

**RAPID CITY REGIONAL AIRPORT NOTICE OF PROPOSED
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE
GOALS FOR FEDERAL FISCAL YEARS 2017 - 2019**

Rapid City Regional Airport (RCRA) 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.

It is the policy of RCRA 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 RCRA;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at RCRA; and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Pursuant to 49 C.F.R. Part 23, the RCRA hereby gives notice of its intent to propose an overall percentage goal for participation by Airport Concessions Disadvantaged Business Enterprises for the federal fiscal year beginning October 1, 2016, and ending September 30, 2019, as follows:

Non-Rental Car Concessions Goal:	1.75%
Rental Car Concessions Goal:	1.15%

Beginning the date of this notice, and continuing for 30 days thereafter, a statement regarding this proposed goal and how it was selected is available for inspection at RCRA Administration Office.

Written comments regarding the proposed goal and the manner of its selection may be submitted for 30 days from the date of publication of this notice to:

Rapid City Regional Airport
4550 Terminal Road, Suite 102
Rapid City, SD 57703-8706
C/O DBE Liaison Officer

For further information, write or visit RCRA at the above address or telephone (605) 394-4195.



Rapid City Regional Airport

**Airport Concessions Disadvantaged Business
Enterprise (ACDBE) Program**

**Goal Period:
October 1, 2016 through September 30, 2019**

APPROVED: April 6, 2018

**Rapid City Regional Airport
4550 Terminal Road, Suite 102
Rapid City, SD 57703-8706
(605) 394-4195 or (605) 394-6190 (fax)**

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

The City of Rapid City d/b/a Rapid City Regional Airport (RCRA) 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. RCRA 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). RCRA has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of RCRA 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;
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 airports in establishing and providing opportunities for ACDBEs.

The Deputy Director for Airport Finance and Administration has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Deputy Director for Airport Finance and Administration 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 RCRA in its financial assistance agreements with the Department of Transportation.

RCRA has disseminated this policy statement to the Rapid City Regional Airport Board of Directors and all of the components of our organization. RCRA will distribute this statement to ACDBE and non-ACDBE concessionaire communities in our area via the airport's website, www.rapairport.org, and periodic public information workshops.

Patrick Dame
Patrick Dame, Airport Executive Director

March 28, 2018
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

RCRA 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

RCRA 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

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

In administering its DBE program, RCRA 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.

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

RCRA will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

- (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

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

RCRA 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.

RCRA'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 RCRA 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 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.
- (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 the [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the RCRA 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 RCRA 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

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

Type of Airport	Next Goal Due (2020/2021/2022)	Second Goal Due (2023/2024/2025)	Third Goal Due (2026/2027/2028)	Subsequent Goals Due
Nonhub Primary	October 1, 2019	October 1, 2022	October 1, 2025	Every 3 years on October 1

Until our new ACDBE program goal is submitted and approved, RCRA will continue to implement our ACDBE program that is in effect currently, except with respect to any provision that is contrary to 49 CFR Part 23.

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

Section 23.23 Administrative Provisions

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

ACDBE Liaison Officer (ACDBELO): RCRA have designated the following individual as our ACDBELO: Toni Broom, 4550 Terminal Rd, Ste 102, Rapid City, SD 57703, 605-394-4195, toni.broom@rcgov.org

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that RCRA complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Executive 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 duties and responsibilities include the following

1. Gather and report statistical data and other information as required by FAA or DOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Ensure bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identify contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyze RCRA's progress toward attainment and identifies ways to improve progress.
7. Participate in pre-bid meetings.
8. Advise the CEO/governing body on ACDBE matters and achievement.
9. Chair the ACDBE Advisory Committee.
10. Provide ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
11. Plan and participate in ACDBE training seminars.
12. Act as liaison to the Uniform Certification Program in South Dakota.
13. Provide outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintain RCRA's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: RCRA through the South Dakota Uniform Certification Program (UCP) maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP revises the Directory at least annually. RCRA makes the Directory available as follows: Lance DeMers, SDDOT, 700 East Broadway Avenue, Pierre, SD 57703, 605-773-4906, <http://sddot.com/business/contractors/docs/DBEDirectory.pdf>.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

RCRA 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))

RCRA's overall goal methodologies, a description of the race-neutral measures it will take to meet the goals, are described in Section 23.25 and Attachment 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

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

RCRA 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.

