

City of Bangor, Maine

# **Airport Concession Disadvantaged Business Enterprise Program**

2023, 2024 and 2025

for

**BGR**

**Bangor International Airport**

*Bangor, Maine*

Updated: October, 2022

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**Attachments:**

1. Organizational Chart
2. ACDBE Overall Goals for Other Than Car Rentals, Calculation, Consultation, Breakout of Race-Neutral & Race-Conscious Participation
3. ACDBE Overall Goals for Concessions Car Rentals, Calculation, Consultation, Breakout of Race-Neutral & Race-Conscious Participation
4. Form 1 & 2 for Demonstration of Good Faith Efforts
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**US Department of Transportation Federal Aviation Administration**  
 Airport Concession Disadvantaged Business Enterprise Program – 49 CFR Part 23  
 City of Bangor for Bangor International Airport

**POLICY STATEMENT**

**Section 23.1, 23.23 Objectives/Policy Statement**

The Bangor International Airport (hereafter “the Airport”) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Airport is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Airport has signed airport grant assurances that it will comply with 49 CFR Part 23.

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

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

*Jody M. Varney, Accounting Manager, 287 Godfrey Blvd Bangor, ME 04401: (207) 992-4617,* has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Jody Varney is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the Airport in its financial assistance agreements with the Department of Transportation.

The Airport has disseminated this policy statement to The City of Bangor and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area.

1. *This Policy statement will be included in all requested proposals and agreements for the airport concessions.*
2. *Copies of the Policy statement are/will be posted to the City’s and Airport’s websites.*
3. *This statement was transmitted to the organizations consulted during the development of the ACDBE goal.*

*Anthony P. Caruso Jr.*

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Anthony P. Caruso, Jr., C.M.  
 Airport Director

12/29/2022

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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**

The Airport will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

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

### **Section 23.9 Non-discrimination Requirements**

The Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, the Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

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

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

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

## **Section 23.11 Compliance and Enforcement**

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

The Airport will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

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

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

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

1. 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.
2. For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
3. 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.
4. DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Airport's ACDBE program or otherwise violates applicable Federal statutes.

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

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

## **SUBPART B – ACDBE PROGRAMS**

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

The Bangor International Airport is a non-hub primary airport required to have an ACDBE program.

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

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

When the Airport makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

**Policy Statement:** The Airport is committed to operating its ACDBE program in a nondiscriminatory manner.

The Airport'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: Jody M. Varney, Accounting Manager, 287 Godfrey Boulevard Bangor, ME 04401; [jmvarney@flybangor.com](mailto:jmvarney@flybangor.com); (207)992-4617.

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Airport 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 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has access to the Airport's administrative staff 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 DOT/FAA.

2. Ensures non-discrimination assurances are included in all new proposals and new concession agreements and management contracts (ref. Section 23.9, 23.45).
3. Monitors compliance and exercises enforcement measures (ref. Section 23.11 and 23.29).
4. Submits the next 3-year update (ref. Section 23.21 and 23.41).
5. Submits interim updates when significant changes occur to the ACDBE program (ref. Section 23.21).
6. Executes measures to ensure nondiscrimination participation of ACDBEs (ref. Section 23.25).
7. Retains ACDBE information and conducts annual reporting. (ref. Section 23.27).
8. Conducts stake holder consultation in goal setting (ref. Section 23.43).
9. Monitors goal attainment and sets concession-specific goals (ref. Section 23.45).
10. Obtains documentation of good faith efforts (ref. Section 23.45).
11. Counts and calculates concession and rental car participation (ref. Section 23.53 and 23.55).
12. Assesses potential for ACDBE participation when material amendments (renewals, extensions) to existing contracts are made (ref. Section 23.71).
13. Prohibits long term (greater than 5 year) exclusive agreements without prior FAA approval (ref. Section 23.75).
14. Collects and catalogs concessionaire receipts on an annual basis.
15. Refers potential ACDBEs to the Maine DOT for certification.
16. Directs interested parties to the Maine DOT Directory for certified DBEs.

### **Directory (23.23)**

The Airport through the Maine Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory weekly online. The most current Directory is available as follows:

<https://www.maine.gov/mdot/civilrights/dbe/>

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

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

1. Identify opportunities for ACDBEs on concession agreements and sub agreements.
2. Encourage non-ACDBE concessionaires to consider subcontracting opportunities with ACDBEs.
3. Aid non-ACDBE concessionaires in locating ACDBEs for subcontracting opportunities.
4. In all concession agreements entered into with the Airport, the agreement signed by the concessionaire will include statements that ensure to the Airport that: 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.
5. The Airport will require businesses subject to ACDBE goals at the Airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f))
  6. The Airport will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others (23.25(c)).
  7. The Airport's overall goal methodology, as well as a description of the race-neutral measures it will take to meet the goals, are described in Section 23.25 and Attachments 2 & 3 of this plan. The goals are set consistent with the requirements of Subpart D (23.25(b), (d)).
  8. If the Airport 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 2 and 3 of this plan. (23.25(e)(1-2)).
  9. The Airport will not use set-asides or quotas as a means of obtaining ACDBE participation (23.25 (g)).

