

AIRPORT CONCESSIONARIE DISADVANTAGE BUSINESS ENTERPRISES PROGRAM

49 CFR Part 23



Luis Muñoz Marín International Airport (SJU)
Carolina, Puerto Rico

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

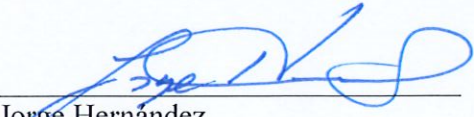
Aerostar Airport Holdings, LLC., ("Aerostar"), owner of Luis Muñoz Marín International Airport ("LMMIA"), has established an Airport Concession Disadvantaged Business Enterprise ("ACDBE") program in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 CFR Part 23. Aerostar 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). Aerostar has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of Aerostar 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 party's eligibility standards are permitted to participate as ACDBEs at our airport.
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport.
6. To promote the use of ACDBEs in all types of concessions activities at our airport.
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
8. To provide appropriate flexibility for our airports in establishing and providing opportunities for ACDBEs.

Mrs. Shara Mathew-López has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the ACDBE Liaison Officer is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded with the same priority as compliance with all other legal obligations incurred by Aerostar in its financial assistance agreements with the Department of Transportation.

Aerostar disseminated this policy statement to the executive management team and all the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by posting on www.aeropuertosju.com.



Jorge Hernández
President & CEO



Date

General Requirements

Section 23.1, 23.23- Objectives/Policy Statement

The objectives are found in the policy statement on the first page of this program.

Section 23.3- Definitions

PRHTA – Puerto Rico Highway and Transportation Authority

PR – Puerto Rico

UCP – Unified Certification Program

Aerostar will adopt the definitions in Section 23.3 and Part 26, §26.5 where applicable.

Section 23.5- Applicability

Aerostar operates a primary airport and is 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

Aerostar 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 based on race, color, sex, or national origin.

In administering its ACDBE program, Aerostar 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.

Aerostar acknowledges these representations are also in accordance with obligations contained in its Civil Rights, Disadvantage Business Enterprise (“DBE”) and ACDBE Airport grant assurances.

Aerostar will include the following assurances in all concession agreements and management contracts it draws up with any firm:

- (1) This agreement is subject to the requirements of the DOT'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 causes those businesses to similarly include the statements in further agreements.

Section 23.11- Compliance and Enforcement

Aerostar will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 and 2 CFR parts 180 and 1200).

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

2 C.F.R. Part 180, Government-wide Debarment and Suspension (Non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs and activities. 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through 1 of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

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

Compliance reviews: The Federal Aviation Administration (“FAA”) may review Aerostar compliance with this part at any time, including, but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor’s monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by Aerostar may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the Aerostar ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the DOT or the FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or

honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in Aerostar ACDBE program or otherwise violates applicable Federal statutes.

ACDBE Program

Section 23.21- ACDBE Program Updates

Aerostar operates a medium hub primary airport required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, Aerostar will submit its ACDBE program and overall goals to FAA according to §23.45 (a) of this section:

When Aerostar makes significant changes to its ACDBE program, Aerostar will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23- Administrative Provisions

Policy Statement: Aerostar is committed to operating its ACDBE program in a nondiscriminatory manner. The Aerostar Policy Statement is elaborated on the first page of this program.

Aerostar 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. Aerostar will also encourage prime concessionaires to use such institutions.

ACDBE Liaison Officer (ACDBELO): Aerostar has designated the following individual as our ACDBELO:

Shara Mathew López
DBE/ACDBE Liaison Officer
Terminal D, First Level
Luis Muñoz Marín International Airport Carolina, PR 00979
(787) 289-7240
shara.mathew@aerostarairports.com

In that capacity, ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that Aerostar complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the Chief Executive Officer (“CEO”) of Aerostar concerning ACDBE program matters. An organizational chart displaying the ACDBELO’s position in the organization is found in Attachment 1 to this program.

ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensure 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 Aerostar progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO and Board of Directors on ACDBE matters and achievements.
9. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSD-BU-Minority Resource Center (MRC).
10. Plans and participates in ACDBE training seminars.
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
12. Maintains the Aerostar updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The PRHTA maintains a directory for the Puerto Rico Unified Certification Program (“PRUCP”) identifying all firms eligible to participate as ACDBEs. The Directory lists the firm’s name, address, phone number, email address, contact person and the type of work the firm has been certified to perform as an ACDBE.

