

CITY OF DAYTON, DAYTON INTERNATIONAL AIRPORT

DAY - ACDBE Part 23 Program 2016-2018

The City of Dayton, Dayton International Airport has implemented an Airport Concession Disadvantaged Business Enterprise Program consistent with 49 CFR Part 23.

Contents

City of Dayton, Dayton International Airport ACDBE Program	4
POLICY STATEMENT.....	4
SUBPART A – GENERAL REQUIREMENTS.....	5
Section 23.1 Objectives	5
Section 23.3 Definitions	5
Section 23.5 Applicability	5
Section 23.9 Non-discrimination Requirements	5
Section 23.11 Compliance and Enforcement	6
SUBPART B – ACDBE PROGRAMS	7
Section 23.21 ACDBE Program Updates.....	7
Section 23.23 Administrative Provisions.....	8
Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs.....	10
Section 23.27 Reporting	10
Section 23.29 Compliance and Enforcement Procedures.....	10
SUBPART C – CERTIFICATION AND ELIGIBILITY	11
Section 23.31 Unified Certification Program.....	11
Section 23.35 Personal Net Worth.....	12
SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING	13
Section 23.41 Basic Overall Goal Requirement.....	13
Section 23.43 Consultation in Goal Setting.....	13
Section 23.45 Overall Goals	14
1. Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e)) ...	14
2. Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv)).....	15
3. Administrative reconsideration (26.53(d)).....	16
4. Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f)).....	16
Section 23.53 Counting ACDBE Participation for Car Rental Goals.....	17
Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals.....	17
Section 23.57 Analysis of ACDBE Participation	18

Section 23.61 Quotas or Set-asides.....	18
SUBPART E – OTHER PROVISIONS	18
Section 23.71 Existing Agreements	19
Section 23.73 Privately-Owned or Leased Terminal Buildings (N/A).....	19
Section 23.75 Long-Term Exclusive Agreements	19
Section 23.79 Geographic Preferences	19
LIST OF ATTACHMENTS	19
Attachment 1: Organizational Chart.....	21
Attachment 2: Ohio DBE Directory.....	22
Attachment 3: Monitoring and Enforcement Mechanisms	23
Attachment 4: Overall Goal Calculation for Concessions Other than Car Rentals	25
1. Section 23.45: Overall Goal Calculation for Concessions Other than Car Rentals	25
2. Overall Three-Year Goal:	25
3. Base of Concessions Other than Car Rentals Goal	25
4. Methodology used to Calculate Overall Goal	26
Attachment 5 Overall Goal Calculation for Car Rentals	28
1. Section 23.45: Overall Goal Calculation for Car Rentals	28
2. Overall Three-Year Goal:	28
3. Base of Car Rental Goal.....	28
4. Methodology used to Calculate Overall Goal	29
5. Section 23.51: Breakout of Estimated Race-Neutral & Race Conscious Participation.....	29
Attachment 6: Demonstration of Good Faith Effort Forms	31
FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION ...	32
FORM 2: LETTER OF INTENT	33
Attachment 7: ACDBE Certification Application	34
Attachment 8: Procedures for ACDBE Eligibility.....	35

City of Dayton, Dayton International Airport ACDBE Program

POLICY STATEMENT


The City of Dayton, Dayton 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 City of Dayton, Dayton 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 Dayton, Dayton International Airport has signed airport grant assurances that it will comply with 49 CFR Part 23.

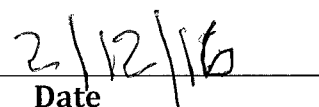
It is the policy of the City of Dayton, Dayton International Airport to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

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 airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Juleda Hyde, Contract Compliance Assistant, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Juleda Hyde, Contract Compliance Officer works with Sarah Spees, Airport Business Administrator, to implement 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 of Dayton, Dayton International Airport in its financial assistance agreements with the Department of Transportation.

Dayton International Airport has disseminated this policy statement to the City Manager, City Commissioners and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area via electronic mail and on the City of Dayton and Dayton International Airport's websites.