### **Section 23.27            Reporting**

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

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

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

1. In the event that a concessionaire does not comply with the Airport's ACBDE Policy and Plan set forth in an agreement, nor establish a good faith effort to meet contract goals, the Airport will impose such contract sanctions as the Airport, the FAA or both may determine to be appropriate.
2. If at any time the Airport has reason to believe that the concessionaire is in default of this policy and plan, the Airport may, in addition to pursuing any other available legal remedy, terminate, suspend, or cancel the agreement in whole or in part; and/or suspend or debar the concessionaire from eligibility to contract with the Airport in the future.
3. The Airport will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in the 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.



4. The Airport will consider similar action under its own legal authorities, including responsibility determinations in future contracts. (26.37) Concession contracts are entered into in accordance with the City of Bangor's Procurement Policy, [https://bangormaine.gov/filestorage/318/360/Procurement\\_Policy\\_-\\_Amended\\_-\\_09-16.pdf](https://bangormaine.gov/filestorage/318/360/Procurement_Policy_-_Amended_-_09-16.pdf) Article 6 of the City's Policy contains the available procedures and authority regarding Debarment and Suspension.
5. The Airport 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:
  - a. Requiring annual ACDBE participation reports. Each concessionaire will be required by contract to submit gross receipts report to the Airport through the ACDBELO. The ACDBELO will verify that the ACDBEs utilized certified as DBEs pursuant to Section 23.23. The gross receipts from each concessionaire will be entered into corresponding spreadsheet which will be used to track ACDBE participation and process towards meeting the Airport's established goal. In the event that a concessionaire does not achieve the goal DBE participation, the concessionaire will be required by contract to submit documentation of a good faith effort. The good faith effort documentation will be reviewed by the ACDBELO for conformance with SUBPART D of this plan. Reporting forms and reporting information are included in Attachments 4 & 8 of this plan.
6. In the reports of ACDBE participation to FAA, the Airport will show both commitments and attainments, as required by the DOT reporting form. (ref 23.27)

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

**Section 23.31** We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

The Airport is the member of a Unified Certification Program (UCP) administered by State of Maine. The UCP will meet all of the requirements of this section.

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

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, the ACDBELO or administrative staff will review their eligibility at that time through the Maine DOT UCP. To review the eligibility, the ACDBELO or administrative staff will consult the Maine DOT DBE Directory or other state UCP as appropriate. Eligibility requirements are specified in Sections 23.33, 23.35 and 23.37 of this plan.

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

**Section 23.35** The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

We recognize that Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

1. The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
2. The individual's equity in his or her primary place of residence; and
3. Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

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

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will follow the provisions of 23.39 (a) through (i). We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native

Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

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

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

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

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

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

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

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the Airport from concessionaires.

The Airport'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**

Before establishing the overall goal, the Airport consulted with current concessionaires to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses. The Airport also reviewed the Maine DOT DBE Directory for DBEs that could perform concession work or offer support to non-DBE concessionaires in an attempt to increase overall participation of ACDBEs.

### **Section 23.45            Overall Goals**

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

| <b>Non-hub Primary Airport</b> | <b>Due Date</b> | <b>Period Covered</b> |
|--------------------------------|-----------------|-----------------------|
| normal scheduled submission    | October 1, 2025 | 2026/2027/2028        |
| normal scheduled submission    | October 1, 2028 | 2029/2030/2031        |
| normal scheduled submission    | October 1, 2031 | 2032/2033/2034        |

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

The Airport 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 Airport’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 3 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 2 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 2 & 3 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 (*Also include this language in the DBE goal attachment*) (23.25(c)(e)(1)(iv))**

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

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change

their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

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

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

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

Jody M. Varney, Accounting Manager, 287 Godfrey Boulevard Bangor, ME 04401; [jmvarney@flybangor.com](mailto:jmvarney@flybangor.com); (207)992-4617 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.

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 performance of the contract by the bidder/offeror.

#### Information to be Submitted (26.53(b))

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

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

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;

4. Written and signed documentation of commitment to use 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 (Refer to Appendix A of Part 26).

Forms for collecting and submitting this information can be found in Attachment 8 of this plan.

#### Administrative reconsideration (26.53(d))

Within 7 business days of being informed by Airport that it is not responsible because it has not documented sufficient good faith efforts, a potential concessionaire may request administrative reconsideration. Potential Concessionaires should make this request in writing to the following reconsideration official: Anthony Caruso, Airport Director, 287 Godfrey Blvd., Bangor, ME (207)-992-4605. 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. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

The Airport will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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

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

1. The listed ACDBE sub-concession fails or refuses to execute a written contract;
2. The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession

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

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

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

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

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

other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

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

Sample Proposal/Bid Specification:

*The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Bangor-Bangor International Airport 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 concession firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of \_\_\_ percent of (annual gross receipts; value of leases and/ or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the concession specific goal for ACDBE participation in the performance of this concession.*

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

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

The Airport will count ACDBE participation for car rentals in accordance with 49 CFR 23.53.

