

---

# Norfolk Airport Authority Norfolk International Airport



## Airport Concession Disadvantaged Business Enterprise Program

April 2025

---

## TABLE OF CONTENTS

<b>SUB-PART A - GENERAL REQUIREMENTS &amp; INFORMATION.....</b>	<b>1</b>
Section 23.1, 23.23 Policy Statement and Objectives.....	1
Section 23.1 Objectives .....	2
Section 23.3 Definitions.....	2
Section 23.5 Applicability .....	2
Section 23.9 Non-discrimination Requirements .....	2
Section 23.11 Compliance and Enforcement.....	3
<b>SUBPART B – ACDBE PROGRAMS .....</b>	<b>3</b>
Section 23.21 ACDBE Program Updates.....	3
Section 23.23 Administrative Provisions .....	3
Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs .....	4
Section 23.26 Fostering Small Business Participation .....	6
Section 23.27 Reporting .....	6
Section 23.29 Compliance and Enforcement Procedures .....	7
<b>SUBPART C – CERTIFICATION AND ELIGIBILITY .....</b>	<b>8</b>
Section 23.31 Certification Standards.....	8
Section 23.33 Business Size Standards .....	8
Section 23.35 Personal Net Worth .....	9
Section 23.37 Firms Certified as DBEs .....	9
Section 23.39 Other ACDBE Certification Requirements.....	9
<b>SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING .....</b>	<b>9</b>
Section 23.41 Basic Overall Goal Requirement .....	9
Section 23.43 Consultation in Goal Setting.....	10
Section 23.45 Overall Goals .....	10
Section 23.53 Counting ACDBE Participation for Car Rental Goals.....	11
Section 23.55 Counting ACDBE participation for Concessions Other than Car Rentals.....	11
Section 23.57(b) Goal shortfall accountability.....	12
Section 23.61 Quotas or Set-asides .....	12
<b>SUBPART E - OTHER PROVISIONS .....</b>	<b>13</b>
Section 23.71 Existing Agreements .....	13
Section 23.73 Privately-Owned or Leased Terminal Buildings .....	13
Section 23.75 Long-Term Exclusive Agreements.....	13
Section 23.77 Preemption of Local Requirements.....	14
Section 23.79 Geographic Preferences.....	14
<b>ATTACHMENTS.....</b>	<b>14</b>

## Sub-Part A - General Requirements & Information

### **Section 23.1, 23.23    Policy Statement and Objectives**

The Norfolk Airport Authority (hereafter the "Authority") has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program, on behalf of the Norfolk International Airport ("Airport"), in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 23. The Authority has received Federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Authority has signed grant assurances that it will comply with 49 CFR Part 23.

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

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving USDOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that the Authority's 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 the Airport;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at the Airport;
6. To promote the use of ACDBEs in all types of concession activities conducted by recipients;
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program;
8. To provide appropriate flexibility to the Authority in establishing and providing opportunities for ACDBEs.

**Steve Sterling, Executive Vice President & Chief of Staff**, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351, has been designated as the ACDBE Liaison Officer (ACDBELO). In this capacity, the ACDBELO 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 Norfolk Airport Authority in its financial assistance agreements with the Department of Transportation.

The Norfolk Airport Authority has disseminated this policy statement to its board members and all of the components of the organization. The Authority has distributed this statement to ACDBE and non-ACDBE concessionaire communities in the area on the Authority's website, via local newspapers, local chambers of commerce, local trade organizations, professional organizations and local minority, women, and disadvantaged business organizations.

  
\_\_\_\_\_  
Mark Perryman, Chief Executive Officer

4/14/2025

\_\_\_\_\_  
Date

## **Section 23.1 Objectives**

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

## **Section 23.3 Definitions**

The Norfolk Airport Authority 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 Norfolk International Airport is a small-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 Authority 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 DBE program, the Authority 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 Authority acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The Authority 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 causes those businesses to similarly include the statements in further agreements.

## **Section 23.11 Compliance and Enforcement**

Norfolk Airport Authority acknowledges that the compliance and enforcement provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under Part 23 in the same way that they apply to FAA recipients and programs under Part 26.

### **SUBPART B – ACDBE Programs**

## **Section 23.21 ACDBE Program Updates**

The Authority is the operator of at least one primary airport and is required to have an ACDBE program. This ACDBE program applies to the following airport(s):

- ***Norfolk International Airport***

Prior to implementing significant changes to this ACDBE program, the Norfolk Airport Authority will provide the amended program to the FAA for review and approval.

## **Section 23.23 Administrative Provisions**

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

**Financial Institutions:** The Authority will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. One source is the FDIC Minority Depository Institutions List [www.fdic.gov](http://www.fdic.gov). The Authority will also encourage prime concessionaires to use such institutions. The Authority has not identified any financial institutions owned and controlled by socially and economically disadvantaged individuals.

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

**Steve Sterling**  
**Executive Vice President & Chief of Staff**  
**Norfolk Airport Authority**  
**2200 Norview Ave**  
**Norfolk VA 23518**  
**757-857-3351**  
[ssterling@norfolkairport.com](mailto:ssterling@norfolkairport.com)

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Authority complies with all provisions of 49 CFR Part 23. The ACDBE Liaison Officer has direct, independent access to the Chief Executive Officer, who is the equivalent to the CEO of an organization, on ACDBE program issues. An organization chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of 1 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 USDOT.
2. Reviews third-party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
4. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract-specific goals).
5. Analyzes the Authority's progress toward attainment and identifies ways to improve progress.
6. Advises the Chief Executive Officer and the governing body on ACDBE matters and achievements.
7. Chairs MBE/DBE/ACDBE Advisory Committee, if one is formed.
8. 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).
9. Explaining the ACDBE participation guidelines at pre-bid and pre-proposal conferences.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Unified Certification Program in Virginia.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

**Directory:** The Virginia Uniform Certification Program (UCP) maintains a directory identifying all firms eligible to participate as 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 revises the directory when a firm has been certified. The directory is available to the public and interested persons can obtain access to the directory. The directory may be found in Attachment 2 to this program plan.

