

**JUNEAU INTERNATIONAL AIRPORT
CITY and BURROUGH OF JUNEAU
JUNEAU, ALASKA
ACDBE PROGRAM – 49 CFR PART 23**

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The CITY and BURROUGH OF JUNEAU (Sponsor) 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 Juneau International 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 Sponsor has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Sponsor 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.

Mr. John Coleman, Airport Business Manager has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Mr. Coleman, 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 Sponsor in its financial assistance agreements with the Department of Transportation.

This policy statement is disseminated to the City officials, departments of the Sponsor, to organizations of minority and disadvantaged businesses and to non-minority business and community organizations of the City of Juneau, Alaska area and its surrounding area through bulletin board postings and website postings.



Date: 9/8/21

Scott Rinkenberger
Deputy Manager
Juneau International Airport

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

The Sponsor 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 Sponsor 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 Sponsor 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 Sponsor'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 Sponsor's ACDBE program:

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

fraudulent statement in connection with participation of an ACDBE in the Sponsor's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the Sponsor'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 City 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 Sponsor is a non-hub primary airport required to have an ACDBE program.

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

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

This ACDBE program will be implemented at the Juneau International Airport, Juneau, Alaska.

When the Sponsor 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 Sponsor is committed to operating its ACDBE program in a nondiscriminatory manner.

The Sponsor'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:

John Coleman
Airport Business Manager
1873 Shell Simmons Dr. Ste 200
Juneau AK 99801
907-586-0960
airportbusinessmanager@jnuairport.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Sponsor complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Deputy Airport Manager, Scott Rinkenberger 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 a staff of two to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes Sponsor's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Acts as liaison to the Unified Certification Program (UCP) in Alaska.
10. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
11. Maintains the Sponsor's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The Sponsor through the Alaska 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 monthly. We make the Directory available as follows: <http://www.dot.state.ak.us/cvlrts/directory.shtml>. The Directory may be found in Attachment 2 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The Sponsor will develop and use affirmative action techniques to facilitate ACDBE participation in concession activities. These techniques will include, but are not limited to:

1. Arranging solicitations or requests for proposals, time for presenting bids for proposals, quantities, specifications, and delivery schedules so as to facilitate DBE participation.
2. Providing information to ACDBE's on overcoming barriers in the procurement process such as obtaining bonding, financing, or technical assistance.
3. Carrying out information and communication programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

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

The Sponsor 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))

The Sponsor's overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 and Attachment 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the Sponsor projects that race-neutral measures 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 5 of this plan. (23.25(e))

The Sponsor 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))

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

The Sponsor will verify that the work committed to ACDBEs is actually performed by the ACDBEs. This monitoring and enforcement mechanism will include a written certification that the Sponsor has reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored these agreements at the Airport for this purpose. The monitoring and enforcement mechanisms will be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., closeout reviews for a contract). (23.29))

- 1) We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- 2) We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We 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. (26.37)

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 Sponsor is a member of a Unified Certification Program (UCP) administered by the State of Alaska which will make ACDBE certification decisions on behalf of the Sponsor.

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, we will review their eligibility at that time as soon as possible.

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.

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 concession 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 Concession 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 Sponsor 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 Recipient's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

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

Section 23.45 Overall Goals

The sponsor 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:

Non-Hub Primary	All regions	October 1, 2019	2020/2021/2022
Non-Hub Primary	All regions	October 1, 2022	2023/2024/2025

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 sponsor 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)

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

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

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

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachment 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

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

The Sponsor 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.)

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

Section 26.53 Good Faith Efforts Procedures

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

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

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

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))

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

- (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:
 - (i) The names and addresses of ACDBE firms that will participate in the contract;
 - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each ACDBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.

- (vi) 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:

Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by Sponsor that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Reconsideration Official
Scott Rinkenberger
1873 Shell Simmons Dr. Ste 200
Juneau AK 99801
907-586-0211
scottr@jnuairport.com

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. 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 Sponsor 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 Concession;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) 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 Concession 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 Sponsor 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 Juneau 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

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

We 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;
- 3) (i) CORE 30 or other Airport designated by FAA: We will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval by April 1 following the report submittal. If the FAA approves the report, we will be regarded as complying with the requirements of this section for the remainder of the fiscal year. Juneau International is not a Core 30 airport.
- (ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.
- 4) We understand the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- 5) We understand we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:
- (i) We do not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;
 - (ii) FAA disapproves our analysis or corrective actions; or
 - (iii) We do not fully implement:

(A) The corrective actions to which we have committed, or

(B) Conditions that FAA has imposed following review of our analysis and corrective actions.

(C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23 and it is incorporated herein and submitted as Attachment 11.

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with Part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23 and it is incorporated herein and submitted as Attachment 11.

