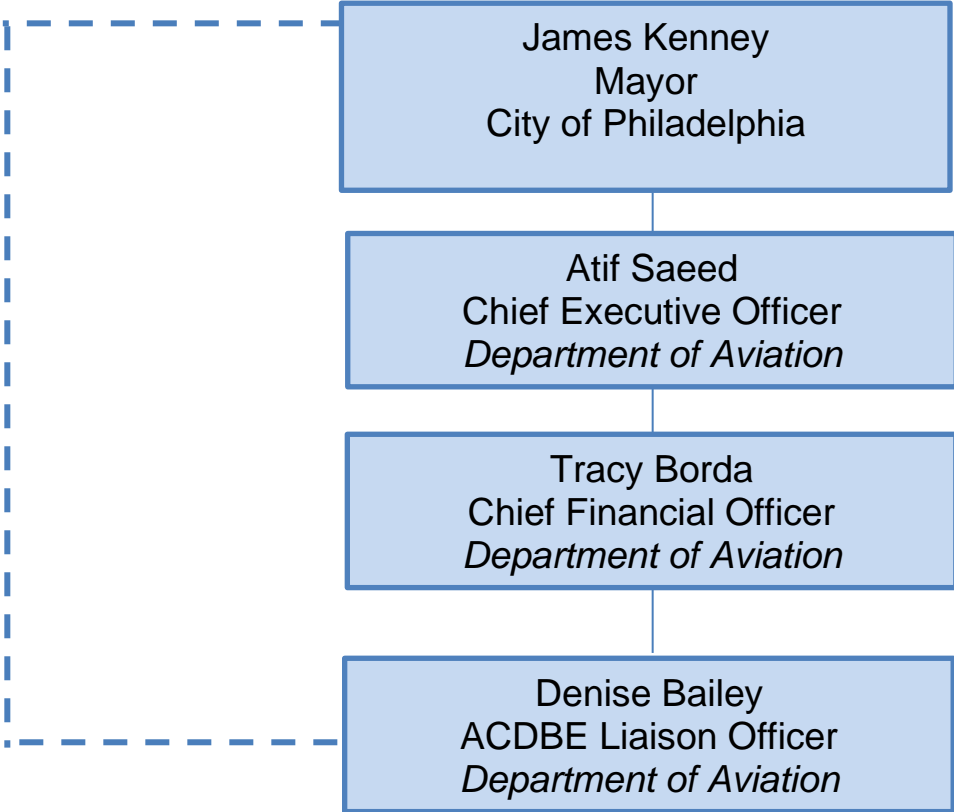
Attachment 1	City of Philadelphia/Philadelphia International Airport Organizational Chart
Attachment 2	Sample Page from DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculations for Car Rental Concessions
Attachment 5	Overall Goal Calculations for Other than 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



City of Philadelphia  
Department of Aviation  
Organization Chart





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

## About the System

Welcome to the Pennsylvania State Unified Certification Program (PAUCP) Certification Portal! The PAUCP is responsible for DBE/ACDBE certification in the state of Pennsylvania and provides firms with "one-stop" shopping.

To apply for DBE/ACDBE certification you may contact any one of the five PAUCP Certifying Partners - SEPTA, Pennsylvania Department of Transportation, Allegheny County, Philadelphia International Airport, and Pittsburgh Regional Transit - by clicking on their logo.

## 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.



Pittsburgh Regional Transit



## Business & Contact Information

BUSINESS NAME	<b>Guava &amp; Java Phl Inc.</b>
OWNER	<b>Ms. Nanditta Bhasker</b>
ADDRESS	<b>8500 ESSINGTON AVE LA COLOMBE TERM A PHILADELPHIA, PA 19153 <a href="#">map</a></b>
PHONE	<b>703-501-4800</b>
FAX	<b>703-759-6816</b>
EMAIL	<b><a href="mailto:rita@guavaandjava.com">rita@guavaandjava.com</a></b>
WEBSITE	<b><a href="http://www.guavaandjava.com">http://www.guavaandjava.com</a></b>
ETHNICITY	<b>Subcontinent Asian American</b>
GENDER	<b>Female</b>