The PRHTA makes a monthly revision of the Directory and is available in their webpage in the following address: <https://act.dtop.pr.gov/wp-content/uploads/2024/11/DBE-Business-Directory-Updated-November-2024.pdf>

The link to the Directory may be found in Attachment 2 to this program document.

Section 23.25- Ensuring Non-discriminatory Participation of ACDBEs

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

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

Aerostar will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation as needed to meet overall goals through such measures. Aerostar will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)):

Aerostar 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 we will implement, as needed:

1. Establishing concession-specific goals for concession opportunities.
 - a. In setting concession-specific goals for concession opportunities other than car rental Aerostar 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, Aerostar 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, Aerostar 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, Aerostar 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, Aerostar 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, Aerostar 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.
 - f. 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 FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.
4. Aerostar will ensure that the Airport Personnel with responsibility for the administration of this program will engage in appropriate continuing education, including attendance at annual training seminars and professional conferences.
5. Aerostar will follow all state and federal laws.

Aerostar 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

Aerostar has created a small business element to provide 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 concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as Attachment 11 to this ACDBE Program. The program's elements will be actively implemented to foster small business participation. Aerostar acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program.

Aerostar will submit an annual report on small business participation obtained through the use of this small business element. The report must be submitted in the format acceptable to the FAA based on a schedule established and posted to the agency's website, available at: https://www.faa.gov/about/office_offices/acr/bus_ent_program.

Section 23.27- Reporting

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

Aerostar 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.

Aerostar will create and maintain active participants list information and enter it into a system designated by the FAA. Aerostar will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession's opportunities.

- a. Firm name.
- b. Firm address including ZIP code.
- c. Firm status as an ACDBE or non-ACDBE.
- d. Race and gender information for the firm's majority owner.
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform.
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

Aerostar will collect data from all active participants for concession opportunities by requesting the information to be submitted with their proposals or initial responses to negotiated procurements. Aerostar 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 department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to DOT's Departmental Office of Civil Rights each year. PRHTA, if a certified member of the state UCP, ensures the collection and reporting of the following information in the UCP directory:

- 1) The number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority).
- 2) The number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible.
- 3) The number of decertified firms.
 - a. Total in-state and out-of-state firms are decertified.
 - b. Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap.
 - c. Names of in-state and out-of-state firms are decertified for excess gross receipts beyond the relevant size standard.
- 4) Number of in-state and out-of-state ACDBEs summarily suspended.
- 5) Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and
- 6) Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

Section 23.29- Compliance and Enforcement Procedures

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

1. Aerostar will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. Aerostar will consider similar action under our own legal authorities, including responsibility for determinations in future contracts. Aerostar has listed the regulations, provisions, and contract remedies available to us in the event of non-compliance with the ACDBE regulation by a participant in our procurement activities.
3. Aerostar will also implement a monitoring and enforcement mechanism (Attachment 3) to ensure that work committed to ACDBEs at contract award is performed by ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payments made to ACDBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
 - a) Review solicitation package documentation thoroughly, obtaining clarification, if necessary.
 - b) Review monthly reports regarding ACDBE participation to ensure adherence to commitment as represented in agreements and as stipulated in this program.
 - c) Monitor progress of gross revenues generated by ACDBEs, and expenditures paid to DBEs as applicable through monthly reports from concessionaires.
 - d) Monitor progress of ACDBEs through on-site visits and communication with ACDBEs.
4. In our reports on ACDBE participation in FAA, Aerostar will show both commitments and attainments, as required by the DOT reporting form.

Subpart C- Certification and Eligibility

Section 23.31- Certifications and standards used to certify ACDBEs.

Aerostar is an official member of the PRUCP and is responsible only for the airport ACDBEs new certifications and review of existing firms doing business at the LMMIA. Aerostar 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. Aerostar makes all certification decisions based on the facts. Detailed certification processes are described in the Puerto Rico UCP agreement. The full Puerto Rico UCP agreement is in Attachment 9 to this program.