The car rental companies will count the following:

1. purchases or leases of vehicles from certified ACDBE vendors. If the car rental company elects to use purchases and leases of vehicles, the car rental company must also submit to the Airport documentation of good faith efforts to ACDBE participation from other ACDBE providers of goods and service;
2. if elected, count ACDBE participation through direct ownership and
3. for other goods and services, count participation toward ACDBE goals as provided in part 26 §26.55 and §23.55 of this part. In the event of a conflict, §23.55 controls.

Special rules that apply to counting participation include the following:

1. count the entire number of repairs made by an ACDBE vendor, provided the fees are not excessive, are reasonable and are customary;
2. count the entire fee charged by an ACDBE to manage a car rental concession, provided the fees are not excessive, are reasonable and are customary;
3. do not count the fee paid to an ACDBE dealership or service station for warranty related work.



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

The Airport will count ACDBE participation for non-car rentals in accordance with 49 CFR 23.55.

The non-car rental concessionaires will count the following:

1. ACDBE participation that results from a commercially useful function as defined in §26.55(c); except that the requirements of §26.55(c)(3) do not apply to concessions.
2. the total dollar value of gross receipts an ACDBE earns under a concession or sub-concession agreement;
3. the dollar value of a management contract or subcontract performed by an ACDBE;
4. in a joint venture, count the portion of the gross receipts equal to the distinct, clearly defined portion of work performed by the ACDBE;
5. the fees or commissions charged by the ACDBE for services;
6. 100% of the cost of goods obtained from an ACDBE manufacturer; and
7. 100% of the cost of goods purchased or leased from an ACDBE regular dealer.

If the ACDBE is neither a manufacturer nor a regular dealer, count the entire amount of fees, commissions and transportation costs charged in the procurement of the goods and delivery of the goods, provided the costs are reasonable, not excessive and customary. Do not count any portion of the costs of the goods.

Do not count the following:

1. the subcontract value a non-ACDBE enters into with an ACDBE;
2. cost of goods and services from firms not certified as ACDBE's;
3. gross receipts from a firm after its ACDBE eligibility has been removed; and
4. costs incurred in connection with renovation, repair or construction of a concession facility (i.e. "build-out")

### **Quotas and Set-Asides (23.61)**

The Airport does not use quotas or set-asides in any way in the administration of this ACDBE program.

## **SUBPART E – OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

### **Section 23.73 Privately-Owned or Leased Terminal Buildings**

The Airport does not have any privately owned or leased terminal buildings.

**Section 23.75 Long-Term Exclusive Agreements**

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

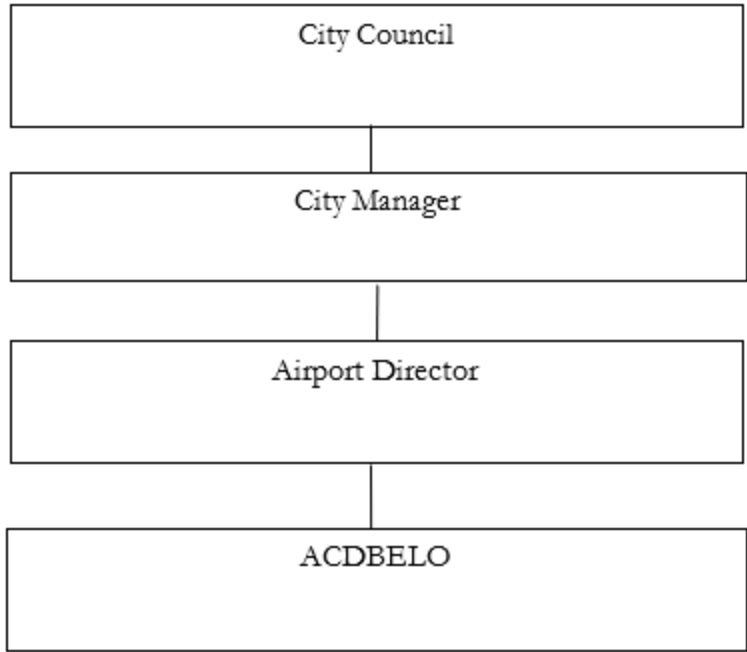
**Section 23.77 State and Local Law**

In the event that the Airport discovers that a state or local law differs from part 23, the Airport will take steps to comply with part 23 and the actions required in 23.77.

