



CINCINNATI/NORTHERN KENTUCKY
INTERNATIONAL AIRPORT

ACDBE

**AIRPORT CONCESSION
DISADVANTAGED BUSINESS
ENTERPRISE**

PROGRAM PLAN 2023

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**KENTON COUNTY AIRPORT BOARD
CVG AIRPORT AUTHORITY**

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The Kenton County Airport Board ("KCAB"), owner/operator of Cincinnati/Northern Kentucky International Airport ("CVG") 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. CVG 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). KCAB has signed airport grant assurances that it will comply with 49 CFR Part 23.

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

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

Mrs. Larisa Sims, Director, Business Administration, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Mrs. Larisa Sims 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 KCAB in its financial assistance agreements with the Department of Transportation.

KCAB has disseminated this policy statement to all the components of our organization. KCAB has distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area through website postings.

Candace McGraw
Candace McGraw (Sep 29, 2023 13:09 PDT)
Kenton County Airport Board
Candace S. McGraw
Chief Executive Officer
Cincinnati/Northern Kentucky International Airport (CVG)

Sep 29, 2023
Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

KCAB 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

CVG is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

KCAB 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 (Attachment 1) on the basis of race, color, sex, or national origin.

In administering its ACDBE program, KCAB 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.

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

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

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

Section 23.11 Compliance and Enforcement

KCAB will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107) and 2 CFR parts 180 and 1200.

KCAB will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects,

grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

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

KCAB's compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The following enforcement actions apply to firms participating in KCAB's ACDBE program:

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

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

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

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

CVG is a medium-hub primary airport required to have an ACDBE program.

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

Until KCAB's new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at CVG in Boone County, Kentucky.

When KCAB 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

KCAB is committed to operating its ACDBE program in a nondiscriminatory manner. The entire Program is available from the CVG webpage.

KCAB's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO)

KCAB has designated the following individual as KCAB's ACDBELO:

Larisa Sims
Director, Business Administration
DBE/ACDBE Liaison Officer
Cincinnati / Northern Kentucky International Airport (CVG)
Kenton County Airport Board
P.O. Box 752000
Cincinnati, OH 45275
kkempff@cvgairport.com
Phone: [859-767-1421](tel:859-767-1421)

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that KCAB complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the CEO concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 2 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 DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall triennial goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Determines bidder/contractor compliance with good faith efforts.

7. Analyzes KCAB's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the CEO/governing body on ACDBE matters and achievement.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Unified Certification Program (UCP) in Kentucky.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

ACDBE Directory

The Kentucky Transportation Cabinet's Office for Civil Rights & Small Business Development Unified Certification Program ("KYTCUCP") maintains a directory identifying all firms eligible to participate as ACDBEs and DBEs (the "Directory"). 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 KYTCUCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The KYTCUCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The KYTCUCP revises the Directory monthly and it is available online at <http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/default.aspx>.

KCAB also maintains multiple links to the Office for Civil Rights & Small Business Development website and the directory on the KCAB maintained website.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

- The Airport will monitor ACDBE concession activities and periodically review subcontracts to ensure compliance with the ACDBE program requirements.
- KCAB 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)).
- KCAB's overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in 49 CFR Part 23.25. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d)).
- If KCAB projects that race-neutral measures alone are not sufficient to meet an overall goal, it will use race-conscious measures as described in 49 CFR Part 23.25 (e) (1-2) with FAA approval.
- KCAB will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs (23.25(f)).

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

Section 23.27 Reporting

KCAB 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 December 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 via FAA DBE Connect.

Section 23.29 Compliance and Enforcement Procedures

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

1. KCAB will provide a monitoring and enforcement mechanism to ensure that the concession or work committed to ACDBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the ACDBEs to which the work was committed. KCAB will monitor program compliance simultaneously with periodic audits and regular inspections of the concession location(s) and performance under the agreement. KCAB will include the following provisions in its concessions agreements:

Reporting: In a format prescribed by the Board, Concessionaire must submit the following information annually for the previous federal fiscal year, October through September, no later than March 1 of the following calendar year: (1) the names and contact information of ACDBE firms participating in the contract; (2) a description of the goods and/or services applicable NAICS code(s) that each ACDBE firm performed; (3) the dollar amount of the participation of each ACDBE firm; (4) written and signed confirmation from the ACDBE that it is participating in the concession as provided in Concessionaire's report; (5) identifying whether any ACDBE firms participating are new for the federal fiscal year being reported; (6) the total number of vendors/suppliers utilized under the contract at the Airport along with the total amount spent on goods and services; (7) the total number of vendors/suppliers which are new for the federal fiscal year being reported along with the amount spent with these new vendors/suppliers; and, (8) if the ACDBE participation promised is not met, provide evidence of good faith efforts as indicated in Appendix A of 49 CFR Part 26.