The Puerto Rico UCP directory is eligible ACDBEs specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

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

- Name
- Title
- Address,
- Telephone Number
- Fax Number
- Email Address
- Website of certification office

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

Section 23.33- Business Size Standard

The personal net worth standard used in determining eligibility for purposes of part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. 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.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institution is \$1 billion in assets, for pay telephone company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

The PRUCP application papers for the certifications are included in attachment 8.

Section 23.37- Firms Certified as DBEs

Certifying members of Puerto Rico UCP 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 Puerto Rico UCP 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 eligible to ACDBE, Aerostar Airport Holdings, LLC., will take the following steps:

- 1) Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. Aerostar will review those people's 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 Aerostar 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 Aerostar Airport 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 this part is governed by §26.63(c)(1).

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

Certifying Aerostar 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- Basic Overall Goal Requirement

Aerostar will establish two separates 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 Aerostar will review the goals annually to make sure the goal continues to fit Aerostar's circumstances. Aerostar 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 does not exceed \$200,000, Aerostar does not need to submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding three (3) years do not exceed \$200,000, Aerostar does not need to submit an overall goal for concessions other than car rentals. Aerostar understands that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires' agreements.

Aerostar 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

Aerostar consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, Aerostar will identify the stakeholders that Aerostar 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 are available during the goal period. However, Aerostar will take appropriate steps to encourage available ACDBE's to participate as concessionaires whenever there is a concession opportunity.

Section 23.45- Overall Goals

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

[https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and ACDBE_Reporting_Requirements_Schedule_Final.pdf](https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_ACDBE_Reporting_Requirements_Schedule_Final.pdf)

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 solicitation for the new concession opportunity. (23.45i)

Aerostar will establish overall goals in accordance with the 2-step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in the sponsor’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 the sponsor 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).

Aerostar 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 Aerostar goal 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 Aerostar.

Section 23.53- Counting ACDBE Participation for Car Rental Goals

Aerostar will count Car Rental ACDBE participation toward overall goals 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, Aerostar will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, Aerostar 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. Aerostar 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 Aerostar 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 in Concessions Other than Car Rentals

Aerostar will count ACDBE participation toward overall goals 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, Aerostar will verify that the firm in all other respects remains an eligible ACDBE. To accomplish this verification, Aerostar 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. Aerostar 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 Aerostar 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 our Uniform Report of ACDBE participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, Aerostar will:

- Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year.
- Establish specific steps and milestones to correct the problems Aerostar has identified in our analysis to enable us to fully meet our goal for the new fiscal year.

As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

FAA may impose conditions as part of its approval of Aerostar 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.

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

- Aerostar does not submit the analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of §23.57.
- FAA disapproves of the analysis or corrective action; or
- Aerostar does not fully implement:
 - The corrective actions to which we have committed, or
 - Conditions that FAA has imposed following review of our analysis and corrective actions.
 - If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61- Quotas or Set-asides.

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

Subpart E- Other Provisions

Section 23.71- Existing Agreements

Aerostar 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. Aerostar 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

This section is not applicable to Aerostar.

Section 23.75- Long-Term Exclusive Agreements

Aerostar will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. Aerostar understands that a “long-term” agreement is one having a term of longer than ten (10) years, including any combination of base term and options or holdovers to extend the term of the agreement, in the effect is a term of more

than ten years. Aerostar understands 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.

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

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

To obtain FAA approval of a long-term exclusive concession agreement, Aerostar 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 the 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 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, Aerostar will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before the 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, Aerostar will submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days prior to 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 is 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

If a State or a local law, regulation, or policy differs from the requirements of this part, Aerostar 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 Aerostar, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy does not conflict with part 23.

Section 23.79- Geographic Preferences

Aerostar will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., Carolina) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at our airport.