Terrence G. Slaybaugh, Director of Aviation


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 of Dayton, Dayton International Airport (Dayton International Airport) 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 Dayton International Airport is a 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 Dayton International Airport 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, religion, sex, sexual orientation, gender identity, disability, age, ancestry, marital status, place of birth or national origin*

In administering its ACDBE program, the Dayton International Airport 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 Dayton International Airport acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The Dayton International Airport 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 Dayton International Airport will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.109).

The Dayton International Airport 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.

The Dayton International Airport’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.

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

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

The following enforcement actions apply to firms participating in the Dayton International Airport’s ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C 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 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other 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 C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.

- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) 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.
- (e) 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 [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

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

Any person who knows of a violation of this part by Dayton International Airport 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 Dayton International Airport is a small hub primary, airport required to have an ACDBE program.

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

Until the Dayton International Airport'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 Dayton International Airport and Dayton Wright Brothers Airport.

When the Dayton International Airport 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 Dayton International Airport is committed to operating its ACDBE program in a nondiscriminatory manner.

The Dayton International Airport Policy Statement is elaborated on the first page of this program.

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

Juleda Hyde, Contract Compliance Officer
371 West Second Street, Suite 100
Dayton, OH 45402
937-333-1405
juleda.hyde@daytonohio.gov

The ACDBELO office will work in partnership with:

Sarah Spees, Airport Business Administrator
3600 Terminal Drive, Suite 300
Vandalia, OH 45377
937-454-8207
sspees@flydayton.com

Both are responsible for implementing all aspects of the ACDBE program and ensuring that the Dayton International Airport complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the City Manager 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 and the Airport Business Administrator are responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO is part of a staff of six (6) that will assist with program implementation and monitoring and technical assistance. 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 Dayton International Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager 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 Ohio Minority Business Assistance Center.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Unified Certification Program (UCP) in Ohio.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

The ACDBELO is housed at the Dayton Human Relations Council (HRC). The HRC implements procurement programs that provide opportunities to minority, women, small and disadvantaged business enterprises. In addition, the HRC is host to the Minority Business Assistance Center (MBAC) funded by the State of Ohio. The MBAC provides technical assistance to disadvantaged businesses, including those participating in the ACDBE program. Technical assistance includes marketing, financial management, financial assistance, procurement assistance, construction consulting, and assistance completing certification applications. The MBAC consists of two (2) staff.

Directory: The Dayton International Airport through the Ohio 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 continuously. We make the Directory available as follows: www.transportation.ohio.gov/dbe. More information on the directory can be found in ATTACHMENT 2.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The City of Dayton, Dayton International Airport will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)). Notification is made to all interested parties of any new opportunities.

The City of Dayton, Dayton International Airport 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 of Dayton, Dayton International Airport's overall goal methodology and a description of the race-conscious measures it will use to meet the goals are described in Section 23.25 and ATTACHMENT 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

The City of Dayton, Dayton International Airport 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 of Dayton, Dayton International Airport 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. We will submit the report to the FAA Regional Civil Right Office via hard copy of the form or electronically via the DBE Office Online Reporting System (DOORS).

Section 23.29 Compliance and Enforcement Procedures

The City of Dayton, Dayton International Airport will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

Random unannounced site visits.

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)

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 Unified Certification Program

We 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 City of Dayton, Dayton International Airport is the member of a Unified Certification Program (UCP) administered by the State of Ohio Department of Transportation. The UCP will meet all of the requirements of this section.

The City of Dayton, Human Relations Council is a member of a Unified Certification Program (UCP) administered by the State of Ohio. The Recipient is authorized to certify firms as defined in the State of Ohio UCP.

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. Our schedule for this review process will be: 90 days prior to new contract.

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

Section 23.35 Personal Net Worth

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

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:

- (a) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (b) The individual's equity in his or her primary place of residence; and
- (c) 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)

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

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

concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

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

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

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

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

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The City of Dayton, Dayton International Airport will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. We will report any significant overall goal adjustments to the FAA.

The average annual concession revenues for concessions other than car rentals over the preceding three years, and the concession revenues for car rentals will exceed \$200,000. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

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

Section 23.43 Consultation in Goal Setting

The City of Dayton, Dayton International Airport 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, 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 sponsor's efforts to increase participation of ACDBEs.