**Section 23.79 Geographic Preferences**

The Airport will not use local geographic preferences in administering its ACDBE program. (i.e., any requirement that gives an ACDBE located in the Bangor Area an advantage over ACDBEs from other places in obtaining business as, or with, a concession at the Airport.)

**ATTACHMENT 1:**  
**ORGANIZATIONAL CHART**



**ATTACHMENT 2:****FY 2023-2025 AIRPORT CONCESSION  
ACDBE GOAL METHODOLOGY****OVERALL GOAL CALCULATION FOR CONCESSIONS OTHER THAN CAR RENTALS,  
CONSULTATION, BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE- CONSCIOUS  
PARTICIPATION****Section 23.51: Overall Goal Calculation for Concessions Other Than Car Rentals****Concessions Goal**

The Airport's overall goal for concessions other than car rental during the period beginning October 1, 2022 and ending September 30, 2025 is the following: 0.11% of the total gross receipts for concessions at Bangor 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 concessions.

**Annual Sales**

Current concessionaires at the Airport have reported the following information on gross sales from the past periods indicated:

**Table 1: Average Annual Gross Sales for FY 2019-2021**

| <b>Existing Concession Type</b> | <b>Location of Operating Company</b> | <b>Most Applicable NAICS Code</b>              | <b>FY 2019-2021 Average Annual Gross Sales</b> |
|---------------------------------|--------------------------------------|--|--|
| Four Points Sheraton            | White Plains, NY                     | 72111 Hotels (except Casino Hotels) and Motels | \$3,094,964                                    |
| Montage DBA Grasshopper Shop    | Bangor, ME                           | 453220 Gift, Novelty, and Souvenir Stores      | \$435,870                                      |
| BAFS                            | Bangor, ME                           | 722310 Food Service Contractors                | \$1,261,774                                    |
| Smarte Carte                    | St. Paul, MN                         | 5322 Consumer Goods Rental                     | \$12,437                                       |
| Republic Parking Systems        | Chattanooga, TN                      | 812930 Parking Lots and Garages                | \$248,097                                      |
| <b>TOTAL</b>                    |                                      |  | <b>\$5,053,142</b>                             |

Based on the available historical information, as provided in the Table 1 above, the average concession opportunities anticipated during the next 3-year goal period (FY 2022-2025) for non-car rental concessions at the Airport is approximately \$5.1 million per year. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Airport will submit an appropriate adjustment to the overall

goal. This will be submitted to the FAA for approval at least 90 days before executing the new concession agreement. (23.45(i)).

### **Methodology Used to Calculate Overall Goal**

Market Area:

Market area is defined by the geographical area in which the substantial majority of firms which seek to do concession-related business with the Airport are located and in which the firms that receive the substantial majority of the concession-related revenues are located. (23.51(b)(3)). Based on the available historical information, as provided in Table 1 above, two out of the five companies are based in Maine. Additionally, when DBE participation is achieved on Airport-related work, it typically comes from “local” businesses. Therefore, the State of Maine has been selected to be the market area.

Using the Census Bureau’s County Business Pattern (CBP) database, the number of all ready, willing and able businesses in the Maine market that perform work related to the concession type businesses currently and in the anticipated future at the Airport was determined. This information is provided in Table 2.

**Table 2: US Census Bureau Data – Maine Data**

| Concession Type Businesses               | NAICS Code | Number of Establishments in ME <sup>1</sup> |
|--|------------|---|
| Hotels (except Casino Hotels) and Motels | 72111      | 477   |
| Gift, Novelty, and Souvenir Stores       | 453220     | 216   |
| Food Service Contractors                 | 722310     | 140   |
| Consumer Goods Rental                    | 5322       | 101   |
| Parking Lots and Garages                 | 812930     | 17  |
| <b>TOTAL</b>                             |            | <b>951</b>                                  |

<sup>1</sup> Derived from US Census Bureau data, [Census Business Builder: Small Business Edition - 4.3](#)

Based on the Maine market area, the Maine DOT DBE directory was used to determine DBEs that could provide services to the concession type businesses listed in Table 2. This information is provided in Table 3.

**Table 3: Maine DOT DBE Directory – Maine Data**

| Service Provided                         | Number of DBE’s in ME <sup>1</sup> |
|--|------------------------------------|
| Hotels (except Casino Hotels) and Motels | 0                                  |
| Gift, Novelty, and Souvenir Stores       | 0                                  |
| Food Service Contractors                 | 1                                  |
| Consumer Goods Rental                    | 0                                  |
| Parking Lots and Garages                 | 0                                  |
| <b>TOTAL</b>                             | <b>1</b>                           |

<sup>1</sup> Derived from *Maine DOT Disadvantaged Business Enterprise Weekly DBE Vendor List, October 7, 2022* <http://www.maine.gov/mdot/civilrights/dbe.htm>

**Base Figure Calculation Step 1 - 23.51(c)(1):**

The base figure for the relative availability of ACDBEs other than car rentals was determined. The base figure was calculated using the data presented in Tables 2 and 3 as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area (Table 3)}}{\text{All ready, willing and able non-car rental concession firms in the market area (Table 2)}}$$

Base Figure for non-car rental concessions =  $1/951 = 0.11\%$

Neither an Active Participants List (23.51(c)(2)) nor a disparity study (23.51(c)(3)) are available for use in the base goal calculation.