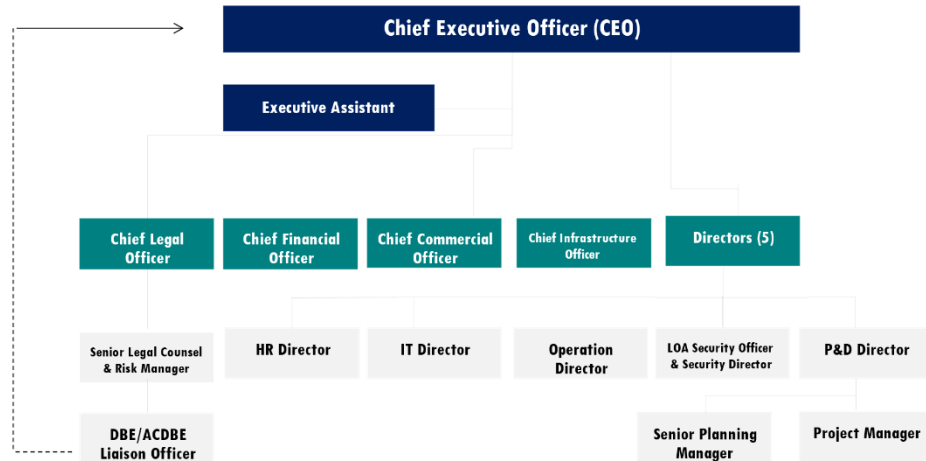
Attachments

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (Website Link)
Attachment 3	Active Participants List Collection Form
Attachment 4	Monitoring and Enforcement Mechanisms
Attachment 5	Overall Goal Methodology- Concessions Other Than Car Rental
Attachment 6	Overall Goal Methodology- Car Rental
Attachment 7	Form 1 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	Puerto Rico's UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23
Attachment 11	Small Business Element Program

Attachment 1

ORGANIZATIONAL CHART

OFFICERS & DIRECTORS



**The DBE/ACDBE Liaison Officer has direct and independent access to Aerostar's Chief Executive Officer.

Attachment 2

DBE/ACDBE DIRECTORY (Website Link)

<https://act.dtop.pr.gov/wp-content/uploads/2024/11/DBE-Business-Directory-Updated-November-2024.pdf>

Attachment 3

Active Participants List Collection Form

As 49 CFR § 23.27 Aerostar will collect active participants list information from all firms that have participated or attempted to participate in airport concession activities and submitted proposals or initial responses to negotiated procurements, and to enter it into USDOT's designated system. The data must be collected for all firms who sought to participate in the opportunity (successfully or not).

The following information from ACDBE and non-ACDBE firms seeking to participate in our concession opportunities:

1. Firm Name
2. Firm Address including ZIP Code
3. Firm's status as an ACDBE or non-ACDBE
4. Race and gender information for the firm's majority owner
 - a. Aerostar will use only the race/ethnicity classifications from 49 CFR part 26:
 - i. Black American
 - ii. Hispanic American
 - iii. Native American
 - iv. Asian Pacific American
 - v. Subcontinent Asian American
 - vi. Other
5. NAICS code applicable to the concession contract in which the firm is seeking to perform.
6. Age of the firm
7. Annual gross receipts of the firm.
 - a. <\$1 million
 - b. \$1-3 million
 - c. \$3-6 million
 - d. \$6-10 million
 - e. >\$10 million

Attachment 4

MONITORING AND ENFORCEMENT MECHANISMS

Aerostar 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.
2. Other actions deemed appropriate including responsibility reviews on future concession award opportunities.

In addition, the federal government has available several enforcement mechanisms that 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.

In a suspension or debarment proceeding, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.

2. Enforcement action pursuant to 49 CFR Part 31.

DOT may take enforcement action under 49 CFT Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31; and

3. Prosecution pursuant to 18 USC 1001.

DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provision of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in Aerostar's ACDBE program or otherwise violates applicable Federal statutes.

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

1. Aerostar will insert the following provisions into concessions agreements and management contracts:
 - a. This agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 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.

