

**SPECIAL CONDITIONS REGARDING  
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT  
(AIRPORT CONCESSIONS)**

**I. POLICY AND TERMS**

**A. Concession Operation Goal**

It is the policy of the City of Chicago (“City”) in accordance with the requirements of 49 CFR Part 23 and 49 CFR Part 26, that Disadvantaged Business Enterprises (“DBEs”) have the maximum opportunity to participate fully in the operation of concessions under any concession license agreement entered into with the City in connection with its airports. The City’s overall goal for DBE participation in operating its airport concessions (including licenses and sublicenses) (“**DBE Concession Goal**”) is 30%, measured by the annual gross receipts derived from airport concession operations from October 1st through September 30th.

**B. Supplemental Concession Contracting and Procurement Goal**

In addition to fostering participation of DBEs as concessionaires, the City has a further goal of encouraging concessionaires, whenever practicable, to obtain DBE participation in the amount of 30% of their expenditures for goods, work and services that may be required for the operation of the concessions (“**DBE Contracting and Procurement Goal**”).

**C. Concessionaire Commitment**

The City considers a concessionaire’s commitments regarding DBE participation proposed in connection with obtaining a concession license agreement with the City (see Part IV, Concessionaire’s DBE Proposal, of these Special Conditions) a material inducement to the City to enter the agreement. Further, it is a material condition of any concession license agreement granted by the City that concessionaire carry out its commitments each year during the concession term. Concessionaire’s failure to do in good faith is a material default subject to all available remedies.

**D. Effect of New Regulations/New DBE Regulations**

If in the future the United States Department of Transportation (“DOT”) issues new DBE regulations concerning airport concessions, as proposed in the supplemental notice of proposed rulemaking issued September 8, 2000 (“**SNPRM**”) or otherwise, concessionaires must comply with the requirements of any revised City Airport Concession DBE Program, DBE Concession Goal, and DBE-related regulations that the City may adopt in connection with the applicable federal regulations.

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**II. GENERAL PROVISIONS**

**A. Definitions.**

1. The definitions set forth in 49 CFR Part 23 and 49 CFR Part 26 are incorporated into these Special Conditions.
2. **“Directory”** means the Directory of Certified “Disadvantaged Business Enterprises” “Minority Business Enterprises” and “Women Business Enterprises” maintained and published by the Department of Procurement Services of the City of Chicago. The Directory identifies firms that have been certified as DBEs, and includes both the date of their last certification and the Primary Industry Classification (alternatively referred to as “area of specialty”) in which they have been certified. Concessionaires are responsible for verifying the current certification status of all proposed DBE firms.
3. **“Contract Compliance Administrator”** means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

**B. Joint Venture**

**1. Concession Operations Joint Ventures**

Concessionaires may develop joint venture agreements as an instrument to provide participation by DBEs in concessions operations. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between a DBE firm and a non-DBE firm. Each joint venturer must separately sign the proposal to and the agreement with the City.

A DBE/non-DBE concessionaire joint venture is eligible to be counted toward DBE goals if, and only if, all of the following requirements are satisfied:

- a. The DBE venturer shares in the ownership, control, management responsibilities, risks and profit of the joint venture in proportion with the DBE ownership percentage;
- b. The DBE venturer is responsible for a clearly defined portion of the business operations, in proportion with the DBE ownership percentage;
- c. The DBE venturer must actually perform the business operations (with its own personnel and its own supervising staff) to an extent commensurate with the value of its ownership of the joint venture.

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**NOTE: Credit for participation by DBEs in a joint venture with non-DBEs does not require a minimum participation of 51% in venture ownership and control on the part of the DBE. A junior ownership interest in the venture by the DBE can be credited toward the DBE Concession Goal in a pro rata fashion.**

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**2. Contracting and Procurement Joint Ventures**

DBEs may also participate through joint ventures organized to provide goods and services necessary to the operation of the concession. DBE/non-DBE joint ventures are creditable on either the prime or the subcontractor level and are otherwise subject to Federal, State and City contract limitations restricting second tier subcontracting.

The Contract Compliance Administrator will evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether the requirements for joint ventures have been satisfied. In addition, the Contract Compliance Administrator will consider the record of the joint venturers on other City of Chicago contracts. The decision of the Contract Compliance Administrator regarding the eligibility of the joint venture will be final.