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 23.79 Geographic Preferences

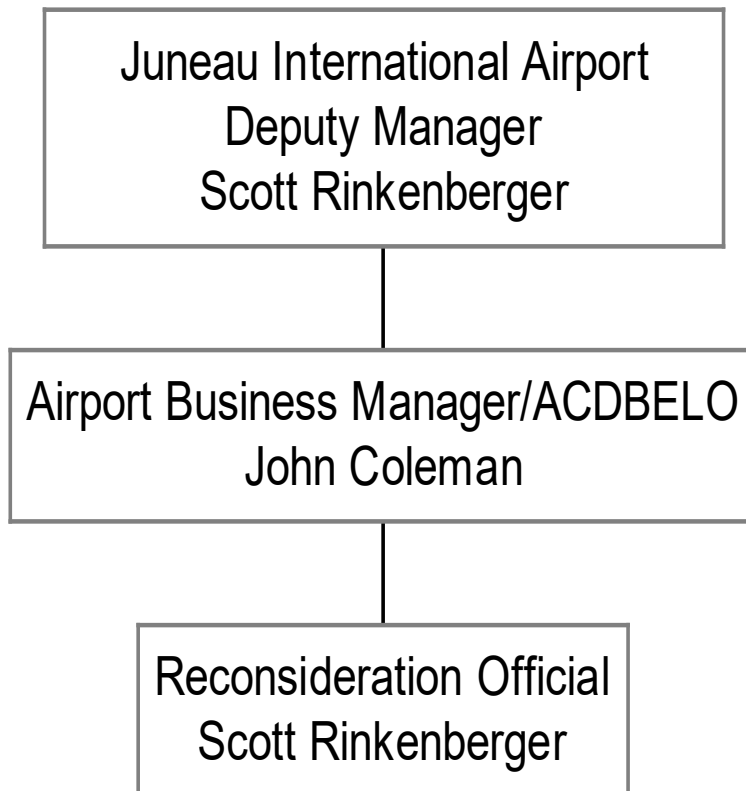
We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place an advantage over ACDBEs from other places in obtaining business as, or with, a concession at our airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
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
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Attachment 11	Goals and Elements for Privately-Owned or Leased Terminal Buildings

Attachment 1

Organizational Chart



Attachment 2

Alaska DBE Directory

<http://www.dot.state.ak.us/cvlrts/directory.shtml>

Attachment 3

Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Actions outlined in Alaska State Code and other legal mechanisms as necessary.

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

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

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

1. All contracts between the City and a concessionaire (including applicable management contracts) shall contain an appropriate provision to the effect that failure by the Concessionaire to comply with the Airport's ACDBE Program shall constitute a breach of contract, exposing the Concessionaire to a potential termination of the contract or other appropriate remedies, until such time as the Concessionaire complies with all the ACDBE requirements of this program.
2. Should an ACDBE firm not certified by the Alaska Department of Transportation & Public Facilities be proposed by a potential Concessionaire as a part of his/her ACDBE plan efforts, review, and certification procedures consistent with 49 CFR Part 23 must be conducted prior to award of any contract.
3. In contracts with ACDBE contract goals, proposals submitted that do not meet the ACDBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered non-responsive proposals, and offerors will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Office (49CFR 26.53). The offeror will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Officer will make the determination of the sufficiency of the good faith efforts.
4. We will insert the following provision into concessions agreements and management contracts:

A. “Concessionaire shall comply with all applicable provisions of 49 CFP Part 23. All concessionaires (Prime contractors) shall list all certified ACDBE’s they intend to use (including themselves) with the Airport ACDBELO. Concessionaire shall provide the City with monthly reports detailing all payments made to ACDBEs, or in the case that the Concessionaire is an ACDBE, monthly reports detailing all pertinent gross revenue amount to be applied toward the ACDBE goals as described in the City’s ACDBE Program and 49 CFR Part 23.”

5. We will implement the following additional monitoring and compliance procedures:

A. The Alaska Unified Certification Program (AKUCP) routinely monitors and verifies compliance with the ACDBE Program. The City will rely on the AKUCP to complete these activities. The Airport will also periodically check the AKUCP website to ensure all ACDBEs listed in Airport concessions contract are still appropriately certified.

B. The Airport shall require Concessionaires to make good faith efforts to replace an ACDBE Concessionaire that is terminated or fails to complete its work on the contract for any reason, with another ACDBE Concessionaire. If an ACDBE Concessionaire is terminated or fails to complete its work on the contract for any reason, with another ACDBE Concessionaire. If an ACDBE Concessionaire is terminated or fails to complete its work on the contract for any reason, the Concessionaire must notify the City immediately. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the contract as the ACDBE that was terminated, to the extent needed to meet the established contract goal. The City shall approve all substitutions prior to the contract award (or confirmed use) and during contract performance in order to ensure that the substitute firms are eligible ACDBEs.

C. The City will review the monthly reports of Concessionaires regarding ACDBE participation to ensure adherence to the City’s ACDBE Program.

6. We will implement our compliance and monitoring procedures as follows:

A. The Airport will monitor participating ACDBEs by requiring an annual report of all ACDBE activity and by periodically auditing various ACDBE participants, as allowed by their contracts. In addition, period checks of the AKUCP website will be accomplished to ensure continued certification of all participating ACDBEs.