Bidders/offerors may also be referred to the FAA's directory of firms at FAA Matchmaker (<https://faa.dbesystem.com>).

## **Section 23.25            Ensuring Nondiscriminatory Participation of ACDBEs**

The Authority will not use set-asides or quotas as a means of obtaining ACDBE participation. The Authority will seek ACDBE participation in all types of concession activities.

The Authority will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. The Authority will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)):

Race-neutral measures may include but are not limited to:

- 1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
- 2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- 3) When practical, structuring concession activities 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 recipient'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 part 2 § 26.35); technical assistance programs; or taking other steps to foster ACDBE participation in concessions.

The Authority will also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures we will implement, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
  - a. In setting concession-specific goals for concession opportunities other than car rental, the Authority will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is *de minimis* availability for direct ownership arrangement participation for that concession opportunity.
  - b. In setting car rental concession-specific goals, the Authority will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, the Authority is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
  - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the Authority will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

- d. If the goal applies to purchases or leases of goods and services from ACDBEs, the Authority will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
  - e. When a concession-specific goal is set, the Authority will require competitors to make good faith efforts to meet this goal. A competitor 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.
  - f. The administrative procedures applicable to contract goals in part 26, § § 26.51 through 26.53. apply with respect to concession-specific goals.
2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.
  3. With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

The Authority requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

#### **Section 23.26      Fostering Small Business Participation**

The Authority has created a small business element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as Attachment 11 to this ACDBE program plan. The program elements will be actively implemented to foster small business participation. The Authority acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program plan.

The Authority will submit an annual report on small business participation obtained through the use of this small business element. The report must be submitted in the format acceptable to the FAA based on a schedule established and posted to the agency's website, available at [https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program).

#### **Section 23.27      Reporting**

The Authority 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.

The Authority will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.



The Authority will create and maintain active participants list information and enter it into a system designated by the FAA. The Authority will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession opportunities.

- a. Firm name;
- b. Firm address including ZIP code;
- c. Firm status as an ACDBE or non-ACDBE;
- d. Race and sex information for the firm's majority owner;
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

The Authority will collect data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. The Authority will collect the data using the form in [Attachment 3](#). The Authority will enter this data in FAA's designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded.

The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to USDOT's Departmental Office of Civil Rights each year. The Authority, if a certifying member of the state UCP, ensures the collection and reporting of the following information in the UCP directory:

- 1) The number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by sex and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
- 2) The number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
- 3) The number of decertified firms;
  - i) Total in-state and out-of-state firms decertified;
  - ii) Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;
  - iii) Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- 4) Number of in-state and out-of-state ACDBEs summarily suspended;
- 5) Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and
- 6) Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

## **Section 23.29                      Compliance and Enforcement Procedures**

The Authority will take monitoring and enforcement mechanisms discussed in [Attachment 4](#) to ensure compliance with 49 CFR Part 23. The specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means used to ensure compliance are included in the attachment.

1. The Authority will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The Authority will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The Authority has listed the regulations, provisions, and contract remedies available in the event of non-compliance with the ACDBE regulation by a participant in its procurement activities (see [Attachment 4](#)).

### **SUBPART C – CERTIFICATION AND ELIGIBILITY**

#### **Section 23.31      Certification Standards**

The Authority is a non-certifying member of the Virginia Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. The Virginia UCP will use the certification standards of Subpart C of Part 23 to determine the eligibility of firms to participate as ACDBEs in airport concessions contracts. To be certified as an ACDBE, a firm must meet all certification eligibility standards. Certifying Virginia UCP members make all certification decisions based on the facts as a whole.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of Part 23, or both.

For information about the certification process or to apply for certification, firms should contact:

**Steve Sterling**  
**Executive Vice President & Chief of Staff**  
**Norfolk Airport Authority**  
**2200 Norview Ave**  
**Norfolk VA 23518**  
**757-857-3351**  
[ssterling@norfolkairport.com](mailto:ssterling@norfolkairport.com)

A link to the certification application forms and documentation requirements is found in [Attachment 8](#) to this program.

#### **Section 23.33      Business Size Standards**

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm's previous five (5) fiscal years.
2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.

4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in [13 CFR 121.104\(a\)](#)) of affiliates are included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

#### **Section 23.35                      Personal Net Worth**

The personal net worth standard used in determining eligibility for purposes of Part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

#### **Section 23.37                      Firms Certified as DBEs**

Certifying members of Virginia 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, certifying Virginia UCP members 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 the concessions program.

#### **Section 23.39                      Other ACDBE Certification Requirements**

The provisions of § 26.83(c)(1) of 49 CFR Part 26 do not apply to ACDBE certifications. The Authority will defer to the Virginia UCP to make the determination whether or not a firm is eligible to become an ACDBE. The UCP will follow the procedures in § 23.39 to make the determination.

### **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 23.41                      Basic Overall Goal Requirement**

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

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

The Authority'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 Authority 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 Authority's efforts to increase participation of ACDBEs.

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

The requirements of this section do not apply if no new concession opportunities become available during the goal period. However, the Authority will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

#### Section 23.45 Overall Goals

Overall goals will be submitted to the FAA for approval. The Norfolk International Airport is a **small-hub** primary airport. As a condition of eligibility for FAA financial assistance, the Authority will submit its overall goals according to the following schedule for small-hub primary airports:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Small-Hub	All regions	October 1, 2024	2025/2026/2027	October 1, 2027 (2028/2028/2029)

Source: [https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart New Final.pdf](https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart%20New%20Final.pdf)

The goals must be submitted every three years based on the published schedule.

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 Authority will submit an appropriate adjustment to the overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

The Authority will establish overall goals in accordance with the two-step process as specified in § 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 Authority will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that Airport's goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral "split." In such a case, the adjusted goal is binding on the Authority.