**Base Figure Adjustment Step 2 - 23.51(d):**

After calculating a base figure of the relative availability of ACDBEs, relevant evidence reasonably available to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal was examined.

An adjustment to the base goal may be made based upon the current capacity of ACDBEs to perform work in the concessions program by measuring the volume of work ACDBEs have performed in the recent years. (23.51(d)(1)(i)). The past three years of data (2019-2021) from the Airport concessions program was reviewed. The data indicates no (0%) ACDBE participation. The Airport will continue to monitor the past participation of ACDBEs in the program. If the data indicates additional participation in excess of the base goal is possible, the Airport may elect to adjust and increase the overall goal.

An adjustment to the base goal may also be made based on a disparity study (23.51(d)(1)(ii)). There are no disparity studies conducted within the Airport's jurisdiction that relate to concessions. The Airport will continue to contact state and local agencies to determine when a disparity study becomes available. The Airport does not have any evidence of disparities affecting the ability of DBEs to grow, form and compete.

Given the above information, the Airport has determined not to adjust the base goal. The goal figure of 0.11% is believed to accurately reflect ACDBE other than car rental concession participation that can be achieved during the next three-year period for the market area.

**Therefore, the goal for Concessions Other Than Car Rentals will be 0.11%.**

**Goals, Good Faith Efforts and Counting – Other than Car Rentals (23.47)**

Goods and Services:

The Airport strives to meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the Airport. The Airport, 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 (23.47(a)).

**Management Contract or Subcontract:**

The Airport strives to meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The Airport, and the businesses at the Airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in Airport concessions (both the numerator AND the denominator) and to the base from which the Airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While this appears to go against the normal rules and rationale for goal-setting, it is understood that this method is nevertheless required by Section 23.47(c).

**Breakout of Estimated Race-Neutral & Race Conscious Participation**  
**Sections 23.45(f) and 23.51(d)(5)**

The Airport will strive to meet the maximum feasible portion of its overall goal by using both race-neutral and race-conscious means of facilitating DBE participation. The Airport uses the following measures to increase DBE participation.

1. Identify opportunities for DBE's on concession agreements and sub agreements and notify concessionaires of potential participation opportunities.
2. Encourage non-DBE concessionaires to consider subcontracting opportunities with DBEs.
3. Aid non-DBE concessionaires in locating DBEs for subcontracting opportunities.
4. Provide information concerning the availability of DBE firms to competitors to assist them in obtaining DBE participation;

Historically, there has been no ACDBE participation on concession leases that did not have ACDBE goal requirements. Thus, the Airport will:

1. Continue to work with current and potential new concessionaires to establish concession-specific goals for particular concession opportunities (23.25(e)(1)).
2. Continue to work with current and potential new concessionaires to include DBE participation in operation of the Airport concession (23.25(e)(2)).

**In review of the past three years of data showing 0% ACDBE participation for Concessions Other Than Car Rentals, the Airport will strive to obtain .11% from race-conscious participation.**

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, when concession-specific goals are used, the Airport will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)). The Airport 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.

The Airport will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals.



**ATTACHMENT 3:****FFY 2023-2025 AIRPORT CONCESSION  
ACDBE OVERALL GOALS FOR CAR RENTALS CALCULATION, CONSULTATION, BREAKOUT OF  
ESTIMATED RACE-NEUTRAL & RACE- CONSCIOUS PARTICIPATION****Section 23.51: Overall Goal Calculation for Car Rentals****Rental Car Goal**

The overall goal for car rentals during the period beginning October 1, 2022 and ending September 30, 2025 is 1.22% of the total goods and services of the car rental operations at the Bangor International Airport. The Airport anticipates most of the goal is likely to be met through the purchases by car rental companies of goods or services from ACDBEs.

**Methodology used to Calculate Overall Goal:**

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

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

Upon review of the market, it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods/services from ACDBEs. This is due to the fact that no certified ACDBE car rental companies exist within the market. As such, the Airport has structured the goal entirely in terms of the purchases of goods and services.

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

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

After collaboration and discussion with the Airport, Car Rental Company concessionaires at the Airport stated that the goods and services they may need in the goal period are: automobile parts, auto towing services, oil change services, office supplies, auto repair services, insurance services and fuel dealers.

