

JOHN WAYNE AIRPORT ORANGE COUNTY

ACDBE

**49 CFR PART 23
AIRPORT CONCESSION
DISADVANTAGED BUSINESS
ENTERPRISE**

Program Plan 2025

Submitted to:

U.S. Department of Transportation
Federal Aviation Administration

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POLICY STATEMENT**Section 23.1, 23.23 - Objectives/Policy Statement**

John Wayne Airport (JWA) 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 23¹. 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 (USC)). 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;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport;
6. To provide appropriate flexibility to our airport receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
8. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

JWA's Government Relations Manager – Public Affairs, 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 John Wayne Airport in its financial assistance agreements with the Department of Transportation.

John Wayne Airport has disseminated this policy statement to applicable airport staff. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area. The distribution was accomplished by posting to JWA's public website.

Signed by:



A1A526A921AE49E

9/15/2025

Charlene Reynolds
Airport Director

Date

¹ <https://www.ecfr.gov/current/title-49/subtitle-A/part-23>

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 §23.3 and Part 26 § 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. JWA acknowledges these representations are also in accordance contained in its Civil Rights, Disadvantaged Business Enterprise (DBE) program, 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:

- (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 acknowledges that the compliance and enforcement provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under Part 23 in the same way that they apply to FAA recipients and programs under Part 26.

SUBPART B – ACDBE Program

Section 23.21 - ACDBE Program Updates

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

Prior to implementing significant changes to this ACDBE program, JWA will provide the amended program to FAA for review and approval.

Section 23.23 - Administrative Provisions

Policy Statement: JWA is committed to operating its ACDBE program in a nondiscriminatory manner.

JWA's Policy Statement is elaborated on the first page of this program.

John Wayne Airport will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. John Wayne Airport will also encourage prime concessionaires to use such institutions.

Below is a list of such Financial Institutions in JWA's market area.

- Community Commerce Bank- Claremont, CA
- US Metro Bank- Garden Grove, CA
- Bank Irvine- Irvine, CA
- California Business Bank- Irvine, CA
- Commercial Bank of CA- Irvine, CA
- Bank of Hope- Los Angeles, CA
- Cathay Bank- Los Angeles, CA
- Commonwealth Business Bank- Los Angeles, CA
- CTBC Bank Corp USA- Los Angeles, CA
- Eastern International Bank- Los Angeles, CA
- Hanmi Bank- Los Angeles, CA
- Open Bank- Los Angeles, CA
- PCB Bank- Los Angeles, CA
- Preferred Bank- Los Angeles, CA
- Royal Business Bank- Los Angeles, CA
- Genesis Bank- Newport Beach, CA
- East West Bank- Pasadena, CA

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- First General Bank- Rowland Heights, CA
 - Asian Pacific National Bank- San Gabriel, CA
 - Mega Bank- San Gabriel, CA
 - Pacific Alliance Bank- San Gabriel, CA
 - Universal Bank- West Covina, CA
 - California International Bank, N.A.- Westminster, CA
 - Bank of Whittier, N.A.- Whittier, CA

ACDBE Liaison Officer

John Wayne Airport has designated the following individual as the ACDBE Liaison Officer (ACDBELO):

Constance Clabeau
Government Relations Manager, Public Affairs
John Wayne Airport, Orange County
3160 Airway Avenue, Costa Mesa, CA 92626-4608
Telephone: (949) 252-5297
Email: cclabeau@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 ACDBELO has a staff of one along with an external consultant and coordination from other departments, including Legal and Commercial and Revenue Development to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by the 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-bid 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. Participates in ACDBE training seminars.
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

Directory

The California Uniform Certification Program (CUCP) maintains a directory (Attachment 2) 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 Directory clearly specifies whether a firm is certified as a DBE for purposes of Part 26, an ACDBE for purposes of Part 23, or both.

Section 23.25 - Ensuring Nondiscriminatory Participation of ACDBEs

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

JWA will seek ACDBE participation in all types of concession activities.

