

ONTARIO INTERNATIONAL AIRPORT



AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

ONTARIO INTERNATIONAL AIRPORT AUTHORITY
1923 E. Avion Street | Ontario, CA 91761
Phone (909) 544-5300 | TDD (909) 937-2163

Updated September 1, 2017

**Ontario International Airport Authority (OIAA)
ACDBE PROGRAM – 49 CFR PART 23**

INTRODUCTION

This Airport Concession Disadvantaged Business Enterprise (ACDBE) program is based on the requirements of 49 CFR Part 23. The entire regulation can be viewed here:

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

The sections that make up the entirety of the DBE program correspond to the sections of the regulation starting with Section 23.1 through Section 23.79 and include ten attachments.

This ACDBE program has been reviewed and accepted by the Federal Aviation Administration (FAA).

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The Ontario International Airport (OIAA) 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 OIAA 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 OIAA signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the OIAA 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 airport in establishing and providing opportunities for ACDBEs.

Amy Goethals, Director of Commercial Real Estate, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the ACDBELO 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 OIAA in its financial assistance agreements with the Department of Transportation.

The OIAA has disseminated this policy statement to the OIAA Commission and all the components of our organization. We have distributed this statement to ACDBE and non-

ACDBE concessionaire communities in our area. This policy statement is available for public access on the OIAA's website (www.flyontario.com). This link to the OIAA website is listed on all solicitation documents qualified for DOT assistance during the DOT Fiscal Years 2017-2019.

Mark A. Thorpe

Mark Thorpe, Interim Chief Executive Officer

11/2/2017

Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

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

The OIAA 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 OIAA 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 OIAA 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 OIAA'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 OIAA 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 OIAA 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 OIAA 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 OIAA is a medium hub primary airport required to have an ACDBE program.

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

Until the OIAA'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 Ontario International Airport.

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

The OIAA Policy Statement is elaborated on the first page of this program.

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

Amy Goethals

Director of Commercial Real Estate

ONTARIO INTERNATIONAL AIRPORT AUTHORITY

1923 E. Avion Street | Ontario, CA 91761

Phone (909) 544-5427 | Cell (909) 452-5586

Email: Agoethals@flyontario.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the OIAA complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Chief Executive Officer (CEO) of the OIAA 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. 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 OIAA'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. Plans and participates in ACDBE training seminars.
10. Is a member of the UCP.
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
12. Maintains the OIAA's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The OIAA through the California 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 daily. The Directory may be found in Attachment 2 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

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

The OIAA 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 OIAA 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 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the OIAA 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 4 and 5 of this plan. (23.25(e))

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

Section 23.27 Reporting

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

1. The OIAA 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. OIAA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. If the concessionaire fails to maintain the level of ACDBE participation described in Concessionaire's proposal, or to make good faith effort, as determined by the OIAA, the OIAA shall have the right to cancel or terminate the agreement in its entirety and all rights ensuing therefrom upon giving a thirty (30) days written notice to Concessionaire.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 The OIAA will use the procedures and standards of Part 23, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

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

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

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

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

The OIAA recognizes 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)

The OIAA 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).

The OIAA recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. The OIAA will follow the provisions of 23.39 (a) through (i). We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have

received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a) (b)).

The OIAA acknowledges that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. The OIAA recognizes 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)).

The OIAA 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))

The OIAA 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))

The OIAA 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 OIAA has established two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals cover a three-year period and the OIAA will review the goals annually to make sure the goals continues to fit the sponsor’s circumstances. The OIAA 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, The OIAA will 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, The OIAA will not submit an overall goal for concessions other than car rentals. The OIAA understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The OIAA’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 OIAA 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 overall goals, the OIAA will identify the stakeholders that were consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

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

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Large/Medium Hubs	All regions	October 1, 2014	2015/2016/2017	October 1, 2017 (2018/2019/2017)
Small Hubs	All regions	October 1, 2015	2016/2017/2018	October 1, 2018 (2019/2020/2021)

Non-Hubs	All regions	October 1, 2016	2017/2018/2019	October 1, 2019 (2020/2021/2022)
-----------------	-------------	-----------------	----------------	-------------------------------------

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 OIAA 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 OIAA 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 The OIAA relied on can be found in Attachment 4 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 the OIAA relied on can be found in Attachment 4 of this program.

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

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 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 OIAA 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.

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

OIAA 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.

The OIAA 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 OIAA 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 OIAA will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e) (1) (ii))

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

To be eligible to be awarded a concession that has a concession specific goal, bidders/offers must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e) (1) (iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the OIAA'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 OIAA's Procurement Services Division is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith effort to be regarded as responsive.

The OIAA will ensure that all information is complete and accurate and adequately documents the Bidder/Offeror's good faith effort before the OIAA commits to the concession agreement with the Bidder/Offeror. Award of the contract will be conditioned on meeting the requirements of this section.