- b. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and causes those businesses to similarly include the statements in further agreements.
2. We will implement the following additional monitoring and compliance procedures:
 - a. Concessionaires or contractors will be required to submit monthly gross revenue earned by ACDBEs and expenditures to ACDBEs.
 - b. Concessionaires or contractors will be required to list the specific duties, functions, and responsibilities that ACDBEs will perform.
 - c. Concessionaires or contractors will be required to submit, for review, written notification of any material change in the duties, functions, and responsibilities of ACDBEs prior to implementing the change.
 - d. Aerostar will review, annually, the specific duties, functions, and responsibilities of each ACDBE to confirm that no material change has occurred.
 - e. Aerostar will perform periodic reviews, including site visits, each year on concessionaires and contractors to confirm ACDBEs are performing listed duties, functions, and responsibilities.
3. We will implement our compliance and monitoring procedures as follows:
 - a. Aerostar will capture monthly gross revenues of concessionaires, including ACDBEs and monitor progress of concessionaire commitments to ACDBEs versus actual participation.
 - b. Aerostar will require that concessionaires submit written confirmation, annually, that there are no changes in duties, functions, and responsibilities of ACDBEs, including terms and conditions of joint venture agreements.
 - c. Aerostar will use appropriate personnel to perform, at least quarterly, reviews of ACDBEs to ensure that their activities correspond to the previously submitted list of duties, functions and responsibilities. All ACDBEs will be reviewed within a

three-year period from the start of the review process, at which time the review process will begin again. Reviews will include site visits, reviews of appropriate records, contracts financial information, joint venture agreements, certification information and other relevant information deemed necessary.

- d. Aerostar will request from concessionaires any expenditures made with ACDBEs in performing services and supplying goods. Those expenditures will be reported periodically to Aerostar, but no less than semi-annually.
- e. Aerostar will periodically audit a sample of the purchase of goods and services claimed to the goals by each concessionaire including the invoices reported with the corresponding payment.
- f. ACDBELO will review all ACDBE Contracts with Aerostar and worksites if any change occurs it will be informed in writing.

Attachment 5

**OVERALL GOAL CALCULATION FOR CONCESSIONS OTHER THAN
CAR RENTAL**

“To be submitted to FAA every three years.”

Attachment 6

OVERALL GOAL CALCULATION FOR CAR RENTAL

“To be submitted to FAA every three years.”

Attachment 7

DEMONSTRATION OF GOOD FAITH EFFORTS

Form 1

Monthly ACDBE Report



Monthly ACDBE Report of : <i>Airport:</i>	<div>LMM</div>	<i>Date</i>
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PURCHASE OF GOOD AND SERVICES

ACDBE Company	Invoice Date	Invoice Number	Invoice Amount

Good Faith Oath

I certify that upon verification of the ACDBE Directory prepared by the Puerto Rico Highway Authority and Public Works we have determined that there are no certified ACDBE firms that can provide goods or services to our business operations.

Signature

Date

I Certify that to the best of my knowledge all the information provided in this report is true and accurate and the evidence is available for evaluation.

Name

Signature

Title

Date

Attachment 8

ACDBE CERTIFICATION APPLICATION FORMS

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>




Attachment 9



PUERTO RICO'S UCP AGREEMENT

PUERTO RICO UNIFIED CERTIFICATION PROGRAM AGREEMENT

This Unified Certification Program Agreement is entered by and between Puerto Rico Highway and Transportation Authority ("PRHTA"), represented by its Executive Director, Carmen A. Villar Prados; the Metropolitan Bus Authority, ("MBA"), represented by its President and General Manager, Héctor I. Santos Santos and Miguel A. Torres Diaz, P.E. Secretary of Public Works; the Puerto Rico Ports Authority, ("PRPA"), represented by its Executive Director Ms. Ingrid Colberg Rodríguez; the Municipalities included in Attachment B, represented by its main Official authorized to enter into agreements and by AEROSTAR Airport Holdings, LLC, ("AEROSTAR"), represented by its President and Chief Executive Officer, Mr. Agustín E. Arellano Rodríguez.

PRHTA, PRPA, MBA and AEROSTAR shall be referred to collectively as the Certifying "Parties". Any term not defined herein shall have the meaning ascribed in the DBE program regulations



 WHEREAS: The PRHTA, PRPA and MBA established a Unified Certification Program pursuant to and in accordance with certain Uniform Certification Program Agreement dated December 3rd, 2003, (the "Agreement") amended on August 12, 2005, to include as party of the Fourth Part Municipalities that would agree to abide by the terms of the Agreement, particularly by its Sixth Clause which stated that PRHTA will serve as certifying agent for the Municipalities. The Municipalities are made part of this agreement as per Attachment B, once they sign the letter acknowledging the existence of this Agreement and their adherence to its terms and the corresponding 49 CFR Parts 23 & 26 where applicable.