JWA will take the following steps to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (§23.25(a)):

- Include appropriate contract language prohibiting discrimination
- Apply sanctions/penalties for discrimination, including referral for suspension/debarment as appropriate
- Set ACDBE goals as appropriate
- Provide debriefing opportunities for Proposers not awarded an opportunity
- Investigate all complaints of discrimination in contracting

Race-Neutral Measures

John Wayne Airport will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. Race-neutral measures may include but are not limited to:

- Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under Part 23;
- Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- When practical, structuring concession activities to encourage and facilitate the participation of ACDBEs;
- Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
- Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;
- Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
- Establishing a small business program to level the playing field for ACDBEs participating in concession solicitations (Attachment 10).

Race-Conscious Measures

John Wayne Airport will also provide for the use of race-conscious measures when race-neutral

measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures that will be implemented, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
 - a. In setting concession-specific goals for concession opportunities other than car rental, John Wayne Airport will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is *de minimis* availability for direct ownership arrangement participation for that concession opportunity.
 - b. In setting car rental concession-specific goals, John Wayne Airport will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, John Wayne Airport is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
 - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, John Wayne Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
 - d. If the goal applies to purchases or leases of goods and services from ACDBEs, John Wayne Airport will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
 - e. When a concession-specific goal is set, John Wayne Airport will require competitors to make good faith efforts to meet this 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 (Attachment 6).
 - f. The administrative procedures applicable to contract goals in Part 26, §§26.51 through 26.53 apply with respect to concession-specific goals.
 - g. In setting car rental concession-specific goals, JWA will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, JWA is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
 - h. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, JWA will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

i. If the goal applies to purchases or leases of goods and services from ACDBEs, JWA will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.

j. When a concession-specific goal is set, JWA will require competitors to make good faith efforts to meet this 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.

k. The administrative procedures applicable to contract goals in Part 26, §§ 26.51 through 26.53, apply with respect to concession-specific goals.

2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.

3. With the prior approval of the FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

John Wayne Airport requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

Section 23.26 - Fostering Small Business Participation

John Wayne Airport has established a Small Business element as a supplement to the existing ACDBE Program for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in solicitations.

John Wayne Airport's small business element is incorporated as Attachment 10 to this ACDBE Program. John Wayne Airport will actively implement the program elements to foster small business participation. JWA acknowledges that active use of the small business element is a requirement of good faith implementation of the ACDBE program.

John Wayne Airport will submit an annual report on small business participation obtained through the use of this small business element. This report will be submitted in a format acceptable to the FAA based on a schedule established² and posted to the agency's website, available at: https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_ACD_BE_Reporting_Requirements_Schedule_Final.pdf

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

² https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program

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.

JWA will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

JWA will create and maintain an Active Participants List information (Attachment 3) and enter it into a system designated by the FAA. JWA will collect the following information about ACDBEs and non-ACDBEs who seek to work on each of our concession opportunities:

- Firm name;
- Firm address, including zip code;
- Firm's status as an ACDBE or non-ACDBE;
- Race and sex information for the firm's majority owner;
- NAICS code applicable to the concession contract in which the firm is seeking to perform;
- Age of firm; and
- Annual gross receipts of the firm.

JWA will collect the data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. JWA will enter this data in FAA's designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded.

The State of California Department of Transportation (Caltrans) is responsible for the California Unified Certification Program (CUCP) and must report certain information from the CUCP Directory to DOT's Departmental Office of Civil Rights each year. JWA is not a certifying member of the CUCP.

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. JWA 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 49 CFR § 26.107.
2. JWA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities

SUBPART C - CERTIFICATION AND ELIGIBILITY

Section 23.31 - Certification Standards and Procedures

John Wayne Airport is a non-certifying member³ of the CUCP administered by Caltrans and relies upon the CUCP's determinations of certification eligibility. The CUCP will use the certification standards of Subpart C of Part 23 to determine the eligibility of firms to participate as ACDBEs in airport concessions contracts. To be certified as an ACDBE, a firm must meet all certification eligibility standards. Certifying CUCP members make all certification decisions based on the facts as a whole.