A contracting and procurement joint venture is eligible to be counted toward the DBE Contracting and Procurement Goal if, and only if, all of the following requirements are satisfied.

- a. The DBE venturer shares in the ownership, control, management responsibilities, risks and profits of the joint venture in proportion with the DBE ownership percentage;
- b. The DBE venturer is responsible for a clearly defined portion of work to be performed in proportion with the DBE ownership percentage; and
- c. The DBE venturer must actually perform (with its own forces and equipment) work equal to at least 50% of the value of its ownership of the joint venture. For example, if the DBE is proposed as a 25% venturer on a \$1,000,000 subcontract for work, the DBE must, in addition to its other joint venture responsibilities, perform work equal to least \$125,000 (or 50% of 25% of %\$1,000,000).

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**III. MEASURING DBE PARTICIPATION**

**A. Counting DBE Participation for the DBE Concession Goal**

DBE participation will be counted toward the DBE Concession Goal on a federal fiscal year basis as follows:

1. DBE Concessionaires

When a DBE is a concessionaire, once the DBE is determined to be eligible under applicable rules, the gross receipts generated by the DBE from the concession counts towards the DBE Concession Goal.

2. DBE/non-DBE Joint Venture Concessionaires

When DBE participation is obtained through a joint venture arrangement between a non-DBE and a DBE for the operation of a concession, only that portion of the gross receipts contributed by the commercially useful efforts of the DBE joint venturer count towards the DBE Concession Goal, but in no case may the percentage contribution attributable to a DBE joint venturer exceed the DBE's percentage interest in the joint venture. When the Contract Compliance Administrator has reason to doubt the extent of a DBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the Contract Compliance Administrator may request evidence to substantiate the DBE's contribution. Credit toward the DBE Concessions Goal will not be granted when the DBE joint venturer is not participating in the actual operation of the concession, but rather is providing goods or services used by a concessionaire.

3. DBE Subconcessionaires

When DBE participation is obtained through use of DBE subconcessionaires, the amount of credit toward the DBE Concessions Goal is equal to the gross receipts generated by the subconcession. The DBE subconcession must be independently operated by the DBE as evidenced by the DBE's responsibility for all aspects of the management and operation of the subconcession.

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**B. Counting DBE Participation Toward the DBE Contracting and Procurement Goal**

DBE participation will be counted toward the DBE Contracting and Procurement Goal annually in accordance with the standards set forth in 49 CFR Part 26.55 *et seq.*

1. When a DBE is a contractor for work or services, or a manufacturer or regular dealer of goods or equipment, and is determined to be eligible in accordance with these rules, except as provided below, the total dollar value of the contract awarded to the DBE may be counted toward the DBE Contracting and Procurement Goal, except that a concessionaire may count only a portion of the total dollar value of a contract with a joint venture subcontractor eligible under the standards of these Special Conditions equal to the percentage of the ownership and control of the DBE joint venture.
2. When a concessionaire contracts out for work, a concessionaire may count toward the DBE Contracting and Procurement Goal only expenditures to firms that perform a commercially useful function in the work. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine if a firm is performing a commercially useful function, the Contract Compliance Administrator will evaluate the amount of work subcontracted, industry practices, and other relevant factors.
3. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of a normal industry practices, the DBE will be presumed not to be performing a commercially useful function. Evidence may be presented by the contractors involved to rebut this presumption.

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4. A concessionaire may count toward the DBE Contracting and Procurement Goal the following expenditures to DBE firms that are not manufacturers or regular dealers:
  - a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for operation of the concession, but only if the fee or commission is determined by the Contract Compliance Administrator to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of a regular dealer in the materials and supplies, but only if the fee is determined by the Contract Compliance Administrator to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. The fees or commissions charged for providing any bonds or insurance specifically required under the concession license agreement, but only if the fee or commission is determined by the Contract Compliance Administrator to be reasonable and not excessive as compared with fees customarily allowed for similar service.