Monitoring and Enforcement: Concessionaire must implement appropriate mechanisms to ensure compliance with the requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, and KCAB's most current ACDBE Program, including any updates or revisions. Concessionaire must include a monitoring and enforcement mechanism to verify that the work committed to an ACDBE is actually performed by the ACDBE.

KCAB reserves the right, at any time during the term of this Agreement to request additional information, documentation, or verification of payments made for goods and services in connection with this Agreement. Concessionaire must provide KCAB access to the necessary records for the purpose of investigating and determining compliance, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to ACDBE participation, which Concessionaire must maintain for a minimum of 3 years following the termination of this Agreement.

If Concessionaire fails to comply with the ACDBE Program, applicable regulations, or to meet the ACDBE Goal or demonstrate good faith efforts to do so, KCAB may: pursue any available remedy; terminate, suspend, or cancel this Agreement in whole or in part; and/or, suspend or debar Concessionaire from eligibility to contract with KCAB in the future unless Concessionaire demonstrates, within a reasonable time as determined by KCAB, it complies with the terms of the ACDBE Program and this Agreement or demonstrates, in KCAB's sole discretion, good faith efforts to comply.

2. KCAB will implement a mechanism that will provide for a running tally of actual ACDBE attainments (e.g., revenues earned by or payments actually made to ACDBE firms), including a means of comparing these attainments to commitments. In our reports of ACDBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form. This will be accomplished by monitoring ACDBE reported revenues as determined by the appropriate Administrative Board staff.
3. KCAB will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that the 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.
4. KCAB will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3: Monitoring and Enforcement Mechanisms lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our ACDBE Program.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 Certification Standards

The procedures and standards of Part 26, except as provided in 23.31, are applicable for certification of ACDBEs to participate in KCAB's concessions program and these standards are incorporated in this program. KCAB is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Kentucky Transportation Cabinet (KYTC) which will make certification decisions on behalf of KCAB for ACDBEs.

All certification procedures will be handled through the KYTC pursuant to the August 9, 2010, Agreement Establishing a Unified Certification Program for Disadvantaged Business Enterprises in the Commonwealth of Kentucky between KCAB and the KYTC.

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

KENTUCKY TRANSPORTATION CABINET

200 Mero Street

Frankfort, KY 40622

Phone: (502) 564-4890

<http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/default.aspx>

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

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

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

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

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, KCAB does 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 3 years do not exceed \$200,000, KCAB does not need to submit an overall goal for concessions other than car rentals. KCAB understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

KCAB’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

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

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

Section 23.45 Overall Goals

CVG is a medium-hub primary airport. As a condition of eligibility for FAA financial assistance, KCAB will submit its overall goals (as of this goal) according to the following schedule:

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

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, KCAB will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity (23.45i).

KCAB 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 KCAB 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)

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

A description of the methodologies to calculate both the overall goal for car rentals and concessions other than car rentals, including the goal calculations and the data the KCAB relied on can be found on the CVG website at:

<https://www.cvgairport.com/about/biz/procurement/dbe>.

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 on the CVG website. 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))

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

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

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

Section 26.53 Good Faith Efforts Procedures

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

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

KCAB's ACDBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

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

1. Award of the contract is conditioned on meeting the requirements of this section.
2. All bidders or offerors will be required to submit the following information to KCAB, at the time provided in paragraph (b)(3) of this section:
 - The names and addresses of ACDBE firms that will participate in the contract.
 - A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - The dollar amount of the participation of each ACDBE firm participating.

- Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal.
 - Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment; or,
 - If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract.
3. KCAB will require that the bidder/offeror present the information required by paragraph (b)(2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53(d))

Within ten (10) business days of being informed by Kenton County Airport Board that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. Scott Gibbons, Vice President of Administration
77 Comair Blvd
Erlanger, KY 41018
(859)767-4793
Email: sgibbons@cvgairport.com

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

KCAB 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. KCAB will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

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

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

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

The prime concession must give the ACDBE five days to respond to the prime concession's notice and advise KCAB and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why KCAB should not approve the prime concession's action. If required in a particular case as a matter of public necessity (e.g., safety), KCAB may provide a response period shorter than five days.

