

JOHN WAYNE AIRPORT

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

in compliance with Title 49 Code of Federal Regulations, Part 26

September, 2021

JOHN WAYNE AIRPORT
ORANGE COUNTY



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POLICY STATEMENT

Section 23.1, 23.23 - Objectives/Policy Statement

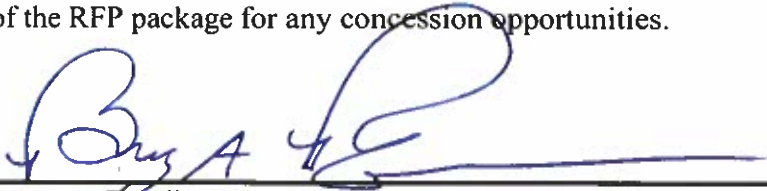
John Wayne Airport has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. John Wayne Airport is a primary airport and has received federal funds authorized for airport development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

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

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

To ensure adherence to this policy, the Airport Director has delegated this responsibility to the Government Relations Manager – Public Affairs (ACDBE Liaison Officer). In that capacity, the ACDBE Liaison Officer (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 John Wayne Airport in its financial assistance agreements with the Department of Transportation.

John Wayne Airport will disseminate this policy statement to applicable airport staff. We will also distribute this statement to ACDBE and non-ACDBE concessionaire communities in our area, including the current concessionaires at the airport and the various Chambers of Commerce from the surrounding cities. This statement will also be distributed at stakeholder meetings and as part of the RFP package for any concession opportunities.



Barry A. Rondinella
Airport Director

9-3-21

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

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

Section 23.5 - Applicability

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

Section 23.9 - Non-Discrimination Requirements

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

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

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

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

(1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

Section 23.11 - Compliance and Enforcement

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

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

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

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

Compliance Reviews: The FAA may review the airport 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 John Wayne Airport may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

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

- (a) For a firm that does not meet the eligibility criteria of subpart C 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 you under 49 CFR part 29.
- (b) For a firm that, in order to meet ACDBE goals or other 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 C of this part, DOT or FAA may initiate suspension or debarment proceedings against you under 49 CFR part 29.

- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, 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.
- (d) 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.
- (e) 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 John Wayne Airport's ACDBE program or otherwise violates applicable Federal statutes.

SUBPART B – ACDBE Programs

Section 23.21 - ACDBE Program Updates

John Wayne Airport is a medium hub primary airport required to have an ACDBE program.

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

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

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

Section 23.23 - Administrative Provisions

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

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

Nick Dinger
Government Relations Manager
John Wayne Airport, Orange County
3160 Airway Avenue, Costa Mesa, CA 92626-4608
Telephone: (949) 252-5297
Fax: (949) 252-5178
Email: ndinger@ocair.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that John Wayne Airport complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Director concerning ACDBE program matters. An organization 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 John Wayne Airport's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-proposal meetings.
8. Advises the Airport Director on ACDBE matters and achievement.
9. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the California Uniform Certification Program.
12. Coordinates outreach to ACDBEs and community organizations to advise them of opportunities.

Directory: The California Uniform Certification Program (CUCP) maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The CUCP revises the Directory in real-time. The Directory is available on the Caltrans website at:

<https://dot.ca.gov/programs/civil-rights/dbe-search>

Section 23.25 - Ensuring Nondiscriminatory Participation of ACDBEs

John Wayne Airport will take the following measures to ensure non-discriminatory participation of ACDBEs in concession and other covered activities (23.25(a)).

John Wayne Airport will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

John Wayne Airport's overall goal methodology and a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and in the ACDBE Triennial Goal

Document, which is linked at the following webpage: <https://www.ocair.com/business/business-opportunities/dbe-acdbe/airport-concessions-disadvantaged-business-enterprise/>.

The goals are set consistent with the requirements of Subpart D (23.25(b), (d))

If John Wayne Airport projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25(e)(1-2).

John Wayne Airport will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs.

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

Section 23.27 - Reporting

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

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

Section 23.29 - Compliance and Enforcement Procedures

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

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.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., gross receipts actually earned by ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by documented ongoing, scheduled, and unscheduled on-site visits to the operations and meetings with Business Development staff.

4. In our reports of ACDBE participation to the FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C - CERTIFICATION AND ELIGIBILITY

Section 23.31 – Certification Standards and Procedures

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. We are a non-certifying member of the California Unified Certification Program (CUCP) administered by Caltrans and its designated certifying agencies which will make certification decisions on behalf of the John Wayne Airport for ACDBEs.

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

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))

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 - Basic Overall Goal Requirement

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

If the average annual concession revenues for car rentals over the preceding three 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 three 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.

John Wayne Airport's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 - Consultation in Goal Setting

John Wayne Airport 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 sponsor's efforts to increase participation of ACDBEs.

In its submission of its overall goals, John Wayne Airport will identify the stakeholders that it consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 - Overall Goals

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

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goal Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every three years, on October 1

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

John Wayne Airport will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure." The second step is to examine all relevant evidence reasonably available in John Wayne Airport's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation John Wayne Airport 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, and training.)