Information to be submitted 26.53 (b)

In solicitations for concession contracts for which a contract goal has been established, the OIAA 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:
 - (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.
 - (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.
3. The OIAA will require that the bidder/offeror present the information required in 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 three (3) days of being informed by OIAA that it is not responsive because it has not documented sufficient good faith effort, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official:

Director of Procurement Services Division
Ontario International Airport Authority
1923 E. Avion St.
Ontario, CA 91761

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

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 effort to do so. The concessionaire will have the opportunity to meet in person with OIAA's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith effort to do. OIAA 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 effort 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)

OIAA will require a concessionaire to make good faith effort 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. OIAA will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, OIAA 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.

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

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

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

If the concessionaire fails to make good faith effort, as determined by OIAA, OIAA shall have the right to cancel or terminate the agreement in its entirety and all rights ensuing therefrom upon giving a thirty (30) days written notice to concessionaire.

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 OIAA to practice nondiscrimination based on race, color, sex or national origin in the award or performance of his 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 23.2 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 effort, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), 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; and (5) if the contract goal is not met, evidence of good faith efforts.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

The OIAA 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, OIAA will:

1. Analyze in detail the reasons for the difference between the overall goal and OIAA's awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems OIAA has identified in the analysis to enable OIAA to fully meet our goal for the new fiscal year;

- a. OIAA will submit within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b) (1) and (2) of this section to the FAA for approval. If FAA approves the report, OIAA will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
- b. As an airport not meeting the criteria of paragraph (b) (3) (i) of this section, OIAA will retain analysis and corrective actions in our records for three-year and make it available to FAA, on request, for its review.

Section 23.61 Quotas or Set-asides

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

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

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

Section 23.75 Long-Term Exclusive Agreements

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

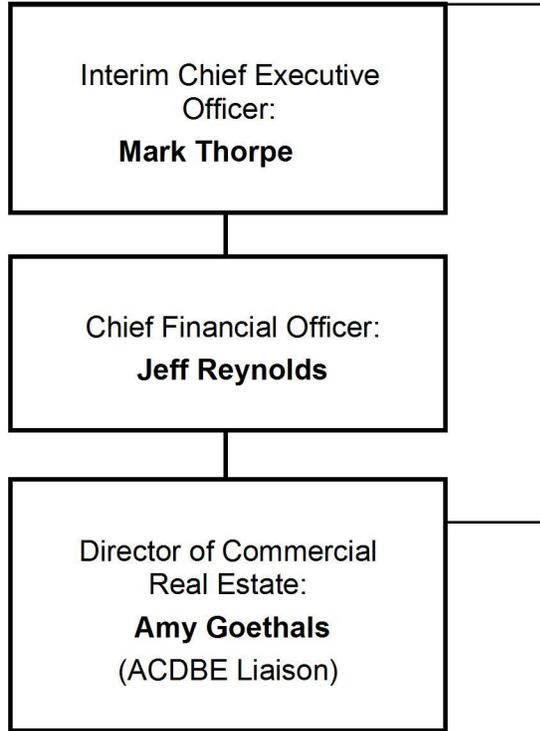
Section 23.79 Geographic Preferences

The OIAA 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
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	State's UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23

Attachment 1
Organizational Chart



Attachment 2

Link to State of California DBE Directory: http://www.dot.ca.gov/hq/bep/find_certified.htm

Attachment 3

Sample Monitoring and Enforcement Mechanisms

The OIAA has several available 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.
2. Breach of contract action, pursuant to California Civil Code, Article 1. Damages for Breach of Contract 3300.-3322.
3. Other actions deemed appropriate including responsibility reviews on future concession award opportunities.

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: In a suspension or debarment proceeding, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
2. Enforcement action pursuant to 49 CFR part 31: 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; and
3. Prosecution pursuant to 18 USC 1001: 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 OIAA's ACDBE program or otherwise violates applicable federal statutes.