### **Section 23.53                      Counting ACDBE Participation for Car Rental Goals**

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

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of Part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the Authority will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the Authority will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of Part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. The Authority 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 (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform the Authority in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

### **Section 23.55                      Counting ACDBE participation for Concessions Other than Car Rentals**

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

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of Part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the Authority will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, the Authority will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of Part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. The Authority will not count the former

ACDBE's participation toward ACDBE goals beyond the termination date for the agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform the Authority in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

#### **Section 23.57(b) Goal shortfall accountability.**

If the awards and commitments on the Uniform Report of ACDBE participation 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) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

The FAA may impose conditions as part of its approval of the Authority's 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.

The Authority 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:

- (1) The Authority does not submit the analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of § 23.57;
- (2) FAA disapproves the analysis or corrective actions; or
- (3) The Authority does 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**

If permitted by the existing agreement, the Authority 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 Authority does not have any privately-owned or leased terminal buildings.

### **Section 23.75            Long-Term Exclusive Agreements**

The Authority 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 more than 10 years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

The Authority may enter into a long-term, exclusive concession agreement only under the following conditions:

- 1) Special local circumstances exist that make it important to enter such agreement; and
- 2) FAA approves the Authority’s plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, the Authority will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

- 1) A description of the special local circumstances that warrant a long-term, exclusive agreement;
- 2) A copy of the solicitation;
- 3) ACDBE contract goal analysis developed in accordance with this part;
- 4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;
- 5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
- 6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
- 7) Final long-term exclusive concession agreement, subleasing or other agreements;
  - a) In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, the Authority will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
  - b) In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, the Authority will submit to the responsible FAA

regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:

- i. A description of the special local circumstances that warrant the holdover;
- ii. Anticipated date for renewal or re-bidding of the agreement;
- iii. The method to be applied for renewal or re-bidding of the agreement;
- iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

### **Section 23.77                      Preemption of Local Requirements**

In the event that a State or local law, regulation, or policy differs from the requirements of this part, the Authority will, as a condition of remaining eligible to receive Federal financial assistance from USDOT, take such steps as may be necessary to comply with the requirements of 49 CFR Part 23. However, nothing in Part 23 preempts any state or local law, regulation, or policy enacted by the governing body of the Authority , or the authority of any state or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with Part 23.

### **Section 23.79                      Geographic Preferences**

The Authority will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g., our local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport(s).

## **ATTACHMENTS**

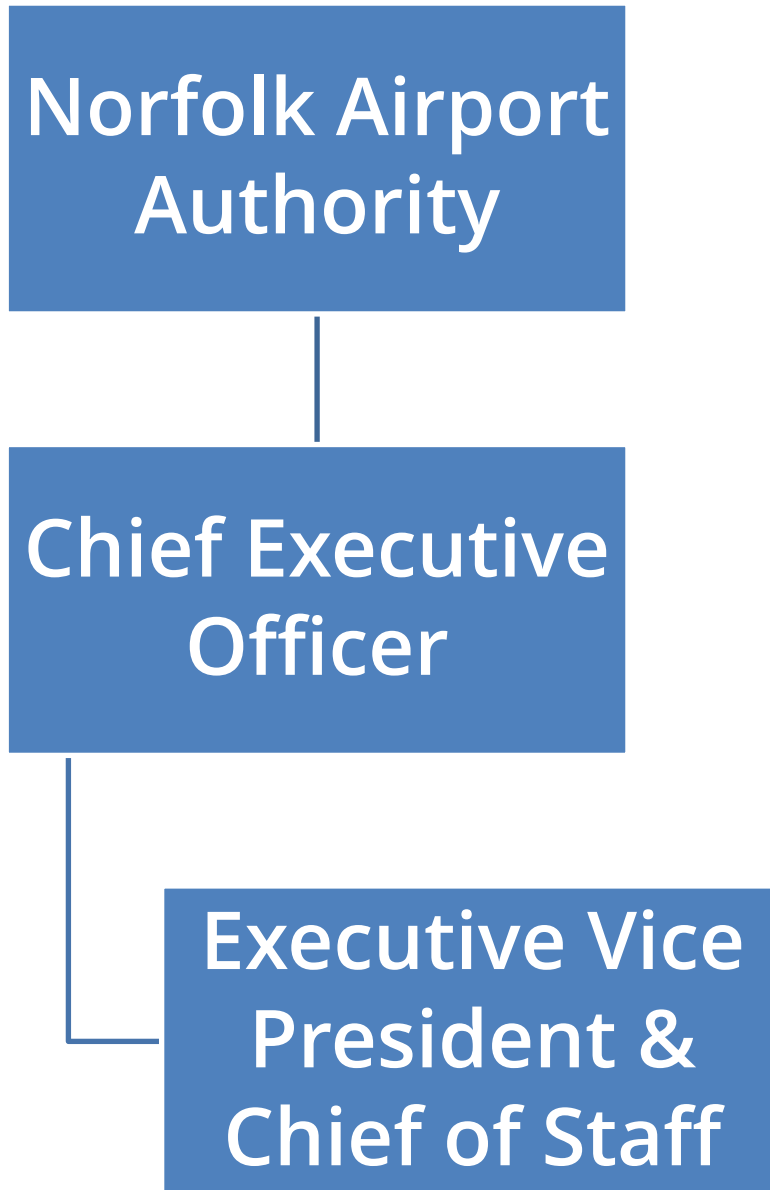
Attachment 1	Norfolk Airport Authority Organizational Chart
Attachment 2	Link to Virginia UCP Directory
Attachment 3	Active Participants List Collection Form
Attachment 4	Monitoring and Enforcement Mechanisms (26.37)
Attachment 5	Overall Goal Calculations for Car Rentals
Attachment 6	Overall Goal Calculations for Concessions Other Than Car Rentals
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts; Form 3 & 4 for Demonstration of Participation Plan
Attachment 8	Certification Application Forms
Attachment 9	State's UCP Agreement
Attachment 10	Regulations: 49 CFR Parts 23
Attachment 11	Race-Neutral Small Business Element



**ATTACHMENT 1**

**Organizational chart**

**Norfolk Airport Authority**



## **ATTACHMENT 2**

### **ACDBE DIRECTORY**

The DBE Directory for the Commonwealth of Virginia may be found at

<https://sbsd.virginia.gov/>.