The CUCP directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, an ACDBE for purposes of Part 23, or both.

For more information about the certification process or to apply for certification, firms should contact:

- Jennifer Baker
Certification Officer
Department of Transportation- MS 79
1823 14th Street, Sacramento, CA 95811
(916) 324-0090
Jennifer.Baker@dot.ca.gov
<https://dot.ca.gov/programs/civil-rights>
<https://californiaucp.dbesystem.com/>

The Uniform Certification Application form, Personal Net Worth (PNW) statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

Section 23.33 – Business Size Standards

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm's previous five (5) fiscal years.
2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.
4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in [13 CFR 121.104\(a\)](#)) of affiliates are included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts

3

<https://www.lawa.org/sites/lawa/files/documents/CUCP%20MOA%20FINAL%20Approved%20Feb%2012%202020%20For%20Signature%202020225%20%20signed.pdf>

reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

Section 23.35 - Personal Net Worth Limits

The personal net worth standard used in determining eligibility for purposes of Part 23 is posted online on the DOT's website, available at [Personal Net Worth \(PNW\) Cap | US Department of Transportation](#). Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

Section 23.37 - Firms Certified as DBEs

Certifying members of the CUCP 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, certifying CUCP members 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 the concessions program.

Section 23.39 - Other ACDBE Certification Requirements

The provisions of § 26.83(c)(1) of 49 CFR Part 26 do not apply to ACDBE certifications. Instead, in determining whether a firm is an eligible ACDBE, certifying CUCP members will take the following steps:

1. Visit the firm's principal place of business, virtually or in person, and interview the socially and economically disadvantaged owner(s) (SEDO), officers, and key personnel. Certifying CUCP members will review those persons' résumés and/or work histories and maintain a complete audio recording of the interviews. Certifiers will also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the certifying CUCP member will keep in its files.
2. Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;
3. Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;
4. Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;
5. Obtain or 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;
6. Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;
7. Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and

8. Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of Part 26.

In reviewing the Declaration of Eligibility required by § 26.83(j), Certifying CUCP members will ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

For purposes of this part, the term prime contractor in § 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of § 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of Part 23 is governed by § 26.63(c)(1).

Certifying CUCP members will use the Uniform Certification Application found in Part 26 of this chapter without change. If the CUCP seeks to supplement the form by requesting specified additional information consistent with Part 23 and Part 26, the CUCP will first seek written approval of the concerned Operating Administration.

Certifying CUCP members will require every applicant to clearly state that it is applying for certification as an ACDBE and complete all of section 5.

Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs.

SUBPART D - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 – Overall Goals

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 and John Wayne Airport will review the goals annually to make sure the goal continues to fit JWA'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 (3) years do not exceed \$200,000, JWA is not required to develop and 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, JWA is not required to develop and submit an overall goal for concessions other than car rentals. JWA understands that "revenue" means total revenue generated by concessions, not the revenue received by the airport from concessions agreements.

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 overall goals to the FAA.

Stakeholders will include, but are not 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.

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

The requirements of this section do not apply if no new concession opportunities will become available during the goal period. However, John Wayne Airport will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

Section 23.45 - Overall Goals

Overall goals will be submitted to the FAA for approval. The overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA's website.

The goals must be submitted every three years based on the published schedule.

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.

John Wayne Airport will establish overall goals in accordance with the 2-Step process as specified in § 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, training, and union apprenticeship).

John Wayne Airport will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that John Wayne Airport's goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral "split." In such a case, the adjusted goal is binding on JWA.

Section 23.53 - Counting ACDBE Participation for Car Rental Goals

John Wayne Airport will count ACDBE participation toward overall goals for car rental concessions as provided in 49 CFR §23.53.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, JWA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, JWA will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. JWA 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 (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform JWA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

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

John Wayne Airport will count ACDBE participation toward goals for concessions other than car rental as provided in 49 CFR § 23.55.