B. The City will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT/FAA can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT/FAA Inspector General, action under suspension and debarment of Program Fraud and Civil Penalties rules) provided in 49 CFR Part 25.107. The City will also consider similar action under its own legal authorities, including responsibility determination in future contracts. This includes, for example, apply liquidated damages, withholding payments, etc.

Monitoring Payments to ACDBEs

The City will require Prime Concessions to maintain records and documents of payments to ACDBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement also extends to any certified ACDBE subcontractor.

The City will perform interim audits of each contractor's payments to ACDBEs. The audit will review payments to ACDBE subcontractors to ensure that the actual amount paid to ACDBE subcontractors equals or exceeds the dollar amount stated in the schedule of ACDBE participation. The City is committed to monitoring the performance of project participants. We will utilize all regulations available as well as additional contractual remedies to enforce the program. We will implement our compliance and monitoring procedures as follows:

(A). The City will also implement a written monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payments actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by a comparison of contractor payments to ACDBEs to actual contract amounts awarded to ACDBEs.

(B). The City will provide reports of ACDBE participation to DOT on as required basis, we will show both commitments and attainments, as required by the DOT reporting form.

Attachment 4

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

Submitted Separately

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals

Submitted Separately

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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 _____ Title _____
(Signature)

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

ACDBE Certification Application Form

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/new-dbe-uniform-certification-application>

Attachment 8

Procedures for Removal of ACDBEs Eligibility

To ensure the separation of functions in a decertification, the Sponsor has determined that the Alaska DOT will serve as the decision-maker in de-certification proceedings. The Sponsor has established an administrative “firewall” to ensure the Alaska DOT will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

The Sponsor has certified that it understands and agrees that it, as a recipient of FAA funds, agrees with, and will comply with all of the provisions of 49 CFR Part 26.81, Subpart E, as amended, and the Alaska Unified Certification Program (ALCUP), and further agrees to cooperate fully with the Alaska DOT and be bound by its decisions or actions concerning this program.

If Alaska DOT should deny a firm’s application or decertify it, it may not reapply until 12 months have passed from the date of the denial or decertification action.

In the event the Sponsor proposes to remove an ACDBE’s certification, the procedures will be consistent with §26.87.

An ACDBE’s certification will be suspended without a hearing for 30 days if the recipient has evidence that the disadvantaged owner(s) has died or is incarcerated as is consistent with §26.88.

Certification Appeals: An ACDBE firm which is denied certification or whose eligibility is removed may make an administrative appeal to the Department.

Send appeals to the following address:

U.S. Department of Transportation
Office of Civil Rights
External Civil Rights Program Division
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202)-366-4754

We will promptly implement any DOT certification appeal decisions affecting the eligibility of ACDBEs for our DOT-assisted contracting (e.g. certify a firm if DOT has determined that our denial of its application was erroneous).

Recertification: The Alaska DOT will review the eligibility of ACDBEs that were certified under former Part 23, to make sure that they meet the standards of Subpart D of Part 26. This review will be made no later than three years from the most recent certification date of each firm. For firms that have been decertified or reviewed and found eligible under Part 26, the Alaska DOT will again review their eligibility every three years following their initial certification. These reviews will include the components on a case-by case basis.

Unified Certification Program: The Sponsor is participating in the development of the UCP through providing representation to the Department on an as required basis. The Sponsor relies primarily on the Alaska DOT who presently certifies both construction and professional firms for the accomplishment of work that is funded in part by the United States Department of Transportation. The Directory that they provide is upgraded periodically and is maintained in a current status and is available to the public. Because of this it is our intent to continue to exercise reciprocity with firms that are contained in this Directory. In addition it is our intent to recognize any firm that has been certified by other recipients of the Department of Transportation grants, as long as they remain in good standing. All certification by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as an ACDBE as stated in §26.81.

"No Change" Affidavits and Notices of Change. The Alaska DOT requires all ACDBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the firm's application for certification.

The Alaska DOT also requires all owners of all ACDBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

"I swear (or affirm) that there have been no changes in the circumstances of [name of ACDBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of ACDBE]'s application for certification, except for any changes about which the [name of ACDBE's] have provided written notice to the Alaska DOT under 26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million."

The Sponsor requires ACDBEs to submit, with this affidavit, documentation of the firm's size and gross receipts.

The Alaska DOT will notify all currently certified ACDBE firms of these obligations, by mail on or about the first day of June each year. This notification will inform ACDBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth: All disadvantaged owners or applicants and currently certified ACDBEs, who are eligible under Part 26 as reviewed, are required to submit a statement of personal net worth. The spouse of a disadvantaged owner who is involved in the operation of the firm must also submit a PNW form with the application. The applicant does not have to provide information on the value of the primary residence, or on the value of his or her investment in the firm. This information should not be collected or used in the personal net worth determination.

ATTACHMENT 9

State's UCP Agreement

<https://dot.alaska.gov/cvlrts/forms/aucp-agreement.pdf>

Attachment 10

Regulations: 49 CFR Part 23

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

Attachment 11

Goals and Elements for Privately-Owned or Leased Terminal Buildings

This section is not applicable to the Juneau International Airport at this time.