### ATTACHMENT 3

## Active Participants List Collection Form

[illegible]



## **ATTACHMENT 4**

### **Monitoring and Enforcement Mechanisms**

The Norfolk Airport Authority 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.

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

1. The Authority 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 Authority will implement the following additional monitoring and compliance procedures, consistent with concession contract provisions:
  - A. The Authority has the right to inspect books and records of the ACDBE concerning operations at the Airport, directly or indirectly, at the discretion of the Authority.
3. The Authority will implement its compliance and monitoring procedures as follows:
  - A. All concessions will be required to submit monthly revenue reports to the Authority. The Authority performs annual reconciliations and periodic revenue audits. Concessionaires will submit the ACDBE Attainment Reports annually.

## **ATTACHMENT 5**

### **Section 23.45: Overall Goal Calculation for Car Rental Concessions**

## **ATTACHMENT 6**

**Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rental Concessions**



## **ATTACHMENT 7**

### **FORM 1: AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid 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 has submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

## FORM 2: LETTER OF INTENT

(THIS PAGE SHALL BE SUBMITTED FOR EACH ACDBE PARTICIPATING FIRM)

**Proposer** Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ACDBE Participant:** Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ACDBE Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

**Firm is performing as:** ☐ Certified ACDBE Sub ☐ Certified ACDBE Joint Venture Team Member

Certification #: \_\_\_\_\_

Applicable NAICS code (note: ACDBE must be certified in the trade of the contract): \_\_\_\_\_

Description of Work Item(s) To Be Performed By ACDBE	Estimated Gross Revenue Dollars (\$) To Be Earned	Percentage (%) of Total Contract Gross Revenues
TOTAL ACDBE % Credit Claimed for this Contractor		

The Proposer is committed to utilizing the above-named ACDBE firm for the work described above and the ACDBE agrees to participate as listed. The estimated participation is as follows:

ACDBE estimated gross revenues: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

Total Contract estimated gross revenues: \$ \_\_\_\_\_

The above-named firms affirm that it will perform the portion of the contract for the estimated gross revenues as stated above.

By: \_\_\_\_\_  
(Proposer Authorized Representative name) (Title)

\_\_\_\_\_  
(signature) (date)

By: \_\_\_\_\_  
(ACDBE Authorized Representative name) (Title)

\_\_\_\_\_  
(signature) (date)

**\* In the event the Proposer does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void (make copies of this form as needed for each participant)**

## **ATTACHMENT 8**

### **Certification Application Forms**

The ACDBE certification application for the Commonwealth of Virginia  
may be found at

<https://certification-app.sbsd.virginia.gov/>

**ATTACHMENT 9**

**State's UCP Agreement**



## VIRGINIA UNIFIED CERTIFICATION PROGRAM RECIPIENT AGREEMENT

THIS AGREEMENT, made this 10<sup>th</sup> day of April 2003, by  
and between the Virginia Department of Aviation (hereinafter the Department) and  
Norfolk Airport Authority (Recipient).

WITNESSETH, that in consideration of the mutual covenants and agreements to be kept and  
performed on the part of said parties hereto, respectively as herein stated, the Department does  
hereby covenant and agree that it shall:

- I. Be designated as the signatory, on behalf of the Recipient, in and associated with  
the execution of the Virginia Unified Certification Program Agreement.
- II. And said party recipient covenants and agrees that it shall: Maintain regulatory  
compliance, in accordance with 49 CFR Part 26 and the provisions of the Virginia  
Unified Certification Program Agreement.

This agreement shall be binding upon the parties, their successors, assigns and personal  
representatives.

Signed the day and year first above written.

### Department of Aviation

Charles S. Macfarlane

Print Name

Director

Title

Charles S. Macfarlane  
Signature

### Recipient

Kenneth R. Scott

Print Name

Executive Director

Title

Kenneth R. Scott  
Signature

VIRGINIA



# UNIFIED CERTIFICATION PROGRAM

# TABLE OF CONTENTS

PARTIES TO THE VIRGINIA UNIFIED CERTIFICATION PROGRAM.....	1
RATIFICATION PROCESS.....	2
COMPLIANCE.....	2
IMPACT OF UCP ON RECIPIENT'S PROGRAM .....	2
VIRGINIA UCP CERTIFYING MEMBERS .....	2
Receipt of Certification Applications .....	3
Other Requirements of the Certifying Members.....	4
Duplication of Effort.....	4
Certification Review .....	4
Certification Denials .....	4
DEVELOPMENT OF UCP DIRECTORY .....	5
Phase I.....	5
Phase II .....	5
INFORMAL APPEALS PROCESS .....	5
The Airports Authority's Process.....	5
The Virginia Department of Transportation's Process .....	6
DECERTIFICATION AND THIRD PARTY CHALLENGES .....	6
ANNUAL AFFIDAVITS OF NO CHANGES AND RECERTIFICATIONS.....	7
COST SHARING .....	7
COMMUNICATIONS .....	8
RELEASE OF CERTIFICATION INFORMATION AND MEDIA CONTACTS .....	8
LITIGATION .....	9
UCP DURATION .....	9
SIGNATURE PAGE .....	10
RECIPIENT'S NAMES AND TITLES.....	11
APPENDIX A - 49 CFR Parts 26.81 .....	12
APPENDIX B - Sub recipient Agreement.....	15

## THE PARTIES TO THE VIRGINIA UNIFIED CERTIFICATION PROGRAM

- (a) The following five-(5) recipients of the United States Department of Transportation (USDOT) grants are signatories to the Commonwealth of Virginia's Unified Certification Program.