Section 23.45 Overall Goals

The sponsor is a, small hub primary, airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Small Hubs	All regions	October 1, 2015	2016/2017/2018	October 1, 2018 (2019/2020/2021)

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 sponsor 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. (23.45i)

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

A description of the overall goal for car rentals can be found in ATTACHMENT 5 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 4 of this program.

1. 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 methodology 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).

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City of Dayton, Dayton International Airport 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 of Dayton, Dayton International Airport 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))

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

To be eligible to be awarded a concession that has a concession specific goal; bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the City of Dayton, Dayton International Airport's concession specific goals. Specifically,

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

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

Juleda Hyde, Contract Compliance Officer
371 West Second Street, Suite 100
Dayton, OH 45402
937-333-1405
juleda.hyde@daytonohio.gov

Sarah Spees, Airport Business Administrator
3600 Terminal Drive, Suite 300
Vandalia, OH 45377
937-454-8207
sspees@flydayton.com

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

b. Information to be submitted (26.53(b))

The City of Dayton, Dayton International Airport treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility.

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

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

3. Administrative reconsideration (26.53(d))

Within two days of being informed by the City of Dayton, Dayton International Airport that it is not responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official: Catherine Crosby, Human Relations Council, Executive Director, 371 West Second Street, Suite 100, Dayton, Ohio 45402 937-333-1403, Catherine.Crosby@daytonohio.gov. The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

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

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

The City of Dayton, Dayton International Airport 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.

If the concessionaire fails or refuses to comply within 10 days our contracting office will notify the Finance Department to suspend payment until satisfactory action has been taken. If the concessionaire continues to fail to comply, the contracting officer may issue a termination for default proceeding.

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 of Dayton, Dayton International Airport to practice nondiscrimination based on race, color, religion, sex sexual orientation, gender identity, disability, age, ancestry, marital status, place of birth, 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 (Attachment 6), 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.

When a concession specific goal is established pursuant to the sponsor's ACDBE program, the sample proposal/bid specification can be used to notify concession firms of the requirements to make good faith efforts. The forms found at ATTACHMENT 6 can be used to collect information necessary to determine whether the concession firm has satisfied these requirements. A proposal/bid specification is required only when a concession specific is established.

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 Analysis of ACDBE Participation

(If the awards and commitments on our 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 us to fully meet our goal for the new fiscal year;
- (3) We understand the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures; and
- (4) We understand we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:
 - i. We do not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;
 - ii. FAA disapproves our analysis or corrective actions; or
 - iii. We do not fully implement:
 - a. The corrective actions to which we have committed, or
 - b. Conditions that FAA has imposed following review of our analysis and corrective actions.
 - c. If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set-asides

We 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 (N/A)

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee (other means – identify.) We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23.

