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# **ACDBE Program Administration and Goal-Setting**

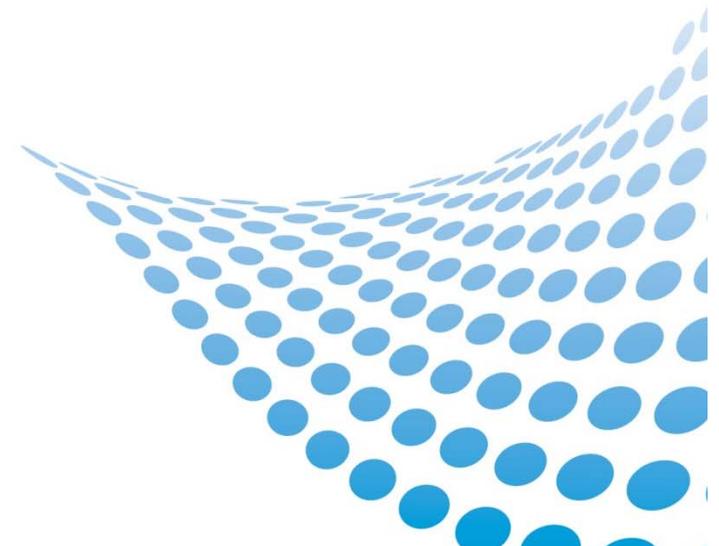
**Presented by:**

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# What is ACDBE?

To whom does the program apply?

When is the program required?

# Program Legal Authorities

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# What does “ACDBE” Stand for?

ACDBE = *Airport Concessions* Disadvantaged Business Enterprise

## Airport Concessions



# ACDBE Program Rules

Primary Program Authority:

ACDBE Program: 49 CFR Part 23

- Applies to all primary airports
- Cannot apply to FHWA or FTA Grantees by definition



# FAA Grant Assurance No. 37

.....The sponsor shall take all necessary and reasonable steps under **49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts.** The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. **Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.** Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

# Program Objectives

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# ACDBE Program Objectives

- a) To ensure **nondiscrimination** in the award and administration of opportunities for concessions by airports receiving DOT financial assistance
- b) To create a **level playing field** on which ACDBEs can compete fairly for opportunities for concessions
- c) To ensure that the Department's ACDBE program is **narrowly tailored** in accordance with applicable law
- d) To ensure that only firms that fully meet this part's **eligibility standards** are permitted to participate as ACDBEs
- e) To help **remove barriers** to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance
- f) To **provide appropriate flexibility** to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs

# Programs Applicability

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# ACDBE Program Applicability

**All Primary Level Airport Grantees Must Have an approved ACDBE Program & Submit Yearly Participation Reports, even if they are not required to set goals.**

## **Two ACDBE Goal Types:**

- Car Rental Concessions (Avis-Budget, Enterprise, etc.)
- Non-Car Rental Concessions (Food & Beverage, Retail, etc.)

## **General Goal Requirements:**

- Both goal types based on Total Gross Receipts of concessions (not net profit of concession or MAG to airport)
- Total Gross Receipts Threshold for Both > \$200,000 annually

# What is an Airport Concession as per 49 CFR Part 23 definitions?



- A for-profit business that is located on an airport or conducts “covered activities” on an airport such as maintaining advertising displays or supplying to other concessionaires
- Has an agreement with an airport owner or another concessionaire
- Engaged in the sale of consumer goods or services to the **travelling** public or another concessionaire
  - An aeronautical activity is not considered a concession

# Examples of Airport Concessions

Examples: restaurants & food/beverage kiosks, **gas stations**, retail/specialty shops & kiosks, taxi and limo services, **shuttle services**, rental car services, mail and shipment services, luggage cart services, **hotels**, personal services (i.e. shoe shine, salon services, and day spas), banking & currency exchange services, **web-based and electronic services (i.e. Wi-Fi)**, vending machines, goods and services firms that supply concessionaires (i.e. food wholesalers and consulting firms), and **management contracts** for activities that take place on the airport (i.e. parking facility and passenger lounge management contractors), **medical clinics**, etc...

# How long does a FAA Grant Recipient Administer the ACDBE Program and Goals?

- The requirements to submit both Car Rental and Non-Car Rental goals are based on the \$200,000 threshold.
- An eligible Primary level airport grantee must continue to implement the ACDBE Program regardless of the requirement to submit and implement ACDBE Goals.
  - Smaller airports that lose their Primary level status no longer are required to implement the ACDBE Program or Set goals.