Virginia Department of Transportation (VDOT)

Metropolitan Washington Airport Authority (Airports Authority)

Virginia Department of Rail and Public Transportation (VDRPT)

Virginia Department of Aviation (DOAV)

- (b) Each signatory to the Agreement is referred to as a "Member" of the Virginia Unified Certification Program (Virginia UCP).
- (c) Each Member where appropriate will establish written agreements with existing USDOT recipients and subrecipients and will have the same agreement executed with future recipients/sub recipients requiring them to acknowledge their concurrence with the provisions of the Virginia Unified Certification Program.

Notices to the Virginia UCP are to be sent to the following address:

Virginia Unified Certification Program  
Virginia Department of Transportation  
Equal Opportunity Division  
1401 E. Broad Street  
Richmond, VA 23219  
Attention: Doretha Davis

Notices received by VDOT on behalf of the Virginia UCP will be forwarded to the UCP Members as is necessary.



## RATIFICATION PROCESS

The Members agree that the name of the Unified Certification Program (UCP) will be the Virginia Unified Certification Program (Virginia UCP). The members by signing this Agreement hereby agree to abide by the rules, regulations and guidelines explained in this Unified Certification Agreement. Failure to abide by the rules, regulations and guidelines may result in the loss or disruption of federal funds by parties to this Agreement. If, because of action by the USDOT, a Member no longer receives USDOT grants or is no longer subject to the requirements of 49 CFR Part 26 that Member may terminate its membership in the UCP by providing written notice to the UCP.

## COMPLIANCE

- (a) The March 1999 Disadvantaged Business Enterprise Program (DBE) Regulations require all USDOT recipients to participate in a Unified Certification Program (UCP). The Virginia UCP will provide "one-stop shopping" to applicants for certification in Virginia, such that an applicant is required to apply only once for a DBE certification in Virginia that will be honored by all USDOT recipients in the state.
- (b) The members of the Virginia UCP agree that all certification approvals or denials will be determined in accordance with 49 CFR Part 26, and that certification decisions of the Virginia UCP will be binding on all USDOT recipients within the state. The Virginia UCP agrees to carry out all obligations with respect to certification and non-discrimination under 49 CFR Part 26, as it currently exists and as it may be amended in the future. This Agreement may be amended from time to time by agreement of the Members.

## IMPACT OF UCP ON RECIPIENT'S PROGRAMS

The Virginia UCP does not establish, endorse or alter any member's overall DBE Program. DBE goal development, administration, monitoring and reporting remain the sole responsibility of each member with a USDOT approved DBE Program in accordance with 49 CFR Part 26.

## VIRGINIA UCP CERTIFYING MEMBERS

- (a) There will be two Certifying Members in the Virginia UCP that have executed a written Reciprocity Agreement relating to DBE certification. They are:
  - 1) Virginia Department of Transportation  
Equal Opportunity Division  
1401 E. Broad Street  
Richmond, VA 23219

Contact: Doretha W. Davis  
1-888-508-3737

- 2) Metropolitan Washington Airports Authority  
Equal Opportunity Programs Department  
1 Aviation Circle  
Washington, DC 20001-6000  
Contact: Acy Bellamy  
703-417-8625

- (b) The Virginia Department of Transportation (VDOT) and the Metropolitan Washington Airports Authority (Airports Authority) will be referred to as the “Certifying Members” of the Virginia UCP. The Virginia UCP Certifying Members will process all DBE certification applications and matters related to DBE certifications filed by firms that maintain their principal place of business within the Commonwealth of Virginia, and firms that are certified by another State in which they maintain their principal place of business (the “home state”) and are interested in doing business with a Virginia UCP Member. The Certifying Members agree to perform the following functions to ensure that only bona fide firms are certified in the Disadvantaged Business Enterprise (DBE) Program. Any Certifying Member may, with a minimum of six (6) months advance written notice to the Virginia UCP, elect to cease to be a Certifying Member of the Virginia UCP. If this occurs, the Certifying Members agree to negotiate in good faith with the UCP Members concerning adjustments to this agreement that are necessitated by a withdrawal from Certifying Member status.

- (c) Receipt of Certification Applications

- 1) Intake

New applications submitted by firms maintaining their principal place of business in Virginia and new out-of-state DBE applications will be processed by the Certifying Member that receives the application. However, if one Certifying Member determines that its workload is such that it may not be able to review the application within the required time frame, it may transfer the DBE application to the other Certifying Member if it consents to the transfer. Applicants in highway or aviation services may be better served by the Certifying Member most familiar with their types of work. An applicant’s certification application and any changes, updates, denials, appeals, decertification and/or reapplication will be handled by the initial Certifying Member unless transferred by the Certifying Members.

Out of State firms initially applying for certification with the Virginia UCP will be required to show proof of certification from their “home state” UCP. The Virginia UCP will not process an application for certification from a firm having its principal place of business outside the State if the firm is not certified by the UCP in the State in which it maintains its principal place of business.

2) Processing Time

The firm seeking DBE certification must submit a complete DOT approved certification application to the Certifying Member before a determination of eligibility can be made. A “complete application” is one that includes all required attachments and any other critical documents. The Certifying Agency has 90 days from its receipt of a complete application, as defined above, to process the application and make its decision.

(d) Other requirements of the Certifying Members (VDOT and Airports Authority)

- 1) Certifying Members will hold certification meetings (or telephone conferences) at least once a month (more often as is necessary) to review and resolve DBE certification issues.
- 2) Certifying Members will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations concerning the UCP.
- 3) Certifying Members will implement USDOT directives and guidance concerning certification matters.

(e) Duplication of Effort

The Certifying Members will develop written procedures to avoid the processing of duplicate certification applications filed with both Certifying Members. Each Certifying Member will notify the other of applications that have been filed with it. Certifying Members will communicate by e-mail the names of new applicant firms on a daily basis that will be checked for duplication. In the case of double submissions, the Certifying Members will agree on which Member will process the application based on type of firm, location and member workload.

