



**APPLETON INTERNATIONAL AIRPORT  
REQUEST FOR QUALIFICATIONS (RFQ)  
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE  
(ACDBE) UTILIZATION SPECIFICATIONS**

1. The successful concessionaire shall comply with CFR 49 Parts 23 and 26, which requires Good Faith Efforts (GFE) to achieve participation of certified Airport Concessions Disadvantaged Business Enterprise (ACDBE<sup>1</sup>) firms on all Airport Concession contracts. In accordance with USDOT requirements, the concessionaire shall ensure that ACDBEs have an opportunity to participate on this concession contract. Refer to Section (8) for the specific ACDBE participation contract goal.
2. All bidders are required to submit **ATW ACDBE-1** form with their proposals.
3. The Airport Director is authorized to make the determination that Concessionaire has made a good faith effort (GFE) to achieve the required ACDBE participation. The Concessionaire can demonstrate that it has made a good faith effort in meeting the assigned ACDBE goal by doing either of the following:
  - a. Shows evidence that it has met the ACDBE participation by submitting a complete and detailed ACDBE Utilization Plan (**ATW ACDBE-2**); or
  - b. Documents that it made good faith efforts to meet the ACDBE participation goal, even though it did not succeed in achieving it. In this case, the concessionaire must submit the Certificate of Good Faith Efforts (**ATW ACDBE-3**) and all relevant documentation to the Airport for a GFE determination with its bid submittal.
4. The efforts employed by the Concessionaire should be those that one could reasonably expect a concessionaire to take if the concessionaire were actively and aggressively trying to obtain ACDBE participation sufficient to meet the ACDBE concession goal. Mere pro forma efforts are not good faith efforts to meet the ACDBE contract requirements. (49 CFR §26.53 and Appendix A to 49CFR Part 26 provides guidance regarding GFE). Also refer to the Provisions governing GFE attached to this document.

<sup>1</sup> The term "ACDBE" means small business concerns known as an Airport Concession Disadvantaged Business Enterprise (ACDBE) owned at least 51% by socially and economically disadvantaged individuals, and certified by the Wisconsin Unified Certification Program under 49 CFR Parts 23 and 26.

5. In the event that the Airport determines that the Concessionaire has failed to meet the GFE requirements, Concessionaire is entitled to appeal this determination by submitting ATW ACDBE-4. The provisions of 49 CFR §26.53(d) apply to such an appeal. A request for administrative reconsideration must be sent within three (3) calendar days of receiving written notice from the Airport of the failure to meet the GFE requirement. The request should be sent to:

**Airport Director  
Appleton International Airport  
W6390 Challenger Drive, Suite 201  
Appleton, WI 54914**

6. The Concessionaire shall on a quarterly basis, submit accurate reports on ACDBE utilization to the Airport by submitting form **ATW ACDBE-5**. For management contracts this form must be submitted with each payment request by the Prime Concessionaire. The reports must be submitted even if no ACDBE activity took place during the period being reported. Failure to submit such reports will be considered a violation of the terms of the agreement.
7. For management contracts the Prime Concessionaire is required to submit **ATW ACDBE-6** to ensure final payment to ACDBEs.
8. **ACDBE Participation Goal: The Prime Concessionaire shall utilize ACDBE firms to a minimum of 1%.** Concessionaires should note that for the purpose of proposal evaluation, participating ACDBEs must be certified upon submission of their proposal. Bidders must submit a detailed and specific **ACDBE Utilization Plan ATW ACDBE-2** with their proposal including, but not limited to, the following information:
  - a. Name(s) of ACDBE(s) firm(s) being considered for utilization.
  - b. Method of achieving ACDBE participation (direct contract, partnership, joint venture)
  - c. Detailed description on how the ACDBEs will operate under this agreement.
  - d. Percentage of the concession agreement assigned to the ACDBE(s).
9. A list of certified ACDBEs can be found at <http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>. If you need additional assistance in the identification of ACDBEs, contact the Airport Administrative Office at (920) 832-5267.

10. The Airport Director through the application of 49 CFR §26.55 (c) will be responsible for the determination and evaluation of whether or not an ACDBE firm is performing a commercially useful function on this concession agreement. For ACDBE counting and crediting purposes, only the participation of firms performing a commercially useful function will be considered. Prime concessionaire is required to notify the Airport if the ACDBE firm will further subcontract out any portion of the concession. Credit will be given based on actual participation by the ACDBE firm(s).
11. The Airport reserves the right to waive any of these specifications when it is in the best interest of the Airport.

## **PROVISIONS GOVERNING GOOD-FAITH EFFORTS**

### **1. ACDBE Participation Plan (ATW ACDBE- 2) and Good-Faith Efforts Certificate (OCRA ACDBE-3)**

As indicated in the Request for Proposal (RFP) documents, you must supply an ACDBE Participation Plan which is included with the bid documents when you submit your proposal. This form is to establish that you have received from the listed ACDBE contractors signed commitments sufficient to satisfy the ACDBE goal for this concession. If you indicate in this document that you have not met the ACDBE goal, your proposal may be rejected as non- responsive. If you wish to ask for a waiver of the goal, you must submit the form entitled, Certificate of Good-Faith Efforts, (ATW ACDBE -3) at the time you submit the Participation Plan.