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

KCAB will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in

that section that KCAB deems appropriate if the prime concessionaire fails to comply with the requirements of this section.

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

Each solicitation for which a contract goal is established will include a provision requiring a bidder/offeror to submit information concerning ACDBE participation. Therefore, the following provisions stating the specific contract goal will be included in such solicitation and contract documents:

The requirements of 49 CFR Part 23, Regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the Board 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 contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as an ACDBE. A DBE contract goal of _#_ percent has been established for this concession. The concession firm shall make good faith efforts, as defined in 49 CFR Part 26 Appendix A, to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms that will participate in the contract; (2) a description of the work that each ACDBE firm will perform; (3) the dollar amount of the participation of each ACDBE firm participating; (4) written and signed documentation commitment to use an 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

KCAB will count ACDBE participation toward overall goals for car rental as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

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

Section 23.57(b) Goal shortfall accountability.

If the awards and commitments on KCAB's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, KCAB will:

1. Analyze in detail the reasons for the difference between the overall goal and KCAB's participation in that fiscal year; and,
2. establish specific steps and milestones to correct the problems KCAB identified in the analysis to enable KCAB to fully meet the goal for the new fiscal year.

Section 23.61 Quotas or Set-Asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

KCAB 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. KCAB 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

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

Section 23.75 Long-Term Exclusive Agreements

KCAB will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. KCAB understands that a “long-term” agreement is one having a term of longer than 5 years. KCAB understands 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, KCAB will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

KCAB will not use a “local geographic preference,” i.e., any requirement that gives an ACDBE located in the Cincinnati/Northern Kentucky area an advantage over ACDBEs from other places in obtaining business as, or with, a concession at CVG.