## Certification Information

CERTIFYING AGENCY	<b>Philadelphia International Airport</b>
CERTIFICATION TYPE	<b>ACDBE - Airport Concessionaire Disadvantaged Business Enterprise</b>
CERTIFIED BUSINESS DESCRIPTION	<b>NAICS CODE 722310- Food Service Contractors</b>

## Commodity Codes

Code	Description
<b>NAICS 722310</b>	<b>Food Service Contractors</b>

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 – MONITORING & REPORTING FORM**

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

\_\_\_\_\_  
**Philadelphia International Airport – Authorized Signature**

\_\_\_\_\_  
**Date Prepared**

\_\_\_\_\_  
**Federal Fiscal Year & Quarter**

**PHILADELPHIA INTERNATIONAL AIRPORT  
ACDBE PROGRAM – MONITORING & 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 FFY 2024 – 2026  
Airport Concession Disadvantaged Business Enterprise (ACDBE)  
Car Rental Goal  
City of Philadelphia, Department 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 Department of Aviation has developed a proposed Overall Goal for FYs 2024 – 2026 for Car Rental Concessions.

**Overall Three-Year Goal:**

2.08%, to be accomplished through 2.03% RC and 0.05% RN

**Methodology used to Calculate Overall Goal:**

The Airport in conducting this goal-setting process is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

**Goal Based on Goods and Services Purchases - Determination:**

Upon review of the market, 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/services from ACDBEs. This is due to the fact that no certified ACDBE car rental companies exist within the market. As such, the PHL has structured the goal entirely in terms of the purchases of goods and services.

We determined the goal based on outreach for the purchases of goods and services from certified ACDBE firms and/or potential ACDBE firms in the market area. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goods and services goal. We will continue to consult and work with the Pennsylvania Unified Certification Program (PAUCP), our car rental concessionaires at the Airport, similarly situated airports in our region, minority and women businesses in the State, minority serving institutions, local pro-business organizations, and targeted media publications to find prospective ACDBE firms. We will work with our car rental companies to strategize outreach to PAUCP certified ACDBEs that may be able to provide car rental goods and services, to encourage current vendors who may be eligible for ACDBE certification to apply, and to encourage firms already working at the airport but certified as ACDBE in other states, to apply via the interstate certification process. The PAUCP is aware of this requirement and is on board to assist and process certifications as required by 49 CFR Subpart C.

We have the following car rental agencies operating at the airport: Enterprise, National, Alamo, Hertz, Dollar, Avis, Budget, and Sixt.



After collaboration and discussion with the Airport, car rental company concessionaires at the Airport stated that the goods and services they may need in the goal period are: Motor Vehicle Supplies and New Parts, Equipment and Supplies, Building Finishing, Vehicle Towing, Insurance Agencies and Brokerages, Locksmiths, Other Personal and Household Goods Repair/Maintenance, Janitorial Services, General Automotive Repair, New Car Dealers, Tire Dealers, Automotive Body, Paint, and Interior Repair and Maintenance, Automotive Glass Replacement Shops, Automotive Oil Change and Lubrication Shops, and Direct Property and Casualty Insurance.

**Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located. PHL has determined that its market area is the eight-county area of Bucks, Chester, Delaware, Montgomery, Philadelphia (in Pennsylvania) and Burlington, Camden, and Gloucester (in New Jersey). To calculate the base of the goal, PHL considered the previous 3 years of car rental expenditures/purchases and the projected potential car rental expenditures three years into the future, including upcoming new opportunities.

**Base of Goal**

To calculate the base of the goal, PHL considered the previous three years of car rental expenditures/purchases and the projected potential car rental expenditures three years into the future, including new opportunities.

