



U.S. Department of Transportation Federal Aviation Administration

FY-2013 COMPLIANCE REVIEW REPORT

Airport Name: LOS ANGELES INTERNATIONAL AIRPORT

Site Visit Date(s): APRIL 9-11, 2013

Review Conducted By FAA Staff: Patricia Wright and Ricky Watson

Airport Staff : Samson Mengistu, Deputy Executive Director; Karen Tozer, Director, Procurement Services; Amanda Dyson, Departmental Audit Manager; Anna Lim, Procurement Services; Melanie Torres, Procurement Services; Annie Chau, Procurement Services; Delia Goodine, Procurement Services

Purpose: Review of monitoring and enforcement aspect of your Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) programs. 49 CFR 26 and 49 CFR 23 require that you implement appropriate mechanisms to ensure compliance with the parts' requirements by all program participants. You are required to set forth these mechanisms as part of your DBE Program and ACDBE Program.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged business by the grant recipients or its sub-recipients, nor to adjudicate these issues on behalf of any party.

SECTION 1 - Title 49 CFR Part 26 – Construction

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
1	Did the airport disseminate its DBE Policy Statement?	X		LAX posts its policy statement on its web site.		X	None	
2	Does the airport have a DBELO in place who has direct independent access to the Airport Director/CEO concerning DBE program matters?	X		DBELO has direct access to CEO in regard to responsibilities of the DBE program.		X	None	
3	Is the DBELO responsible for ensuring that DBEs are not discriminated against in the award and administration of FAA funded contracts and subcontracts?	X		DBELO and staff are responsible for the administration of the DBE program. Staff is knowledgeable of this requirement.		X	None	
4	Does the airport make reasonable efforts to use DBE financial institutions as well as encourage prime contractors on DOT assisted contracts to make use of DBE financial institutions?		X	LAX has not researched the availability of any DBE financial institutions in the Southern California area. In accordance with 49 CFR 26.27, LAX must thoroughly investigate the full extent of services offered by DBE financial institutions owned and controlled by	X		LAX will submit results of this research to FAA for review.	7/11/13

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		Y	N		Y	N		
				socially and economically disadvantaged individuals in its community and make reasonable efforts to use these institutions. It must also encourage prime contractors to use such institutions.				
5	Is the DBELO present during the bid openings for FAA funded projects?	X		DBELO or staff member is present during pre-bid meetings.		X	None	
6	Does the airport verify written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment?	X		Procurement Division is responsible for reviewing construction contracts and ensuring that prime contractors are utilizing the DBE sub-contractors. Staff closely monitors DBE participation by analyzing reports produced by project managers.		X	None	
7	Does the airport confirm DBE certification prior to awarding the contract?	X		LAX Procurement Division verifies DBE certification through the California UCP online Directory.		X	None	
8	In situations where a DBE contract goal has been established, does the airport ensure that all DBE information is complete and accurate and adequately documents the bidder's good faith efforts before committing to the performance of the contract by the bidder?	X		Currently, LAX has a race-neutral program in place. Therefore, no DBE goals are set. LAX must abide by 49 CFR 26.51 as it relates to setting overall goals. Particular attention should be addressed to Sections (a), (c), (d) and (f). In January 2006, USDOT issued guidance regarding how states in the Ninth Circuit can comply with the <i>Western States Paving</i> decision and meet DBE requirements. See: http://osdbuweb.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/WesternStatesPavingCompanyCaseQA.cfm	X		LAX should provide FAA a timeline detailing its plan to address when it will be in compliance.	7/13/13
9	In situations where a DBE contract goal has been established, is the award of the contract conditioned on meeting the requirements of 49 CFR Section 26.53?	X		LAX is currently operating under a race neutral environment and does not utilize DBE contact goals.		X	None	
10	Does the airport have mechanisms in place to ensure that work committed to DBEs at contract award is actually awarded to DBEs?	X		Procurement Division receives monthly project manager reports that name each firm and verifies each firm's scope of work.		X	None	
11	Do the mechanisms provide for a running tally of actual DBE attainments (e.g., payments actually	X		Procurement Division maintains a running tally of all payment invoices to both primes		X	None	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
	made to DBE firms), including a means of comparing these attainments to commitments?			contractors and DBE subcontractors. They have one dedicated staff member to ensure proper tracking and maintenance of DBE participation records.				
12	Does the airport have mechanisms in place to verify that the DBEs are managing their work, utilizing their own work forces, equipment, and materials?	X		Procurement Division receives and reviews project site visit reports that detail existing firms, equipment, and materials used on projects. However, LAX should consider developing a standard DBE site visit form to utilize in this process. The form should include the specific 49 CFR Part 26 regulation requirements related to verification of DBEs' work.		X	None	
13	Does airport staff conduct regular construction site visits and verify that the DBEs are performing a commercially useful function?	X		Procurement Division receives and reviews project site visit reports that detail existing firms, equipment, and materials used on projects. To further strengthen its verification process, LAX should consider incorporating random site visits when DBEs are subcontractors on federal projects.		X	None	
14	During the construction site visits, does the airport verify that business names on equipment and vehicles are not covered with paint or magnetic signs?	X		Inspectors and project managers are checking for potential DBE fraud. However, Procurement Division should consider incorporating random site visits as part of its verification process.		X	None	
15	During the construction site visits, does the airport verify who employs the workers on site?	X		The City of Los Angeles has a Labor Compliance office that verifies identities of workers on construction sites. However, LAX Procurement Division should consider incorporating random site visits as part of its verification process.		X	None	
16	Does the airport have a monitoring mechanism in place that provides a written certification that contracting records are being reviewed and work sites are being monitored?	X		Procurement Division has a contracting records review process, but there is no written certification of those records. DBELO was reminded of the regulatory requirement of having "written certification" that the contract records have been reviewed.	X		LAX DBE Program should include updated process to address this requirement.	6/13/13

