

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago (“City”) not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration (“FAA”), the concessions at the City’s airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions (“Part 23”). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire’s obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises (“ACDBEs”) have the maximum opportunity to participate fully in the City’s airport concession program. As used throughout these Special Conditions, the term “ACDBE” means an entity that has been certified as such under the Illinois Unified Certification Program (“UCP”). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm’s participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the “concessionaire or contractor” referenced.

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 order 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.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### IV. COUNTING ACDBE PARTICIPATION

#### A. CONCESSIONS OTHER THAN RENTAL CAR

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

## B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## VI. GOOD FAITH EFFORTS

### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, 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 failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' 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.

## B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

#### A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

#### B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.