Fiscal Year	Car Rental Expenditures/Purchases
2020	\$67,659,821
2021	\$87,650,783
2022	\$90,101,909

PHL estimates expenditures will increase by 2% over the next three years due to increased passenger traffic, as shown below.

Fiscal Year	Car Rental Expenditures/Purchases	% Growth
2023	\$91,903,947	2.0%
2024	\$93,742,026	2.0%
2025	\$95,616,866	2.0%

The following are not included in this base: (a) non-car rental operations.

If a new 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 PHL will submit to the FAA an appropriate adjustment to the overall goal. This will

be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

**Step 1: 23.51(c)**

The data source or demonstrable evidence used was Pennsylvania and New Jersey UCP directories, active participant’s list, the City of Philadelphia’s Office of Economic Opportunity Registry, our active participant’s list and Census Bureau data.

Concession Type	NAICS Code	Potential ACDBE Firms	All Firms	% of ACDBE Firms Available
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	3	179	1.68%
Service Establishment Equipment and Supplies Merchant Wholesalers	423850	16	78	20.51%
Other Building Finishing Contractors	238390	32	129	23.02%
Motor Vehicle Towing	488410	4	171	2.34%
Insurance Agencies and Brokerages	524210	8	1989	0.40%
Locksmiths	561622	2	60	3.33%
Other Personal and Household Goods Repair/Maint.	811490	0	130	0.00%
Janitorial Services	561720	68	1133	6.00%
General Automotive Repair	811111	5	1669	0.30%
New Car Dealers	441110	1	289	0.35%
Tire Dealers	441320	0	223	0.00%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	1	641	0.16%
Automotive Glass Replacement Shops	811122	0	49	0.00%
Automotive Oil Change and Lubrication Shops	811191	1	45	2.22%
Direct Property and Casualty Insurance	524126	3	186	1.61%
	<b>Total</b>	<b>144</b>	<b>6,971</b>	<b>2.07%</b>

Based on the chart above our Step 1 base figure is 2.07%.

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the Step 1 base figure in order to arrive at the overall goal. The data used to determine the adjustment to the base figure were

**Past Participation**

The Airport evaluated the current capacity of ACDBEs to perform work in the car-rental 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. Specifically, expenditures that were made available by the car rental agencies at the airport were assessed. Notice the annual ACDBE percent accomplishment for each year reported as seen in Table 4, and the median amount of ACDBE participation for the three-year period.

<b>FISCAL YEAR</b>	<b>ACDBE goal</b>	<b>ACDBE achievement</b>	<b>Over/under</b>
<b>FY 2018</b>	1.17%	5.53%	4.36%
<b>FY 2019</b>	1.17%	3.59%	2.42%
<b>FY 2020</b>	2.05%	1.70%	-0.35%
<b>FY 2021</b>	2.05%	1.56%	-0.49%
<b>FY 2022</b>	2.05%	2.10%	0.05%
	<b>MEDIAN</b>	<b>2.10%</b>	

**Disparity Studies**

The City of Philadelphia commissioned a disparity study in 2021 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 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 2018. 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 specifically, so the data in the studies were not used to make an adjustment to the base figure.

**Goal of Another Recipient**

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

**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.

Based on past participation being the only relevant factor for adjustment, the base goal was adjusted by adding our Step 1 base figure with our Step 2 adjustment figure and then averaging the total, arriving at an overall goal of 2.08% as shown below.

Median of Past Participation	Step One Base Figure	Divided by	Adjusted Goal
2.10%	2.07%		<b>2.08%</b>
4.17%		2	

We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period. Further, there are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.

To project the breakout of race-neutral and race-conscious projected, we used the median of over-achievement of our goal over the past three years. Based on historical data showing To project the breakout of race-neutral and race-conscious projected, we used the median of over-achievement of our goal over the past three years. That data shows that we exceeded the historical median goal by .05%, PHL projects achieving the 2.08% goal with 2.03% race conscious measures and 0.05% race neutrally.