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

1. The OIAA 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 regulation, 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. The OIAA will implement the following additional monitoring and compliance procedures:
 - a. Concessionaires or contractors will be required to submit monthly gross revenue earned by ACDBEs and expenditures to DBEs.
 - b. Concessionaires or contractors will be required to list the specific duties, functions and responsibilities that ACDBEs or DBEs will perform.
 - c. Concessionaires or contractors will be required to submit, for review, a written notification of any material change in the duties, functions and responsibilities of ACDBEs and DBEs prior to implementing the change.
 - d. The OIAA will review, annually, the specific duties, functions and responsibilities of each ACDBE and DBE to confirm that no material change has occurred.
 - e. The OIAA will perform periodic reviews, including site visits, each year on a representative number of judgmentally selected concessionaires and contractors to confirm ACDBEs and DBEs are performing listed duties, functions and responsibilities.
3. The OIAA will implement our compliance and monitoring procedures as follows:
 - a. The OIAA will utilize existing compliance software to capture monthly gross revenues of concessionaires, including ACDBEs and monitor progress of concessionaire commitments to ACDBEs versus actual participation.
 - b. The OIAA will require that concessionaires submit written confirmation, annually, that there are no changes in certification, duties, functions and responsibilities of ACDBEs, including terms and conditions of joint venture agreements.
 - c. The OIAA will use appropriate personnel to perform, at least quarterly, reviews of ACDBEs to ensure that their activities correspond to the previously submitted list of duties, functions and responsibilities. All ACDBEs will be reviewed within a three-year period from the start of the review process, at which time the review process will begin again. Reviews will include site visits, reviews of appropriate records, contracts, financial information, joint venture agreements, certification information and other relevant information deemed necessary
 - d. The OIAA will request from concessionaires any expenditures made with ACDBEs or DBEs in performing services and supplying goods. Those expenditures will be reported periodically to the OIAA, but no less than semi-annually.
 - e. Joint ventures will be reviewed in accordance with 49 CFR part 23, the July 2008 FAA Joint Venture Guidance, and this section.

- f. The OIAA will include, in the contract files, a written certification that it has reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site for each concession contract to which 49 CFR part 23 applies.
- g. Bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- h. Implement similar action under the OIAA's own legal authorities, including responsibility determinations in future contracts.
- i. Implement a mechanism that will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In reports of ACDBE participation to the DOT, the OIAA will show both commitments and attainments, as required by the DOT uniform reporting form.

Attachment 4

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

Amount of Goal

Name of Recipient: Ontario International Airport Authority (OIAA)

Goal Period: FY 2018-2019-2020 (October 1, 2017 through September 30, 2020)

Overall Three-Year Goal:

17.5%, to be accomplished through 11.5% RC and 6% RN

Market Area for Non-Car Rental Concessionaires

The OIAA has determined the market area is as follows: San Bernardino County, Riverside County, Orange County, and Los Angeles County. The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.



Base of Goal

To calculate the base of the goal the OIAA considered the previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

Gross Receipts for Previous 3 Years - Non-Car Rental Concessions

Fiscal Year	Concessions Revenue (Excluding Car Rental)
2014	\$12,382,924
2015	\$9,840,375
2016	\$10,864,360
Total	\$33,087,659
Average	\$11,029,220

The OIAA estimates that revenues to existing concessions will grow by 5% over the next three years due to new lease agreements with Delaware North Corporation, Hudson Group, and Lamar. The new agreement with Delaware North will make a six-million dollar (\$6,000,000.00) initial investment for the complete rebranding and refurbishment of concessions which will generate an estimated \$1,188,000.00 in *net revenue*. Hudson Group will invest over \$2.4 million to open new and rebrand existing stores in T2 and T4 and predicts first year *gross sales* to be \$8,000,000. Both companies have pledged to deliver ACDBE participation of 20% (DNC) and 12% (Hudson Group). Lamar projects that during their 10-year term, they will invest \$630,000 in brand new digital advertising, which will generate \$11.5 million in gross revenue for ONT.

The table below, provided by DNC, lists ONT's actual food & beverage revenue to date and projected revenue through 2027 based on DNC's projections and other assumptions as indicated. These projections are believed to be conservative as they rely on conservative assumptions of passenger growth provided by the FAA. On November 1, 2016, ownership of the Ontario International Airport transferred from Los Angeles World Airports (LAWA) to the Ontario International Airport Authority (OIAA). With the change to local ownership, greater focus on airport and airline market development and yield higher passenger growth than what is currently forecast by the FAA's Terminal Area Forecast (TAF).

	Year	Enplane- ments*	Total Food & Beverage Revenue (\$000s)	DNC Revenue (\$000s)**	SSP (Carls Jr.) Revenue (\$000s)***	Net to OIAA F&B \$ per enplanement
	2014	2,013,354	\$735			\$0.37
	2015	2,062,768	\$651			\$0.32
Unaudited	2016	2,087,291	\$692			\$0.33
Budgeted	2017	2,212,830	\$769			\$0.35
Projected	2018	2,268,636	\$1,331	\$1,188	\$143	\$0.59
	2019	2,319,578	\$1,377	\$1,230	\$147	\$0.59
	2020	2,370,513	\$1,425	\$1,273	\$153	\$0.60
	2021	2,419,620	\$1,475	\$1,317	\$158	\$0.61
	2022	2,467,956	\$1,527	\$1,363	\$164	\$0.62
	2023	2,516,176	\$1,580	\$1,411	\$169	\$0.63
	2024	2,562,898	\$1,636	\$1,460	\$175	\$0.64
	2025	2,611,318	\$1,693	\$1,511	\$181	\$0.65
	2026	2,663,586	\$1,752	\$1,564	\$188	\$0.66
	2027	2,715,824	\$1,813	\$1,619	\$194	\$0.67

* Source: 2016 FAA Terminal Area Forecast; 2016 and future years are forecast.