**IV. CONCESSIONAIRE'S DBE PROPOSAL**

- A. Subject to the provisions of Section I(D) of these Special Conditions, the following schedules and documents constitute the concessionaire's DBE proposal, and represent its commitment to DBE participation in the concession each year throughout the term of the concession. DBE participation toward the DBE Concession Goal and toward the DBE Contracting and Procurement Goals should be stated clearly, distinctly, and separately. These schedules and documents must be submitted in accordance with the guidelines stated.
  1. Schedule B: Affidavit of DBE/non-DBE Joint Venture (if the DBE proposal includes the participation of any DBE as a joint venturer). Attach a copy of the joint venture agreement proposed among the parties.

Schedule B, in conjunction with the joint venture agreement, must clearly evidence that the DBE venturer will be responsible for a clearly defined portion of the work to be performed or the concession to be operated and that the DBE firms's responsibilities are in proportion with their ownership

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percentage, as described under Section II(B), Joint Ventures. In order to demonstrate the DBE venturer's share in the ownership, control, management responsibilities, risks, and profits of the joint venture, the proposed joint venture agreement must include specific details related to (i) the contributions of capital and equipment; (ii) work items or management services to be performed or concessions to be operated by the DBE's own forces; (iii) work items, management services to be performed or concessions to be operated under the supervision of the DBE venturer and (iv) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

Schedule B, together with the joint venture agreement must, in addition, clearly evidence the commitment of the DBE venturer to actually perform (with its own forces and supervisory staff) to an extent commensurate with the value of its ownership in the joint venture.

2. Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Goods or Material Supplier. Each Schedule C must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid. Schedule C, appropriately labeled, should also be used to show intent to perform as a concessionaire or subconcessionaire, with the estimated annual gross receipts attributable to the concessionaire or subconcessionaire.
3. Letter of Certification. Attach a copy of each proposed DBE firm's current Letter of Certification.

All Letters of Certification issued by the City of Chicago include a statement of the DBE firm's area of specialization. The DBE firm's scope of work, as detailed by its Schedule C, must conform to its stated area of specialization. When a DBE is proposed to perform work or supply goods, materials or services not covered by its area of certification, it must request an extension of its certification prior to its being proposed to perform such work or supply goods, materials or services. The DBE firm's request to expand the scope of its certification, together with all documentation required by the City to process that request, must be received by the City at least thirty (30) calendar days before execution of any agreement with the City.

4. Schedule D: Affidavit of Prime Contractor Regarding DBEs.

Concessionaires must submit, together with the proposal, a completed Schedule D committing to use each listed DBE firm in connection with the ownership of the concession, in which case estimated annual gross receipts will be listed, and in connection with the acquisition of goods, work and services, in which case anticipated expenditures will be listed. The commitments made by the concessionaire's Schedule D must conform to those presented in the submitted Schedule Cs.

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- B.** Agreements between a concessionaire and a DBE that promise not to provide subcontracting quotations to other concessionaires are prohibited.
- C.** During the period before award, as well as during the term of the concession, the concessionaire must give, upon request, earnest and prompt cooperation to the Contract Compliance Administrator and/or authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a proposed DBE in providing such assistance. A proposal may be treated as non-responsive if the City determines that a concessionaire has failed to make adequate good faith efforts to obtain DBE participation, or that the concessionaire was found to be unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.
- D.** Concessionaires will not be permitted to modify their DBE proposals except insofar as directed to do so by the City. All terms and conditions stipulated for DBE concessionaires, subconcessionaires, subcontractors or suppliers therefore should be satisfactorily negotiated before the concessionaire's DBE commitment is submitted to the City as part of a concessionaire's proposal.
- E.** When necessary in the interest of time, the City may treat a proposal as non-responsive instead of granting extended time for a concessionaire to replace DBEs named in the concessionaire's proposal that were later determined to be ineligible or unavailable.

**V. GOOD FAITH EFFORTS**

The City considers compliance with these Special Conditions and concessionaire's commitments material. Failure to comply with them will be considered an event of default under the concession agreement. The concessionaire must make good faith efforts to obtain DBE participation in its concession (including any extensions, amendments and modifications). The concessionaire must document that it has obtained enough DBE participation to meet the DBE Concession Goal and the DBE Contracting and Procurement Goal, or if unsuccessful in doing so, has made adequate good faith efforts to meet the goal. The concessionaire can demonstrate it has made good faith efforts to meet the DBE Concession Goal and the DBE Contracting and Procurement Goal either by:

- A. Meeting** the DBE Concession Goal and the DBE Contracting and Procurement Goal, as provided in these Special Conditions, and documenting commitments for participation by DBE firms sufficient for this purpose; or
- B. Documenting**, in the manner described below, adequate good faith efforts to meet DBE Concession Goal and the DBE Contracting and Procurement Goal.