 WHEREAS: The Certifying Parties and the Municipalities are recipients of FTA, FHWA and/or FAA funds.


WHEREAS: On February 27, 2013, **AEROSTAR** became the operator of the Luis Muñoz Marín International Airport, (the "**Airport**"), pursuant to certain Lease Agreement entered by and between **PRPA** and **AEROSTAR**.



WHEREAS: On June 17, 2014, the FAA ordered the **PRHTA**, **PRPA** and **MBA** to include **AEROSTAR** in the Puerto Rico Unified Certification Program, ("**PRUCP**"). The Certifying Parties signed a Supplementary Agreement (**Supplementary Agreement**) on July 1, 2014, stating that **AEROSTAR** would be included as part of the **PRUCP** and the Parties would amend the original Agreement, determining how DBE and ACDBE certifications will be conducted in Puerto Rico.



WHEREAS: In order to avoid confusion, a revised Agreement is entered,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties and DOT recipients identified in Attachment B, intending to be legally bound, hereby agree to the following:

TERMS AND CONDITIONS

 **FIRST:** The **PRUCP** shall make all certification decisions on behalf of all DOT recipients in Puerto Rico with respect to participation in the DOT DBE Program. Certification decisions by the **PRUCP** shall be binding on all DOT recipients within Puerto Rico.


 **SECOND:** The **PRHTA**, as lead Agency and point of contact for the **PRUCP** with the USDOT shall maintain the unified DBE Directory required by 49 C.F.R. 26.31 and 26.81 for the **PRUCP**, while the other parties shall submit the information necessary to make updates, revisions, additions and/or corrections.

THIRD: Only firms certified as eligible DBEs by the parties to this agreement or by other states or territories of the US pursuant to written reciprocity agreements or interstate certification provisions in compliance with 49 CFR, Parts 23 and 26 shall participate in the program as DBEs. The PRUCP is not required to process an application for certification from a firm having its principal place of business outside the Commonwealth if it is not certified by the UCP in the state in which it maintains its principal place of business.

FOURTH: Each party shall follow all certification procedures and standards of 49 C.F.R. Parts 23 and 26 and certify qualified DBE applicants that meet the eligibility criteria set forth at 49 C.F.R. Parts 23 and 26, including the following:

- The USDOT Uniform Certification Application (Attachment 1) will be used as required by 49 CFR Parts 23 and 26 criteria.
- On-site visits (Attachment 2) are required as part of the certification process. The On-site visits report will be shared with other recipients upon request.
- The DBE, must provide to the PRUCP, every year on the anniversary of the date of the certification, an affidavit sworn to by the firm's owners affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 C.F.R. Parts 23 and 26 or any material changes in the information provided in its application form. The affidavit shall specifically affirm that the firm continues to meet the overall gross receipts cap of 49 C.F.R. Parts 23 and 26, documenting this affirmation with supporting documentation of the firm's size and gross receipts.


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The DBE affidavit also has to affirm that the firm continues to meet SBA business size criteria.

- On-site reports for certified firms will be shared upon request from other UCPs pursuant to interstate certification requirements found in 49 CFR §26.85. All other certification information shall be shared or considered confidential in a manner consistent with 49 CFR §§26.67, 26.83 (g) and 26.109.

FIFTH: Communication among the Parties will include, but not limited to, telephone conversations, conferences and meetings; Correspondence among the Parties shall include, but not be limited to, electronic transmittals of data and information.






SIXTH: The Puerto Rico Municipalities are direct recipients of Federal funds that need to comply with the requirements of the 49 CFR Part 26. The PRHTA will be the certifying entity for the municipalities.

 **SEVENTH:** An On-site Visit Review (Attachment 2); Uniform Certification Letter (Attachment 3); Notification of Annual No-Change Affidavit Request (Attachment 4); and No-change Affidavit (Attachment 5) will be used by all the Parties of this PRUCP in accordance with applicable regulatory requirements. The Uniform Certification Letter will include the letterhead of the party making the certification decision.