# Program Submission Schedules and Reporting Requirements

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# ACDBE Goal Submission Requirements for Airport Grant Sponsors

**49 CFR Part 23** Primary Airports -- 3-Year Overall **ACDBE Goals** DUE: **OCTOBER 1**

Airport Size	Region	Due	Period Covered	Next Goal Due
Non-Hubs	All	2013	2014/2015/2016	2016 (2017/2018/2019)
Large/Medium Hubs	All	2014	2015/2016/2017	2017 (2018/2019/2020)
Small Hubs	All	2015	2016/2017/2018	2018 (2019/2020/2021)

# DBE & ACDBE Participation and Achievement Reporting

- All Primary airports must submit an ACDBE Participation Report Yearly by March 1
  - Report captures total gross receipts of non-ACDBE and ACDBE firms, management contract data, goods and services data, and data about ACDBE firm demographics
- FAA strongly encourages recipients to submit achievement reports online @ [FAA.CivilRightsConnect.com](https://www.faa.gov/civilrightsconnect) .
  - Report submission training available to the public online at the system's log-in page

# Goal Accountability Regulation

If the awards and commitments shown on your yearly achievement report at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the USDOT/FAA as implementing your ACDBE Program in good faith:

- (1) **Analyze in detail the reasons for the difference** between the overall goal and your awards and commitments in that fiscal year;
- (2) **Establish specific steps and milestones to correct the problems** you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;
  - If you are an Operational Evolution Partnership (OEP) Plan airport or other airport designated by the FAA, you must submit to FAA for approval within 90 days after submitting the yearly report(s).
  - Other airports must **keep on file**

# Record Keeping Requirements

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# Record Keeping Requirements

Recipient must have and maintain for three years:



- Contracting/Leasing Records
- Firms' ACDBE Program Compliance Records

# Staffing Requirements

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# ACDBE Liaison Officers

ACDBELOs Responsible for:

1. Developing
2. Implementing &
3. Monitoring the ACDBE Programs...

...in coordination with other appropriate staff and organizational officials.

# Key Airport Staff roles and Responsibilities

- **Maintain an ACDBE Program Plan document.**
- Periodically, **establish narrowly-tailored goals** for the participation of ACDBEs on concessions contracts.
- Carry out information and communication programs to **outreach** to firms.
- Consistently ensure contractors make **Good Faith Efforts** to meet race-conscious (contract) goals.
- Certify and/or **confirm the eligibility of ACDBE firms** to participate in airport concessions agreements.
- Proactively **monitor contracts, worksites, & achievements** to ensure work committed to ACDBE firms at bid time are actually performed by the same firms.
- Yearly, **report ACDBE participation achievements** to FAA.

# ACDBE Non-Car Rental Goal-Setting

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# Goal-Setting Resources

- Regulations in 49 CFR Part 23.51
  - offers step-by-step instruction and suggested methods
- FAA's ACDBE Sample Plan contains a goal methodology template
  - methodology sample & template in attachments
- USDOT's "Tips for Goal-Setting"
  - Provides Guidance & Addresses Common Issues
- Benchmark with an Experienced Airport
- **Coming Soon!** FAA's ACDBE Goal-Setting Tool

# Goal-Setting – Calculating Base

## 49 CFR Part 23.47

- The base for a [non-car rental] goal includes the total gross receipts of airport concessions.
- This base does not include the gross receipts of car rental operations.
- The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.
- This base does not include non-concessions services like airport employee lunch catering services.

# How is Goal-Setting Data Gathered?

- Census Bureau County Business Patterns Data
- UCP ACDBE Directories
- Bidders/Active Participants List Data
- ACDBE Past Participation Data
- Disparity Study Data (must be relevant)
- Use of another similarly situated Recipient's Goal
- Other Logical Method(s)

# General Goal-Setting Process

- Recipients must set Overall Three-Year Goals
  - Do not use aspirational goals
- Identify Airport Concessions & Lease Terms

FY 2021-2023 Goal Period Concessions Data				
Scope	Start Date	Extension Option	End Date	Prior ACDBE Availability Goal
Advertising	05/17/2015	05/16/2017	05/17/2020	3%
Retail	09/22/2017	N/A	09/22/2027	10%
Food & Beverage	12/02/2019	N/A	12/02/2021	17%
Passenger Lounge	04/20/2020	04/19/2023	04/20/2025	N/A

# General Goal-Setting Process

- Establish Market Area
  - Based on past bid and spending activity
- Determine relative availability of ACDBE firms in Market Area in **two-step process**:
  - 1) Establish the percentage (of the types of firms you need for our project(s)) that are ACDBE certified and/or eligible.
  - 2) Then adjust for any circumstances that affect the goal using other data available to you in your market.

