

**MINOT INTERNATIONAL AIRPORT (MOT)**

**AC/DBE PROGRAM POLICY STATEMENT**

(49 CFR Part 23)

**Section 23.1, 23.23**

**Objectives/Policy Statement**

The Minot International Airport (MOT) 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. MOT 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). MOT has signed airport grant assurances that it will comply with 49 CFR Part 23 (hereinafter, "Part 23").

It is the policy of MOT 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 23's eligibility standards are permitted to participate as ACDBEs at our airport;
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.

The Airport Business and Development Manager has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Airport Business and Development Manager 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 MOT in its financial assistance agreements with the Department of Transportation.

MOT has disseminated this policy statement to the Minot City Council and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area via our airport website ([www.motairport.com](http://www.motairport.com)).

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Jennifer K. Eckman; Airport Director

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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**

MOT will use terms in this program that have the meaning defined in Section 23.3 where applicable.

### **Section 23.5 Applicability**

MOT 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**

MOT 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, MOT 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.

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

MOT will include the following nondiscrimination language 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**

MOT will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

## **SUBPART B – ACDBE Programs**

### **Section 23.21 ACDBE Program Updates**

Since MOT is a small hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, MOT will submit its ACDBE program and overall goals to FAA according to the following schedule:

<b>Type of Airport</b>	<b>Initial Program and Goal Due</b>	<b>Second Goal Due</b>	<b>Subsequent Goals Due</b>
Small Hub Primary	March 2, 2020	October 1, 2022	3 years on Oct. 1

Until our new ACDBE program goals are submitted and approved we will continue to implement our concessions DBE program that was in effect prior, except with respect to any provision that is contrary to 49 CFR Part 23.

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

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

Jessica Long  
 Airport Business and Development Manager  
 Minot International Airport  
 Direct 701-857-4725  
 305 Airport Road, Suite 216  
 Minot, ND 58703  
[jessica.long@minotnd.org](mailto:jessica.long@minotnd.org)

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that MOT complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment to this program.

**Directory:** MOT through the State of North Dakota 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 at least annually. We make the Directory available as follows: <http://www.dot.nd.gov>. The Directory may be found in Attachment 2 to this program document.

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

MOT will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a)):

1. Identifying ACDBEs who may be interested in participating as concessionaires;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete,

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as appropriate;

3. When proper, structure concession activities so as to encourage and facilitate ACDBEs participation; and
4. Providing information to competitors concerning the availability of ACDBE firms to assist them in obtaining ACDBE participation.

MOT 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))

MOT's overall goal methodology, a description of the race-neutral measures it will take 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))

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

MOT 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. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(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, 2020 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

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

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by reviewing the reports submitted to MOT by the concessionaires and advising them if not in compliance with MOT ACDBE goals.
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

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

**Section 23.31** We are a member of the North Dakota Unified Certification Program (UCP) which will make certification decisions on behalf of MOT for ACDBEs.

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.

We will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of part 23. We will complete these reviews as soon as possible.

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

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

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

MOT'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**

MOT 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 sponsor's efforts to increase participation of ACDBEs.

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

### **Section 23.45 Overall Goals**

MOT 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:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Small Hub Primary	March 2, 2020	October 1, 2022	3 years on Oct 1.

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, MOT may submit an appropriate adjustment to our overall goal to FAA for approval at least one month before executing the new concession agreement.

MOT will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

A description of the methodology to calculate the overall goal for car rentals, the goal

calculations, and the data we relied on can be found in Attachment 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 to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal 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).

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

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

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, MOT 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, MOT will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

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

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

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

The ACDBE liaison officer is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

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.

Information to be submitted (26.53(b))

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.

Administrative reconsideration (26.53(d))

Within 30 days of being informed by MOT that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the ACDBE Liaison Officer (contact info above). 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 to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. 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.

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

MOT 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 in the time specified, our contracting office will (insert procedures) until satisfactory action has been taken. If the concessionaire still fails 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 MOT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including



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those who qualify as an ACDBE. An ACDBE concession specific goal of 1.0 percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession.

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

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

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

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

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

### **Section 23.57 Failure to Meet Overall Goals**

We will maintain an approved ACDBE Program and overall ACDBE goal and will administer the ACDBE Program in good faith to be considered to be in compliance with this part.

If the awards and commitments shown 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 the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis and to enable the goal for the new fiscal year to be met;
3. We will retain the analysis and corrective actions developed for up to three years, and we will make it available to the FAA, on request, for their review.