**Public Participation**

On May 19, 2023 PHL held a virtual consultation meeting that had 75 attendees which included PHL representatives, stakeholders, and prime and sub concessionaires. The following is a summary of comments received during related to the goal during this comment period:

- If Car rental percentage is based on goods and services, does it include 3%? How do we calculate properly per location? *The overall goal we are establishing is an aggregate of all car rental companies’ goods and services procurements.*
- You used the term willing & able. Does this mean judgement is made on who is willing & able? And therefore, certain ACDBEs excluded? *All ACDBEs in the PAUCP in the appropriate NAICS codes are included.*
- Will the presentation be available? *Yes it will be emailed to attendees after the meeting.*
- When is the bid date for car rental period Oct 2023-Sept 2026? *These are not separate bids from PHL, rather it is the period of time that PHL’s overall goal is established for. Car rental companies conduct procurements for good and services year-round.*
- On the topic of food concessions and preparing for future years: Temple University Small Business Development Center noted that if there are any established diverse

food/beverage businesses on the line, we are recruiting for an amazing 12-week virtual program, akin to a mini-MBA. Applications are open through June 15<sup>th</sup>. While every participant received a \$2500 stipend for program completion, last year, Philly businesses also received awards of \$20,000, \$14,000, and \$11,000. Email me with any questions [jamiesbdc@temple.edu](mailto:jamiesbdc@temple.edu)”

During the meeting an email address was provided for any additional comments or questions. No further questions or comments were received.

The attendee list from that meeting follows:

Full Name	Company
Adam Mitchell	PHL
Aidan Fitzpatrick	
Alan Kessler	Hudson Group
Alisha Brown	PHL
Andre Titus	AMAC
Bather-Taylor, Suzette C	Port Authority NY NJ
Bridget Biagas	Hudson Group
Brooks, Maria T.	Hertz Corporation
Christopher Puchalsky	City of Philadelphia
Cobi Duncan	PHL
Connie Carson	City Sign
Courteney Henderson	PHL
Cubie Dawson	Hudson Group
Deneen Wilson	PHL
Denise Bailey	PHL
Elizabeth Walsh	WBEC East
Eric Hill	OTG
Erica Antoine, PE	Burns Group
Grose, Lydia	COMTO
Hannah, Mel	MarketPlace PHL
Howard Steven Brown	
Jahira Longcrier	City of Philadelphia
James Barnett	PHL
Jamie A. Shanker-Passero	Temple University SBDC
Jenny Ly	PHL
Jude Nix	Pleasant News
Keith Scroggins	BWI Airport
Kevin Hanagan	City of Philadelphia
Kevin Soeung	3Sixty Duty Free

<b>Full Name</b>	<b>Company</b>
Kim Carter	Sixt
Kim Carter	AACC
Larry Reed	Dandr, Inc.
Laura Siener	3Sixty Duty Free
Lauren Rago	Hudson Group
Laurex London	SPI
Lee, Yvonne	Avis Budget
Marc Coleman	The Tactile Group
Mark Toliver	SPI
Martin RICKS	Paradies
Monique Nesmith-Joyner	City of Philadelphia
Paula FEIJOO-VEGA	Paradies
Peruzzato, Sydney	Avis Budget
Pyle, Dana	MarketPlace PHL
Raghu Tadavarthy	Seven Hills
Stacy French	PHL
Stanley Lowe	HMS Host
Stephanie Weatherbe	PHL
Steve Cant	EP Guidi
Steve McKeon	The Grove, Inc.
Suman Tadavarthy	Seven Hills
Vesay, Ashley	MarketPlace PHL
Victoria Hosendorf	The Enterprise Center
Weber, Matthew	EHI
William Carter, Esq.	Greater Phila Chamber
Jovan Goldstein	African American Chamber
Urselle Garnett	MarketPlace PHL
Saron McKee	PHL
Malyka Sankofa	The Enterprise Center
Sandy Roberts	Onsite Retailers
Slong	SLA Worldwide
Terri Roberts	Onsite Retailers
Nicole Stokes	City of Philadelphia
Jill Dresnin	Wright Food Services
Jolly Sikka	Ramy Enterprises
Michelle Francois	Hakan Ilhan Restaurants
Kim Carter	AACC
James Bishop	SLA Worldwide

