

Long-Term, Exclusive Airport Concession Agreements: Draft Guidance Overview

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Purpose

- **Provide information and direction to sponsors, program staff, stakeholders, and all other interested parties on how to evaluate long-term and exclusive agreements in the ACDBE Program**
- **Assist sponsors in structuring their leasing activities so that ACDBEs have an opportunity to participate in airport concessions; it is not intended to obstruct airport concession business operations**



Reason for Guidance

- **The FAA wants to ensure that sponsors interpret and apply the rule in a consistent and correct way**
- **Clarify existing requirements and address existing and future concession agreements before they become more problematic**
- **There may be existing long-term, exclusive agreements without ACDBE participation for which FAA review has never been requested and these agreements raise compliance concerns**



Effective Date



- In order to comply with existing regulatory requirements, all sponsors should review the content and context of the guidance with any prime concessionaire that has a long-term, exclusive agreement and seek ways to include participation by ACDBEs, if none currently exists, as stated in § 23.75(c)(2)(ii)

Guidance Applicability



- **Applies only to long-term and exclusive leases with “non-ACDBEs” by sponsors whose concession revenues exceed \$200,000 annually averaged over three years; concession agreements that have ACDBE participation commensurate with local market availability and approved ACDBE goals are not subject to FAA review**

Concession

- **Any business located on an airport that is engaged in the sale of consumer goods or services to the general public via an agreement with the sponsor, another concessionaire, or owner/lessee of a terminal (if not the sponsor) is considered an airport concession**
- **Includes management contracts and subcontracts, web-based or other electronic businesses in a terminal or accessed at the terminal, goods and services contracts, and advertising**



Exclusive

- **Defined as an entire category of a particular business opportunity by a single business entity or a combination of business entities in a terminal, or at the entire airport, depending on the size of the airport**

Sample Categories

Lodging	Retail	Food Service	Dining Service
Advertising	Car Rental	Transportation	Parking

Long-Term Agreement

- **Defined as any agreement between a sponsor and a concessionaire or multiple concessionaires that is more than five years in length. More than five years includes any combination of base term and options (e.g., options to extend the term of the lease agreement, or to expand the scope of the agreement to a new section or terminal, or to enter into a new contract etc.) if the effect is a lease period of more than five years with a non-ACDBE or non-ACDBEs.**



Approving Requests

- **As outlined in § 23.75, in order to obtain FAA approval of a long-term and exclusive concession agreement, a sponsor should submit a written request together with the required information to the FAA Regional Office of Civil Rights**
- **The responsible FAA Regional Office of Civil Rights will promptly respond to the request**



Evaluation

- **Evaluating whether an agreement is “exclusive” requires examining the agreement with reference to both the category of concession covered (lodging, retail, advertising, parking, etc.), and the location of the concession (the entire airport or an entire terminal at an airport)**



Guidance Topic Areas

- **Goods and Services**
- **Multiple Terminals**
- **Short Term Agreements and Options**
- **Special Local Circumstances**
- **Obligations of Private Operators/Owners**
- **Good Faith Efforts**



Summary

- **Sponsors should not enter into long-term, exclusive agreements for concessions with non-ACDBEs, except as provided in § 23.75(b)**
- **Compliance with the DBE and ACDBE regulations are a condition of continued federal financial assistance**
- **Sponsors who are uncertain whether potential lease agreements would be long-term and exclusive in light of this guidance should contact the FAA for help with interpretation or in finding alternative means of compliance with the long-term and exclusive agreement requirements**



