

49 C.F.R. Part 23 Stakeholder Listening Session: Car Rental Concession Goals Subpart - D



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office Of Civil Rights

*ACHIEVING SAFETY
THROUGH DIVERSITY*

**Presented by:
FAA Office of Civil Rights**

August 13, 2019



Goals

Basic Overall Three-Year Goal Requirement – 49 C.F.R. § 23.41

Section 23.41 requires airports to set overall goals every three years without taking into consideration the contracting processes and contract terms at airports. Lease terms are typically longer than three years and can be as much as 10 or 20 years. Once a goal is set for a contract, it is for the duration of the contract unless it is amended. Thus, a three-year goal is often a consolidation of contract goals adjusted for any anticipated new contracts or contract amendments.

- What analysis, if any, should be conducted in setting the three-year goal when there are no new anticipated contracts or amendments? Please explain.
- Should the three-year goal requirement be increased to five years to conform with concession practices which may reduce regulatory burdens? Please explain.

Basic overall goal requirement concessions revenue threshold - 49 C.F.R. § 23.41

Section 23.41 requires airports to submit an ACDBE goal if the concession revenues averaged over the three years preceding the date on which you are required to submit overall goals exceed \$200,000.

- Should the \$200,000 amount be increased to conform to inflation and concession practices? Please explain.

Consultation requirement for setting overall goals – 49 C.F.R. § 23.43

Section 23.43 requires recipients to consult with stakeholders before submitting overall goals. Stakeholder consultations are currently required to be conducted for the three-year goal submissions which may include periods when there are no concession opportunities to promote.

- ❑ What should be the consultation requirement when there are no new concession opportunities to promote?

Since there may be goal periods when there are only continuing contracts, making stakeholder consultations irrelevant.

Consequences of not meeting overall goals - 49

C.F.R. § 23.57

Section 23.57 requires CORE 30 airports to submit an shortfall analysis and corrective actions if the airport falls short of meeting its overall goal for the fiscal year. The report is due to be submitted to the FAA within 90 days of the end of the federal fiscal year. This seems inconsistent with the requirement to file the uniform report of ACDBE participation which is due March 1, which is 180 days after the end of the fiscal year.

- ❑ Should the due date be changed to conform to the timeline in the requirement of Part 26 which requires airports submit the shortfall analysis 30 days after the participation report is due? (The report would then be due March 31). Please explain.

Car Rental Goal Base - 49 C.F.R. § 23.49

Section 23.49 requires airports to use as the base for their goal setting, the total gross receipts of car rental operations at the airport except in the case where they use an alternative goal approach of §23.51(c)(5)(ii). This clause may be causing confusion when an airport anticipates meeting the goal through goods and services and tends to still use gross receipts as their base figure.

Is guidance necessary regarding what data to use when setting goals? Is there a need to update this section to provide additional clarification? Please explain.

Management Contracts - 49 C.F.R. § 23.47

Section 23.47 directs airports to exclude the gross receipts generated from 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. The regulation is not clear on whether or not airports should be setting goals on management contracts. The most common example of a management contract is Consolidated Rental Car Facility (CONRAC) management companies.

- ❑ Is there a need to update this section to provide additional clarification on the handling of management contracts? Please explain.

Expressing and Calculating Overall Goals - 49

C.F.R. § 23.51

Section 23.51(c)(5)(ii) states: “...where it appears that all or most of the goal is likely to be met through the purchases of car rental companies for vehicles or other goods or services... one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of all purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.”

Unlike gross revenues that are collected and reported for rent purposes and are subject to audit, many airports may not have an effective method for accessing the purchasing data of the car rental firms, including those purchases which are controlled at the local versus regional or national level...this might be different for each car rental firm.

Is guidance necessary to clarify how this information should be collected and interpreted? Please explain.

Counting

Requirement that a certified DBE firm be certified as an ACDBE- 49 C.F.R. § 23.55

Section 23.55(i) requires that a firm be certified as an ACDBE in accordance with the standards in Part 23 in order for the firm's participation to be counted toward ACDBE goals.

- 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? Please explain.

Counting pro-rated participation on national or regional contracts – 49 C.F.R. § 23.53(f)

23.53(f) provides that airport should pro-rate the share of the amount a national or regional contract toward the goals of each airport covered by the contract and to use the proportion of the applicable gross receipts as the basis for making the pro-rated assignment of ACDBE participation. Airports have reported that in many cases the national or regional contracts also include purchases of non-airport locations. Airports find it very difficult to audit car rental purchases as a way to verify accurate reporting of participation .

- Is guidance and/or training necessary for airports and car rental companies regarding this issue?

How do car rental companies count ACDBE participation toward their goals? -- 49 C.F.R. § 23.53

Section 23.53 provides guidance on how to count participation toward goals for car rental concessions. This section provides the option of meeting the goal by including purchases of goods and services and through direct ownership arrangements. The section does not detail what each type of participation should be counted against. For example, participation generated by the purchase of goods and services should be counted against the total purchase of goods and services (ACDBE and non-ACDBE combined).

- ❑ Is additional clarification necessary regarding how to count direct ownership participation versus participation in the form of goods and services? Please explain.

Part 23 Review- Points Contacts

Nicholas Giles, Equal Opportunity Specialist, National Airports Policy & Compliance, FAA Office of Civil Rights

nicholas.giles@faa.gov

Dolores Leyva, Equal Opportunity Specialist, National External Operations Program, FAA Office of Civil Rights

dolores.leyva@faa.gov

Marcus England, Team Lead, National Airports Policy & Compliance, FAA Office of Civil Rights

marcus.england@faa.gov