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
				LAX should incorporate this monitoring mechanism into its DBE program and process for contract verification.				
17	Does the airport review monthly DBE participation reports? (Provide copy of sample report)	X		Procurement Division receives and reviews the prime contractors' DBE participation reports on a monthly basis.		X	None	
18	Does the airport randomly verify who orders and pays for the necessary supplies being used by the DBE subcontractor?		X	LAX Procurement Division does not verify the supply orders. In accordance with 49 CFR 26.55, LAX must count only the value of work actually performed by the DBE toward the DBE goal. LAX should establish a system to verify the cost of supplies and materials obtained by the DBE. Airport should incorporate this monitoring mechanism into its DBE program and process for contract verification	X		LAX DBE Program should include updated process to address this requirement.	6/13/13
19	Does the airport have prompt payment mechanisms in place?		X	LAX has an established prompt payment requirement only for PRIME contractors. In accordance with 49 CFR 26.29, LAX must establish a prompt payment mechanism to ensure prime contractors pay subcontractors no later than 30 days after prime contractor has been paid by the airport.	X		LAX should update its DBE program and process to include this requirement.	6/13/13
20	In the case of post-award terminations, pre-award deletions or substitutions of DBE firms, does the airport verify that the DBE has been notified AND given time to respond before approving the termination/substitution?	X		LAX has followed this procedure for recent terminations, pre-award deletions or substitutions of DBE firms. DBELO has a clear understanding that the prime contractors must have written consent from LAX prior to termination of any DBE subcontractor.		X	None	
21	Before approving a termination and/or substitution of a DBE subcontractor, does the airport verify the documented good cause that compels the termination of the DBE subcontractor?	X		Yes, and DBELO has a clear understanding that the prime contractors must have written consent from LAX prior to termination of any DBE subcontractor.		X	None	
22	Does the airport submit its Uniform Report on DBE participation to the DOORS system?	X		The DOORS system reflects that LAX has submitted the annual Uniform Report for		X	None	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
				the last three years.				
23	Was the airport required to prepare a DBE goal accountability report for fiscal year 2012?		X	LAX did not underachieve its overall DBE goal for fiscal year 2012, and therefore was not required to submit an accountability report.		X	None	
24	Has the airport implemented its Small Business element for the DBE Program?		X	LAX has submitted its Small Business element to the FAA and is awaiting approval.		X	None	
25	Does the airport have a mentor-protégé program?		X	LAX has not established a mentor program.		X	None	
26	Does the airport have a current and approved DBE Program in place?		X	LAX does not have a current DBE program document that has been approved by the FAA. In accordance with 49 CFR Section 26.21, LAX must submit a DBE program to the FAA for approval. A sample DBE Plan has been provided to DBELO.	X		LAX should submit a DBE program to the FAA, Office of Civil Rights by the set due date.	5/13/13
27	Has the airport submitted its three year DBE goal and received concurrence with its methodology from the FAA.	X		LAX has established and submitted its FY 2011-2013 DBE goal and has received approval from the FAA.		X	None	