** DNC estimated OIAA would net \$1,188,000 in the first full year of a new contract with DNC, increasing by approximately 3.5% annually. This estimate is based on DNC's original proposal to OIAA, which has been modified as a result of subsequent negotiations. DNC's proposal does not include revenue from Carls Jr., currently operated by SSP.

*** Assumes that SSP will continue to operate a concession similar to Carls Jr. or that DNC will incorporate this concession into its operations post-November 2018. Assumes that SSP's MAG of \$143,000 is increased by 3.5% annually.

The five percent anticipated growth in revenue means that the OIAA can expect an average annual concessions revenue of \$11,580,680 in gross receipts over the next three years (see calculation below).

Calculation:

$$\$11,029,219.70 \times 5\% = \$551,461$$

$$\$551,460.99 + \$11,029,219.70 = \mathbf{\$11,580,681}$$

Base of goal: \$11,580,681

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the OIAA will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

Methodology used to Calculate Overall Goal

Goods and Services

The OIAA can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. The OIAA and the businesses at ONT, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

Management Contract or Subcontract

The OIAA can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. The OIAA and the businesses at ONT, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base. *While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.*

Step 1: 23.51(c)

CFR Part 23.51 recommends several methodologies for determining a base ACDBE goal based on relative availability of ACDBEs. The recommendations and examples are provided as a starting point but are not intended as an exhaustive list. Other methods or combinations of methods may be used subject to FAA approval.

Since there was *no Active Participant's list*, and no disparity study for ONT, the base figure for the relative availability of DBEs was calculated through an analysis of the State of California DBE directory and Census Bureau County Business Patterns in the market area counties, historical participation, as well as a comparison of goals at airports in the region.

The 2015 U.S. Census County Business Patterns by NAICS classifications for San Bernardino County, Los Angeles County, Orange County and Riverside County were compared to the number of firms certified as ACDBEs by the California UCP to arrive at the base percentage.

The result of these calculations yields a base goal of 1.1%.

NAICS Code	Meaning of NAICS code	San Bernardino County ACDBE Certified Firms	Total San Bernardino Establishments	Riverside County ACDBE Certified Firms	Total Riverside Establishments	Orange County ACDBE Certified Firms	Total Orange Establishments	Los Angeles County ACDBE-Certified Firms	Total Los Angeles Establishments	TOTAL ACDBE FIRMS LOCATED IN MARKET	TOTAL FIRMS	Percent DBE
311811	Retail bakeries	0	28	2	37	1	100	3	368	6	533	1.1%
445291	Baked goods stores	0	17	0	14	1	38	1	149	2	218	0.9%
445292	Confectionery and nut stores	1	21	2	24	2	43	2	116	7	204	3.4%
446120	Cosmetics, beauty supplies, and perfume stores	2	89	0	92	0	220	0	714	2	1,115	0.2%
446199	All other health and personal care stores	0	46	0	50	0	123	0	229	0	448	0.0%
448110	Men's clothing stores	1	31	2	41	3	73	3	266	9	411	2.2%
448120	Women's clothing stores	2	127	2	188	2	388	0	1297	6	2,000	0.3%
448190	Other clothing stores	0	50	0	62	0	134	0	365	0	611	0.0%
448310	Jewelry stores	2	90	2	114	3	255	4	939	11	1,398	0.8%
448320	Luggage and leather goods stores	1	5	1	6	2	12	2	56	6	79	7.6%
451212	News dealers and newsstands	11	2	13	1	16	6	19	34	59	43	137.2%
452990	All other general merchandise stores	3	152	3	138	2	162	3	661	11	1,113	1.0%
453110	Florists	0	41	0	59	0	110	0	305	0	515	0.0%
453210	Office supplies and stationery stores	0	34	0	39	0	76	0	229	0	378	0.0%
453220	Gift, novelty, and souvenir stores	22	86	24	86	27	211	35	595	108	978	11.0%
454210	Vending machine operators	1	12	1	15	1	22	2	62	5	111	4.5%
485999	All other transit and ground passenger transportation	1	9	2	10	1	18	3	94	7	131	5.3%
517919	All other telecommunications	0	19	0	17	0	48	0	145	0	229	0.0%
519130	Internet publishing and broadcasting and web search portals	0	12	8	23	0	141	0	500	8	676	1.2%
522320	Financial transactions processing, reserve, and clearinghouse activities	0	28	1	22	0	100	0	274	1	424	0.2%
541613	Marketing consulting services	2	123	1	183	1	1009	2	1961	6	3,276	0.2%
541810	Advertising agencies	0	30	0	39	0	241	0	733	0	1,043	0.0%
541890	Other services related to advertising	0	23	1	33	0	112	1	201	2	369	0.5%
561720	Janitorial services	0	207	0	291	0	489	0	1077	0	2,064	0.0%
722310	Food service contractors	7	42	7	39	8	144	10	465	32	690	4.6%
722320	Caterers	1	21	1	53	1	126	4	449	7	649	1.1%
722410	Drinking places (alcoholic beverages)	7	99	8	90	8	228	9	720	32	1,137	2.8%
722511	Full-service restaurants	11	1063	11	1185	14	2718	18	7957	54	12,923	0.4%
722515	Snack and nonalcoholic beverage bars	8	319	9	380	9	931	13	2654	39	4,284	0.9%
812113	Nail salons	0	181	0	168	0	323	0	1154	0	1,826	0.0%
TOTAL:										420	39,876	1.1%

