

**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM
RACE- AND GENDER-NEUTRAL CONTRACT CLAUSE**

SECTION I. DEFINITIONS

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City of Phoenix as a member of the Arizona Unified Certification Program pursuant to the criteria contained in 49 CFR Parts 23 and 26.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: <http://www.azdbe.org>.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

Contract is a written agreement for a direct concession opportunity with the City of Phoenix. Or a written agreement between Proposer and JV partner, sublessee, or a Goods and Services Provider.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and has been granted DBE status by the City's Equal Opportunity Department (EOD) or another AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

Economically Disadvantaged Individuals means those individuals who have a personal net worth of less than \$1,320,000, not including the value of their equity interest in their personal residence or the value of their ownership interest in the firm seeking certification as a DBE.

Goods and Services Providers are firms that provide goods and services directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold an ACDBE, DBE or small business status with the City or AZUCP. The joint venture is limited in scope and duration to this contract, the resources, assets and labor of the participants must be combined in an effort to accrue profit.

Outreach Requirements means the demonstrated efforts by a Proposer in fulfillment of the outreach requirements to solicit participation from interested and qualified ACDBEs, DBEs and other small businesses. The Proposer must document the identification of potential business opportunities for ACDBEs, DBEs and other small business participation, describe what efforts were undertaken to solicit for ACDBE, DBE and small business involvement, results of negotiations with potential ACDBEs, DBEs and small

businesses, and record the communications of the Proposer's selections of ACDBE, DBE and small business participants.

Proposer is an individual, partnership, joint venture, corporation or firm submitting a proposal to the City to perform services requested by a solicitation or procurement. The proposal may be direct or through an authorized representative.

Small Business means a business entity operated by any individual(s) regardless of race or gender with a personal net worth of less than \$1,320,000 and with gross receipts averaged over the businesses previous three fiscal years that are less than the limits stated in the U.S. Small Business Administration's - Small Business Size Standards, and limitations defined in 49 CFR Parts 23 and 26.

Socially Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed an ACDBE or DBE certification process and been granted ACDBE or DBE status by the City or AZUCP shall be considered socially and economically disadvantaged individuals for purposes of this contract.

Subcontractor is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

Sublease is an agreement between the prime contractor and another firm.

SECTION II. GENERAL REQUIREMENTS

- A. **ACDBE Participation** – For this business opportunity, the City has not established a race- and gender-conscious ACDBE participation goal. The City extends to each individual, firm, vendor, supplier, and proposer, an equal economic opportunity to compete for business. After review of the market, there is 5.3% availability of certified firms. The City supports the use of race- and gender-neutral measures to facilitate participation by ACDBEs, DBEs and other small businesses, and encourages submitters to subcontract portions of work that they might otherwise perform with their own forces.
- B. **Applicable Federal Regulations** – This concession contract is subject to the ACDBE and DBE Program requirements issued by the U.S. Department of Transportation (USDOT) as set forth in 49 CFR Parts 23 and 26. Despite the lack of a race-and-gender conscious ACDBE goal on this contract, the City is required to track and report ACDBE and DBE participation that does occur as the result of any procurement, sublease, joint venture, goods/services or other arrangement involving an ACDBE or DBE, creating an obligation for the Proposer to provide all relevant information to allow such reporting to occur.
- C. **Nondiscrimination Clause** - The City, as a recipient of federal U.S. Department of Transportation (USDOT) funding, has agreed to abide by the assurance found in 49 CFR Part 26.13(a). As a condition of this agreement, the City shall require each contract signed by the City with the Proposer or executed by a sub recipient,

and each subcontract signed by the Proposer or a sub recipient with a subcontractor or supplier, to include the following assurance:

“The contractor, subcontractor, or sub recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract and/or any other such remedy as the City deems appropriate.”

The above assurance shall be incorporated, verbatim, in any subcontract, joint venture agreement, sublease or any other business arrangement executed by the Proposer, including equipment leases, materials contracts and goods and services providers.

SECTION III. DIVERSITY COMMITMENT

The City is committed to a policy and practice of inclusiveness in its airport concession contracting. The goal of the City is to achieve the maximum participation possible of ACDBE, DBE and small businesses through the use of race- and gender-neutral measures carried out by the City and its Proposers. The objective of these Outreach Requirements is to achieve participation from small businesses, including suppliers of goods and services, in every airport concession at levels comparable to their availability, with the ultimate goal being the development of small businesses' expertise to compete for future airport concession contracts.

SECTION IV. OUTREACH REQUIREMENTS FOR RACE- AND GENDER-NEUTRAL AIRPORT CONCESSION CONTRACTS

- A. The City has implemented outreach requirements for this contract. Each Proposer shall provide documentation to demonstrate its Outreach Efforts as detailed below. Failure to submit the required documentation of the Proposer's outreach efforts (**Attachments X and Y** and supporting documents) will result in a determination by the City that the Proposer is noncompliant with the Outreach Efforts requirements.
- B. **Submittal of Outreach Efforts Documentation** – *The following Attachments, supporting documents and supplemental evidence must be submitted with the proposal as a matter of compliance:*
1. **Documentation of Outreach Efforts (Attachment X):** List all subcontractors and suppliers contacted by the Proposer in the preparation of its proposal. This information serves to document the following factors and shall be illustrative of the matters EOD will consider in determining whether the Proposer demonstrated Outreach Efforts:
 - a) Identification of business opportunity;
 - b) Solicitation of participation;
 - c) Negotiations with and the selection process for small businesses; and
 - d) Communicating the selection outcomes to participants

The Proposer should include supporting documentation to supplement **Attachment X**. This documentation should include the type and/or description of the potential opportunities identified for small business participation and a copy of the solicitation notice that was provided to interested small businesses. This notice may be in the form of a letter, phone calls, or email or an attachment to an email, advertisements in newspapers, trade papers, or communications with chambers of commerce. The final aspect of demonstrated Outreach would provide for communicating the selection outcomes to potential participants. For all of the above, if a blast email or fax format is used, the documentation provided must reflect a listing of all email addresses or fax numbers to which the solicitation was sent and the date and time of the transmission. Additionally, if contacts are made by telephone, the Proposer must document the name of the person representing the Proposer and of the person representing the small business.