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 also be found in Attachment 5.

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

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).

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

John Wayne Airport will use concession-specific goals to meet any portion of the overall goals John Wayne Airport 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. (Section 23.25(f) is a new paragraph and provides that an airport's ACDBE program "must require businesses subject to ACDBE goals at the airport (except car rental companies) make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs. 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, John Wayne Airport 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, John Wayne Airport 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))

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

To be eligible to be awarded a concession that has a concession-specific goal, competitors must make good faith efforts to meet the goal. A competitor 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 Part 26.51-3 regarding contract goals apply to John Wayne Airport's concession-specific goals. Specifically, demonstration of good faith efforts (26.53(a) & (c)).

Section 26.53(a) & (c) - Demonstration of Good Faith Efforts

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 concessionaire who has not met the concession-specific 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 good faith efforts before we commit to the concession agreement with the bidder/offeror.

Section 26.53(b) - Information to be Submitted

John Wayne Airport treats a concessionaire's compliance with good faith efforts requirements as a matter of responsiveness.

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

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

Section 26.53(d) - Administrative Reconsideration

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

Amy Goethals
Real Estate Manager - Concessions, Services & Advertising
John Wayne Airport, Orange County
3160 Airway Avenue
Costa Mesa, CA 92626-4608
Phone: (949) 252-6036
Email: AGoethals@ocair.com

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

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

Section 26.53(f) - Good Faith Efforts When an ACDBE is Replaced

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

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

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

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;

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

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

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

John Wayne Airport will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within seven days, which may be extended for an additional seven 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 notify the concessionaire that it is in default. 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, apply to this concession opportunity. It is the policy of the John Wayne Airport to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all 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 1), 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 an ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

Section 23.53 - Counting ACDBE Participation for Car Rental Goals

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

Section 23.55 - Counting ACDBE Participation for Concessions Other than Car Rentals

We will count ACDBE participation toward goals for concessions 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) 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:
- a. We do not maintain our analysis and corrective actions as required under paragraph (b)(3) of this section;
 - b. FAA disapproves our analysis or corrective actions; or
 - c. We do not fully implement:
 - i. The corrective actions to which we have committed, or
 - ii. Conditions that FAA has imposed following review of our analysis and corrective actions.
 - iii. 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 do 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 23.75 - Long-Term Exclusive Agreements

We will not enter into a long-term exclusive agreement 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 five 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, you must submit detailed information to the FAA Regional Civil Rights Office for review and approval.