Source: U.S. Census Bureau, 2015 County Business Patterns. Data in this table represent those available when this report was created; data may not be available for all NAICS industries or geographies. Excludes most government employees, railroad employees, and self-employed persons.

The total certified DBE firms in a particular county may include firms who possess an interstate certification, meaning they may be physically located in another state yet have expressed an interest in doing business in California, thus obtaining a California DBE certification. For example, a DBE firm located in New York City can register to do business in San Bernardino County. This often times, can exceed total firms by NAICS code because the Census Bureau only takes into consideration firms that have a physical address in a specific county.

While there is a presumption that the market area is the area in which it is expected that the substantial majority of the Airport's concessions that seek to do business with the Airport **are located**, data from the State of California was further analyzed to assess DBE firms physically located in the market (San Bernardino, Riverside, Orange, and Los Angeles counties). This

analysis, however, yielded so few results that these numbers were not used in calculating the base goal (see table below).

NAICS Code	Meaning of NAICS code	San Bernardino County ACDBE Certified & Located in County	Riverside County ACDBE Certified & Located in County	Orange County ACDBE Certified & Located in County	Los Angeles County ACDBE Certified and Located in County
311811	Retail bakeries	0	0	0	2
445291	Baked goods stores	0	0	0	0
445292	Confectionery and nut stores	0	0	2	0
446120	Cosmetics, beauty supplies, and perfume stores	0	0	0	0
446199	All other health and personal care stores	0	0	0	0
448110	Men's clothing stores	0	0	1	1
448120	Women's clothing stores	0	0	1	0
448190	Other clothing stores	0	0	0	0
448310	Jewelry stores	0	0	0	1
448320	Luggage and leather goods stores	0	0	0	0
451212	News dealers and newsstands	0	0	0	9
452990	All other general merchandise stores	0	0	0	1
453110	Florists	0	0	0	0
453210	Office supplies and stationery stores	0	0	0	0
453220	Gift, novelty, and souvenir stores	0	0	1	13
454210	Vending machine operators	0	0	0	1
485999	All other transit and ground passenger transportation	0	0	0	0
517919	All other telecommunications	0	0	0	0
519130	Internet publishing and broadcasting and web search portals	0	0	0	0
522320	Financial transactions processing, reserve, and clearinghouse activities	0	0	0	0
541613	Marketing consulting services	0	0	0	0
541810	Advertising agencies	0	0	0	0
541890	Other services related to advertising	0	0	0	0
561720	Janitorial services	0	0	0	0
722310	Food service contractors	0	0	1	0
722320	Caterers	0	0	0	0
722410	Drinking places (alcoholic beverages)	0	0	0	3
722511	Full-service restaurants	0	0	1	2
722515	Snack and nonalcoholic beverage bars	0	0	0	4
812113	Nail salons	0	0	0	0

Source:Source:State of California DBE directory

Step 2: 23.51(d)

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

Past History Participation

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

FY	ACDBE Goals			Accomplishments		
	RC	RN	Total	RC	RN	Total
2012	23.10%	0%	23.10%	10.25%	4.45%	14.70%
2013	23.10%	0%	23.10%	11.37%	3.69%	15.06%
2014	14.00%	0%	14.00%	33.88%	0%	33.88%
2015	13.20%	0%	13.20%	23.62%	10.84%	34.45%
2016	13.20%	0%	13.20%	27.74%	11.59%	36.34%

Arranging this historical data from low to high, the median is 34%.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an **overall goal of 17.5%**. We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period. This is in line with the DBE goals of other airports in the region, as depicted in the graphic below.

Comparing ONT ACDBE Overall Goal to other Airport ACDBE Goals in Region



PUBLIC PARTICIPATION

Consultation: Section 23.43.