(f) Certification Review

In accordance with 49 CFR, all certifications by the Virginia UCP will be pre-certifications meaning that a firm will be considered a DBE by the Virginia UCP Members only if its certification has been made final before the opening date for bids or the deadline for submittal of offers for a contract on which a firm seeks to participate as a DBE. It is not enough for the DBE application to have been submitted and received by a Member prior to the offer or bid deadline.

(g) Certification Denials

- 1) When a Certifying Member is considering denial of a firm’s certification application, the other Certifying Member will be notified. Upon issuance of the letter, a copy will be sent to the other Certifying Member.

- 2) No denied firm, its owners or officers, affiliates of the denied firm or officers or owners of an affiliated firm may submit an application for DBE certification within 9 months after the date of denial. Applicants will be required to reapply at the same agency where denied after the required waiting period.

## DEVELOPMENT OF UCP DIRECTORY

### (a) Phase I

After USDOT's approval, within 90 days, the Certifying Members' existing websites will be utilized to publish the directories of certified DBEs. Each Certifying Member will add a section on the Virginia UCP to its website and produce a link to the other Certifying Member's DBE certification directory.

### (b) Phase II

During the initial 18-months of this Agreement, the Certifying Members will explore the development of a UCP single website or continue with the format in (a) above. The UCP's focus will be on developing a combined DBE directory on this UCP website and converting all current work classes to the North American Industry Classification System (NAICS) codes.

## INFORMAL APPEALS PROCESS

- (a) Each Certifying Member will continue to consider applicant appeals of certification or recertification denials that are filed with the Certifying Member. Such appeals will be handled by the Certifying Member that issued the denial decision. If an applicant files an appeal of denial with a Certifying Member other than the Member that issued the denial decision, the appeal will be forwarded promptly to the appropriate Member.
- (b) Certifying Members will continue to use their own procedures for handling appeals of DBE certification and recertification denials. However, each Certifying Member will apply the Part 26 certification standards in its consideration of each appeal. Firms meeting the Part 26 certification standards will be certified and firms that do not meet the Part 26 certification standards will be denied certification. Each Certifying Member's decision will be recognized and honored by the other Virginia UCP Members.
- (c) The Airports Authority's appeal process will consist of the following:
  - 1) Applicants denied DBE certification may file an appeal of the denial with the President and Chief Executive Officer of the Airports Authority within 30 days after receipt of the denial letter.

- 2) The appeal will be investigated by Airports Authority staff or consultants under contract with the Airports Authority who did not conduct the original review of the DBE certification application. The investigation will consider the issues raised by the applicant in its appeal and determine whether the applicant meets the Part 26 certification standards.
  - 3) At the conclusion of the appeal review, a recommendation will be made to the Airports Authority's President and Chief Executive Officer. The Authority's President and Chief Executive Officer will determine the disposition of the appeal. A disposition by the Airports Authority's President and Chief Executive Officer will be rendered within 30 days of completion of the investigation and staff review. Firms that are denied certification may file an appeal with the United States Department of Transportation in accordance with 49 CFR Part 26.
- (d) The Virginia Department of Transportation's Appeal Process will consist of:
- 1) Applicants denied DBE certification may file an appeal of the denial with the Division Administrator, Equal Opportunity Division of the Virginia Department of Transportation within 30 days of receipt of the denial letter.
  - 2) An informal hearing will be arranged with the applicant and staff of the Equal Opportunity Division at the Virginia Department of Transportation and a member of VDOT's Legal Counsel if the firm is represented by same. Other persons may be added to the committee. The applicant's appeal will be investigated and the hearing will consider the issues raised by the applicant in its appeal. A recommendation will be made to the Equal Opportunity Division Administrator or Assistant Administrator who will make a final determination if applicant meets the Part 26 certification standards.
  - 3) A final determination will be rendered within 30 days after the hearing or 30 days after receipt of requested information. Firms that are denied certification of continued eligibility in the program may appeal to the U. S. Department of Transportation in accordance with Part 26.

## DECERTIFICATION AND THIRD PARTY CHALLENGES

- (a) Decertification proceedings may be commenced against any DBE at the request of any Member, by either Certifying Member, at the request of a third party, or at the request of the U. S. Department of Transportation, under the conditions stated in, and in accordance with the procedures in 49 CFR Part 26.87. The Certifying Member undertaking decertification proceedings must ensure that Member staff and offices that took part in the initial decision to seek decertification do not make the final determination regarding decertification. The Certifying Members will also process the decertification.

- (b) If, after investigating the decertification request a Certifying Member determines that a decertification proceeding should be commenced, as required by 49 CFR 26.87 (h), the DBE shall remain an eligible DBE during the pendency of the decertification proceeding.
- (c) If the Certifying Member recommends decertification, the firm's file, with the recommendation, will be forwarded to the VDOT DBE Panel to review, to conduct final decertification proceeding and to render a final decision.

## ANNUAL AFFIDAVITS OF NO CHANGES AND RECERTIFICATION

- (a) The Certifying Member who conducted the initial certification review will be responsible for requesting and reviewing Annual Affidavits of No Changes and Recertification applications.
- (b) If a Certifying Member other than the one who conducted the initial certification review receives an annual affidavit or recertification application, that application shall be forwarded immediately to the appropriate Certifying Member.

## COST SHARING

- (a) The Certifying Members agree at the outset of this Agreement that each Certifying Member will continue to bear its own costs associated with DBE certification matters handled by the Certifying Member.
- (b) After the UCP has been in operation for at least one year, if either of the Certifying Members determines that its DBE program costs have risen significantly because it is processing significantly more applications than it did prior to the formation and operation of the UCP, that Certifying Member may request that the UCP Members determine a more equitable sharing of the costs associated with the UCP.
- (c) The UCP Members agree to conduct such discussion in good faith and to take all steps necessary to implement the cost sharing agreement. A meeting between the UCP Members will be held in March 2003 to address all issues associated with cost.