# Two-Step Goal-Setting Example

## Determine Baseline Data First

- Identified Goal Period: 2021-2023
- Identified Concessions: Advertising, Retail, Food & Beverage, and Passenger Lounge (**Research associated NAICS Codes for each scope**)
- Identify Base of Goal:
  - Average past three years concessions activity = \$3,000,000
  - Average past yearly growth = 1%
  - Total Projected Goal Period Revenue = \$9,090,903

# Two-Step Goal-Setting Example

- Identify Market Area
  - Based on past successful and unsuccessful bidder activity

Scope	Location of Bidders
Advertising	A variety of states nationally
Retail	Several midwestern & one eastern state
Food & Beverage	Niceland Metropolitan Area (four counties)
Passenger Lounge	One state

## Retail Market Area



# Two-Step Goal-Setting Example

## ➤ Determine Relative Availability of Firms

- Identify Firms located in identified Market Areas with Proper NAICS Codes as per State UCP/Census:
    - Advertising = 13/343 or 4% ACDBE Availability
    - Retail = 57/427 or 13% ACDBE Availability
      - Carried over goal of 10% replaces the current availability of 13%
    - Food & Beverage = 82/376 or 22% ACDBE Availability
    - Passenger Lounge = 1/21 or 5% ACDBE Availability
- $4\% + 10\% + 22\% + 5\% / 4 = 10\% = \text{Step One Goal Figure}$

# 2-Step Goal-Setting Example for Non-Car Rental Concessions

- Step 1 Goal is 11%
- Median Past participation (MPP) Data on all Concessions:
  - FY15 = 1% -outlier (no ACDBE Program in place)
  - FY16 = 11%
  - **FY17 = 14% (MPP Figure)**
  - FY18 = 57% -outlier (Prime ACDBE, one year lease)
  - FY19 = 12%
- Step Two Goal Figure = 12% or \$1,090,908 in value for ACDBEs
  - Step 2 Calculation  $10\% + 14\%/2 = 12\%$

# General Goal-Setting Process

- Determine the portion of the goal that will be race-neutral vs. race-conscious
  - *Race-Neutral* measure is one that may be used to assist and attract all small businesses.
    - Airport would not use ACDBE contract goals.
  - *Race-Conscious* measure is one that is focused specifically on assisting only ACDBEs
    - Airport would **use ACDBE contract goals.**

# Race/Gender Neutral Activities: Examples

- Use Small Business Program Element (SBE) to arrange contracts to be of a size most small businesses can perform (unbundling and setting-aside contracts).
- Outreach: Conduct ACDBE information sessions & post program information online.
- Outreach: Conduct pre-bid information meetings, hold business match-making sessions & post bidding information online.
- Provide business guidance and other supportive services to small businesses.
- Provide technical assistance to small businesses and help remove barriers to qualifying for participation (e.g. overcoming limitations obtaining bonding, financing, & insurance).
- Encourage Primes to utilize small firms & provide informational resources (i.e. program handbooks, ACDBE directories).

# General Goal-Setting Process

- Consultation Required for ACDBE Program
  - Consult with minority and women's contractor groups, Primes, community organizations, government officials, etc.
  - Look for and consider evidence that affects DBE/ACDBE Opportunities to Compete.
- Public Notice of Goal (posting on airport/recipient website) not required

# ACDBE Car Rental Goal-Setting

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# Goal-Setting Resources

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- FAA's ACDBE Sample Plan contains a goal methodology template
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- USDOT's "Tips for Goal-Setting"
  - Provides Guidance & Addresses Common Issues
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# Goal-Setting – Calculated Base

## 49 CFR Part 23.49

Except in the case where you use the alternative goal approach of § 23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

# Goal-Setting – Calculated Base

## **49 CFR Part 23.51(c)(5)(ii)**

In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

# Two-Step Goal-Setting Example

## Determine Baseline Data First

- Identified Goal Period: 2021-2023
- Current List of Purchased Goods and Services: Key FOB/Cutting, Oil/Lube Service, Car Repair Services, Child Seats, GPS systems, Cleaning Supplies, Management Services, and Staffing Services  
(Research associated NAICS Codes for each scope)
- Identify Base of Goal:
  - Average past three years' ACDBE expenditures = \$13,660
  - Average past three years' total expenditures = \$2,732,019
  - Average past yearly growth in total spending = 2%
  - Total Projected Goal Period total expenditures = \$8,528,290

# Two-Step Goal-Setting Example

- Identify Market Area
  - Based on past spending activity
- Spending data shows that Niceland's Car Rental Concessionaires purchase 73% of their goods and services from suppliers located within one state. A closer look reveals that 61% of suppliers actually come from two major metropolitan areas' 10 counties in one corner of the state near the airport.