**Market Area**

Market area is defined by the geographical area in which the substantial majority of firms seeking to do concession-related business with the Airport are located and the geographical area in which the firms that receive the substantial majority of the concession-related revenues are located. (23.51(b)(3)). The companies provided in Table 1 are national firms. However, historically, when DBE participation is achieved at the Airport it is performed by “local” firms. Therefore, instead of using a national market area, the market area is based upon the geographical area where the companies typically purchase their goods and services for the Airport. This area consists of the following counties: Androscoggin, Cumberland, Hancock, Kennebec, Penobscot, Somerset, and Waldo.

**Base of Goal**

**Step 1: 23.51(c)**

The base figure for the relative availability of DBEs offering car rental related goods and services was determined. The base figure was calculated using the data presented in Table 1 as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able car rental goods and service DBE's in the market area}}{\text{All ready, willing and able car rental goods and service companies in the market area}}$$

$$\text{Base Figure} = \frac{9}{1089} = 0.83\%$$

Using the Census Bureau’s County Business Pattern (CBP) database, the number of all ready, willing and able businesses in the market area that provide goods and services related to the rental car type businesses was determined. The Maine DOT D/WBE Directory of Businesses was then used to determine the number of DBE firms that provide related goods and services (i.e. towing, insurance, janitorial services, repair, and petroleum products in the market area). This information is provided in Table 1.

**Table 1: Rental Car Related Businesses - Relative Availability of DBEs in Market Area Compared to All Firms**

| County                    | 488410<br>Motor<br>Vehicle<br>Towing | 524210<br>Insurance | 56172<br>Janitorial<br>Services | 811111<br>General<br>Automotive<br>Repair | 453210<br>Office<br>Supplies | 423120<br>Automobile<br>Parts | 454310<br>Fuel<br>dealers | Total# of<br>Car Rental<br>Related<br>Companies<br>in Market<br>Area |
|---------------------------|--------------------------------------|---------------------|---------------------------------|---|------------------------------|-------------------------------|---------------------------|--|
| Androscoggin,<br>ME       | 7                                    | 34                  | 28                              | 53  | 0                            | 4                             | 13                        | 139  |
| Cumberland,<br>ME         | 7                                    | 120                 | 122                             | 107                                       | 5                            | 12                            | 38                        | 411  |
| Hancock, ME               | 0                                    | 19                  | 11                              | 31  | 0                            | 0                             | 19                        | 80   |
| Kennebec,<br>ME           | 8                                    | 43                  | 23                              | 66  | 3                            | 5                             | 19                        | 167  |
| Penobscot,<br>ME          | 5                                    | 47                  | 39                              | 58  | 0                            | 5                             | 36                        | 190  |
| Somerset, ME              | 3                                    | 6                   | 7                               | 26  | 0                            | 3                             | 10                        | 55   |
| Waldo, ME                 | 0                                    | 7                   | 7                               | 23  | 0                            | 0                             | 10                        | 47   |
| <b>Total:</b>             | 30                                   | 276                 | 237                             | 364                                       | 8                            | 29                            | 145                       | <b>1089</b>  |
| <b>Maine DOT<br/>DBEs</b> | 0                                    | 1                   | 6                               | 1   | 0                            | 0                             | 1                         | <b>9</b>   |

[Census Business Builder: Small Business Edition - 4.3  
DBE Information \(maine.gov\)](#)

Neither an Active Participants List (23.51(c)(2)) nor a disparity study (23.51(c)(3)) are available for use in the base goal calculation.

**Step 2: 23.51(d)**

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

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

**Past History Participation**

*Data used to determine the adjustment to the base figure was the median of historical ACDBE accomplishments*

| <b>FY</b> | <i>Total Achievement</i> |
|-----------|--------------------------|
| 19        | 1.91%                    |
| 20        | 1.35%                    |
| 21        | 1.53%                    |

Arranging this historical data from low to high, 1.35%, 1.53%, and 1.91%, the median is 1.60% which is our Step 2 figure.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 1.22%.

(Step 1 .83% plus Step 2 1.60% = 2.43% divided by 2 = 1.22%)

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

**Breakout of Estimated Race-Neutral & Race Conscious Participation Section 23.45(f) and 23.51(d)(5)**

The Airport will strive to meet the maximum feasible portion of its overall goal by using both race-neutral and race-conscious means of facilitating DBE participation. The Airport will:

1. Identify opportunities for DBE's on concession agreements and sub agreements and notify concessionaires of potential participation opportunities.
2. Encourage non-DBE concessionaires to consider subcontracting opportunities with DBEs.
3. Aid non-DBE concessionaires in locating DBEs for subcontracting opportunities.
4. Provide information concerning the availability of DBE firms to competitors to assist them in obtaining DBE participation;

Historically, there has been no ACDBE participation on concession leases that did not have ACDBE goal requirements. Thus, the Airport will:

1. Continue to work with current and potential new concessionaires to establish concession-specific goals for particular concession opportunities (23.25(e)(1)).
2. Continue to work with current and potential new concessionaires to include DBE participation in the operation of the Airport concession (23.25(e)(2)).