## COMMUNICATIONS

- (a) Communication is essential for effective implementation of the UCP. All UCP Members agree to communicate on an as needed basis to ensure smooth operation of the Program. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings, correspondence, and/or electronic transmittals.
- (b) Any Member to this Agreement that has information critical to the determination of an applicant's eligibility should submit that information to the certifying office at the Virginia Department of Transportation or Metropolitan Washington Airports Authority. All Members will be notified of any adverse changes in a firm's eligibility, work classes and/or location per the DBE directory.

## RELEASE OF CERTIFICATION INFORMATION AND MEDIA CONTACTS

- (a) Each Certifying Member will maintain files for each DBE certification application and related matters it handles.
- (b) Each Certifying Member will safeguard from disclosure to unauthorized persons information gathered as part of the certification process in accordance with the requirements of 49 CFR Part 26.83. Members in possession of such information will also safeguard the information from disclosure in accordance with 49 CFR Part 26.83.
- (c) When a Member makes a request of a Certifying Member for certification information about a firm, such as application materials or the report of a site visit, the requested information will be promptly provided to the requesting Member.
- (d) Requests for information, including media contacts, concerning a DBE or a firm that applied for DBE certification will be handled by the Certifying Member that handled the certification application provided. However, if the request for information concerns a third party challenge or a decertification being processed by a Certifying Member, the request for information will be handled by that Member. Members will comply with 49 CFR Part 26.83 and any applicable Freedom of Information statutes or policies in determining what information may be released.

## LITIGATION

Litigation filed against the Virginia UCP relating to certification action taken by a Certifying Member will be defended by that Certifying Member at its own expense. If the litigation challenges actions taken by both Certifying Members, then the Certifying Members will determine how litigation expenses will be shared and how the legal defense will be managed.

## UCP DURATION

The Virginia UP will continue from year to year, without the need for renewal or other action by the Members, until 49 CFR Part 26 no longer requires the UCP to exist, or until the Members determine, with USDOT approval, that this UCP should be dissolved and replaced by another.



## RECIPIENT'S SIGNATURE

  
\_\_\_\_\_  
Virginia Department of Transportation

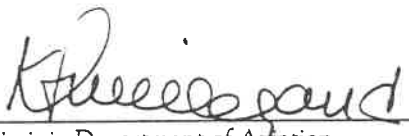
3/22/02  
DATE

  
\_\_\_\_\_  
Metropolitan Washington Airports Authority

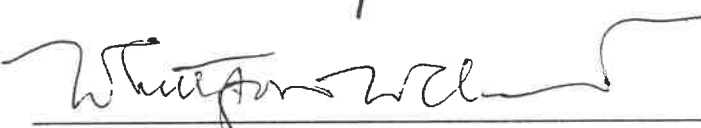
3-1-02  
DATE

  
\_\_\_\_\_  
Virginia Department of Rail & Public Transportation

3-1-02  
DATE

  
\_\_\_\_\_  
Virginia Department of Aviation

3/01/02  
DATE

  
\_\_\_\_\_  
Virginia Secretary of Transportation

3-25-02  
DATE

## RECIPIENTS' NAMES AND TITLES

Ray D. Pethel

Interim Commissioner  
Virginia Department of Transportation

James E. Bennett

Executive Vice President & Chief Operating Officer  
Metropolitan Washington Airports Authority

Leo J. Bevon

Director  
Department of Rail and Public Transportation

Kenneth F. Wiegand

Director  
Department of Aviation

Whittington W. Clement

Secretary of Transportation  
Commonwealth of Virginia

**APPENDIX A**  
**49 CFR PART 26.81**

## ***§26.81 What are the requirements for Unified Certification Programs?***

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of [insert date 30 days after date of publication in Federal Register], you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e.,

certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

**APPENDIX B**  
**Sub Recipient Agreement**

## VIRGINIA UNIFIED CERTIFICATION PROGRAM SUBRECIPIENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ (Recipient) and \_\_\_\_\_ (Sub-recipient).

WITNESSETH, that in consideration of the mutual covenants and agreements to be kept and performed on the part of said parties hereto, respectively as herein stated, the said party of the Recipient does hereby covenant and agree that it shall:

- I. Be designated as the signatory, on behalf of the second party, in and associated with the execution of the Virginia Unified Certification Program Agreement.
- II. And said party of the Sub-recipient covenants and agrees that it shall: Maintain regulatory compliance, in accordance with 49 CFR Part 26 and the provisions of the Virginia Unified Certification Program Agreement.

This agreement shall be binding upon the parties, their successors, assigns and personal representatives.

Signed the day and year first above written.

\_\_\_\_\_  
Recipient "signee"  
{Title}  
{Organization}

\_\_\_\_\_  
Sub-recipient "signee"  
{Title}  
{Organization}

**ATTACHMENT 10**

**49 CFR Part 23**

The federal regulations, Title 49  
Code of Federal Regulations  
Part 23, may be found at  
<https://www.ecfr.gov/>.



**ATTACHMENT 11**

Race-Neutral Small Business Element

**Attachment 11**  
**Small Business Element**

**I. Objectives and Strategies**

**A. Objective**

This element, 49 CFR Part 23.26, is included as an amendment to the ACDBE program plan for the Norfolk International Airport ("the Authority"). The element is herein referenced as the ACDBE Small Business Element. This part calls for the inclusion of an element to

"provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations" ([49 CFR 23.26\(a\)](#)).

The Authority regards its ACDBE Small Business Element as a substantial effort toward meeting the requirements of the regulations to maximize a feasible portion of its overall ACDBE goal by using race-neutral means to obtain ACDBE participation. Therefore, the Airport will implement its ACDBE Small Business Element on the basis of business size, without regard to race or sex of the business owner.

The Authority's policy statement and this small business element are consistent with the Authority's mission of creating and encouraging business opportunities at all levels.