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

Section 23.27 Reporting

RCRA 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, RCRA will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23. We will submit the report to the FAA Regional Civil Rights Office via hard copy of the form or electronically via the DBE Office Online Reporting System (DOORS).

Section 23.29 Compliance and Enforcement Procedures

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

1. RCRA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. RCRA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. RCRA have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment 3).
3. RCRA 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 documented ongoing, scheduled and unscheduled on-site visits to the operations and meetings with Business Development Staff.
4. In our reports of ACDBE participation to FAA, RCRA will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 RCRA 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. RCRA is a member of a Unified Certification Program (UCP) administered by the South Dakota Department of Transportation which will make certification decisions on behalf of RCRA for ACDBEs.

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

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

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

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

RCRA 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. The sponsor 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, RCRA 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, RCRA need not submit an overall goal for concessions other than car rentals. RCRA understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

RCRA'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

RCRA 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, RCRA will identify the stakeholders that RCRA consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

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

Type of Airport	Next Goal Due (2020/2021/2022)	Second Goal Due (2023/2024/2025)	Third Goal Due (2026/2027/2028)	Subsequent Goals Due
Nonhub Primary	October 1, 2019	October 1, 2022	October 1, 2025	Every 3 years on October 1

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, RCRA will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

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

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data RCRA relied on can be found in *Attachment 5* to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data RCRA relied on can be found in *Attachment 4* to this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachment 4 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))

RCRA will use concession specific goals to meet any portion of the overall goals RCRA 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.

RCRA will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. RCRA 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).

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

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, RCRA 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, RCRA 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 RCRA's concession specific goals. Specifically,

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

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

Patrick Dame
Airport Executive Director
4550 Terminal Road, Ste. 102
Rapid City, SD 57703

RCRA will ensure that all information is complete and accurate and adequately document the bidder/offeror good faith efforts before RCRA commits to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

RCRA treats bidder/offeror compliance with good faith effort requirements as a matter of responsiveness.

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

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b) (3) of this section:
 - The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
 - A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in an 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/supplier participating;
 - Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
 - Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
 - 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; and

3. We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section no later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

Administrative reconsideration (26.53(d))

Within seven days of being informed by RCRA that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official:

Joel Landeen
City Attorney
City of Rapid City
300 Sixth St.
Rapid City, SD 57701
joel.landeen@rcgov.org

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

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

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

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

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

If the concessionaire fails or refuses to comply in the time specified, RCRA 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 RCRA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of _____percent of (*annual gross receipts; value of leases and/or purchases of goods and services*) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

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

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

RCRA 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 our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

RCRA 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. RCRA 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 *(if applicable)*

RCRA will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. RCRA will ensure that the owner or lessee complies with part 23. RCRA will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23. Currently, no such agreements exist.

Section 23.75 Long-Term Exclusive Agreements

RCRA will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. RCRA understands that a "long-term" agreement is one having a term

of longer than 5 years. RCRA 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, RCRA will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

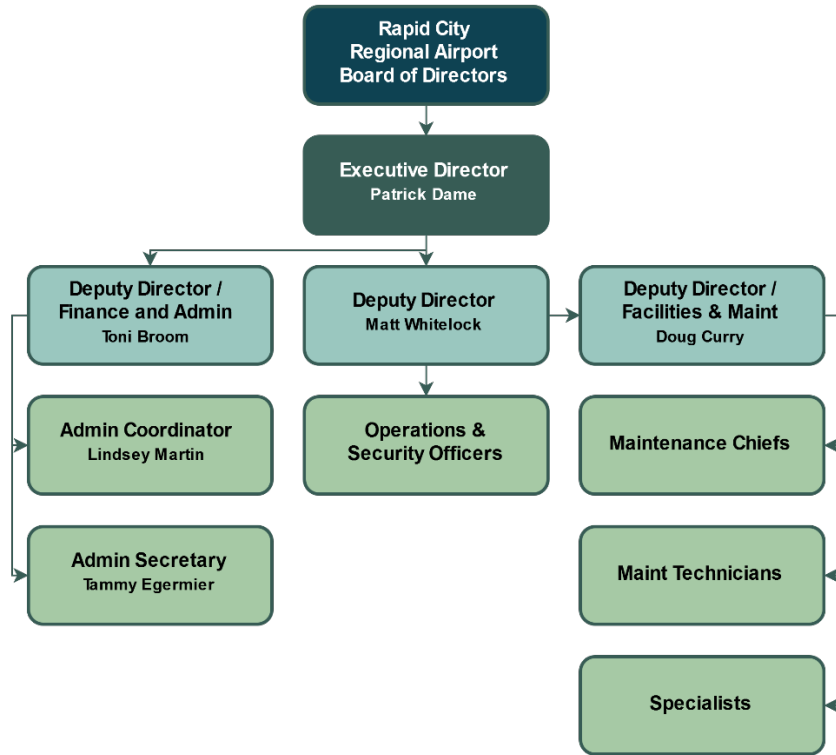
RCRA will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., *Black Hills Region*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Regulations: 49 CFR Part 23
Attachment 10	Goals and Elements for Privately-Owned or Leased Terminal Buildings