EIGHTH: During the review of the documents submitted by applicants, any of the parties to the PRUCP will assign its coordinator to perform, as required by 49 CFR, Part 26, the on-site visit review of the applicant's principal place of business. It will take place

where the individual(s) who control and manage the firm's day to day operations spend most working hours and where management's business record are kept. Each Party must advise the applicant within 30 days of the receipt of the application if it is complete and suitable for evaluation, and, if not, what additional information or action is required. Decisions by the PRUCP on certification applications must be made within 90-days of receiving a complete application. Once a final eligibility determination is made, a Uniform Certification Letter (Attachment 3) will be sent to the applicant, signed by the head of the Department (i.e. PRHTA and PRPA Executive Director, MBA President and General Mgr. and AEROSTAR DBE/ACDBE Liaison Officer) and mailed by certified mail, return receipt requested.

NINTH: The head of each certifying party must identify a Liaison Officer and provide a written notification to all other parties of the Liaison Officer's name and contact information.





 **TENTH:** Each certifying party shall appoint a person or unit other than the DBE Liaison Officer, hereinafter referred to as the "Reviewer", who is knowledgeable about the certification requirements but did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility. In the event that the PRUCP or the USDOT determines that there is reasonable cause to believe a certified firm is ineligible for the Program, the Reviewer must conduct an informal hearing if requested and/or analyze all the information available and provided by the DBE. For the purposes of this agreement, the Reviewer assigned by each certifying Party shall be the Office of Legal Counsel of the entity who is reviewing the eligibility decision. If the Reviewer finds

that a firm is still eligible, he/she shall notify the Liaison Officer that the eligibility criteria have been met, so that it may notify the firm.

ELEVENTH: If the Reviewer of the respective Office of the Legal Counsel agrees with the non-eligibility determination, it shall notify the Liaison Officer, who will in turn notify the Executive Director of each Authority so he/she may inform the firm of the final determination. If the Reviewer of AEROSTAR agrees with the non-eligibility determination, it shall so notify.

Said determination of denial of an application or de-certification of firm shall be made in writing, listing the reasons and evidence cited for such determination. The written notice of the decision and the reasons for it shall include the specific reference to the evidence in the record that supports each reason for the decision and the consequences of the decision and of the availability of an appeal to the US Department of Transportation. The firm may follow Appeals Procedure stated in Attachment A. An applicant denied certification may reapply one year after the date of the denial letter. All correspondence shall be sent via certified mail, return receipt requested.

TWELFTH: The PRUCP may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's certification, or sooner if appropriate in light of changed circumstances. To review their status as a DBE, annually the firms will submit the completed No-Change Affidavit (Attachment 5) with the required information regarding size and gross receipts to the PRUCP entity (PRHTA/PRPA/MBA/AEROSTAR) where certification was requested, stating the ability to

meet size, disadvantage status, ownership or control requirement, on the anniversary date of said certification. The DBE must inform to the UCP in writing of any change in circumstances affecting the ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application form, except for changes about which the DBE submitted a separate notarized Notice of Change.

THIRTEENTH: The certifying parties share a unified DBE Directory under this agreement. Once a firm is certified in the Commonwealth of Puerto Rico as a DBE, it will become part of the Directory that will be available in print on an annual basis to the general public containing information required in 49 CFR sections 26.31 and 26.81. It will also be available electronically through the internet, managed and owned by the PRHTA. The parties under this agreement will submit to the PRHTA the necessary information to keep the Directory updated. The Directory will be shared and made available through the web with the municipalities, other jurisdictions and the general public.

FOURTEENTH: The PRHTA must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the PRUCP Directory controlled by women, socially and economically disadvantaged individuals (other than women) and individual who are women and are otherwise socially and economically disadvantaged individuals.

FIFTEENTH: This agreement will take effect on the date of approval by the USDOT Secretary as specified on 49 CFR, Part 26.81 and will remain in effect as 49 CFR, Part 26


requires. It may be amended in writing and at any time by mutual agreement between the Parties, subject to USDOT approval of significant changes. The Attachments are an integral part of this Agreement as follows:

Attachments:


A. Puerto Rico Unified Certification Program

1. Uniform Certification Application
2. On-site visit review
3. Uniform Certification letter
4. Notification of Annual No-Change Affidavit Request
5. No-change Affidavit

B. PRUCP – Municipalities signing letters



SIXTEENTH: If any provision of this Agreement is held to be contrary to the provisions of 49 CFR Part 23 and 26, the provisions of 49 CFR Part 23 and 26 will always prevail. Moreover, if any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never comprised a part hereof. This Agreement supersedes the December 3rd 2003 Agreement and its amendment.