# Two-Step Goal-Setting Example

## ➤ Determine Relative Availability of Firms

- Identify Supplier Firms located in identified Market Areas with Proper NAICS Codes as per State **UCP/Census**:

- Key FOB/Cutting = 13/1343 or 1% ACDBE Availability
- Oil/Lube Service = 5/127 or 4% ACDBE Availability
- Car Repair Services = 82/1376 or 6% ACDBE Availability
- Child Seats = 0/8 or 0% ACDBE Availability
- GPS Systems = 0/1 or 0% ACDBE Availability
- Cleaning Supplies = 4/89 or 4% ACDBE Availability
- Management Services = 6/424 or 1% ACDBE Availability
- Staffing Services = 3/212 or 1% ACDBE Availability

➤  $1\% + 4\% + 6\% + 0\% + 0\% + 4\% + 1\% + 1\%/8 = 2\% = \text{Step One Figure}$

# Two-Step Goal-Setting Example

- Step 1 Goal is 2%
- Median Past participation (MPP) Data on Supplier Spending:
  - FY15 = 3% -outlier (large purchases from now uninterested ACDBEs)
  - FY16 = 0.48%
  - **FY17 = 0.50% (MPP Figure)**
  - FY18 = 0.28%
  - FY19 = 0.67%

➤ Step 2 Calculation  $2\% + 0.50\%/2 = 1.25\%$
- Step Two Goal Figure = 1.25% or \$106,604 in value for ACDBEs

# General Goal-Setting Process

- Determine the portion of the goal that will be race-neutral vs. race-conscious
  - *Race-Neutral* measure is one that may be used to assist and attract all small businesses
    - Airport would not use ACDBE contract goals.
  - *Race-Conscious* measure is one that is focused specifically on assisting only ACDBEs
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# Race/Gender Neutral Activities: Examples

- Use Small Business Program Element (SBE) to arrange contracts to be of a size most small businesses can perform (unbundling and setting-aside contracts).
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- Outreach: Conduct pre-bid information meetings, hold business match-making sessions & post bidding information online.
- Provide business guidance and other supportive services to small businesses.
- Provide technical assistance to small businesses and help remove barriers to qualifying for participation (e.g. overcoming limitations obtaining bonding, financing, & insurance).
- Encourage Primes to utilize small firms & provide informational resources (i.e. program handbooks, ACDBE directories).

# General Goal-Setting Process Continued

- Consultation Required for ACDBE Program
  - Consult with minority and women's contractor groups, Primes, community organizations, government officials, etc.
  - Look for and consider evidence that affects DBE/ACDBE Opportunities to Compete.
- Public Notice of Goal (posting on airport/recipient website) not required



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# **ACDBE Program Certification, Contract Structures, Monitoring, Commercially Useful Functions, and Reporting**

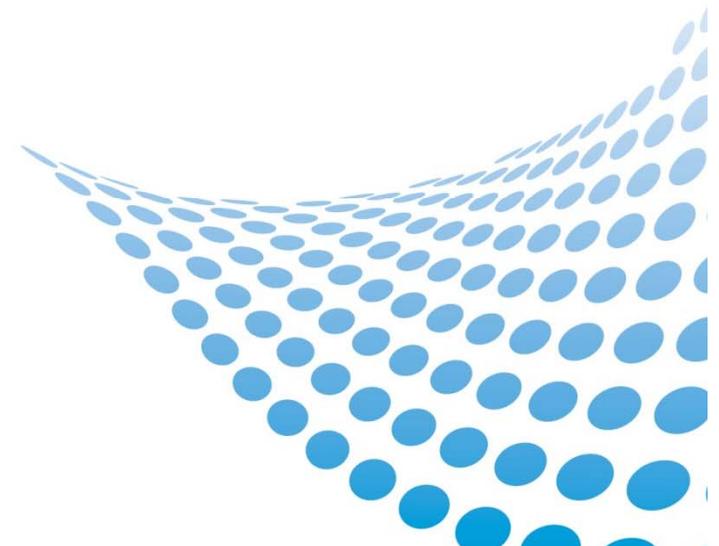
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**Presented by:**

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Lead**

**December 4, 2019**



# Good Faith Efforts



# ACDBE Certification

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# What are ACDBE Firms?

- a) A for-profit small business concern
- b) That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged
- c) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it
- d) Must be officially certified in the state by the UCP



# DBE vs ACDBE Certification Standards

	<b>DBE</b>	<b>ACDBE</b>
<b>PNW Cap</b>	\$1.32 Million	\$1.32 Million
<b>Business Size Cap</b>	\$23.98 Million	\$56.42 Million (most business categories)
<b>Application &amp; PNW Forms</b>	Found in Part 26 Appendix F & G	Same w ACDBE instructions for F in 23.39(g)(1-3)
<b>Certification Duration</b>	Until Decertified via 26.87 procedures	Until Decertified via 26.87 procedures
<b>CUF Performance</b>	Not a Factor	Not a Factor
<b>Prequalified at Airport</b>	Not a Factor	Not a Factor
<b>Governing Regulations</b>	Part 26 Subparts D & E	Part 26 Subparts D & E and Part 23 Subpart C