In order to ensure that the ACDBE program will be narrowly tailored to overcome the effects of discrimination, when concession specific goals are used, the Airport will adjust the estimated breakout

of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)). The Airport 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.

The Airport will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals.

### **Conclusion**

**It is estimated the Airport will obtain its adjusted goal of 1.22% from race-conscious participation.**

**ATTACHMENT 4:**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

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

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

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

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

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

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

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

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

**FORM 2: LETTER OF INTENT**

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

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

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

Name of ACDBE firm: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

Description of work to be performed by ACDBE firm:

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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 5:**

**ACDBE Certification Application Form**

<https://www.maine.gov/mdot/civilrights/docs/dbe/2022/Uniform%20Certification%20Application.pdf>



**ATTACHMENT 6:  
UCP Agreement Between the City of Bangor and the State of Maine**



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0016

ANGUS S. KING, JR.  
GOVERNOR

JOHN G. MELROSE  
COMMISSIONER

April 17, 2002

US Department of Transportation  
Office of the General Counsel  
Uniform Certification Program  
Attention: Robert Ashby C-50  
Room 10428  
400 Seventh Street, SW  
Washington, DC 20590

Mr. Ashby:

Please find enclosed copies of the various UCP Agreements entered between Maine Department of Transportation and FTA, FAA, FRA (via Northern New England Passenger Rail Authority, the Metropolitan/ County or Regional Planning Organizations, Cities or Municipalities with jurisdictional authority for aviation facilities, and the Maine Department of Environmental Protection.

These agreements serve to formalize informal relationships with these agencies and the Maine Department of Transportation regarding the certification of Disadvantaged Business Enterprises. As you may know, the Maine Department of Transportation is the only certifying entity in Maine, and as such these agreements while required by 49 CFR Part 26 § 81 simply reaffirm many years of professional relationships with these entities.

We have chosen to enter into separate agreements with each grantee and they are provided as an enclosure to this letter.

Inquiries may be directed to me at 207-624-3066.

Sincerely,

Penny Flourde, Manager  
Small Business Programs

Encs  
Cc: Maine Division FHWA



PRINTED ON RECYCLED PAPER

THE MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION - EQUAL OPPORTUNITY EMPLOYER

04/10/2002 14:50 FAX 2079454446

CITY OF BANGOR

001

AGREEMENT

Between the

MAINE DEPARTMENT OF TRANSPORTATION  
OFFICE OF HUMAN RESOURCES

And

City of Bangor, Maine

This Agreement is made this 10<sup>th</sup> day of April, 2002, by and between the State of Maine, through its Department of Transportation (MDOT), with an address of 16 State House Station, Augusta, Maine, and the City of Bangor, with an address of 73 Harlow Street Bangor, Maine.

**I. AGREEMENT**

MDOT and the named party hereby agrees as follows:

1. The named party agrees that as a recipient of USDOT financial assistance it will cooperate fully with the Maine Department of Transportation in the certification of Disadvantaged Business Enterprises.
2. The named party agrees it shall utilize the MDOT Disadvantaged Business Enterprise Certification program.
3. The named party agrees to refer potential applicants for DBE Certification to MDOT.
4. The named party agrees to honor the decisions made by MDOT with respect to certification decisions made in accordance with 49 CFR Parts 23 and 26 Subpart E Certification Procedures.
5. MDOT will accept, review, and make determinations about DBE Certification for those entities referred to it by the named party.

**II TERMS**

This Agreement remains in place indefinitely.

SEEN AND AGREED TO BY:

MAINE DEPARTMENT OF TRANSPORTATION

Penny Plourde

By: Penny Plourde, Manager, Small Business Programs

David V. Pellegrina Purchasing Agent  
By: David V. Pellegrina Title: Purchasing Agent

**ATTACHMENT 7:**

**Regulations: 49 CFR Part 23**

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rgn=div5>

**ATTACHMENT 8:  
Annual Reporting Forms**

| <b>FORM 1                      FFY2022                      OCTOBER 1, 2022 – SEPTEMBER 30, 2023</b> |                            |  |                  |                                    |  |
|--|----------------------------|--|------------------|------------------------------------|--|
| <b>Company Name:</b>   |                            | <b>Total amount of all Goods and Services:</b> |                  | <b>\$</b>                          |  |
| <b>Total Gross Receipts:</b>   | <b>\$</b>                  | <b># of all Vendors Paid:</b>                  |                  |                                    |  |
|  |                            |  |                  |                                    |  |
|  | <b>Sub Concession Name</b> | <b>Type of Work Performed</b>                  | <b>DBE Firm?</b> | <b>Total Gross Receipts</b>        | <b>New Firm <u>    </u><br/>(Started after Oct 1 2022)</b> |
| <b>Sub Concessions</b>   |                            |  |                  |                                    |  |
| 1  |                            |  |                  |                                    |  |
| 2  |                            |  |                  |                                    |  |
| 3  |                            |  |                  |                                    |  |
| 4  |                            |  |                  |                                    |  |
|  |                            |  | <b>Total:</b>    | <b>\$</b>                          |  |
| <b>Goods and Services<br/>(list all vendors)</b>   | <b>Vendor Name</b>         | <b>Type of Good/Services Purchased</b>         | <b>DBE Firm?</b> | <b>Total Amount Paid to Vendor</b> | <b>New Vendor Start Date (paid btw 10/1/22-9/30/23)</b>    |
| 1  |                            |  |                  |                                    |  |
| 2  |                            |  |                  |                                    |  |
| 3  |                            |  |                  |                                    |  |
| 4  |                            |  |                  |                                    |  |
| 5  |                            |  |                  |                                    |  |
| 6  |                            |  |                  |                                    |  |
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| 9  |                            |  |                  |                                    |  |
| 10   |                            |  |                  |                                    |  |