Attachment 1

Organizational Chart



Attachment 2

ACDBE Directory

The ACDBE Directory is maintained by the South Dakota Department of Transportation (SDDOT) as the Unified Certification Program (UCP) for the State of South Dakota.

The Directory can be obtained at the SDDOT website listed below. Questions or comments about the directory or to apply for status as an ACDBE may be directed to:

Lance DeMers
SDDOT
700 East Broadway Avenue
Pierre, SD 57703
Phone: 605-773-4906
Fax: 605-773-3921
Email: lance.demers@state.sd.us
Website: <http://sddot.com/business/contractors/docs/DBEDirectory.pdf>

Attachment 3

Sample Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract; and
2. RCRA also reserves the right to use any remedy under applicable local, state or federal law.

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

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

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

1. RCRA will insert the following provisions into concessions agreements and management contracts:
 - A. 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.
 - B. 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.
2. RCRA will implement the following additional monitoring and compliance procedures:
 - A. Annual review and review at time of contract award.
3. RCRA will implement our compliance and monitoring procedures as follows:
 - A. Annual review by ACDBELO that may include reviews of records, on-site reviews of concession workplaces and interviews of concessionaire staff.

Attachment 4

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

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

RCRA's overall goal for concessions other than car rental during the period beginning October 1, 2016 and ending September 30, 2019 is the following: **1.75%**

Methodology to Calculate Overall Goal

Goods and Services

RCRA has determined that its market area is Pennington, Meade, Lawrence and Custer Counties in South Dakota for the Ground Transportation Concessions. The market area for the Food and Beverage and Retail is nationwide. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues.

RCRA determined the goal based on outreach for the purchases of goods and services from certified ACDBE or potential/ACDBE firms. This basis is in lieu of a goal based upon a percentage of total gross receipts of non car rental concessions at the Airport. We will make a good faith effort to pursue opportunities to meet the goal. We will continue to consult with the South Dakota DOT UCP, our concessionaires at the airport, airports in our region, minority and women businesses in the State and other publications to find prospects. We will work with our concessionaires and outreach to ACDBEs for goods and services and encourage certified ACDBEs to apply for certification in South Dakota so we can count the ACDBE participation in goals and uniform form reports. The South Dakota DOT UCP is aware of this requirement and is on board to assist and process certifications as required.

We have the following concessionaire companies operating at the airport: Airport Express Shuttle, Republic Parking, Mount Rushmore Society and Airhost.

Concessionaires rentals stated the services they may need are: insurance, office supplies, tires, auto repair services, auto part supplies, and retail merchandise. Actual purchases have consisted of insurance purchases. We will continue to encourage efforts to make the needed purchases from SD certified ACDBEs.

Step 1

Base of Goal

To calculate the base of the goal, RCRA considered the previous 3 years of purchases and the projected potential purchase three years into the future.

Fiscal Year	Non Car Rental Goods & Services Purchased (Expenditures)
2014	1,421,660
2015	1,421,405
2016	1,367,957
Total	4,211,022
Average	1,403,674

RCRA does not anticipate any major changes that would increase or decrease goods & services purchased over the next three years.