The Proposer must check the appropriate boxes to indicate all firms that will perform on the contract and whose participation is proposed. The Proposer must ensure that the percentage and scope of work as part of this proposal should be the same as the percentage and scope of work appearing on this **Attachment X** and should be the same as represented on **Attachment Y** that will be included in the contract.

If the proposer does not identify any small business opportunities associated with this contract, the proposer must provide acceptable justification for not identifying any opportunities for small business participation.

2. **Small Business Utilization Commitment (Attachment Y)**: The Proposer must provide a signed affidavit indicating that the information submitted is true and correct as to the following:

- a) The firms indicated as selected in **Attachment X** will participate in the contract;
- b) The Proposer will comply with Outreach Requirements for substitution;
- c) The Proposer understands and agrees that any and all changes or substitutions must be requested in writing and authorized by the Equal Opportunity Department prior to implementation; and
- d) The breakdown of participation by DBEs and small businesses is true and correct.

SECTION V. POST AWARD COMPLIANCE REQUIREMENTS

- A. **Subcontracting Commitment** – Copies of any executed contracts, procurements, purchase orders, sublease, joint venture, goods/services or other arrangement legalizing the agreement between the successful Proposer and any ACDBE, DBE or small business agreement will be required. Information submitted shall be for each participant and each arrangement as specified in the Outreach Requirements documentation.
- B. **Changes to Subcontractor Commitment** – If there are after-award circumstances that change the commitment made on the Negotiations with Small Businesses and Small Business Utilization Commitment (**Attachments X and Y**) submitted at the time of proposal, the successful Proposer is required to notify the Equal Opportunity Department in writing in a timely manner. All changes must be

approved by the Equal Opportunity Department, in writing, before the successful Proposer's small business utilization commitment is changed.

- C. **Record/Reporting Requirements** – The successful Proposer shall be required to track and report all ACDBE, DBE and/or small business participation that occurs as a result of a contract, procurements, purchase orders, sublease, joint venture, goods/services or other arrangements involving sub-tier participation. Such documentation is to be provided on forms to be provided by the Equal Opportunity Department within 14 calendar days of request.

- D. **Joint Ventures** – In instances where ACDBE, DBE or small business participation occurs as the result of a joint venture arrangement with the successful Proposer, the successful Proposer is required to cooperate and participate in a review of the utilization of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for ACDBE, DBE and small businesses and the participation of ACDBE and DBE's to be reported to the Federal Aviation Administration (FAA) each year of the contract.

**CITY OF PHOENIX
Aviation Department**

ATTACHMENT X

DOCUMENTATION OF OUTREACH EFFORTS

Proposer Name _____	Local Manager _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____
---------------------	---

**Summary of Proposer's Outreach Activities relative to all businesses considered for this contract.
All supporting documentation of Outreach Efforts/Activities should be attached for review.**

Firm	Business Status	Type of Agreement	Contract or Agreement Amount	ACDBE, DBE, Small Business Participation as a percentage of total concessions contract value	*Provide explanation if firm not selected.
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ ACDBE ___ DBE ___ Small Business ___ N/A	___ Subcontract ___ Joint Venture ___ Goods & Services ¹ ___ Firm was not selected*	\$ _____ N/A	_____ % N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ ACDBE ___ DBE ___ Small Business ___ N/A	___ Subcontract ___ Joint Venture ___ Goods & Services ¹ ___ Firm was not selected*	\$ _____ N/A	_____ % N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ ACDBE ___ DBE ___ Small Business ___ N/A	___ Subcontract ___ Joint Venture ___ Goods & Services ¹ ___ Firm was not selected*	\$ _____ N/A	_____ % N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ ACDBE ___ DBE ___ Small Business ___ N/A	___ Subcontract ___ Joint Venture ___ Goods & Services ¹ ___ Firm was not selected*	\$ _____ N/A	_____ % N/A	

¹Allowable Goods and Services are those that are directly related to this concessions contract.

(Print additional copies of this page as needed.)

**CITY OF PHOENIX
Aviation Department**

ATTACHMENT Y

Small Business Utilization Commitment

On behalf of the proposer, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) the firms indicated as selected in **Attachment X** will participate in this concessions contract;
- 2) the proposer will comply with the Outreach Requirements for Race- and Gender-Neutral Airport Concessions Contracts for substitutions;
- 3) I understand and agree that any and all changes or substitutions must be authorized, in writing, by the City prior to implementation; and
- 4) the following breakdown of participation by ACDBEs and DBEs certified or expect to be certified and small businesses certified or self-identified is true and correct:

Proposed participation as sub lessees or joint venture partners as a percentage of this contract's value:

ACDBE _____ % DBE _____ % Small Business _____ %

Proposed participation as suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this contract:

ACDBE _____ % DBE _____ % Small Business _____ %

Name of Proposer: _____

Printed Name Authorized Person: _____

Signature of Authorized Person: _____