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| 11                              |  |  |  |               |    |
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| 23                              |  |  |  |               |    |
| 24                              |  |  |  |               |    |
| 25                              |  |  |  |               |    |
| 26                              |  |  |  |               |    |
| 27                              |  |  |  |               |    |
| 28                              |  |  |  |               |    |
| 29                              |  |  |  |               |    |
| 30                              |  |  |  |               |    |
| Use additional sheets if needed |  |  |  | <b>Total:</b> | \$ |

**FORM 2 REPORT OF CERTIFIED ACDBE FORM**

(CONCESSIONAIRES/SUBCONCESSIONAIRES/SUPPLIERS/MANAGEMENT CONTRACTORS - COUNTED TOWARD GOALS)

Name of Airport: **Bangor International Airport**

Airport Sponsor: **City of Bangor Maine**

City/State/Zip: **Bangor, Maine 04401**

Company \_\_\_\_\_

Preparer \_\_\_\_\_ Telephone Number \_\_\_\_\_

Date \_\_\_\_\_

List below each ACDBE that participated in a concession during the preceding fiscal year and which are included in your submission of the Uniform Report of ACDBE Participation. <http://www.maine.gov/mdot/civilrights/dbe> If no ACDBE firm participated, write "NONE" below.

Name of ACDBE Firm \_\_\_\_\_

Address \_\_\_\_\_

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

Type of concession/sub concession/supplier, etc., business \_\_\_\_\_

Date Agreement (*i.e.* lease, sublease) Began \_\_\_\_\_ Date Agreement Expires \_\_\_\_\_

- Options to Renew \_\_\_\_\_ How Many \_\_\_\_\_ Length of time \_\_\_\_\_
- Dates that material amendments have been/will be made to agreement \_\_\_\_\_
- Estimated gross receipts for this reporting period: \_\_\_\_\_

The disadvantaged individual having the largest ownership interest is:

\_\_\_\_ Black    \_\_\_\_ Hispanic    \_\_\_\_ Native American    \_\_\_\_ Asian-Indian American

\_\_\_\_ Asian-Pacific American    \_\_\_\_ Non-Minority Woman    \_\_\_\_ Other Disadvantaged

---

Name of ACDBE Firm \_\_\_\_\_

Address \_\_\_\_\_

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

Type of concession/sub concession/supplier, etc., business \_\_\_\_\_

Date Agreement (*i.e.* lease, sublease) Began \_\_\_\_\_ Date Agreement Expires \_\_\_\_\_

- Options to Renew \_\_\_\_\_ How Many \_\_\_\_\_ Length of time \_\_\_\_\_
- Dates that material amendments have been/will be made to agreement \_\_\_\_\_
- Estimated gross receipts for this reporting period: \_\_\_\_\_

The disadvantaged individual having the largest ownership interest is:

\_\_\_\_\_ Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Native American \_\_\_\_\_ Asian-Indian American

\_\_\_\_\_ Asian-Pacific American \_\_\_\_\_ Non-Minority Woman \_\_\_\_\_ Other Disadvantaged

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Name of ACDBE Firm \_\_\_\_\_

Address \_\_\_\_\_

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

Type of concession/sub concession/supplier, etc., business \_\_\_\_\_

Date Agreement (*i.e.* lease, sublease) Began \_\_\_\_\_ Date Agreement Expires \_\_\_\_\_

- Options to Renew \_\_\_\_\_ How Many \_\_\_\_\_ Length of time \_\_\_\_\_
- Dates that material amendments have been/will be made to agreement \_\_\_\_\_
- Estimated gross receipts for this reporting period: \_\_\_\_\_

The disadvantaged individual having the largest ownership interest is:

\_\_\_\_\_ Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Native American \_\_\_\_\_ Asian-Indian American

\_\_\_\_\_ Asian-Pacific American \_\_\_\_\_ Non-Minority Woman \_\_\_\_\_ Other Disadvantaged

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(Use additional sheets as needed)