PUBLIC PARTICIPATION

In accordance with Public Participation Regulatory Requirements of 49 CFR Part 23, the OIAA will take the following steps to inform and consult with the public to satisfy the component of public participation required for goal setting: 1) Compile a distribution list that includes minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires, officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, groups within the market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process, 2) Publish a draft copy of the ACDBE program on www.flyontario.com for a 30 day review by the public and issue a public notice to those specifically on the distribution list, and publish the notice in minority-focused media, 3) Hold a public meeting with as many stakeholders as possible aimed at obtaining information that will

help to establish the overall ACDBE goal. Efforts will be made to engage in a dialogue with as many interested stakeholders as possible.

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

The OIAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The OIAA uses the following race-neutral measures and understands that its personnel are expected to take these steps:

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. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
4. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

In FY-2012 and FY-2013, ONT did not achieve its ACDBE goals (see table below). Between FY-2014 and FY 2016, ONT exceeded its ACDBE goals by approximately 20% (see table below). This is evidence of race-neutral participation. Taking the average of the five previous year's race-neutral achievements, 6% of our goal is being applied to race-neutral and the remaining 11.5% is applied to race-conscious participation.

FY	ACDBE Goals			Accomplishments		
	RC	RN	Total	RC	RN	Total
2012	23.10%	0%	23.10%	10.25%	4.45%	14.70%
2013	23.10%	0%	23.10%	11.37%	3.69%	15.06%
2014	14.00%	0%	14.00%	33.88%	0%	33.88%
2015	13.20%	0%	13.20%	23.62%	10.84%	34.45%
2016	13.20%	0%	13.20%	27.74%	11.59%	36.34%

We estimate that, in meeting our overall goal of 17.5%, we will obtain 6% from race-neutral participation and 11.5% through race-conscious measures.

In working towards achieving the overall OIAA ACDBE goal, the OIAA will also establish concession-specific goals for concession opportunities, as evidenced by the two new concessions leases that have recently been negotiated. Both DNC and Hudson Group have pledged to deliver ACDBE goals of 20% (DNC) and 12% (Hudson Group).

In using concession specific goals the OIAA 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.

The OIAA 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

Name of Recipient: Ontario International Airport Authority (OIAA)

Goal Period: FY 2018-2019-2020 (October 1, 2017 through September 30, 2020)

Overall Three-Year Goal:

3.5%, to be accomplished through 3.5% RC and 0% RN

Market Area for Car Rentals

The OIAA has determined the market area is as follows: San Bernardino County, Riverside County, Orange County, and Los Angeles County. The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.



Base of Goal

To calculate the base of the goal the OIAA considered the previous 3 years of gross car rentals receipts and the projected potential car rentals revenue (gross receipts) three years into the future including upcoming new opportunities.

Gross Receipts (Revenue) for Previous 3 Years - Car Rentals

Fiscal Year	Car Rental Revenue
2014	\$70,334,615
2015	\$69,495,701
2016	\$78,509,691
Total	\$218,340,000
Average	\$72,780,000

The OIAA estimates that revenues to existing car rentals will grow by 2% over the next three years due to *inflation and increased passenger traffic*. On November 1, 2016, ownership of the Ontario International Airport transferred from Los Angeles World Airports (LAWA) to the Ontario International Airport Authority (OIAA). With the change to local ownership, greater focus on airport and airline market development should yield higher passenger growth than what is currently forecast by the FAA's Terminal Area Forecast (TAF), however, with the addition of share-riding companies, Uber and Lyft, the airport will need to spend time evaluating its impacts to car rental companies.

The two percent anticipated growth in revenue means that the OIAA can expect an average annual concessions revenue of \$74,235,600 in gross receipts over the next three years (see calculation below).

Calculation:

$$\begin{aligned}
 & \$72,780,000.00 \times 2\% = \$1,455,600 \\
 & \$1,455,600.00 + \$72,780,000.00 = \$74,235,600 \\
 & \text{Base of goal: } \$74,235,600
 \end{aligned}$$

If a new opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the OIAA will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new opportunity. (23.45(i)).

Methodology used to Calculate Overall Goal

Goods and Services

The OIAA can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. The OIAA and the businesses at ONT, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

Step 1: 23.51(c)

CFR Part 23.51 recommends several methodologies for determining a base ACDBE goal based on relative availability of ACDBEs. The recommendations and examples are provided as a starting point but are not intended as an exhaustive list. Other methods or combinations of methods may be used subject to FAA approval.

Since there was *no Active Participant's list*, and no disparity study for ONT, the base figure for the relative availability of DBEs was calculated through an analysis the State of California DBE directory and Census Bureau County Business Patterns in the market area counties, historical participation, as well as a comparison of goals at airports in the region.

The 2015 U.S. Census County Business Patterns by NAICS classifications for San Bernardino County, Los Angeles County, Orange County and Riverside County were compared to the number of car rentals certified as DBEs by the California UCP to arrive at the base percentage.

The result of these calculations yields a base goal of 0.2%.