### **2. Good-Faith Effort Procedure**

The Good Faith Efforts Certificate Form **ATW ACDBE-3** constitutes your written request for a waiver from the goal, and is used by the contracting officer to determine whether you made a good-faith attempt to secure the services of ACDBEs. The contracting officer will review the completed form, and any attachments, and may contact companies listed as having been asked to submit bids and may take other steps to verify the information provided in **ATW ACDBE-3**. The contracting officer will give you a written response to your waiver request in writing, within three (3) working days of the date the form was submitted. If the waiver is denied, you have three (3) working days from the date you receive the denial in which to submit to the contracting officer a written request by submitting **ATW ACDBE-4** for an administrative hearing to challenge the denial. You will be notified promptly of the time and place of the hearing. The hearing will occur within three (3) working days of the receipt of your request for such appeal. At the administrative hearing you may submit any information you have in support of your waiver application and may have legal Counsel to represent you. The hearing officer will be a person who was not involved in evaluating your original proposal. The hearing officer has discretion whether to consider any evidence, which was not previously submitted with, the form for review by the contracting officer.

### **3. Guidelines For Engaging In Good-Faith Efforts**

Appendix A of 49 CFR 26 sets forth the kind of activities that the Airport would reasonably expect of a concessionaire who was actively and aggressively seeking to engage ACDBEs. Both, the contracting officer and the administrative hearing officer(s) will be guided in their decisions by Appendix A and the contents of the bidder's Certificate of Good Faith Efforts. At the administrative hearing the contracting officer will present the rationale for denying the waiver, and you will have an opportunity to present your case and rebut any statements or evidence. The burden of proof is on the concessionaire to convince the hearing officer that the evidence warrants a good-faith waiver. The hearing officer will promptly issue a written decision setting forth the basis for his or her decision. This decision is final.

#### **4. Consequences of Your Failure To Practice Good-faith Efforts.**

If the hearing officer(s) determine(s) that your ACDBE participation effort lacked good-faith efforts, the contracting department may reject your proposal. If you have any questions about the good-faith effort process, please contact the Airport Administrative Office at (920) 832- 5267.

## **Guidance Concerning Good-Faith Efforts (Based upon 49 CFR Part 26 Appendix A)**

1. When, the Airport establishes a contract goal on a USDOT-assisted concession a concessionaire must, in order to be responsible and/or responsive, make good-faith efforts to meet the goal. The concessionaire can meet this requirement in either of two ways. First, the concessionaire can meet the goal, documenting commitments for participation by ACDBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the concessionaire can document adequate good-faith efforts. This means that the concessionaire must show that it took all necessary and reasonable steps to achieve an ACDBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient ACDBE participation, even if they were not fully successful.
2. In any situation in which the Airport has established a contract goal, Part 26 requires the Airport to use the good faith effort mechanism of this part. It is up to the Airport to make a fair-and reasonable judgment whether a concessionaire that did not meet the goal made adequate good-faith efforts. It is important for the Airport to consider the quality, quantity, and intensity of the different kinds of efforts that the concessionaire has made. The efforts employed by the concessionaire should be those that one could reasonably expect a concessionaire to take if the concessionaire were actively and aggressively trying to obtain ACDBE participation sufficient to meet the ACDBE contract goal. Mere pro forma efforts are not good-faith efforts to meet the ACDBE contract requirements. The Airport's determination concerning the sufficiency of the firm's good-faith efforts is a judgment call: meeting quantitative formulas is not required.
3. The USDOT also strongly cautions the Airport against requiring that a concessionaire meet a contract goal (i.e., obtain a specified amount of ACDBE participation) in order to be awarded a contract, even though the concessionaire makes an adequate good-faith efforts showing. This rule specifically prohibits the Airport from ignoring bona fide good-faith efforts.
4. The following is a list of types of actions, which the Airport is required to consider as part of the concessionaire's good-faith efforts to obtain ACDBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
  - a. Soliciting through all reasonable and available means (e. g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform the work of the contract. The concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. The concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
  - b. Selecting portions of the work to be performed by ACDBEs in order to increase the likelihood that the ACDBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to

- facilitate ACDBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested ACDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - d. Negotiating in good faith with interested ACDBEs.
    - (1) It is the concessionaire's responsibility to make a portion of the work available to ACDBE sub concessionaires and to select those portions of the work consistent with the available ACDBE sub concessionaire or suppliers, so as to facilitate ACDBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for ACDBEs to perform the work.
    - (2) A concessionaire using good business judgment would consider a number of factors in negotiating with ACDBE sub concessionaires and suppliers and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a contractor's failure to meet the contract ACDBE goal, as long reasonable. Also, the ability or desire of a contractor to do the work of a contract with its own organization does not relieve it of the responsibility to make good-faith efforts. Prime consultants/service providers contractors are not, however, required to accept higher quotes from ACDBEs if the price difference is excessive or unreasonable.
  - e. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The concessionaire's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the concessionaire's efforts to meet the project goal.
  - f. Making efforts to assist interested ACDBEs in obtaining lines of credit or insurance as required by the Airport or concessionaire.
  - g. Making efforts to assist interested ACDBEs in obtaining necessary resources or related assistance or services.
  - h. Effectively using the services of available minority/women community organizations; minority/women groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

- i. In determining whether a concessionaire has made good-faith efforts, the Airport may take into account the performance of other concessionaires in meeting the contract. For example, when the apparent successful concessionaire fails to meet the contract goal, but others meet it, the Airport reasonably raise the question of whether, with additional reasonable efforts, the apparent successful concessionaire could have met the goal. If the apparent successful concessionaire fails to meet the goal, but meets or exceeds the average ACDBE participation obtained by other bidders, the Airport may view this, in conjunction with other factors, as evidence of the apparent successful concessionaire having made good faith efforts.