### **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 23.75 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 five years. We understand that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

### **Section 23.79 Geographic Preferences**

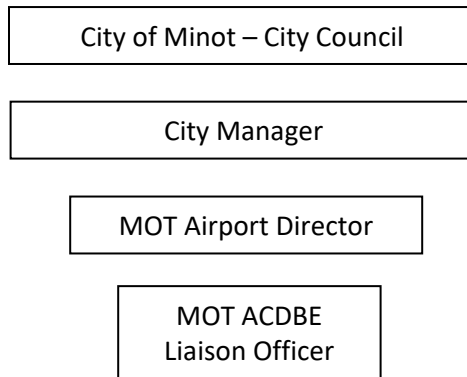
We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., *your local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

## **ATTACHMENTS**

Attachment 1	MOT Organizational Chart
Attachment 2	North Dakota DBE Directory Reference
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 Form
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Regulations: 49 CFR Part 23

**Attachment 1**

**MOT Organizational Chart**



**Attachment 2**

**North Dakota DBE Directory**

North Dakota Unified Certification Program (UCP) DBE Directory

<http://dot.nd.gov>

**OR**

You may contact the MOT ACDBE Liaison Officer.

Jessica Long  
Airport Business and Development Manager  
Minot International Airport  
Direct 701-857-4725  
305 Airport Road, Suite 216  
Minot, ND 58703  
[jessica.long@minotnd.org](mailto:jessica.long@minotnd.org)

**Attachment 3**

**Monitoring and Enforcement Mechanisms**

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

1. MOT will monitor compliance of its concessionaires on concession contracts with the requirement of Part 23. MOT may impose such contract remedies as are available under the contract and under federal law for non-compliance. MOT will seek to insert monitoring and enforcement mechanisms into future concessions contracts.
2. MOT will seek to enforce its concessionaires' maintaining records for three years following the performance of the concessions contracts. MOT will require submittal of compliance updates on a regular and reasonable basis.
3. MOT may perform audits of contract payments to ACDBE firms and subcontractors. These will review payments and gross receipts earned or payments for goods and services to ensure actual amounts paid and total dollar amounts.
4. MOT will review quarterly reports by the concessionaires to monitor compliance with ACDBE goals. For non-compliance, MOT will implement contract remedies and/or corrective actions.

#### **Attachment 4**

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

###### **Amount of Goal**

MOT's overall goal for concessions other than car rental during the period beginning October 1, 2022 and ending September 30, 2025 is the following: 1.0% of the total gross receipts for concessions at Minot International Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

The concession opportunities reasonably anticipated during this goal period are: terminal advertising, parking, food & beverage, retail, and vending with estimated gross receipts revenue of \$8,830,670.12. 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, MOT will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least one month before executing the new concession agreement. (23.45(i)).

MOT has determined that its market area is the State of North Dakota, mostly the western region of the state. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

###### **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.

**Step 1: 23.51(c)**

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

Option 1: Goal of another sponsor – MOT is in the same, or substantially similar market as BIS – Bismarck Airport. The two airports are approximately 110 miles apart, both airports are in the western region of North Dakota and MOT is slightly smaller than BIS, with limited concessions. BIS estimates one out of 600 in the potential marketplace for all concessions other than rental cars resulting in an estimate base figure of 1.33%, but with a percentage of ACDBE firms available at 0.33%

**Step 2: 23.51(d)**

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

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination and a slightly smaller catchment area (thus lowering the denominator) we have adjusted our base figure down by 0.33%. Our overall goal for non-car rental concessions is 1.0%

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

- a. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past.
- b. **Differences in Market Area and Concessions Program** – As noted above, the MOT and BIS locations are similar and MOT is slightly smaller. MOT does have a smaller local business presence resulting in a slight reduction in potential ACDBE business activity in the immediate area. In addition, MOT considers the marketplace area for potential ACDBE concessionaires to be smaller than assumed by BIS.

The reason we chose to adjust our figure using this data was because it most accurately reflects the current circumstances and potential in the immediate future in western North Dakota.

**Consultation with Stakeholders (23.43)**

MOT will continue to consult with the following stakeholders: The Minot Area Chamber of Commerce, Minot Downtown Business and Professional Association, North Dakota Business Development Centers-Minot, existing concessionaires and other organizations which could expect to have information concerning the availability of ACDBEs, the effects of discrimination on opportunities for ACDBEs and MOT's efforts to increase participation of ACDBEs.

**Breakout of Estimated Race-Neutral & Race Conscious Participation**  
**Section 23.51**

MOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. MOT uses the following race-neutral measures to increase ACDBE participation.

1. Identifying ACDBEs who may be interested in participating as concessionaires;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, as appropriate;
3. When proper, structure concession activities so as to encourage and facilitate ACDBEs participation; and
4. Providing information to competitors concerning the availability of ACDBE firms to assist them in obtaining ACDBE participation.

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: All ACDBE participation in the past at MOT has been achieved by race-neutral measures.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

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**

### **Section 23.45: Overall Goal Calculation for Car Rentals**

#### **Amount of Goal**

MOT's overall goal for car rentals during the period beginning October 1, 2022 and ending September 30, 2025 is the following: 1.0% of the total gross receipts of car rental operations at Minot International Airport.