<b>Full Name</b>	<b>Company</b>
Al Hopkins	Yummy Pretzel
Arif Vhora	Dunkin Donuts
Pat Reilly	Reilly
Reds Reilly	Russ Kelly
Luke Naussner	Quality Flooring
Rick Hild	Russ Kelly
Erin Zwiercan	Jack Duggans

Attachment 5

OVERALL GOAL CALCULATION FOR  
OTHER THAN CAR RENTAL CONCESSIONS



**Methodology for Establishing the FY 2024 – 2026  
 Airport Concession Disadvantaged Business Enterprise (ACDBE)  
 Non Car Rental Goal  
 City of Philadelphia, Department 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 Department of Aviation has developed a proposed Overall Goal for FYs 2024 – 2026 for Other Than Car Rental Concessions.

**Overall Three-Year Goal:**

PHL’s overall ACDBE Non-Car Rental goal for FFYs 2024-2026 has been calculated as 21.64%; to be accomplished through 7.05% Race Conscious and 14.59% Race Neutral efforts.

**Methodology used to Calculate Overall Goal:**

The Airport, in conducting this goal-setting process, is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

**Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located. PHL has determined that its market area is the eight-county area of Bucks, Chester, Delaware, Montgomery, Philadelphia (in Pennsylvania) and Burlington, Camden, and Gloucester (in New Jersey).

**Base of Goal**

To calculate the base of the goal PHL considered the previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Fiscal Year	Non-Car Rental Gross Receipts
2020	\$143,116,432
2021	\$121,515,135
2022	\$204,186,331

PHL estimates that revenues to existing concessions will grow by 5% over the next three years due to inflation and increased passenger traffic, along with recovery from the pandemic.

Fiscal Year	Car Rental Expenditures/Purchases	% Growth
2023	\$214,395,647	5.0%
2024	\$225,115,429	5.0%
2025	\$236,371,201	5.0%

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.

If a new 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, PHL will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

**Methodology used to Calculate Overall Goal**

*Goods and Services*

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

*Management Contract or Subcontract*

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses 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 we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.*

**Step 1:** 23.51(c)

We determined the base figure for the relative availability of ACDBEs for non-car rental concessions. The base figure was calculated as follows:

**Numerator:** Ready, willing, and able non-car rental ACDBEs in the market area  
\_\_\_\_\_ divided by \_\_\_\_\_

**Denominator:** All ready, willing and able non-car rental concession firms in the market area

The data source or demonstrable evidence used was Pennsylvania and New Jersey UCP directories, active participant’s list, the City of Philadelphia’s Office of Economic Opportunity Registry, and Census Bureau data.

Concession Activity	NAICS codes	ACDBE Firms	/	All Firms	Relative Availability	x	Weight of Estimated Gross Receipts	=	Weighted Availability
Advertising	541850	8	/	33	24.24%		2.19%	=	0.53%
Cable Television	516210 (515210)	0	/	0	0.00%		0.53%	=	0.00%
Food & Beverage	531312, 541611, 722320, 722330	205	/	1878	10.92%		47.23%	=	5.16%
Hotel	721110	1	/	409	0.24%		12.73%	=	0.03%
Passenger (vending prepaid phone cards, spa shoe shine, carts, payphones)	445132(454210), 517121(517911), 523160 (523130), 812990	7	/	377	1.86%		10.55%	=	0.20%
Retail and RMUs	424920, 455219 (453998), 458320 (448320), 459210 (451211 and 451212), 541611	204	/	2,254	9.05%		26.77%	=	2.42%
<b>Weighted Step 1 Base Figure:</b>									<b>8.34%</b>

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the Step 1 base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 13.3%. Our overall goal for non-car rental concessions is 21.64%.