Documents Reviewed:

- A. Airport organization chart, showing DBELO's position.
- B. Records documenting monitoring of contracts with DBE participation.
- C. Sample forms used to monitor monthly DBE participation.
- D. Records documenting work site visits.
- E. Copy of airport's approved DBE Triennial Goal.
- F. Copy of DBE accomplishment reports for the most recent three years.
- G. List of all active FAA funded projects.
- H. List of active FAA funded projects that have DBE participation, identifying DBE goal and actual contract percentage achieved to date.
- I. Sample of an FAA funded contract.
- J. Sample of a contract that includes a DBE goal requirement.

SECTION II - Title 49 CFR Part 23 – Concessions

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
1	Has the airport's ACDBE program been approved by FAA?		X	Although LAX appears to comply with the spirit of the Regulation, it does not have a current FAA-approved ACDBE program document. In accordance with 49 CFR Section 23, LAX must submit an ACDBE program to the FAA for approval. A Sample ACDBE Plan was provided to the DBELO.	X		LAX should submit an ACDBE program to the FAA, Office of Civil Rights by the set deadline.	5/13/13
2	Did the airport distribute its ACDBE Policy Statement?	X		Policy statement is on LAWA's website.		X	None	
3	Does the airport have an ACDBELO in place who has direct independent access to the Airport Director/CEO concerning DBE program matters?	X		ACDBELO has direct and independent access to CEO regarding the ACDBE program.		X	None	
4	Is the ACDBELO responsible for ensuring that DBEs are not discriminated against in the award and administration of FAA funded contracts and subcontracts?	X		ACDBELO and staff are responsible for the administration of the ACDBE program. Staff is knowledgeable of this requirement.		X	None	
5	Does the approved ACDBE program on file with FAA reflect the current organizational structure of the agency?	X		Although ACDBE program is not yet approved by the FAA, the organizational chart provided reflects the current reporting structure of the agency.		X	None	
6	Does the airport include enforcement provisions in concession agreements?	X		FAA staff reviewed contract records. Required clauses are not consistently included in the solicitations and contracts. LAX should update its standard template language for concession contracts to ensure the required clauses are included.	X		Sample template should be submitted to FAA for review.	6/13/13
7	Does the airport verify that the prime or master concessionaire and ACDBE have entered into a written commitment prior to submitting a response to an RFP/RFQ?	X		LAX includes required ACDBE participation forms as part of its RFP process. Most recent RFPs were released in 2011, this requirement was verified.		X	None	
8	Does the airport require a prime or master concessionaire to submit written documentation to confirm that the ACDBE firm has agreed to participate in the concession contract?	X		LAX requires a letter of intent as part of its bid package.		X	None	
9	Does the airport confirm ACDBE certification prior to awarding the contract?	X		LAX Procurement Division verifies the ACDBE certification through the online California UCP directory		X	None	