SEVENTEENTH: The undersigned parties hereby accept the terms of this Agreement and are hereby committed to administering the Disadvantaged Business Enterprise Program and PRUCP in compliance with 49 CFR Parts 23 and 26 as amended.

FOR THE PUERTO RICO HIGHWAY AUTHORITY (PRHTA)



Carmen A. Villar Prados

Executive Director

FOR THE PUERTO RICO PORTS AUTHORITY (PRPA)



Ingrid Colberg Rodríguez, Executive Director

FOR THE METROPOLITAN BUS AUTHORITY (MBA)



Héctor I. Santos Santos,
President and General Manager



Miguel Torres Díaz, P.E.
Secretary DTPW

FOR AEROSTAR AIRPORT HOLDINGS, LLC (AEROSTAR)



Agustín Arellano, President and Chief Executive Officer

FOR THE MUNICIPALITIES;

The representatives of such as per list included in Attachment B

Attachment 10

REGULATIONS: 49 CFR PART 23

ACDBE program regulations are found in Title 49 of the Code of Federal Regulations, part 23. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

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

Attachment 11

SMALL BUSINESS ELEMENT PROGRAM

Aerostar seeks to implement a small business element into its current ACDBE Program in accordance with 49 CFR Part 23.26, to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.

This Small Business Program will not be used to discriminate against any company or groups of companies.

The Small Business Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender-neutral measures. Aerostar will meet its objective using a combination of the following methods and strategies:

1) Objective/Strategies

- (1) The objective is to facilitate competition and expand opportunities for small businesses.
- (2) Establish a race-neutral small business set-aside for eligible concession opportunities. Aerostar will document the rationale for selecting small business set-aside concession opportunities which may include consideration of size and availability of small businesses to operate the concession.
- (3) The eligibility of these concessions will come when the proposal from the small business is analyzed. It must be consistent with the 13 CFR Parts 121 and 124 and does not conflict with the subsequent contractual agreement Aerostar has established.
- (4) Consider the concession opportunities available through all types of concessions models.
- (5) A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small business. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location.

2) Definition

- (1) As defined in Section 3 of the Small Business Act and the Small Business Administration (“SBA”) regulation 13 CFR Part 121. A small business should be independently owned and operated, organized for profit, and is not dominant in its field.

- (2) A small business concern is defined as a for-profit business concern for which gross receipts, including gross receipts of all affiliate firms as defined by the Small Business Administration, averaged over the firm's previous five fiscal years, do not exceed \$56.42 million.
- (3) Whose socially and economically disadvantaged owner do not exceed the personal net worth ("PNW") described in 49 CFR Part 26. In addition, the owners of a minimum of 51% of the applicant small business shall not have a personal net worth exceeding \$2,047 million.

3) Verification

- (1) Aerostar will accept the following certifications for participation in the small business element of the Luis Muñoz Marín International Airport's ACDBE Program with applicable stipulations:
 - a. ACDBE Certification- ACDBE Certification by the Puerto Rico Unified Certification Program which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 23.
 - b. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124)- It will require submittal of three (3) years of business tax returns after contract award.

4) Monitoring/Record Keeping

- (1) Aerostar will track and monitor participation by ACDBEs and other small businesses that results from the implementation of this small business element. Participation will be reported annually as part of the Uniform Report of ACDBE Participation.
- (2) The report as a spreadsheet for the Small Business Element Program to be utilized:
 - (a) Name
 - (b) Address
 - (c) City, St, Zip Code
 - (d) Telephone
 - (e) Is the firm certified as ACDBE (Yes/No)
 - (f) Type of Concession
 - (g) Small Business Service/Supplier Contract Amount

5) Assurances

- (1) This small business element is authorized [i.e., not prohibited] under State law.

- (2) Certified ACDBEs that meet the size criteria established under this element are presumptively eligible to participate therein element.
- (3) There are no geographic preferences or limitations imposed on any concession opportunities included in this small business element.
- (4) 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.
- (5) Aerostar will take aggressive steps to encourage those minority and women owned firms that are eligible for ACDBE certification to become certified; and
- (6) 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.