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

**Past History Participation**

Data used to determine the adjustment to the base figure was the median of historical ACDBE accomplishments as shown below:

FISCAL YEAR	ACDBE Goal	ACDBE achievement	Over/under
FY 2020	19.15%	33.74%	14.59%
FY 2021	21.30%	34.95%	13.65%

<b>FY 2022</b>	21.30%	37.01%	15.71%
<b>MEDIAN</b>	<b>34.95%</b>		

**Disparity Studies**

The City of Philadelphia commissioned a disparity study in 2021 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 2018. 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.

**Goal of Another Recipient**

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

**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.

Based on past participation being the only relevant factor for adjustment, the base goal was adjusted as follows:

**Adjustment to Base Figure with Median Past DBE Participation**

<b>Median of Past Participation</b>	<b>Step One Base Figure</b>	<b>Divided by</b>	<b>Adjusted Goal</b>
34.95%	8.34%		<b>21.64%</b>
43.29%		2	

We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period.

To project the breakout of race-neutral and race-conscious projected, we used the median of over-achievement of our goal over the past three years. This shows that the median over-achievement was 14.59%, therefore we project that our 21.64% goal will be achieved through 7.05% race-conscious methods and 14.59% race neutral methods.

**Public Participation**

On May 19, 2023 PHL held a virtual consultation meeting that had 75 attendees which included PHL representatives, stakeholders, and prime and sub concessionaires. The following is a summary of comments received during related to the goal during this comment period:

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Alisha Brown	PHL
Andre Titus	AMAC
Bather-Taylor, Suzette C	Port Authority NY NJ
Bridget Biagas	Hudson Group
Brooks, Maria T.	Hertz Corporation
Christopher Puchalsky	City of Philadelphia
Cobi Duncan	PHL
Connie Carson	City Sign
Courtney Henderson	PHL
Cubie Dawson	Hudson Group
Deneen Wilson	PHL

<b>Full Name</b>	<b>Company</b>
Denise Bailey	PHL
Elizabeth Walsh	WBEC East
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Erica Antoine, PE	Burns Group
Grose, Lydia	COMTO
Hannah, Mel	MarketPlace PHL
Howard Steven Brown	
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Jamie A. Shanker-Passero	Temple University SBDC
Jenny Ly	PHL
Jude Nix	Pleasant News
Keith Scroggins	BWI Airport
Kevin Hanagan	City of Philadelphia
Kevin Soeung	3Sixty Duty Free
Kim Carter	Sixt
Kim Carter	AACC
Larry Reed	Dandr, Inc.
Laura Siener	3Sixty Duty Free
Lauren Rago	Hudson Group
Laurex London	SPI
Lee, Yvonne	Avis Budget
Marc Coleman	The Tactile Group
Mark Toliver	SPI
Martin RICKS	Paradies
Monique Nesmith-Joyner	City of Philadelphia
Paula FEIJOO-VEGA	Paradies
Peruzzato, Sydney	Avis Budget
Pyle, Dana	MarketPlace PHL
Raghu Tadavarthy	Seven Hills
Stacy French	PHL
Stanley Lowe	HMS Host
Stephanie Weatherbe	PHL
Steve Cant	EP Guidi
Steve McKeon	The Grove, Inc.
Suman Tadavarthy	Seven Hills
Vesay, Ashley	MarketPlace PHL
Victoria Hosendorf	The Enterprise Center

<b>Full Name</b>	<b>Company</b>
Weber, Matthew	EHI
William Carter, Esq.	Greater Phila Chamber
Jovan Goldstein	African American Chamber
Urselle Garnett	MarketPlace PHL
Saron McKee	PHL
Malyka Sankofa	The Enterprise Center
Sandy Roberts	Onsite Retailers
Slong	SLA Worldwide
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Jolly Sikka	Ramy Enterprises
Michelle Francois	Hakan Ilhan Restaurants
Kim Carter	AACC
James Bishop	SLA Worldwide
Al Hopkins	Yummy Pretzel
Arif Vhora	Dunkin Donuts
Pat Reilly	Reilly
Reds Reilly	Russ Kelly
Luke Naussner	Quality Flooring
Rick Hild	Russ Kelly
Erin Zwiercan	Jack Duggans