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This means documentation to show that it took all necessary and reasonable steps to achieve the DBE Concession Goal and the DBE Contracting and Procurement Goal, or other requirements of 49 CFR Part 23 and 49 CFR Part 26, which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. The following are examples of documented actions the Contract Compliance Administrator may consider to determine whether the 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 DBEs who have the capability to perform the work of the contract. The concessionaire must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The concessionaire must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. **Selecting** portions of the work to be performed by DBEs in order to increase the likelihood that the DBE Concession Goal and the DBE Contracting and Procurement Goal will be achieved. This includes, when appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. **Providing** interested DBEs with adequate information about the plans, specifications and requirements of the concession in a timely manner to assist them in responding to a solicitation.
4. **Negotiating** in good faith with interested DBEs. It is the concessionaire's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A concessionaire using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, 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 DBEs is not in itself sufficient reason for a concessionaire's failure to meet the DBE Concession Goal and/or the DBE Contracting and Procurement Goal, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. **Not rejecting** DBEs as being unqualified without sound reasons based

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on a thorough investigation of their capabilities. The DBE'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 the rejection in the concessionaire's efforts to meet the DBE Concession Goal and the DBE Contracting and Procurement Goal.

6. **Making** efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the City or the concessionaire.
7. **Making** efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. **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 DBEs.

**C.** The following types of documentation, as applicable to the situation, will be considered by the Contract Compliance Administrator in determining whether the concessionaire has made good faith efforts to meet the DBE Concession Goal and the DBE Contracting and Procurement Goal.

1. A listing of all DBE firms contacted that includes:
  - a. names, address and telephone numbers of DBE firms solicited;
  - 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 DBE vendors that include:
  - a. project identification and location;
  - b. classification/commodity of work items for which quotations were sought;
  - c. date, item and location for acceptance of subcontractor bid proposals;
  - d. detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the work and indicates why negotiations were unsuccessful;

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- e. affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve the DBE Concession Goal and/or the DBE Contracting and Procurement Goal by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on DBE subcontractors for the type of work that was solicited.
  
- 3. Copies of proposed plans for selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE Concession Goal and the DBE Contracting and Procurement Goal will be achieved.
  
- 4. Evidence that the concessionaire negotiated in good faith with interested DBEs.
  
- 5. Evidence that the concessionaire did not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
  
- 6. Evidence that the concessionaire made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
  
- 7. Evidence that the concessionaire made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
  
- 8. Evidence that the concessionaire has provided timely notice of the need for subcontractors to at least 50 percent of the applicable DBEs listed in the City's Directory. The Contract Compliance Administrator may contact the certified DBEs for verification of notification.
  
- 9. Evidence that subcontractor participation is excessively costly. Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than 15 percent. In order to establish that a subcontractor's quote is excessively costly, the concessionaire must provide the following information:
  - a. A detailed statement of the work identified for DBE participation for which the concessionaire asserts the DBE quote(s) were excessively costly (in excess of 15 percent higher).
    - (1). a listing of all potential subcontractors contacted for a quotation on that work item;
    - (2). prices quoted for the subcontract in question by all such

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potential subcontractors for that work item.

- b. Other documentation that demonstrates to the satisfaction of the Contract Compliance Administrator that the DBE proposals are excessively costly, even though not in excess of 15 percent higher than the average price quoted.
- c. The City reserves the right to modify this procedure when deemed appropriate.

**C. Administrative Reconsideration**

1. The Contract Compliance Administrator makes the initial determination regarding a concessionaire's good faith efforts based upon his or her review of the documentation that the concessionaire has timely submitted in response to the City's submittal schedule. Within five days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. The concessionaire should make this request in writing to the following reconsideration official:

Chief Procurement Officer  
Department of Procurement Services  
City Hall  
Room 403  
121 N. LaSalle Street  
Chicago, IL 60602

with a copy to:

Deputy Procurement Officer  
Office of Business Development  
City Hall  
Room 403  
121 N. LaSalle Street  
Chicago, IL 60602

The Chief Procurement Officer will not have played any role in the Contract Compliance Administrator's determination that the concessionaire did not make or timely document sufficient good faith efforts.