#	Question	Response		Observations/Comments	Compliance Issue		Recommended Action	Due Date
		Y	N		Y	N		
10	In situations where an ACDBE contract goal has been established, is the award of the concession contract conditioned on meeting the requirements of 49 CFR Part 23?	X		Award of concession contracts is conditioned on meeting the requirements of 49 CFR 23.		X	None	
11	In situations where an ACDBE concession contract goal has been established, does the airport ensure that all ACDBE information is complete and accurate and adequately documents the bidder's good faith efforts before awarding the concession contract?	X		Procurement Division has a process in place to ensure that all ACDBE information is complete and accurate before awarding concession contracts.		X	None	
12	Does the airport have a monitoring mechanism in place that provides a written certification that contracting records are being reviewed and work sites are being monitored?		X	No such written certification is currently in place. DBELO was reminded of the regulation requirement of having "written certification" that the contract records have been reviewed. Sample document was provided by FAA. LAX should ensure written certification of review of contracting records is established and included in its ACDBE program.	X		LAX ACDBE Program should include updated process to address this requirement.	6/13/13
13	Does the airport verify that the work committed to ACDBEs is actually performed by the ACDBEs?	X		LAX has dedicated staff to monitor ACDBE sites and work performance.		X	None	
14	Does the airport prohibit prime or master concessionaires from terminating ACDBE firms for convenience?	X		Required clause is included in contracts.		X	None	
15	Does the airport require prime or master concessionaires include administrative remedies if a prime or master concessionaire fails to comply with ACDBE requirements?	X		Required clause is included in contracts.		X	None	
16	In the case of post-award terminations, pre-award deletions, or substitutions of ACDBE firms, does the airport verify that the ACDBE has been notified AND given time to respond before approving the termination/substitution?	X		LAX concession contracts do not consistently include specific clauses addressing this requirement. LAX should update its standard template language for concession contracts to ensure the required clauses are included	X		Sample template should be submitted to FAA for review.	6/13/13
17	Before approving a termination and/or substitution of a DBE subcontractor, does the airport verify the documented good cause that compels the termination of the DBE subcontractor?	X		LAX concession contracts do not consistently include specific clauses addressing this requirement.	X		Sample template should be submitted to FAA for review.	6/13/13

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				LAX should update its standard template language for concession contracts to ensure the required clauses are included.				
18	Does the airport conduct concession sites visits regularly?	X		LAX has dedicated staff that visits concession sites regularly and discusses concession activities with owners and employees. However, FAA staff recommends documenting these visits and has provided ACDBELO with a sample document.		X	None	
19	During the concession site visits, does the airport verify general managers and to whom they report?	X		LAX has dedicated staff that visits concession sites regularly and verifies this information.		X	None	
20	Does the airport verify that the ACDBE is actively managing the concession location(s)?	X		Dedicated staff verifies this requirement.		X	None	
21	Does the airport verify gross sales reports accounting for ACDBE participation?	X		Dedicated staff verifies this requirement.		X	None	
22	Does the airport submit its Uniform Report on ACDBE participation to the DOORS system?	X		Airport submits Uniform Reports annually.		X	None	
23	Has the airport received any complaints alleging that it was not complying with ACDBE regulations in the past three years?		X	Staff has not directly received any official complaints.		X	None	
24	Does the airport have any joint venture agreements currently in place? If YES, please answer the following:	X						
	Has the airport undertaken an internal review of its joint venture agreements, if any, in order to verify that they are in compliance with the FAA Joint Venture Guidance?	X		LAX has checked JV agreements for compliance with the FAA Joint Venture Guidance. AC DBELO and staff are formerly with LAX Concessions Department and are intimately aware of and personally conducted review of JV agreements.		X	None	
	Did the airport make any change in the counting of ACDBE participation of the joint venture toward ACDBE goals as a result of its joint venture agreement reviews findings?		X	LAX did not make any changes to counting of ACDBE participation of the JV agreements.		X	None	
25	Does the airport have Long Term (5+ years) and Exclusive contract(s) currently in place?	X		LAX does have long term exclusive contracts in place.		X	None	
26	If the airport has current Long Term and Exclusive contracts in place, were these contracts submitted to the FAA for approval?	X		Contracts were submitted to and approved by FAA in 2007.		X	None	

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		Y	N		Y	N		
27	Does the airport have an ACDBE mentor-protégé program?		X	LAX has not explored this option.		X	None	
28	Was the airport required to prepare and/or submit an ACDBE goal accountability report for fiscal year 2012?		X	LAX was not required to submit this report.		X	None	

Documents Reviewed:

- A. Airport organization chart, showing ACDBELO's position.
- B. Records documenting monitoring of contracts with ACDBE participation.
- C. Sample forms used to monitor monthly ACDBE participation.
- D. Copy of approved ACDBE Triennial Goal.
- E. Copy of ACDBE accomplishment reports for the most recent three years.
- F. List of all active concession contracts.
- G. List of all active concession contracts that have ACDBE participation, identifying ACDBE goal and actual contract percentage achieved to date.
- H. Copy of the top three revenue generating concession contracts.
- I. Copy of the top three revenue generating sub-concession agreements.
- J. Copy of the bottom three revenue generating sub-concession agreements
- K. Sample of an ACDBE sub-contract agreement.
- L. Copy of Long Term and Exclusive contracts and FAA Approval Letter.