**B. Strategy**

The Authority intends to carry out the objectives of this part by employing the following strategies and supporting activities:

**1. Establishment of a Race-neutral Set-aside**

The Authority proposes to establish a race-neutral set-aside on certain prime concession opportunities. Where practical, the Authority proposes to set aside concessions opportunities for award without regard to the race or sex of the business owner.

The Authority will evaluate and select certain concession opportunities for set-asides based on the following criteria:

- a. Market Analysis: The Authority will conduct an assessment of the availability and capacity of small businesses to successfully operate the concession.

- b. Concession Size: Opportunities that are deemed manageable in scale for small businesses, typically those with lower capital and operational requirements.
- c. Business Needs: Consideration of the Authority's needs, ensuring that set-aside opportunities align with service demands while being feasible for small business operations.

## 2. Consideration of “Unbundling” of Large Contracts

The Authority will give consideration to “unbundling” as a small business strategy. Where feasible, the Authority will evaluate larger concession contracts to determine if they can be unbundled into smaller, more manageable packages that are accessible to small businesses.

## II. Definitions

### 1. Small Business

For the purpose of the ACDBE Small Business Element, which is part of the Authority's ACDBE program, “small business” shall have the same definition as “small business concern” contained in 49 CFR 23.3 and 23.33(a):

*“Small business concern means a for profit business that does not exceed the size standards of [§ 23.33](#).”*

*“Except as provided in paragraph (b) of this section, recipients must treat a firm as a small business eligible to be certified as an ACDBE if the gross receipts of the applicant firm and its affiliates, calculated in accordance with 13 CFR 121.104 averaged over the firm's previous five fiscal years, do not exceed \$56.42 million.”*

For additional clarification, it is useful to include some excerpts from the SBA regulations, 13 CFR 121.105:

*(a)(1) **Except for small agricultural cooperatives**, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor....” and,*

*(b) **A business concern may be in the legal form** of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.*

Small business concerns must meet the business size standards, as defined by the SBA. The business size standards are based upon the average annual revenues, and they vary

according to the type of business. More information can be found at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

Personal Net Worth standards – should be consistent with 49 CFR Part 23 thresholds.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

## **2. Airport Concessions Disadvantaged Business Enterprise**

Airport Concessions Disadvantaged Business Enterprise (ACDBE) means a for-profit small business (defined by SBA rules, above) that meets the standards of 49 CFR Part 23, i.e.

- At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) of \$2.047 million.
- Has been certified as an ACDBE by a certifying member of the Virginia UCP in accordance with the full requirements of 49 CFR Part 23.

The Authority understands that in the implementation of this element, all of the “small business concerns” may not be DBE firms. However, small businesses that are also owned and controlled by individuals who meet the DBE standard will be encouraged to seek ACDBE certification. Only ACDBE-certified firms who participate as small business concerns, pursuant to this element, will be counted towards ACDBE race-neutral participation on FAA-assisted contracts in this program.

## **III. Verification Standards and Procedures**

The Authority will accept the following certification(s) for participation in the small business element of the Authority's ACDBE Program with applicable stipulations:

### **A. Virginia Unified Certification Program ACDBE Certification**

ACDBE certification by a certifying member of the Virginia UCP that stipulates that a firm has met all the requirements in accordance with 49 CFR Part 23. All certification determinations are evidenced by a letter of ACDBE certification issued by a certifying member of the Virginia UCP. It should be noted that the Norfolk International Airport is a non-certifying member of the Virginia UCP and relies on certification decisions of the certifying members of the UCP.

The UCP certification staff applies the standards and procedures for ACDBE certification applicants contained in Subparts D and E of 49 CFR 26.61 – 26.91.

## **B. Small business status**

A non-ACDBE certified small business may have to complete a simplified application and/or provide at the time of response to a solicitation or proposal the following information, as evidence of the small business status:

- a. A copy of the business tax returns for the most recent five-year period indicating the gross receipts; and/or
- b. Proof of meeting the current personal net worth standards of the ACDBE program (49 CFR 23.35(a)), which is presently at \$2.047 million.

## **C. Use of Personal Net Worth**

The Authority, in addition to the standards for small businesses described above, plans to utilize the current personal net worth standards of the ACDBE program (49 CFR 23.35(a)), which is presently at \$2.047 million.

Certified ACDBE firms that meet the size criteria established under 49 CFR 23.33(b) are presumptively eligible to participate as a part of the ACDBE Small Business Element.

# **IV. Monitoring and Recordkeeping**

## **A. Monitoring of Participation**

The Norfolk International Airport will use a spreadsheet to track and monitor the participation by ACDBEs and other small businesses that results from the implementation of the ACDBE Small Business Element. The Authority will report the participation on an annual basis as a part of the Uniform Report of ACDBE Participation.

## **B. Recordkeeping**

The Norfolk International Airport will maintain records of participation by ACDBEs and other small business that result from the implementation of the ACDBE Small Business Element, and will make those records available to the FAA upon request.

# **V. Assurances**

To ensure the successful implementation of the ACDBE Small Business Element, the Authority accepts the following assurances:

- (1) The element is authorized under state law.

- (2) Certified ACDBEs that meet the size criteria established under the Authority's ACDBE Small Business Element are presumptively eligible to participate in our element.
- (3) The Authority will not impose any geographic preferences or limitations on any concession opportunities included in the ACDBE Small Business Element
- (4) The Authority will not place limits on the number of concession opportunities awarded to firms participating in the ACDBE Small Business Element. Every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses
- (5) The Authority will take aggressive steps to encourage those minority- and women-owned firms that are eligible for ACDBE certification to become certified.
- (6) The Authority will make the ACDBE Small Business Element open to small businesses regardless of their location (i.e., that there is no local or other geographic preference) per [§ 23.79](#).

The Authority may not use a state, local, or other program that requires race, sex, or other criteria in addition to business size for eligibility to comply with the requirements of this part.