The average non car rental goods & services purchased at the airport for the last three years was \$1,403,674. Since no changes are anticipated over the next three years, the 2016 purchases of \$1,367,957 were used to determine the base goal; multiplied by 3 = \$4,103,871 for the base. The anticipated non car rental ACDBE purchases through outreach is \$15,000. The \$15,000 was determined by considering the certified ACDBEs already being used by our non car rental companies and also potential outreach to other national certified ACDBEs. We anticipate being able to encourage national certified ACDBEs already being used by our non car rental companies to certify in the South Dakota UCP. We also expect we will be able to encourage other certified ACDBEs to certify in South Dakota and encourage our non car rental companies to utilize them, amounting in at least \$15,000 of ACDBE participation. To arrive at a Step 1 goal, we divided \$15,000 by \$1,367,957 which equals 1.10%.

Step 2

Past participation from non car rental concessions is as follows:

2016 – .21%
2015 – 2.41%
2014 –12.37%

Arranged from high to low, the median is 2.41% which is our Step 2 figure.

We then added Step 1 and Step 2 - 1.10% plus 2.41% = 3.51% divided by 2 = 1.75% final overall goal

We do not have an applicable disparity study or any other evidence to use to adjust the goal.

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, RCRA will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

Consultation with Stakeholders (23.43)

Prior to submitting this goal to the FAA, RCRA consulted with the following stakeholders:

AirHost, David Shelton
Airport Express Shuttle, Kevin Leui
Black Hills Economic Development Partnership
Rapid City Chamber of Commerce
Visit Rapid City
SDDOT, Lance DeMers
Republic Parking, Roger Weisenbeck

A summary of the information these stakeholders provided follows:

The concessionaires had no opinion on the reasonableness of the goal.

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

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

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;

2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.
6. Outreach to national ACDBE firms to encourage certification in South Dakota.

RCRA estimates that in meeting an overall goal of 1.75%, RCRA will obtain 1.75% from race-conscious participation and 0% through race-neutral measures.

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

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

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

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

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

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

RCRA's overall goal for car rentals during the period beginning October 1, 2016 and ending September 30, 2019 is the following: **1.15%**

Methodology used to Calculate Overall Goal

RCRA has determined that its market area is the State of South Dakota.

Goods and Services

RCRA determined the goal based on outreach for the purchases of goods and services from certified ACDBE or potential/ACDBE firms. 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 goal. We will continue to consult with the South Dakota DOT UCP, our car rentals at the airport, airports in our region, minority and women businesses in the State and other publications to find prospects. We will work with our car rental agencies and outreach to ACDBEs for car rental goods and services and encourage certified ACDBEs to apply for certification in South Dakota so we can count the ACDBE participation in goals and uniform form reports. The South Dakota DOT UCP is aware of this requirement and is on board to assist and process certifications as required.

We have the following car rentals operating at the airport: Alamo, Avis, Budget, Enterprise, Hertz, and National.

Car rentals stated the services they may need are: key blanks, oil change services, insurance, office supplies, janitorial services, tires, auto repair services, auto part supplies, security services, payroll services, towing services, car wash, landscaping services and freight transportation.

Step 1

Base of Goal

To calculate the base of the goal, RCRA considered the previous 3 years of purchases and the projected potential purchase three years into the future.

Fiscal Year	Car Rental Goods & Services Purchased (Expenditures)
2014	4,897,503
2015	5,777,217
2016	5,651,152
Total	16,325,872
Average	5,441,957

The current car rental contracts expire December 31, 2017, and will be rebid this fall. However, RCRA does not anticipate any major changes as a result of that bid offering, that would increase or decrease goods & services purchased over the next three years.

The average car rental goods & services purchased at the airport for the last three years was \$5,441,957. Since no changes are anticipated over the next three years, the 2016 purchases \$5,651,152 were used to determine the base. The anticipated car rental ACDBE purchases through outreach is \$64,808. The \$64,808 was determined by considering the certified ACDBEs already being used by our car rental companies and also potential outreach to other national certified ACDBEs. We anticipate being able to

encourage national certified ACDBEs already being used by our car rental companies to certify in the South Dakota UCP. We also expect we will be able to encourage other certified ACDBEs to certify in South Dakota and encourage our car rental companies to utilize them, amounting in at least \$64,808 of ACDBE participation. To arrive at a Step 1 goal, we divided \$64,808 by \$5,651,152 which equals 1.15%.