# ACDBE Certification Business Size Standard Exceptions

- Financial institutions are capped at \$1 billion in assets
- Car Rental firms are capped at \$75.23 million
- Pay Telephone business size is capped at 1,500 employees
- Automobile dealer business size is capped at 350 employees

# What Type of Business Can Become an ACDBE Firm?

**Myth #1:** *Only retail & restaurant operators can be certified*

**Fact:** There are many different kinds of business types/NAICS codes that firms may apply for under the ACDBE Program certification process

- Concessionaires' suppliers/service providers are typically eligible
- Media & Advertising firms are typically eligible
- Car rental firms' suppliers/service providers are typically eligible
- Aeronautical services/Fixed Base Operators are typically not eligible
- Personal and grooming services like spa or salon services are typically eligible
- Banks and financial institutions may be eligible
- Transportation & Parking Services Operators may be eligible
- In-flight food and beverage services are typically not eligible
- New and untried airport concessions businesses may be eligible
- Firms that do not perform work relevant to airport concessions may not be eligible

# What Are ACDBE Firms?

**Myth #2:** *Any DBE can be certified as an ACDBE and vice versa*



**Fact:** Some DBE firms will not be eligible as ACDBE firms and vice versa based on business type, business size, and how they operate.

- Construction firms could be certified as per Part 23.37, BUT they **may not** be counted toward build-out and construction of a concession as per 23.55(k)
- Professional Services firms may often qualify for both certifications
- Goods and Services suppliers may also qualify for both certifications

# Eligible for ACDBE Certification?



# Concessions Contract Structures

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# How do ACDBEs Participate in Airport Concessions Programs?

<b>Direct Ownership Participation (ACDBE Owns and Controls)</b>	<b>Indirect Participation (ACDBE Provides Support to Owners)</b>
Prime Concessionaire	Provider of Services to Concessionaires
Sub-Concessionaire	Sublease or Provider of Goods to Concessionaires
Joint Venture (JV) Partnership	Provider of Management Services to Concessionaires

Regardless of the participation type, verify firms are ACDBE certified before clearing them to participate

# How do ACDBEs Operate?

- **Prime Concessionaire:** Race-neutral participation where an ACDBE wins a Primary contract via traditional low-bid methods
- **Sub-concessionaire:** ACDBE operates one or more concession, space, or kiosk as a sub-tenant and usually performs 100% of the concessions subcontract work
- **Joint Venture/Partnership:** ACDBE partner(s) pool resources with non-ACDBE partner(s) and share in risk, profit, capital contribution, and control of the JV. Could be operating via a prime or sub agreement. ACDBE performs less than 100% of the concessions contract work. JV agreement must be in writing and meet the standards of USDOT's ACDBE JV Guidance.
- ACDBE sells supplies to or provides service
- **Goods Supplier/Service Provider:** supplier to a concessionaire including consulting work
- **Management Services Provider:** ACDBE vendor performs a portion of a contract under a prime concessionaire by agreeing to manage certain aspects of concessions operations (i.e. staffing)

# How do ACDBEs Operate?

## **Non-Car Rental Concessions**

- Recipients may have various types of direct ownership arrangements for ACDBE firms
- Recipients may also have ACDBE suppliers participating

## **Car Rental Concessions**

- Recipients rarely have direct ownership arrangements for ACDBE firms.
- Recipients often have ACDBEs that act as suppliers and service providers.

How ACDBE firms operate affect monitoring processes.

# Agreements and Legal Instruments

A concession may be operated under various types of agreements, including but not limited to the following:

- Lease Agreements w/ Airport or Terminal Owner
- Sublease Agreements w/ Another Concessionaire
- Franchise Agreement
- License Arrangement
- Permit Arrangement
- Contracts or Subcontracts
- Purchase Order/Agreements
- Invoices
- Other Viable Legal Instruments or Arrangements

# Monitoring Contracts & Worksites

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# ACDBE Monitoring Requirements

- (a) Implement Appropriate Mechanisms to Ensure Compliance by ALL PROGRAM PARTICIPANTS
- (b) Ensure Work Committed to ACDBEs is Performed by the same ACDBEs
- (c) Provide written certification that you have reviewed contracting records and worksites

# How should contracts be reviewed?

- Regulations require that airports review all ACDBE contracts
- Compare ACDBE information in bid documents to information in ACDBE contracts
- Prime must make all ACDBE subcontracts available for review without exception including all supply, management, services and sub-agreements.
  - Ensure bid information matches contract information
  - Ensure all required contract clauses are incorporated into the contract
- Keep data on file for three years
- Written Certification Required

# Contract Review Requirements

Recipients' contracts must contain these provisions required by regulations:

1. Non-discrimination Clause (23.9)
2. Termination Clause (26.53(f) applies to ACDBE agreements)
3. Enforcement provisions (26.105 & 107 applies to ACDBE agreements)
4. Scope of Work and Value Comparison

# JV Agreement Review Requirements

When an ACDBE performs as a participant in a joint venture, recipients must ensure agreements meet the standards described in the JV Guidance document.