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](http://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				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 100%;">Name</td></tr> <tr><td>Address</td></tr> <tr><td>Contact Person</td></tr> <tr><td style="width: 50%;">Phone</td></tr> </table>	Name	Address	Contact Person	Phone			
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Name							
Address							
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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 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.

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Request For Good Faith Efforts Review

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

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								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td colspan="2" style="text-align: left; padding: 2px;">Name</td></tr> <tr><td colspan="2" style="text-align: left; padding: 2px;">Address</td></tr> <tr><td colspan="2" style="text-align: left; padding: 2px;"> </td></tr> <tr> <td style="width: 70%; text-align: left; padding: 2px;">Contact Person</td> <td style="text-align: left; padding: 2px;">Phone</td> </tr> </table>	Name		Address				Contact Person	Phone			
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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.



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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.

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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

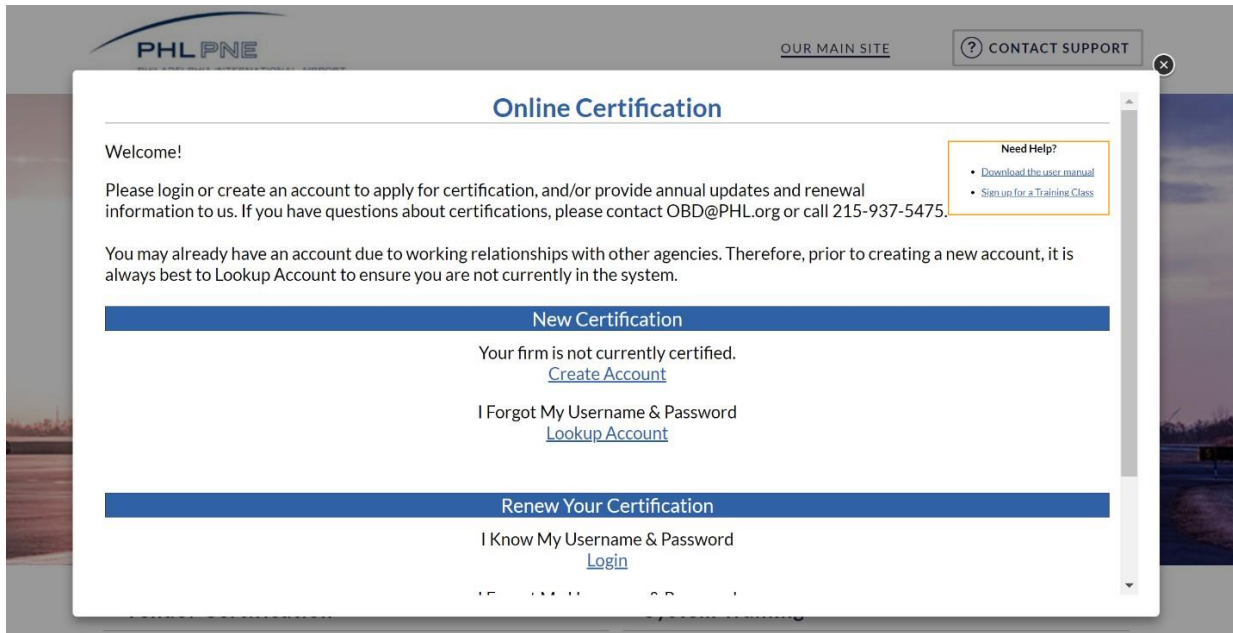
\_\_\_\_\_  
Title

\_\_\_\_\_  
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 twelve (12) 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.

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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.