When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of part 23 during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, JWA will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, JWA will require the firm to provide, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of [subpart C](#) of part 23 or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth. JWA will not count the former ACDBE's participation toward ACDBE goals beyond the termination date for the agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

Firms are required to inform JWA in writing of any change in circumstances affecting their ability to meet ownership or control requirements of [subpart C of this part](#) or any material change. Reporting must be made as provided in [§ 26.83\(i\) of this chapter](#).

Section 23.57 - Goal Shortfall Accountability

If the awards and commitments on John Wayne Airport's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, John Wayne Airport 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) Retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

John Wayne Airport understands 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.

John Wayne Airport understands we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in §23.11 and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- We do not submit our analysis and corrective actions to the FAA as required under §23.57(b)(3);
- FAA disapproves JWA's analysis or corrective actions; or
- JWA does 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 the FAA demonstrates that current trends make it unlikely that John Wayne 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, the 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

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

SUBPART E - OTHER PROVISIONS

Section 23.71 - Existing Agreements

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

Section 23.73 - Privately-Owned or Leased Terminal Buildings

John Wayne Airport does not have any privately-owned or leased terminal buildings. Should this change, JWA will pass through applicable provisions of Part 23 to any private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with Part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under Part 23.

Section 23.75 - Long-Term Exclusive Agreements

John Wayne Airport will not enter into a long-term and exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. John Wayne Airport understands that a "long-term" agreement is one having a term of more than ten years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an "exclusive" agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

JWA may enter into a long-term, exclusive concession agreement only under the following conditions:

1. Special local circumstances exist that make it important to enter such agreement; and
2. FAA approves JWA's plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, JWA will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

1. A description of the special local circumstances that warrant a long-term, exclusive agreement;
2. A copy of the solicitation;
3. ACDBE contract goal analysis developed in accordance with this part;
4. Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;
5. A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
6. Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
7. Final long-term exclusive concession agreement, subleasing or other agreements;
 - a. In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, JWA will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
 - b. In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, JWA will submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days before the expiration of the

current lease term. The holdover plan shall include the following information:

- i. A description of the special local circumstances that warrant the holdover;
- ii. Anticipated date for renewal or re-bidding of the agreement;
- iii. The method to be applied for renewal or re-bidding of the agreement;
- iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

Section 23.77 - Preemption of Local Requirements

In the event that a State or local law, regulation, or policy differs from the requirements of Part 23, John Wayne Airport will, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of 49 CFR Part 23. However, nothing in Part 23 preempts any State or local law, regulation, or policy enacted by the governing body of JWA or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with Part 23.