2. As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the DBE Concession Goal and/or the DBE Contracting and Procurement Goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with the Chief Procurement Officer to discuss whether it did so. The City

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will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the DBE Concession Goal and/or the DBE Contracting and Procurement Goal or make adequate good faith efforts to do so.

**VI. REPORTING**

**A. Concessions Operations:**

1. The concessionaire must, within five working days of receiving the awarded concession agreement, execute a written agreement with all DBE subconcessionaires.
2. The concessionaire must file monthly DBE utilization reports, together with its monthly concession license fee payment, delineating the DBE contribution to concessionaires gross receipts for the month and cumulatively for the year-to-date. Each DBE utilization report must be signed by an authorized officer or representative of the concessionaire and notarized.

**B. Supplemental Concession Contracting and Procurement:**

1. The concessionaire must, within the time specified by the Contract Compliance Administrator after receiving the awarded concession agreement, depending on the circumstances of the particular subcontract or purchase order, execute a formal subcontract or purchase order with the DBEs that were proposed all in accordance with the terms of the concessionaire's proposal and DBE assurances, and must promptly submit to the City at that time a copy of the DBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the DBE.
2. During the term of the concession agreement, whenever construction is performed, the concessionaire must submit partial and final waivers of lien, when appropriate, from DBE subcontractors, which are drawn up to show the true, cumulative dollar amount of subcontractor payments made to date.
3. The concessionaire must file regular DBE utilization reports, on Procurement Services Form DBE Status - I entitled "Status Report of DBE (Sub)Contract Payments." The concessionaire must present the notarized DBE status form executed to reflect the current status of effective and projected payments to DBEs

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**VII. DBE SUBSTITUTIONS**

- A.** Arbitrary changes by the concessionaire of the commitments earlier certified in the Schedule D are prohibited. Further, after once entering into each approved DBE sub-agreement, the concessionaire must thereafter neither terminate the sub-agreement, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to or the level of participation of the DBE, without in each instance receiving the prior written approval of the City. In some cases, however, it may become necessary to substitute a new DBE in order actually to fulfill the DBE requirements. In such cases, the City must be given reasons justifying the release by the City of prior specific DBE commitments established in the concessionaire's DBE proposal, and will need to review the eligibility of the DBE presented as a substitute. The substitution procedure will be as follows:
- 1.** The concessionaire must notify the Contract Compliance Administrator immediately in writing of an apparent necessity to reduce or terminate a DBE subcontract or joint venture and to propose a substitute firm for some phase of the operation or the work, goods or services, if needed in order to sustain the fulfillment of the DBE Concessions Goal or the DBE Contracting and Procurement Goal.
  - 2.** The concessionaire's notification should include the specific reasons for the proposed substitution. Stated reasons that would be acceptable include any of the following examples: A previously committed DBE was found not to be able to perform or not to be able to perform on time; a committed DBE was found not to be able to produce acceptable work; a committed DBE was discovered later to be not bona fide; a DBE previously committed at a given price later demands an unreasonable escalation of price.
  - 3.** The 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 work under terms more advantageous to the concessionaire; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); and a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.
  - 4.** The concessionaire's notification should include the name, address, and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same DBE affidavits, documents, and Letter of Intent that are required of concessionaires, as enumerated above in Section IV, Concessionaire's DBE Proposal.

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- 5.** The City will evaluate the submitted documentation, and respond within fifteen working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress or operation of the concession, the City will instead respond as soon as practicable.
  - 6.** Actual substitution of a replacement DBE should not be made before City approval is given of the acceptability of the substitute DBE. A subcontract with the substitute DBE must be executed within the time specified by the Contract Compliance Administrator, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.
- B.** In a case in which a firm under contract was previously considered to be a DBE but is later found not to be, or whose work is found not to be creditable toward DBE goals fully as planned, the City will consider the following special criteria in evaluating a substitution:
- 1.** Whether the concessionaire was reasonable in believing the enterprise was a DBE or that eligibility or "counting" standards were not being violated.
  - 2.** The adequacy of unsuccessful efforts taken to obtain a substitute DBE as outlined in Section V, Good Faith Efforts.
- C.** The Contract Compliance Administrator solely will determine all matters of DBE compliance.