NAICS Code	Meaning of NAICS Code	San Bernardino County ACDBE Certified Firms	Total San Bernardino Establishments	Riverside County ACDBE Certified Firms	Total Riverside Establishments	Orange County ACDBE Certified Firms	Total Orange Establishments	Los Angeles County ACDBE-Certified Firms	Total Los Angeles Establishments	TOTAL ACDBE FIRMS LOCATED IN MARKET	TOTAL FIRMS	Percent DBE
532111	Passenger Car Rental	0	53	0	46	0	127	1	354	1	580	0.2%
532112	Passenger Car Leasing	0	2	0	1	0	6	1	13	1	22	4.5%
532120	Truck, utility trailer, and RV rental & leasing	0	36	0	32	0	35	0	140	0	243	0.0%
TOTAL										2	845	0.2%

Source: U.S. Census Bureau, 2015 County Business Patterns. Data in this table represent those available when this report was created; data may not be available for all NAICS industries or geographies. Excludes most government employees, railroad employees, and self-employed persons; and State of California DBE directory

The total certified DBE firms in a particular county may include firms who possess an interstate certification, meaning they may be physically located in another state yet have expressed an interest in doing business in California, thus obtaining a California DBE certification. For example, a DBE firm located in New York City can register to do business in San Bernardino County. This often times can exceed total firms by NAICS code because the Census Bureau only takes into consideration firms that have a physical address in a specific county.

While there is a presumption that the market area is the area in which it is expected that the substantial majority of the Airport's concessions that seek to do business with the Airport **are located**, data from the State of California was further analyzed to assess DBE firms physically located in the market (San Bernardino, Riverside, Orange, and Los Angeles counties). This analysis, however, yielded **two results** from the State of California DBE directory, therefore, these numbers were not used in calculating the base goal.

Step 2: 23.51(d)

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

Past History Participation

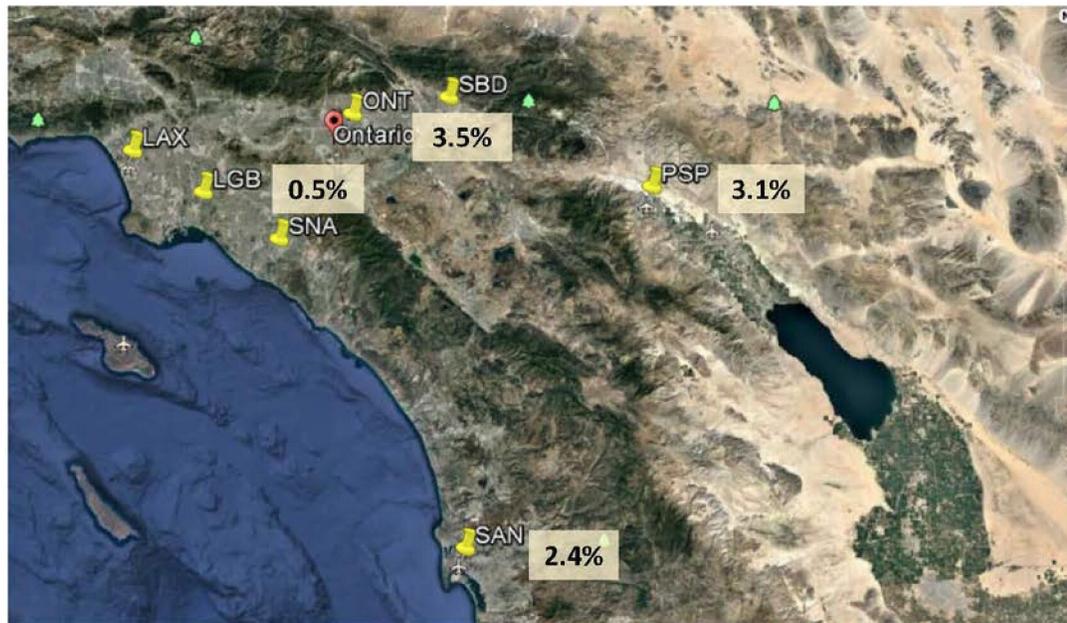
Data used to determine the adjustment to the base figure was the median of historical ACDBE accomplishments

Fiscal Year	ACDBE Goals			Accomplishments		
	RC	RN	Total	RC	RN	Total
2012	0	0	0	1.46	0	1.46
2013	1.00	0	1.00	1.46	0	1.46
2014	1.50	0	1.50	1.36	0	1.36
2015	3.50	0	3.50	8.25%	0	8.25%
2016	3.50%	0	3.50%	5.63%	0	5.63%

Arranging this historical data from low to high, the median is 1.36%.

Querying the US Census and California UCP resulted in a close to zero percent base, therefore, to arrive at an overall goal, the OIAA looked at the average goal accomplishments from the historical data above, arriving at an **overall goal of 3.5%**. The OIAA feels this adjusted goal figure will accurately reflect ACDBE car rental participation that can be achieved during this 3-year period. This is in line with the DBE goals of other airports in the region, as depicted in the graphic below.