Section 23.79 - Geographic Preferences

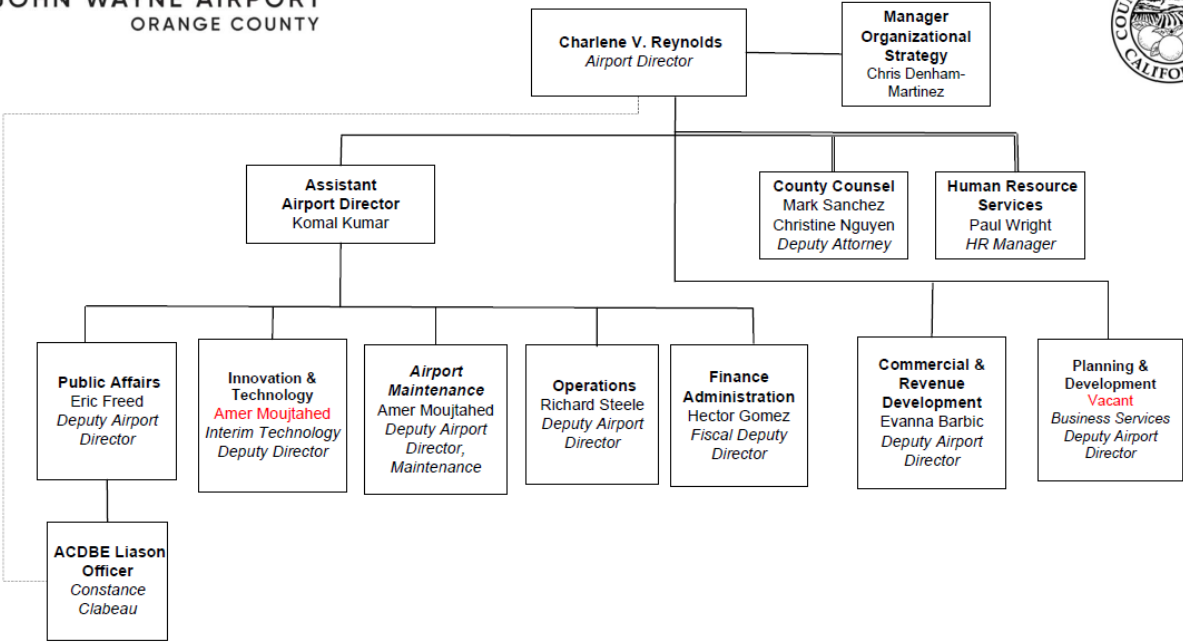
John Wayne Airport will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g., Orange County, CA) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Directory of Certified DBE/ACDBE Firms
Attachment 3	Active Participants List Collection Form
Attachment 4	Monitoring and Enforcement Mechanisms
Attachment 5	Overall Goal Methodology for Concessions Other Than Car Rental & Car Rental
Attachment 6	Demonstration of Good Faith Efforts Forms 1 & 2
Attachment 7	Certification Application Forms
Attachment 8	State's UCP Agreement
Attachment 9	Regulations: 49 CFR Part 23
Attachment 10	Small Business Element

Attachment 1: Organizational Chart

JOHN WAYNE AIRPORT
ORANGE COUNTY



Attachment 2: Directory of Certified DBE/ACDBE Firms

<https://californiaucp.dbesystem.com/>

[illegible]

Attachment 4: 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:

John Wayne Airport will insert the following provisions, or materially equivalent provisions, into concessions agreements and management contracts:

- The Concessionaire shall comply with the requirements of 49 CFR Parts 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.
- 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).
- 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.
- 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.
- 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.

- 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 or designee.
- Concessionaire will cooperate fully with requests for information and monitoring requirements related to ACDBE participation in the concession.

John Wayne Airport will implement the following additional monitoring and compliance procedures:

- Concession revenue reports are reviewed on a quarterly basis as a means of monitoring sales trends among ACDBE participants;
- An annual verification of ACDBE certification status with the CUCP will be conducted for all ACDBE concession participants whose participation is counted;
- ACDBE Uniform reports will be submitted annually;
- Progress as compared to goals will be monitored quarterly;
- Concession meetings will be held monthly by the airport's Commercial and Revenue Development staff;
- Joint Venture reviews will be conducted annually by the airport's Commercial and Revenue Development staff; and
- Site visits and monitoring will be conducted at least annually by the airport's Commercial and Revenue Development Staff.

Attachment 5: Overall Goal Methodology for Concessions Other Than Car Rental & Car Rental

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

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

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

The undersigned bidder/respondent has satisfied the ACDBE requirements of the concession [*bid/RFP/RLI*] in the following manner:

- ☐ Bidder/respondent has met the ACDBE goal
The bidder/offeror is committed to a minimum of ____ % ACDBE participation in this opportunity.
- ☐ Bidder/respondent has not met the ACDBE goal
The bidder/respondent is committed to a minimum of ____% ACDBE participation in this opportunity and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/respondent’s firm: _____

Bidder/Respondent Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/respondent’s firm: _____