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**VIII. NON-COMPLIANCE AND DAMAGES**

Each of the following constitute a material breach of any concession agreement entered into of which these special conditions form a part and will entitle the City to declare a default, terminate the contract and exercise those remedies provided for in the agreement, at law or in equity:

- A.** Failure to satisfy the DBE percentages required by the concession agreement;
- B.** The concessionaire, joint venturer or subcontractor is decertified as a DBE, such status was a factor in the concession award, and was misrepresented by the concessionaire.

Payments due to the concessionaire, if any, may be withheld until corrective action is taken. If the concessionaire has not complied with the contractual DBE percentages, underutilization of identified DBEs will entitle the affected DBEs to recover from the concessionaire damages suffered by these DBEs as a result of such underutilization. Therefore, the concessionaire consents to have any disputes between the concessionaire and such affected DBEs regarding damages resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by a prevailing DBE in accordance with applicable City regulations. This provision is intended for the benefit of all DBEs affected by underutilization and grants them specific third party beneficiary rights. In cases deemed appropriate by the Contract Compliance Administrator, notification of a dispute by the affected DBE or the concessionaire may lead to the withholding of sums that the City may owe the concessionaire until the City receives a copy of the final arbitration decision, but in no event will the 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.

If the concessionaire is determined not to have been involved in any misrepresentation - of the status of the disqualified joint venturer or subcontractor or supplier, the concessionaire must discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement.

**IX. RECORD KEEPING**

The concessionaire must maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least three years after termination or expiration of the concession 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.

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**X. ASSISTANCE AGENCIES**

The following agencies are available to the concessionaires for assistance:

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration  
500 W. Madison Street, Suite 1250  
Chicago, Illinois 60601  
Attention: Robert Conner  
(312) 353-4528

S.B.A. - Bond Guarantee Program  
Surety Bonds  
300 South Riverside Plaza  
Room 1975-S  
Chicago, Illinois 60606-6611  
Attention: Tony Zanetello  
(312) 353-7331

S.B.A. - Procurement Assistance  
300 South Riverside Plaza  
Room 1975-S  
Chicago, Illinois 60606-6611  
Attention: Robert P. Murphy, Assistant Regional Administrator  
(312) 353-4503

Project information; general DBE information; Directory of local and out-of-state construction and design DBEs:

City of Chicago  
Office of Business Development  
City Hall - Room 403  
Chicago, Illinois 60602  
(312) 744-4900

Directory of Certified Disadvantaged, Minority and Women Business Enterprises is available at the address above.

Information on DBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Suppliers  
Development Council, Inc.  
15 W. 29th Street - 9th Floor  
New York, New York 10018  
Attention: Harriet R. Mitchell  
(212) 944-2430

Chicago Minority Business  
Development Council  
36 South Wabash - Suite 725  
Chicago, Illinois 60603  
Attention: Maye Foster-Thompson  
(312) 263-0105

**SPECIAL CONDITIONS REGARDING  
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT  
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**XI. CONCESSIONAIRE ASSISTANCE**

Concessionaires must themselves assist DBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

- A.** Developing solicitations of subcontract proposals so as to increase potential DBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner,
- B.** Providing technical assistance and guidance in the proposing , estimating, and scheduling processes;
- C.** Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the work,
- D.** Providing accelerated payments or establishing prorated payment and delivery schedules so as to minimize cash flow problems faced by small firms;
- E.** Providing, waiving, or reducing subcontract bonding requirements, allowing stage bonding (bonding carried over from one project state to the next); and
- F.** Providing a prebid conference for potential subcontractors,

In addition to employing DBEs for construction work and materials, and goods and services directly used for the concession, the concessionaire should consider the utilization of DBEs in fields indirectly related to management and concession contracts: banking, office equipment sales, vehicle sales, mechanical repair, legal and accounting services, building security, graphics and advertising, etc.

**XII. EQUAL EMPLOYMENT OPPORTUNITY**

Compliance with DBE requirements will not diminish or supplant the concessionaire's obligations to comply with non-discrimination laws as required elsewhere in the concession agreement.