Comparing ONT Car Rental Goal to other Airport Car Rental Goals in Region



PUBLIC PARTICIPATION

Consultation: Section 23.43.

In accordance with Public Participation Regulatory Requirements of 49 CFR Part 23, the OIAA will take the following steps to inform and consult with the public to satisfy the component of public participation required for goal setting: 1) Compile a distribution list that includes minority and women’s business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires, officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, groups within the market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process, 2) Publish a draft copy of the ACDBE program on www.flyontario.com for a 30 day review by the public and issue a public notice to those specifically on the distribution list, and publish the notice in minority-focused media, 3) Hold a public meeting with as many stakeholders as possible aimed at obtaining information that will help to establish the overall ACDBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible.

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

The OIAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The OIAA uses the following race-neutral measures and understands that its personnel are expected to take these steps:

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. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor’s ACDBE program will affect the procurement process; and
4. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

Between FY-2012 and FY-2016, ONT exceeded its ACDBE goals slightly, by approximately 1.5% (see table below). However, there was no recorded race-neutral participation, and therefore ***the OIAA is applying its entire goal of 3.5% to race-conscious participation.***

<i>Fiscal Year</i>	<i>ACDBE Goals</i>			<i>Accomplishments</i>		
	<i>RC</i>	<i>RN</i>	<i>Total</i>	<i>RC</i>	<i>RN</i>	<i>Total</i>
2012	0	0	0	1.46	0	1.46
2013	1.00	0	1.00	1.46	0	1.46
2014	1.50	0	1.50	1.36	0	1.36
2015	3.50	0	3.50	8.25%	0	8.25%
2016	3.50%	0	3.50%	5.63%	0	5.63%

In working towards achieving the overall OIAA ACDBE goal, the OIAA will also establish concession-specific goals for concession opportunities, as evidenced by the two new concessions leases that have recently been negotiated. Both DNC and Hudson Group have pledged to deliver ACDBE goals of 20% (DNC) and 12% (Hudson Group).

In using concession specific goals the OIAA 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.

The OIAA 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

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

Form can be downloaded at:

**[http://www.caltrans.ca.gov/hq/bep/business
forms.htm](http://www.caltrans.ca.gov/hq/bep/business_forms.htm)**

Attachment 8

Procedures for Removal of ACDBEs Eligibility

To remove your firm's ACDBE eligibility or request to change information after certification, please notify the agency that certified your firm in writing. The agency is listed on your certification document or you can access your profile from the following website:

http://www.dot.ca.gov/hq/bep/find_certified.htm

ATTACHMENT 9

State's UCP Agreement

Link to the State of California UCP Agreement: <http://www.dot.ca.gov/hq/bep/ucp.htm>

Signed OIAA CUCP Agreement on following page.

CUCP AGREEMENT/DECLARATION OF STATUS LETTER

TO: CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)

FROM: Ontario International Airport Authority (OIAA), (Recipient)

Address: 1923 East Avion Street Ontario, CA 91761

Recipient hereby acknowledges and agrees that:

- (1) As a recipient of Federal Financial Assistance from the U.S. Department of Transportation (DOT), Recipient has an established Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26.
- (2) By this Letter, Recipient officially becomes a signatory to the Memorandum of Agreement (MOA) for the establishment of a Unified Certification Program among all U.S. DOT recipients in California, as approved by the Secretary of Transportation on March 13, 2002, and amended on March 21, 2006.
- (3) In accordance with said MOA, Recipient hereby makes a declaration to become either a Certifying CUCP Member or a Non-Certifying CUCP Member.
 - (a) A Certifying CUCP Member maintains DBE certification processes including reviewing DBE applications, conducting site visits and making decisions on DBE status; processing annual updates; maintaining DBE certification files; and conducting appeal and third party challenge hearings. A Certifying CUCP Member is responsible for providing certification information and updates for inclusion in the DBE Database.
 - (b) A Non-Certifying CUCP Member does not process DBE certifications for inclusion in the DBE Database.
- (4) CUCP Members may be requested to contribute funds to support the CUCP.
- (5) All CUCP Members will accept the DBE status of firms included in the DBE Database for use in their contracting activities.

Based on the foregoing, Recipient hereby declares its status as:

- A CERTIFYING CUCP MEMBER
- A NON-CERTIFYING CUCP MEMBER

Recipient may change its status upon submission of a new Declaration Letter to the Chair of the CUCP

DATE: 03/14/2017


(Signature of Recipient Agency Official)
Amy Brothals, Director of Commercial Real Estate
(Name and Title)

Participation in CUCP acknowledged:


(Secretary, California Unified Certification Program)

Date 09/27/2017


(Chair, California Unified Certification Program)

Date 9/28/17

Attachment 10

Regulations: 49 CFR Part 23

Click the following link for a copy:

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