Name & title of firm’s AR: _____

Phone: _____ Email: _____

Name of ACDBE firm: _____

Name & title of ACDBE firm’s AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Role to be performed by ACDBE firm:

Description of Work	NAICS	Projected Dollar Amount / %	Joint Venture/Subtenant/ Supplier*

**For suppliers only, state how the ACDBE will perform (e.g., regular dealer, manufacturer, broker). Count only fees and commissions if the supplier performs as a broker.*

The undersigned bidder/respondent is committed to utilizing the above-named ACDBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/respondent understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into an agreement ACDBE firm identified above that reflects the type and amount of participation listed. Bidder/respondent understands that upon submitting this form, it may not substitute or terminate the ACDBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Respondent’s Authorized Representative

Date: _____

The undersigned ACDBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for ACDBE participation therefore.

Signature of ACDBE’s Authorized Representative

Date: _____

If the bidder/respondent does not receive award of the prime concession opportunity, all representations in this Letter of Intent shall be null and void.
Submit this page for each ACDBE participant.

Attachment 7: Certification Application Forms

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

Attachment 8: State's UCP Agreement

<https://www.lawa.org/sites/lawa/files/documents/CUCP%20MOA%20FINAL%20Approved%20Feb%2012%202020%20For%20Signature%202020225%20%20signed.pdf>

Attachment 9: Regulations: 49 CFR Part 23

<https://www.ecfr.gov/current/title-49/subtitle-A/part-23>

Attachment 10: Small Business Element**Small Business Element (SBE)**

In compliance with § 23.26, John Wayne Airport (JWA) has created and implemented this race-neutral Small Business Element as part of JWA's ACDBE program.

Objective/ Strategies

JWA is committed to fostering small business participation in concession opportunities. To that end, JWA will make best efforts to:

- Evaluate and, where feasible, establish small business set-asides for specific concession opportunities, such as food and beverage, retail, or services.
- Explore all types of concession models, such as direct leasing, subleasing, and partnerships, to identify opportunities suitable for small businesses, including assessing the feasibility of short-term or seasonal "pop-up" concessions to reduce barriers to entry for small businesses, particularly in high-traffic areas of the terminal. JWA will also make best efforts to review financing, bonding, and insurance requirements to ensure that they are appropriately scaled to the size and scope of the concession opportunity. Where feasible, JWA will unbundle larger contracts to create smaller, more accessible opportunities for small businesses, such as individual kiosks or carts.
- Promote opportunities for small businesses via partnerships with local colleges and universities.
- Provide small businesses with information on financing, bonding, and insurance.

Definitions

In order to be eligible, firms must conform to size standards consistent with 49 CFR § 23.33 thresholds and Personal Net Worth Standards consistent with 49 CFR Part 23 thresholds. All businesses meeting the aforementioned criteria will be considered to be small businesses without regard to race or sex.

Verification

JWA will diligently attempt to minimize fraud and abuse in the SBE of its ACDBE program by verifying to be the best of its ability the eligibility of all firms, however, certification is not completed by JWA. Review of eligibility may include reviews of appropriate records and other relevant information deemed necessary. JWA will not rely exclusively on programs that include race, sex, or geographical considerations as a condition of certification.

Monitoring/ Record Keeping

JWA will track and monitor participation by ACDBEs and other small businesses that results from the implementation of this SBE. Participation will be reported annually as part of the Uniform Report of ACDBE Participation. This SBE will be reasonably monitored via the current ACDBE monitoring process.

Assurances

- This small business element is authorized [i.e., not prohibited] under State law;
- Certified ACDBEs that meet the size criteria established under this element are presumptively eligible to participate therein element;
- There are no geographic preferences or limitations imposed on any concession opportunities included in this small business element;
- There are no limits on the number of concession opportunities awarded to firms participating in this element but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
- JWA will take aggressive steps to encourage those minority and women-owned firms that are eligible for ACDBE certification to become certified; and
- This element is open to small businesses regardless of their location. There is no local or other geographic preference as part of this small business element.