Step 2

Past participation – We do not have a history of accomplishments to use for a Step 2 adjustment. We do not have an applicable disparity study to use to adjust the goal. We are adopting the Step 1 figure as our overall goal.

Consultation with Stakeholders: Section 23.43

Prior to submitting this goal to the FAA, RCRA consulted with the car rental companies and the SD DOT UCP Coordinator, along with outreach to national ACDBE supplier firms that provide goods and services to car rentals across the U.S. to encourage certification in South Dakota.

A summary of feedback is as follows: Comments were made regarding the limited number of available ACDBE firms in South Dakota.

Breakout of Estimated Race-Neutral & Race Conscious Participation

The 1.15% goal will be achieved by race-conscious means (ACDBE goal).

The Airport will make every reasonable effort to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport will use the following race-neutral measures to increase ACDBE participation:

- i. Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
- ii. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate;
- iii. Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.
- iv. Outreach to other national ACDBEs and encourage certification in South Dakota.

If race-neutral measures, standing alone, are not sufficient to meet an overall goal, the following race-conscious measures will be used to meet the overall goal:

- i. Establish concession-specific goals for particular concession opportunities;

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if concession specific goals are used, RCRA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation and race-neutral and race-conscious participation will be tracked 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, respectively.

Attachment 6
Forms 1 & 2 for Demonstration of Good Faith Efforts

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

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

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

.....
.....
.....
.....

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

Attachment 7

Certification Application Forms

To obtain an application for certification, Lance DeMers, DBE Compliance Officer at (605) 773-4906; or e-mail lance.demers@state.sd.us.

Attachment 8

Procedures for Removal of ACDBEs Eligibility

To obtain information regarding ACDBE eligibility, contact Lance DeMers, DBE Compliance Officer at (605) 773-4906; or e-mail lance.demers@state.sd.us.

Attachment 9

Regulations: 49 CFR Part 23

Title 49 of the Code of Federal Regulations, Part 23 is on file at the offices of the airport. They can also be obtained at: <http://ecfr.gpoaccess.gov> and then searching Title 49 Transportation and then searching on Part 23.

Attachment 10

Goals and Elements for Privately-Owned or Leased Terminal Buildings

Not Applicable

(October 1, 2016 to September 29, 2019)

Car Rental Company Goal

Based on Outreach for Goods and Services

28-Mar-18

Purchases of Goods and Services			Use Fiscal Years - Purchases of Goods & Services		
			2014	2015	2016
Avis			115,634	102,193	104,074
Budget			136,638	46,513	47,624
National			1,454,769	1,663,213	1,781,450
Alamo			1,010,941	1,079,536	1,260,763
Enterprise			535,120	448,062	602,466
Hertz			1,644,401	2,437,700	1,854,775
Totals	Average:	5,441,957	4,897,503	5,777,217	5,651,152
	Total:	16,325,872			

Purchases of Goods & Services from ACDBEs		2014	2015	2016
Total All Car Rental Companies		67,653	24,986	101,786
	Average:			
				64,808

Step 1:

Goods & Services Average: 5,651,152

From ACDBE Average: 64,808

1.15% No further adjustments needed

**Determining ACDBE Goal for 2017-2019
(October 1, 2016 to September 29, 2019)**

28-Mar-18

Non Car Rental Company Goal

Based on Outreach for Goods
and Services

Purchases of Goods and Services			2014	2015	2016
Air Host			419,688	420,847	420,173
Mount Rushmore Society			312,517	397,116	431,189
Airport Express Shuttle			425,322	415,707	436,494
Standard Parking/Republic Parking			264,133	187,735	80,101
Totals	Average:	1,403,674	1,421,660	1,421,405	1,367,957

Purchases of Goods & Services from ACDBEs			2014	2015	2016
Total All Non Car Rental Companies			-	-	9,886

Step 1 Base Goal:			Step 1	1.10%
Goods & Services	2016	1,367,957	Step 2	2.41%
	times 3	4,103,871	Total	3.51%
		15,000		
	Base Goal:	1.10%	Divide by 2	1.75% Final overall goal
Step 2:				
Historical Participation	2016	0.21%		
	2015	2.41% median		
	2014	12.37%		