Section 23.75 Long-Term Exclusive Agreements

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

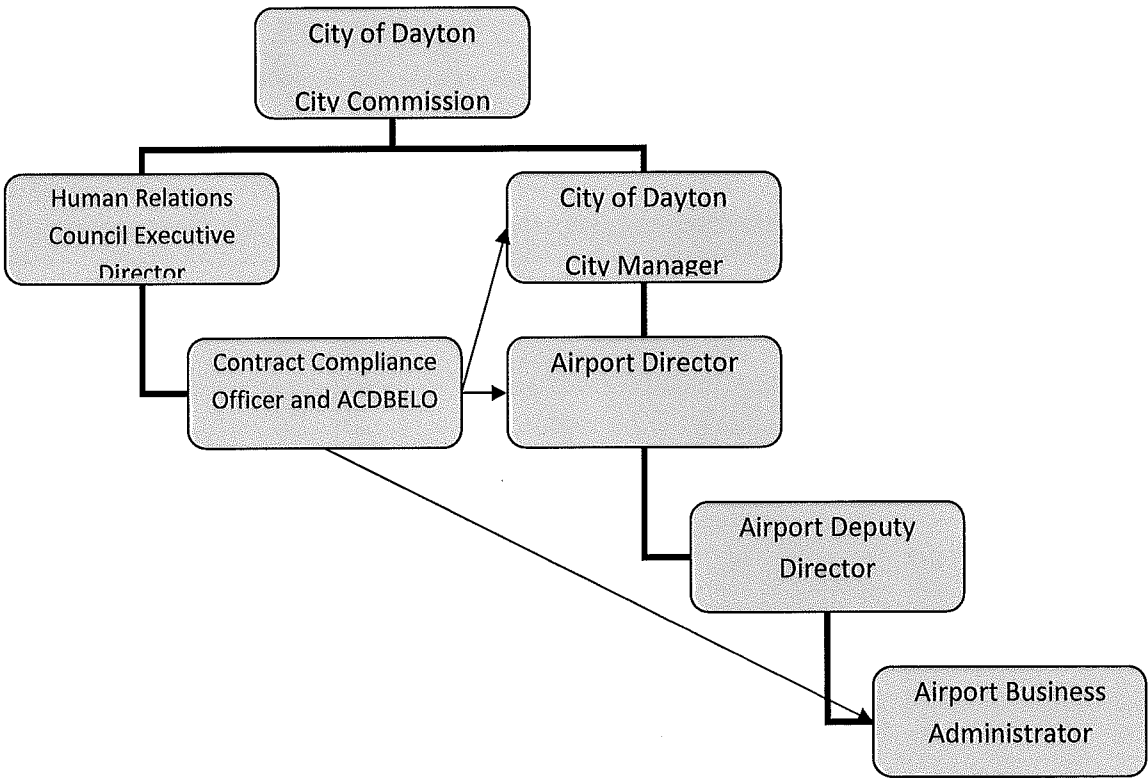
Section 23.79 Geographic Preferences

We will not use a “local geographic preference,” i.e., any requirement that gives an ACDBE located in one place Dayton, Ohio an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

LIST OF ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility

Attachment 1: Organizational Chart



Attachment 2: Ohio DBE Directory

Ohio DBE Directory

www.transportation.ohio.gov/dbe

Attachment 3: Monitoring and Enforcement Mechanisms

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

A contractor or subcontractor who fails to comply with any portion of this program, and whose failure to comply continues for a period of 30 calendar days after the contractor or subcontractor receives written notice of such noncompliance from the Executive Director of the Council, or his/her designee, shall be subject to any or all of the following penalties:

- A. Withholding of ten percent of all future payments for the eligible project until the Executive Director of the Human Relations Council, or his/her designee, determines that the contractor or subcontractor is in compliance with this division.
- B. Withholding of all future payments under the eligible project until it is determined that the contractor or subcontractor is in compliance with this division.
- C. Cancellation of the eligible project.
- D. Refusal of all future contracts or subcontracts with the City of Dayton, Dayton International Airport for a minimum of one year and a maximum of five years from the date upon which this penalty is imposed.

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

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

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

1. We will insert the following provisions into concessions agreements and management contracts:
 - A. Concessions and ACDBEs will report at least annually all participation to the City of Dayton, Dayton International Airport.
 - B. The ACBELO will visit each concession at least annually to confirm data provided in reports from concession and ACDBE participant, if any.

2. We will implement the following additional monitoring and compliance procedures:
 - A. The ACDBELO will visit each concession at least annually to confirm data provided in reports from concession and ACDBE participant, if any.
3. We will implement our compliance and monitoring procedures as follows:
 - A. On-site reviews, review of records, and ongoing monitoring will be conducted by the Contract Compliance Officer

Attachment 4: Overall Goal Calculation for Concessions Other than Car Rentals

1. Section 23.45: Overall Goal Calculation for Concessions Other than Car Rentals

Amount of Goal (submit if average annual gross receipts exceed \$200,000)

Name of Recipient: City of Dayton, Dayton International Airport

Goal Period:

FY-2013-2014-2015: – October 1, 2012 through September 30, 2015

2. Overall Three-Year Goal:

5%, to be accomplished through 5% RC and 0% RN

The City of Dayton, Dayton International Airport has determined that its market area is Dayton Metropolitan Statistical Area.