# How should worksites be monitored?

Regulations also require that airports review all ACDBE worksites proactively while work is in progress.

- Monitors must visit ACDBE location at least once each year; try to visit at least twice.
- If you have many ACDBE firms participating at your airport, then you may want to create a review schedule to keep yourself on track.

# How Should Worksites be Monitored?

## Key Elements of ACDBE Work-Site Monitoring:

- Ensure agreement matches what is actually happening on worksite.
  - Verify ACDBE firm and scope of work is the same as identified on participation plan for race-conscious contracts. Ensure ACDBE firms are performing as expected and independently.
  - Verify no unapproved ACDBE Terminations Occurred on race-conscious contracts.
- Provide for written certification by memorializing reviews in writing (include date of review and staff signature). Incorporate CUF Review by producing Site-Visit Reports/CUF Forms/Checklists. Produce Follow-Up Reports (as needed).
  - May combine contract and worksite reviews CUF forms with written certification form to simplify process
- Keep data on file for three years (after agreement term ends).

# Monitoring is a Team Effort!

- Involve other staff members.
- Identify ACDBE oversight as an essential job function of multiple airport employees.
- Consider creating an ACDBE Program Planning committee of employees where the ACDBELO is the chair.



# Counting & Commercially Useful Functions (CUF)

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# Why is it important to review CUF?

- Regulations require that airports review ALL ACDBE worksites proactively while work is in progress in order to verify CUF.
- **Prime Contractors and Recipients only get credit for ACDBE participation when an ACDBE performs a CUF regardless of whether participation is race-conscious or race-neutral.**
- For race-conscious contracts, CUF review actually begins when airports verify that firms are properly certified to perform their proposed scope(s) of work during the bidding stages as GFEs are reviewed.
- For race-conscious contracts, recipients can proactively review how a prime plans to count proposed DBE participation during the bid process.

# Verifying CUF During Worksite Reviews

An ACDBE performs a CUF when it is...

*“Responsible for execution of the work of the contract [or a distinct element of the work] by actually performing, managing, and supervising the work involved.”*

- An ACDBE like a JV partner or management firm is not required to perform at least 30% of an agreement’s work with its own workforce in order to perform a CUF as in the DBE Program.
- ACDBE firms are allowed to share equipment and/or lease equipment it uses from its Prime Concessionaire and still be regarded as performing a CUF while DBE firms are not allowed to share equipment with non-DBE firms or lease from their Primes.

# Verifying ACDBE JV Partner CUF During Worksite Reviews

When an ACDBE performs as a participant in a joint venture, recipients must ensure performance is commensurate with ownership interest in the operation. ACDBE responsibilities must be distinct and clearly defined in the agreement.

<b>ACDBE's Ownership Interest in JV</b>	<b>ACDBE's required portion of work in the JV</b>
30%	30%
10%	10%
2%	2%

# Verifying CUF During Worksite Reviews for Direct Ownership Agreements other than JVs

Conduct scheduled and unscheduled periodic On-Site Interviews and observe the operation.

- **Ensure ACDBE is still properly certified, or countable if decertified.**
- Verify the ACDBE owner visits the location at least periodically.
- Ask ACDBE employees who they work for and verify they appear on ACDBE payroll; what company name appears on their paystubs? Ask them how often they see the ACDBE firm manager/owner and who their supervisor is.
- Observe whether or not it appears the ACDBE firm manager controls the employees, and ask about their daily duties.
- For race-conscious contracts, is the work consistent with the approved participation plan?
- Is the ACDBE's work discernable from the Prime firm's work?

# Verifying CUF for Indirect Participation

Recipients must verify CUF for purchases from ACDBE Goods and Services Providers before accepting a payment report.

- Validate that the ACDBE firm is providing bona fide goods and services and that payments are not excessive or over-inflated.
- Develop monitoring processes to confirm that purchases were actually made from the ACDBE.

# ACDBE Program Fraud Indicators

- ACDBE Firm Owner does not appear to understand their duties or how to operate the concession
- ACDBE Owner does not visit the airport terminal the ACDBE operation is located within
- ACDBE's concessions business viability depends on ongoing relationship with one Non-ACDBE firm
- ACDBE sub uses the non-ACDBE Prime firm's employees and goods without charge
- Non-ACDBE JV Partner loaned ACDBE funds to participate without requiring collateral or repayment
- No written JV Agreement or sub-agreement
- ACDBE operating in a JV at the airport that does not have a contract with the airport (only non-ACDBE partner listed)

# How is ACDBE Participation Counted?

- Count the total dollar value of gross receipts earned under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE.
- If ACDBE enters into agreement with non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
- If ACDBE is a sub-concessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its sub-agreement.

# How is ACDBE Participation Counted?

- For Joint Venture ACDBE participation, count the portion of gross receipts equal to a distinct, clearly defined portion of work performed by the ACDBE.
- Count the entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, if reasonable.

# How is ACDBE Participation Counted?

- Count 100% of the cost of goods obtained from an ACDBE manufacturer.
- Count 100% of the cost of goods purchased or leased from a ACDBE regular dealer.
- Count the entire amount of fees or commissions charged for assistance in the procurement of the goods and/or for delivery charges, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. **Do not count any portion of the cost of the goods themselves.**
- Count the entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, if reasonable.

# How is ACDBE Participation Counted?

- Do not count if ACDBE eligibility removed. However, if ACDBE was decertified due to a disadvantaged owner not maintaining the required PNW size cap, or if the firm exceeds the business size standard during performance of contract, participation may continue to be counted for remainder of term of contract **BUT NOT EXTENSIONS OR RENEWALS!**
- Count Car Rental and Non-Car Rental participation separately because you need to report on them in separate areas of the FAA's ACDBE Participation reporting form.

# ACDBE Program Report Submissions

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# Basic Reporting Form Structure

Primary airports must submit an annual report on ACDBE participation using the form found in Appendix A of 49 CFR Part 23. Ensure you have procedures in place to gather all the data needed.

Essential Sections of the Form:

- Sections 1-3 capture basic airport information.
- Sections 4-6 deal with non-car rental participation.
- Sections 7-9 deal with car rental participation.

# Basic Reporting Form Structure

## Essential Sections of the Form:

- Section 10 breaks down ACDBE participants by race and gender for both car rental and non-car rental participation data reported in sections 4-9.
- Section 11 captures participating ACDBE firm names, business type, agreement terms including renewal/extension options, dates of material amendments, and estimated gross receipts during the reporting period.

# Basic Reporting Form Structure

- The car rental and non-car rental sections of the form contain rows that further break information down by participation types (prime, sub, management contracts, and goods & services).
- The columns allow airports to attribute dollar values of concessions' total gross receipts to ACDBEs and non-ACDBEs for each participation type. ACDBE participation is further broken down into race-conscious and race-neutral achievement in these columns.

# What does the reporting form look like?

<b>4. Current Non-Car Rental ACDBE Goal:</b>	Race Conscious Goal _____ %		Race Neutral Goal _____ %		ACDBE OVERALL Goal _____ %		
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
<b>5. NON-CAR RENTAL CUMULATIVE ACDBE PARTICIPATION</b>	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Management Contracts							
Goods and Services							
Total Cumulative Non-Car Rental ACDBE Participation							
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
<b>6. NON-CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD</b>	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs /Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Management Contracts							
Goods and Services							
Total Non-Car Rental New ACDBE Participation							

# What does the reporting form look like?

7. Current Car Rental ACDBE Goal:	Race Conscious Goal		Race Neutral Goal		ACDBE OVERALL Goal		%
	A	B	C	D	E	F	
<b>8. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION</b>	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs/Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Goods and Services							
Total Cumulative Car Rental ACDBE Participation							

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9. CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD	A	B	C	D	E	F	G
	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs/Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Goods and Services							
Total Cumulative Car Rental New ACDBE Participation							

# What does the reporting form look like?

<b>10. CUMULATIVE ACDBE PARTICIPATION BY RACE/GENDER</b>	Black Americans (numbers & dollars)	Hispanic Americans (numbers & dollars)	Asian-Pacific Americans (numbers & dollars)	Asian - Indian Americans (numbers & dollars)	Native Americans (numbers & dollars)	Non-Minority Women (numbers & dollars)	Other (i.e. not of any other group listed here) (numbers & dollars)	TOTALS [A+B+C+D+E+F+G] (numbers & dollars)
Car Rental								
Non-Car Rental								
Total Cumulative Race/Gender ACDBE Participation								

# FAA's Online Reporting System

<https://faa.civilrightsconnect.com/FAA/login.asp>

The screenshot shows a web browser window with the URL <https://faa.civilrightsconnect.com/FAA/login.asp>. The browser's address bar and tabs are visible. The main content area displays the "FAA Civil Rights Connect Login" page. At the top of the page is a green header with the text "FAA Civil Rights Connect Login". Below the header is a disclaimer: "Disclaimer: This system is strictly for the use of authorized FAA, airport, and consultant users to provide and manage DBE/Part 26, ACDBE/Part 23, Title VI, and ADA/Sec. 504 data. All user activity is logged." The login form consists of two input fields: "Username (email address)" and "Password". Below these fields is a "Login" button. Underneath the button is a link: "[User Lookup, Password Reset, and Create Account](#)". At the bottom left of the page, there is a link for "[Customer Support](#)". At the bottom right, there are links for "Civil Rights Connect User Guide: [PDF](#)" and "Uniform Report: [PDF](#), [Video](#)". A large red arrow points from the right side of the page towards the bottom right corner of the login form area.



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# **ACDBE Program Updates and General Q & A**

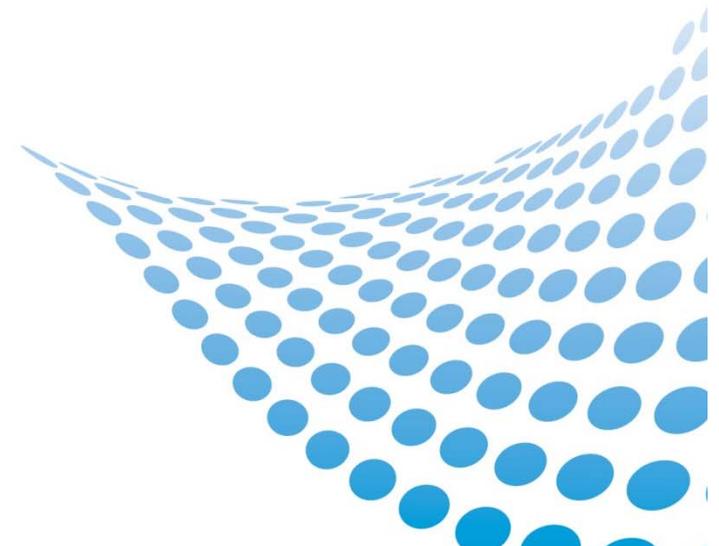
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**Presented by:**

**Gene Roth, DBE/ACDBE Program National Team  
Lead**

**December 4, 2019**



# FAA's ACDBE Program Regulation Review

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# Notice of Inquiry: Make Your Voice Heard

- The FAA is currently undertaking a review of the 49 CFR Part 23 ACDBE Program regulations in order to determine what, if any, regulations require update or edit.
- FAA is currently seeking comments, feedback and recommendations to improve the ACDBE Program from the stakeholders.
- Comments may be submitted to

[9-AWA-ACR-ACDBE-review23@faa.gov](mailto:9-AWA-ACR-ACDBE-review23@faa.gov)

# What else is FAA doing to collect information?

- Listening Sessions with Stakeholders
  - FAA listens to comments from industry stakeholder in a live phone conference [COMPLETED]
- Targeted ACDBE Compliance Reviews at airports with many ACDBE firms participating
  - ACDBE Focus Groups and interviews to make sure we understand the realities of operating a concession for a small business firm [ONGOING]
  - Non-ACDBE Prime Concessionaire Focus Groups and interviews to make sure we understand the realities of working with and supporting small business concessionaires [COMING SOON!]

# Make your Voices Heard Today!

What comments or thoughts do you have about how to improve the ACDBE Program?

# Common Issues Heard so Far

- Many stakeholders have stated that the PNW cap of \$1.32 Million for firms is just not large enough for them to be able to compete as Prime firms. They do not have the wealth needed to finance loans large enough to operate the way a typical prime would. This means the playing field will never be level.
- ACDBE firms should be able to sell their ACDBE business while operating in a concession without the penalty being that the business will lose its operation after being decertified for changing ownership. ACDBE firms will never be able to sell their business unless they have already graduated from the ACDBE Program.
- Joint Venture Partnerships are needed to help ACDBE firms enter the market, but it is often very difficult to correctly structure and monitor JV firms. ACDBE Partners often become overshadowed by the non-ACDBE Partner and do not actually contribute meaningfully to the operation.

# Common Issues Heard so Far

- The majority of airports are having a very hard time securing the staff and expertise needed to run and monitor the ACDBE Program.
- The large expense of putting together concessions proposals is a major barrier to participation for ACDBE firms who may have limited cash available for that purpose.
- Financing from a traditional bank can be impossible to come by for many concessionaires let alone socially and economically disadvantaged ACDBE businesses. In order to level the playing field a large, federally-backed financing program of some kind would be extremely helpful.

# Coming Soon: ACDBE Goal-Setting Tool

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# FAA Matchmaker

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# Legal Update

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•DBE/ACDBE Programs Overview



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# Additional Program Resources



# Additional Program Resources

FAA DBE & ACDBE Program Website:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/)

US Census Bureau County Business Patterns Website:

<https://www.census.gov/programs-surveys/cbp.html>

FAA Matchmaking Website (Includes DBE/ACDBE Directories):

<https://faa.dbesystem.com/>

USDOT DBE/ACDBE Certification Training Website:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbeacdbe-training>

ACDBE JV Guidance Link:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/jvguidefinal508.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/jvguidefinal508.pdf)

FAA DBE/ACDBE Points of Contact:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/contact/](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/contact/)

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# Questions