REVIEW SUMMARY

The Federal Aviation Administration (FAA) Office of Civil Rights would like to thank you for your participation in the FY 2013 DBE & ACDBE Compliance Review. We appreciate the substantial effort taken by Los Angeles International Airport (Airport) in providing the numerous documents and meeting with the FAA team during this on-site visit. Your timely response and active participation was an essential element in the successful completion of this important initiative. The collective assessments made during the review have been incorporated into this report.

The FAA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub-recipients in order to provide technical assistance, note best practices, identify areas for improvement, and ensure program compliance. This review has examined the Airport's compliance with the DBE Program and ACDBE Program. Observations and comments have been registered in each area that was examined.

The objectives of the compliance reviews are not only to ensure compliance, identify areas requiring improvement, and provide technical assistance, but also to identify best practices in the Airport's administration of its DBE Program and ACDBE Program. In examining Airport forms and practices, Airport should be commended for taking proactive efforts to strengthen its program administration in the following areas:

Airport has a very effective mechanism of monitoring and evaluating concession activities using a Business Relations Manager (BRM). This position acts as a day-to-day liaison for concession owners, managers, and staff. Prime concessionaires and concession operators spoke very highly of the improvement in Airport's communication with concessionaires within the last five years. While conducting a concession site visit, led by BRM, it was apparent this individual was familiar with workers and owners by name. Concession operators shared their experiences of contacting BRM as a first line of communication for any airport issues.

Area(s) requiring your attention, if any, have been noted as a Compliance Issue under each specific question, and corrective must be taken by each set deadline. To supplement this year's review, we conducted focus group meetings with prime contractors, DBEs, master/prime concessionaires, as well as ACDBEs. The primary objective during these meetings was to evaluate the administration of the DBE and ACDBE program from the participants' perspective. We found that:

Participants felt strongly that the airport has improved direct communication with ACDBEs within the past five years. In the past, they felt relegated to "afterthought" status by the Airport in that communications to ACDBEs sometimes came from the Prime or not at all.

Prime Concessionaires felt the Airport has improved in its relationships with them by being more specific about expectations; encouraging new ACDBEs through multiple outreach programs; and, the compliance officer being more involved in the RFP process. ACDBEs felt Airport has been very proactive in unbundling packages during recent RFP processes. However, Part 26 participants also noted that the program could be improved by implementing a mentor-protégé program to teach firms new skills and more aggressive unbundling of projects.

Part 26 respondents also noted that the issuance of payments to subcontractors was more difficult because of the complexity of the Airport's payment processing system. It was recommended during the focus group sessions that the Airport implement a training program for subcontractors to clarify the airport's payment system. Part 23 and Part 26 respondents rated the Airport highly in its efforts to improve communication to all contractors and assist ACDBEs.

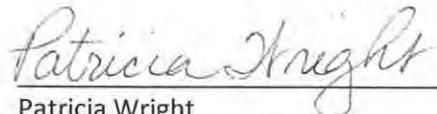
Neither group was aware of a formal complaint procedure that the Airport has implemented. We recommend establishing, communicating, and posting on Airport's website and elsewhere, a procedure for ACDBEs, DBEs or any contractor, supplier, etc., to follow for lodging a complaint.

Based on the above findings, we have designed specialized technical assistance to focus on the following areas of concern:

- Review of DBE and ACDBE Sample Documents to assist with development and submittal to FAA
- Offer of assistance to create a complaint procedure, if Airport deems it necessary
- Discuss potential for further unbundling of Part 26 projects
- Provide samples of documents to assist with enhancing programs' monitoring

The FAA Office of Civil Rights looks forward to continuing to work with you in ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs," and 49 CFR Part 23, "Participation of Disadvantaged Business Enterprise in Airport Concessions."

REPORT PREPARED BY:


Patricia Wright
Western-Pacific Region Compliance Specialist

4/17/13
Date


Ricky Watson
Northwest Mountain Region Compliance Specialist

4/17/13
Date

Recommended Resources:

FAA website, [http://www.faa.gov/about/office org/headquarters offices/acr/bus ent program/fed reg/](http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/fed_reg/)

FAA dbE-Connect System, <https://faa.dbesystem.com/Default.asp?>

U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization <http://www.osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/index.cfm>