3. Base of Concessions Other than Car Rentals Goal

To calculate the base of the goal, the City of Dayton, Dayton International Airport considered the previous three years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Gross Receipts for Previous 3 Years - Non-Car Rental Concessions

Fiscal Year	Concessions Revenue (Excluding Car Rental)
2013	\$11,887,756
2014	\$11,480,869
2015	\$10,878,886
Total	\$34,247,511
Average	\$ 11,415,837

The City of Dayton, Dayton International Airport does not estimate any changes that would cause revenues to increase or decrease over the next three years.

The concession opportunities anticipated during this goal period are:

Food and Beverage, Advertising, News and Gifts, Vending Machines, Shoe Shine concessions will continue with estimated gross receipts of \$11,415,837.

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 City of Dayton, Dayton International Airport 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)).

4. 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.

The average goal achievement over the past three years was 6.1%. There was a significant increase between fiscal year 2012 and fiscal year 2013. Fiscal year 2014 saw a slight

decline. Based on this data we expect to achieve 5% ACDBE participation on non-car rental concessions.

Although we have not set a goal for race neutral, we will be using the Minority Business Assistance Center to encourage Disadvantaged Business Enterprises to become more involved in airport concessions.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Attachment 5 Overall Goal Calculation for Car Rentals

1. Section 23.45: Overall Goal Calculation for Car Rentals

Amount of Goal (submit if average annual gross receipts exceed \$200,000)

Name of Recipient: City of Dayton, Dayton International Airport

Goal Period:

FY-2016-2017-2018: – October 1, 2015 through September 30, 2018

2. Overall Three-Year Goal:

1%, to be accomplished through 1% RC and 0% RN

The City of Dayton, Dayton International Airport has determined that its market area is Dayton Metropolitan Statistical Area.

3. Base of Car Rental Goal

To calculate the base of the goal City of Dayton, Dayton International Airport 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.

Gross Receipts (Revenue) for Previous 3 Years - Car Rental Concessions

Fiscal Year	Concessions Revenue (Car Rental)
2013	\$34,292,881
2014	\$34,269,726
2015	\$34,441,142.45
Total	\$103,003,749
Average	\$34,334,583

The City of Dayton, Dayton International Airport estimates that revenues to existing concessions will grow by 5% over the next three years. Therefore, the recipient's base of goal is the average car rental revenue of \$36,051,312, or $(\$34,334,583 \times 5\% = \$1,716,729) + \$34,334,583 = \$36,051,312$.

The car rental concession opportunities anticipated during this goal period are:

Good and Services such as Insurance, Automobiles, Automobile Repairs.

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 City of Dayton, Dayton International Airport 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)).

4. 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. 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.

The average goal achievement over the past three years was 1.22%. The percentage ranged from 1.20% to 1.26%. Due an increase in revenues and stagnant goal achievement we are maintaining our overall goal at 1% race conscious.

5. Section 23.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The City of Dayton, Dayton International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The City of Dayton, Dayton International Airport uses the following race-neutral measures. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.

We estimate that, in meeting our overall goal of 1%, we will obtain 0% from race-neutral participation and 1% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. ACDBE participation on concession leases that did not have ACDBE requirements;
2. Data from private sector MBE/WBE participation;
3. ACDBE participation in local programs in which there are no ACDBE concession specific goals;
4. Extent of race-neutral business assistance efforts;
5. ACDBE participation on other city or county concession activity; and

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

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

Attachment 6: Demonstration of Good Faith Effort Forms

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

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

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

____ The bidder/offeror is committed to a minimum of ____ % ACDBE utilization on this contract.

____ The bidder/offeror (if unable to meet the ACDBE goal of ____%) is committed to a minimum of ____% ACDBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____
Signature **Title**

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () _____

Description of work to be performed by ACDBE firm:

The bidder/offeror is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
Signature **Title**

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each ACDBE subcontractor.)

Attachment 7: ACDBE Certification Application

ACDBE Certification Application Form is available online at:

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>

Attachment 8: Procedures for ACDBE Eligibility

Procedures for Removal of ACDBEs Eligibility

1. Notify the ACDBELO in writing.
2. Receive written acknowledgement and recommendations from the ACDBELO
3. Review recommendations for further action from the ACDBELO
4. Accept or reject recommendations. If rejected, show good faith efforts to replace ACDBE participation.