ATTACHMENTS

Attachment 1: 49 CFR Part 23

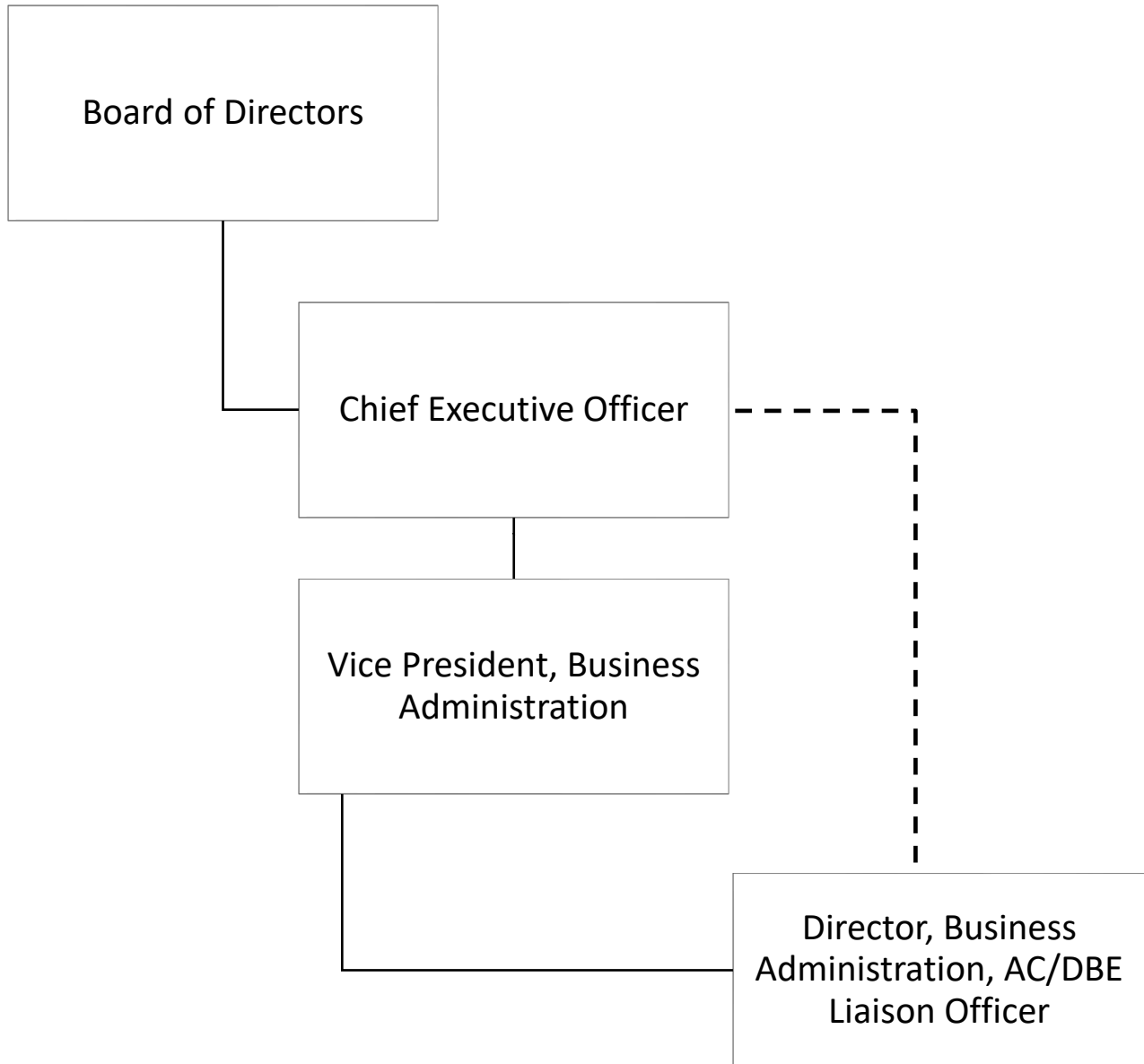
Attachment 2: Organizational Chart

Attachment 3: Monitoring and Enforcement Mechanisms

Attachment 1: 49 CFR Part 23

<https://www.ecfr.gov/current/title-49/subtitle-A/part-23?toc=1>

Attachment 2: Organizational Chart



Attachment 3: Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Similar action pursuant to Kentucky revised statutes.
3. Responsibility determinations in future bids/contracts.
4. Violation of the Rules and Regulations of KCAB.

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and
2. 2 CFR parts 180 and 1200
3. Enforcement action pursuant to 49 CFR part 31; and,
4. Prosecution pursuant to 18 USC 1001.

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

1. All participants are hereby notified that pursuant to Title 49 Code of Federal Regulations, United States Department of Transportation, Part 26 and the ACDBE Participation Program for KCAB must affirmatively ensure that, in any contract entered into with the Sponsor; ACDBEs will be afforded equal opportunity to participate in sub-concession activities. It is the policy of KCAB to ensure that ACDBEs, as defined in Part 23/Part 26, have an equal opportunity to receive and participate in FAA-assisted contracts. It is further the policy of KCAB to ensure nondiscrimination in the award and administration of FAA-assisted contracts.
2. All contracts between KCAB and a concessionaire will contain an appropriate provision to the effect that failure by the concessionaire to comply with KCAB's ACDBE Program constitutes a breach of contract, exposing the concessionaire to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the concessionaire complies with all the ACDBE requirements of this program. KCAB may impose liquidated damages, contract suspension, or even contract termination in accordance with Kentucky law.
3. All documentation submitted at time of proposal, as well as additional data provided by the successful proposer, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission must have prior approval of KCAB's ACDBE Liaison Officer.
4. Should an ACDBE firm not certified by the Kentucky Transportation Cabinet be proposed by a potential concession as a part of its ACDBE plan efforts, review and certification procedures consistent with 49 CFR Part 23 must be conducted prior to award of any contract.
5. In contracts with ACDBE contract goals, proposals submitted which do not meet the ACDBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered nonresponsive, and the proposer will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Official (49 CFR 23). Proposer will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Official will make the determination on the sufficiency of the good faith efforts.

6. KCAB reserves the right to reject any or all bids, or to re-advertise for bids. A submittal will not be considered responsive unless the proposer complies with Title 49 Code of the Federal Regulations, Part 23, and KCAB's ACDBE Program.
7. KCAB will require primes to make good faith efforts to replace an ACDBE sub-concession that is terminated or fails to complete its work on the contract for any reason with another ACDBE sub-concession. If an ACDBE sub-concession is terminated or fails to complete its work on the contract for any reason, the prime must notify the Sponsor immediately. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the contract as the ACDBE that was terminated, to the extent needed to meet the established contract goal. KCAB must first approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible ACDBEs.
8. Additional information on the KCAB's ACDBE Program can be obtained from the ACDBE Liaison Officer.
9. KCAB will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by ACDBE's. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., revenues earned or payments actually made to ACDBE firms), including a means of comparing these attainments to commitments.
10. KCAB will bring to the attention of the US 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 26.109.
11. KCAB also will consider similar action under its own legal authority, including responsibility determinations in future contracts. In addition, the Sponsor will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.