The concession opportunities anticipated during this goal period are: Five rental car company concessions (brands) with estimated gross receipts revenue of \$13,910,881.82. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, MOT will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least one month before executing the new concession agreement. (23.45(i)).

MOT has determined that its market area is the State of North Dakota, mostly the western region of the state. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

#### **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 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.

##### **Step 1: 23.51(c)**

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

Option 3: Goal of another sponsor – MOT is in the same, or substantially similar market as BIS – Bismarck Airport. The two airports are approximately 110 miles apart, both airports are in the western region of North Dakota and MOT is slightly smaller than BIS, with less rental cars. BIS estimates 5 ACDBEs out of 578 in the potential marketplace for all concessions other than rental cars resulting in an estimate base figure of .86%

##### **Step 2: 23.51(d)**

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

In order to reflect as accurately as possible, the ACDBE participation we would expect with potential outreach and in the absence of discrimination our overall goal for car rental concessions is 1.0%.

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

- a. **Past participation** – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past.
- b. **Differences in Market Area and Concessions Program** – As noted above, the MOT and BIS locations similar and MOT is slightly smaller. Both retain national rental car chains.

**Consultation with Stakeholders (23.43)**

MOT will continue to consult with the following stakeholders: The Minot Area Chamber of Commerce, Minot Downtown Business and Professional Association, North Dakota Business Development Centers-Minot, existing concessionaires and other organizations which could expect to have information concerning the availability of ACDBEs, the effects of discrimination on opportunities for ACDBEs and MOT's efforts to increase participation of ACDBEs.

**Breakout of Estimated Race-Neutral & Race Conscious Participation**  
**Section 23.51**

MOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. MOT uses the following race-neutral measures to increase ACDBE participation.

1. Identifying ACDBEs who may be interested in participating as concessionaires;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, as appropriate;
3. When proper, structure concession activities so as to encourage and facilitate ACDBEs participation; and
4. Providing information to competitors concerning the availability of ACDBE firms to assist them in obtaining ACDBE participation.

We estimate that, in meeting our overall goal of 1.0%, 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: All ACDBE participation in the past at MOT has been achieved by race-neutral measures.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

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**

**Forms 1 & 2 for Demonstration of Good Faith Efforts  
and Additional MOT contractor DBE form**

**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 1.0% ACDBE utilization on this contract.

\_\_\_\_\_The bidder/offeror (if unable to meet the ACDBE goal of 1.0%) is committed to submitting 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:

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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**

**Certification Application Form**

<http://www.dot.nd.gov>

The North Dakota Unified Certification DBE Program application is available at the North Dakota Department of Transportation's Disadvantaged Business Enterprise Program website page linked above. The application form is hyperlinked on that page.

### **Attachment 8**

The Minot International Airport is a member of the North Dakota Unified Certification Program (UCP) administered by the North Dakota Department of Transportation.

The UCP meets the requirements of this section and is stated below. The full standard operating procedure can be found at <http://www.dot.nd.gov>.

#### **REMOVAL OF DBE ELIGIBILITY (DECERTIFICATION)**

The UCP members agree to follow the eligibility removal procedures set forth in 49 CFR §26.87 including:

- a) Ineligibility complaints: Any person, including another UCP member, may file a written complaint UCP certifying partner alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible.
- b) Recipient initiated proceedings: If a direct recipient of federal funds determines that there is reasonable cause to believe that a currently certified firm is ineligible based on notification by that DBE firm of a change in its circumstances or any other information that becomes available, they must provide written notice to the firm that it proposes to find them ineligible for the DBE program setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- c) DOT directive to initiate proceeding: If the concerned operating administration (FHWA, FTA, FAA) determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
- d) When a firm is notified that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, it will be provided the opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
- e) A DBE firm whose eligibility has been removed (decertified) for any of the following reasons will be afforded an Appeal Process as stated in Section J(2):
  - (1) The business has changed to the extent that it is no longer owned or controlled by socially and economically disadvantaged individual(s).
  - (2) The DBE firm is no longer an ongoing business entity.
  - (3) The socially and economically disadvantaged owners falsified a sworn statement. This action may also result in more punitive action such as debarment.
  - (4) The DBE fails to notify the UCP Certifying Partner, within 30 days, of changes in ownership, control, independence or status as an ongoing concern.
  - (5) A determination by the UCP Certifying Partner that the firm no longer meets certification eligibility standards.
  - (6) The DBE exhibits a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirement of the regulations. This action may also result in more punitive action such as debarment.
- f) Decertified firms shall be removed from the UCP directory.
- g) A firm decertified for cause may not apply again for DBE certification with the UCP for a period of one year (12 months). A firm that is decertified for not submitting an Annual Affidavit (failure to cooperate clause) may reapply for DBE certification after a six (6) month waiting period from the date of decertification.

**Attachment 9**

**Regulations: 49 CFR Part 23**

Available through the following link:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl)