

49 C.F.R. Part 23 Stakeholder Listening Session: Subpart - C



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**Federal Aviation
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*ACHIEVING SAFETY
THROUGH DIVERSITY*



Certification Standards and Procedures for Recipients to Certify ACDBEs - 49 C.F.R. § 23.31

In 2005, the Regulation directed airports or UCPs to review the eligibility of [then] currently certified ACDBE firms to make sure that they met the eligibility standards. 49 C.F.R. § 23.31(c)(1) and (c)(2) direct airports or UCPs to complete reviews no later than April 21, 2006 or three years from the anniversary date of each firm's recent certification. Additionally, recipients were to direct all currently certified ACDBEs to submit their personal net worth statement, a certification of disadvantage and an affidavit of no change by April 21, 2006.

Since these regulatory deadlines for reviewing the certification status of [then] existing ACDBE firms when these regulations were adopted have expired, should the April 21, 2006 date contained in 49 CFR § 23.31(c)(1) and (c)(2) be potentially deleted or updated? Is there still a need for these subsections?



Size Standards for ACDBE Suppliers of Goods and Services - 49 C.F.R. § 23.33

The same size standard set forth under 49 C.F.R. § 23.33 uniformly applies to ACDBEs including suppliers of goods and services- just as the size standards set forth under 49 C.F.R. § 26.65 apply uniformly to all DBE firms. Factors such as high percentage rents and minimum annual guarantees, high capital investment requirements, and high operating costs justify the higher size standard of \$56.42 million for ACDBE concessions but these factors do not apply to ACDBE suppliers.

Is there a need to maintain the higher size cap for ACDBE suppliers of goods and services?



Personal Net Worth Standard for Disadvantaged Owners of ACDBEs - 49 C.F.R. § 23.35

The personal net worth threshold of \$1.32 million was last increased in 2012. Stakeholders continue to raise concerns that the current personal net worth cap (too low) is a barrier for ACDBE firms, particularly for those seeking opportunities in the airport car rental industry. Concerns raised have indicated that increasing the PNW number favors larger, established firms at the expense of smaller, start-up firms and that larger successful firms could remain in the program longer, to the detriment of the program's objectives.

Is the PNW cap a barrier for concession firms seeking ACDBE certification?
Should the PNW cap be adjusted for inflation and require periodic inflation adjustments?



Are firms certified under 49 C.F.R. part 26 eligible to participate as ACDBEs - 49 C.F.R. § 23.37



The Regulation requires UCPs to presume that a firm certified as a DBE under Part 26 is eligible to participate as an ACDBE under Part 23. Concerns have been raised that certifiers are requiring a certified DBE firm to undergo a full examination before awarding an ACDBE designation without meaningful regard to the "presumption" granted by § 23.37 (a). Stakeholders contend that requiring suppliers of goods and services already certified as DBEs to undergo further scrutiny to become ACDBE certified is a barrier to ACDBE participation and unnecessary. There have also been reports that certifiers are requiring ACDBE applicants to have existing concession operations before they can meet the eligibility requirements of Part 23.

Are UCPs imposing additional requirements that present a barrier to firms seeking ACDBE certification? Are these requirements directly affecting the underrepresentation of ACDBEs in state ACDBE directories? Is the regulation clear as to what UCPs may require from a DBE-that is seeking ACDBE certification?

Requirement that Certified DBE Firm Be Certified as an ACDBE - 49 C.F.R. § 23.55

The Regulation requires that a firm be certified as an ACDBE in accordance with Part 23 in order for airports to count the firm's participation toward ACDBE goals. Stakeholders have expressed concerns that this requirement is not necessary for concession suppliers who are already certified as DBEs and that the requirement presents a burden to [both] small disadvantaged businesses and UCPs. This requirement may also be a factor affecting low ACDBE goals and underreporting ACDBE participation.

Should firms that supply goods [and][or] services, and that are certified-DBEs under Part 26 be allowed to participate in the ACDBE program without undergoing additional review or additional certification requirement, particularly if the firms are already performing the same type of work (same NAICS code) that is relevant to the airport concessions program?



Counting Participation After Removal of ACDBE's Eligibility - 49 C.F.R. § 23.39

The Regulation provides guidance on how to count participation toward goals when an ACDBE's eligibility has been removed because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firms in all other respects remains an eligible DBE. There is no guidance or clarification on the intent of the statement of "in all other respects remains an eligible DBE." There is no provision in the Regulation that addresses the firm's continued eligibility for counting after an ownership change or other changes that might impact certification occurs.

Clarification has been requested on how to identify and evaluate changes that would trigger additional review of the firm. For instance, does a change in ownership fall under that category? How does a certifying agency deal with an ownership or others change of a firm whose eliability has already been removed?



Lack of Specific Concession Specific NAICS Codes - 49 C.F.R. § 23.31

The Regulation requires UCPs to list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. UCPs have difficulty assigning NAICS codes since the NAICS codes used for concessions do not always describe the business accurately or may require numerous codes to define a single business. The Regulation provides the NAICS code for car dealership in the definition. The 2005 Preamble mentions the most useful [broad] NAICS code categories to be 44-45 (Retail Trade), 72 (Accommodation and foodservices), and 81 (Other personal care services, e.g. nail salons, shoeshine kiosks).

Do UCPs still find it challenging to assign NAICS codes to airport concessions?
Is there a need to further clarify what NAICS codes should be used in identifying airport concessions?



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