

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



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

*Office Of Civil Rights*

*ACHIEVING SAFETY  
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**Presented by:  
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# 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?
- Should the three-year goal requirement be increased to five years to conform with concession practices which may reduce regulatory burdens?

*This change may reduce regulatory burdens as the administrative costs of goal-setting can be burdensome for non-hub airports who have minimum concession activity.*

# 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?

*This change may reduce regulatory burdens as the administrative costs of goal- setting can be burdensome for non-hub airports who have minimum concession activity which is mainly car rental.*

# 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.

- Would it be more effective to hold stakeholder consultations at the time that each contract is analyzed for a goal?

*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. Airports need to prepare the ACDBE participation report in order to determine if the goals have been met and the need for a shortfall analysis.

- ❑ 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.

# Goal-setting base for concessions other than car rental - 49 C.F.R. § 23.47

Section 23.47 requires airports to use total gross receipts of concessions as the base for the goal includes the total gross receipts of concessions, and provides for the exclusion of (1) the gross receipts of car rental operations; (2) the dollar amount of a management contract or subcontract with a non-ACDBE; (3) the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains; and (4) any portion of a firm's estimated gross receipts that will not be generated from a concession. Because there are scenarios in which participation for some non-car rental concessions can only reasonably be expected in the form of goods and services purchases, and because Section 23.25 describes concession-specific goals that may be based on either gross receipts or goods and services purchases, the requirement of 23.47 confusion may arise in the context of overall goal setting.

- Is guidance and/or an update of this section necessary to clarify the ACDBE goal base requirement?
- Is guidance needed to clarify that the gross receipts base for overall goals does not preclude the use of concession-specific goods and services goals where appropriate?

# Overall Goal-setting for 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 from the goal base. It is unclear whether or not airports should be setting goals on management. The most common example is parking and valet services.

- Is guidance and/or update to this section necessary to provide clarification regarding management contracts?

# Counting

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# 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?

# Count ACDBE participation toward goals for items other than car rental - 49 C.F.R. § 23.55

Section 23.55 provides guidance on how to count participation toward goals for non-car rental concessions. This section discusses both direct ownership participation and purchasing participation. It states that direct ownership participation should be counted against the value of gross receipts but it does not detail that the 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?
- How are airports counting fees and commissions participation?

# Count ACDBE participation for firms that were certified after April 21, 2005 - 49 C.F.R. § 23.55

Section 23.55(j) directs airports not to count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. It further states that if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

- ❑ Is guidance and/or an update of this section necessary to clarify if 23.55(j) applies only to firms certified on April 21, 2005, or if other firms certified on and after April 21, 2005 continue to count for the remainder of a contract if they are decertified for exceeding the size cap or personal net worth limit during the original term?

# Part 23 Review- Points Contacts

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