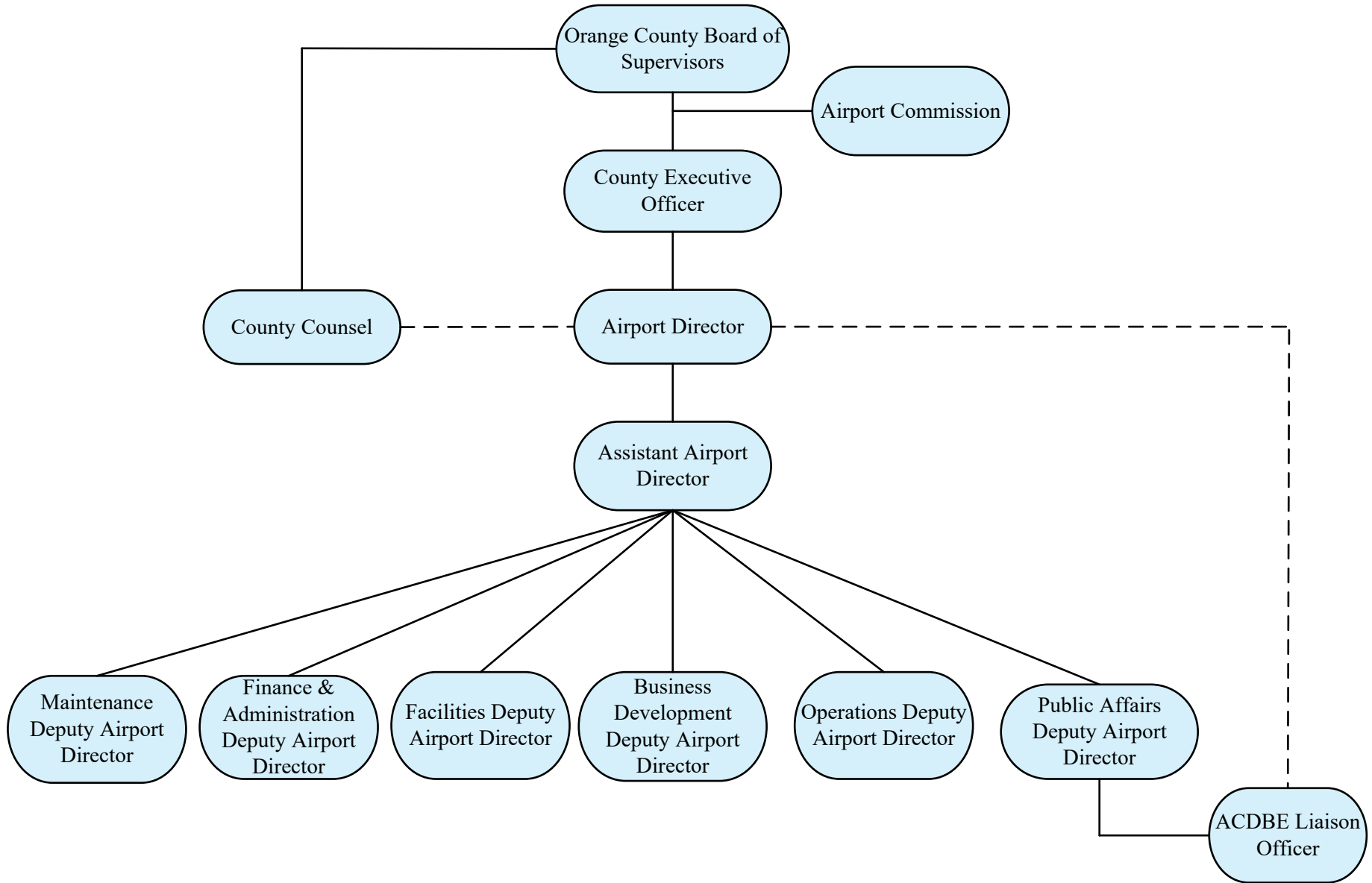
Section 23.79 - Geographic Preferences

We will not use a: "local geographic preference," i.e., any requirement that gives an ACDBE located in one place (e.g., Orange County) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 Monitoring and Enforcement Mechanisms
- Attachment 3 Regulations: 49 CFR Part 23
- Attachment 4 Join Venture Guidance
- Attachment 5 ACDBE Overall Goals 2021-2023

Attachment 1
John Wayne Airport Organizational Chart



Attachment 2 - Sample Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract; and
2. Breach of contract action, pursuant to all applicable state laws

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;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

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

1. John Wayne Airport will insert the following provisions, or materially equivalent provisions, into concessions agreements and management contracts:
 - a. The Concessionaire shall comply with the requirements of 49 CFR Part 23 and 26 and, as amended, guidance issued by the Federal Aviation Administration (FAA) regarding the interpretation of the regulations, including but not limited to the Joint Venture Guidance in the administration of this Lease.
 - b. If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor, or sub-concessionaire in the Lease before or after Lease award, prior to such change, the Concessionaire shall immediately submit for review and prior approval to the John Wayne Airport's ACDBE Liaison Officer reasonable documentation regarding the proposed change in the ACDBE participation. Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change. Concessionaire must implement all procedures required under 49 CFR part 26, section 26.53(f).
 - c. Concessionaire shall make a good faith effort as defined in 49 CFR. Part 26 to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, lease, or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession goal.
 - d. Concessionaire shall also comply with this provision regarding any proposed change in ACDBE participation arising from or relating to any assignment, sublease, or transfer of the obligations under this Lease.
 - e. Concessionaire shall timely submit reports and verifications requested by John Wayne Airport and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Lease. John Wayne Airport shall have the right until six (6) years after the expiration or termination of this Lease, through its representatives, and at all

reasonable times, to review books, records, and financial information of the Lessee (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Lease) requested by representatives of John Wayne Airport to substantiate compliance with 49 CFR Parts 23 and 26 as amended, and any guidance issued by FAA regarding the interpretation of the federal regulations.

- f. The ACDBE participation percentage commitment made by Concessionaire at the time of award is deemed to be contractual in nature. ACDBE Utilization reporting forms or other forms of reporting deemed necessary by John Wayne Airport shall be submitted to the airport's ACDBELO.
 - g. Concessionaire will cooperate fully with requests for information and monitoring requirements related to ACDBE participation in the concession.
2. John Wayne Airport will implement the following additional monitoring and compliance procedures:
- a. Concession revenue reports are reviewed on a quarterly basis as a means of monitoring sales trends among ACDBE participants;
 - b. An annual verification of ACDBE certification status with the CUCP will be conducted for all ACDBE concession participants whose participation is counted;
 - c. ACDBE Uniform reports will be submitted annually;
 - d. Progress as compared to goals will be monitored quarterly;
 - e. Concession meetings will be held monthly by the airport's Business Development staff;
 - f. Joint Venture reviews will be conducted annually by the airport's Business Development staff; and
 - g. Site visits and monitoring will be conducted at least annually by the airport's Business Development Staff.

Attachment 3 - 49 CFR Part 23 - Participation of Disadvantaged Business Enterprise in Airport Concessions

<https://www.ecfr.gov/cgi-bin/text-idx?SID=b8fa2f12f171198f2b3e737db20c3594&mc=true&node=pt49.1.23&rgn=div5>

Attachment 4 - Joint Venture Guidance

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/jvguidefinal508.pdf

Attachment 5 - ACDBE Overall Goals 2021-2023

<https://www.ocair.com/business/business-opportunities/dbe-acdbe/airport-concessions-disadvantaged-business-enterprise/>