



# ACDBE Goal-Setting (non-car rental)



**Federal Aviation  
Administration**

*Office Of Civil Rights*

*ACHIEVING SAFETY  
THROUGH DIVERSITY*

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# Presentation Disclaimer

- This presentation uses paraphrasing of the Regulation
- Please reference the actual Regulation, 49 CFR 23, for verbatim text



# Goal Setting and Implementation

- Purpose and Objectives of ACDBE  
Overall Concession Goal and Program  
Applicability
- Approaches to Calculate Goal
- Accountability Requirements

# Purpose/Objectives

## §23.1 What are the objectives of this part?

- Ensure nondiscrimination
- Create level playing field
- Ensure ACDBE program is narrowly tailored
- Ensure that only eligible firms participate as ACDBEs
- Remove barriers to the participation of ACDBEs
- Provide appropriate flexibility to airports in establishing and providing opportunities for ACDBEs

# What is a Concession?

- Engaged in sale of goods and/or services to the public or a business that provides goods and services to those businesses
- Even if no office, store or other type of location on the airport premises it may still be considered a concession IF activities take place at the airport
  - Advertising
  - Web-based or electronic businesses accessible at the airport
  - Businesses that provide goods and services to concessionaires

# What is a Concession?

- Simply deliver to or pick up passengers from the airport?

= *Not a concession*

- Presence on the airport (taxi dispatcher, limo ticket booth)?

= *Is a concession*

# Who is required to submit an Overall Goal?

## **§23.41 What is the basic overall goal requirement for recipients?**

(b) If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.

# Overall Goal

## **§23.51 How are a recipient's overall goals expressed and calculated?**

(a) Objective is to estimate percentage of base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

1. % of estimated ACDBE participation occurring if “level playing field” for firms to work as concessionaires for your airport.
2. Extent, if any, firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.
3. Complete goal-setting process separately for each of two overall goals (car rental and other-than-car rental).

# Overall Goal

## §23.51 How are a recipient's overall goals expressed and calculated? - continued

- (b)(1) Overall concessions goal must be based on demonstrable evidence of availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in ACDBE program
- (2) Cannot simply rely on 10 % national aspirational goal, previous overall goal, or past ACDBE participation rates without reference to relative availability of ACDBEs in your market
- (3) Market area is defined by geographical area in which substantial majority of firms seeking to do concessions business with airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. **Market area may be different for different types of concessions.**

# Direct Ownership Requirement

§23.25(f) Your ACDBE program **must** require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs

# What's Direct Ownership?

- Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm **owns and controls** a concession.

# Determine Base of ACDBE Goal

## Determine Your Objective

- 23.25(e)(1)(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a **direct ownership** arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

# Determine Base of ACDBE Goal

## Determine Your Objective

- 23.25(e)(1)(ii) If the goal applies to purchases and/or leases of **goods and services**, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

# Steps to Calculating the Overall Goal

## §23.51 How are a recipient's overall goals expressed and calculated? - continued

(c) *Step 1.* Begin goal setting process by determining base figure for relative availability of ACDBEs. Examples of approaches to take toward determining a base figure (not an exhaustive list):

- *Use DBE Directories and Census Bureau Data*
- *Use an Active Participants List*
- *Use data from a disparity study*
- *Use the goal of another recipient*
- *Alternative methods*

*[Discussed in detail in later slides]*

# Steps to Calculating the Overall Goal

## §23.51 How are a recipient's overall goals expressed and calculated? - continued

(d) *Step 2.* Once you have calculated base figure, examine all relevant evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at overall goal.

(1) Many types of evidence to be considered when adjusting base figure, including, but are not limited to:

(i) Current capacity of ACDBEs to perform work in your concessions program, as measured by volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.



## Step 1

# Approaches to Calculate the Non-Car Rental Concessions ACDBE Goal



# 5 Approaches to Calculate the ACDBE Goal

1. ACDBE Directory + Census Data
2. Active Participants List
3. Disparity Study Data
4. Goal from another Recipient
5. Alternative Methods



# Approaches to Calculate the ACDBE Goal

## 1. ACDBE Directory + Census Data

- Determine ready, willing, and able ACDBEs in your market area from the ACDBE Directory
- Determine ready, willing, and able all firms in your market area from the Census Data
- Determine all ready, willing, and able firms performing work under the same NAICS codes
- $\text{Number of ACDBEs} \div \text{Number of all firms} = \text{Base figure for relative availability}$



# 5 Approaches to Calculate the ACDBE Goal

## 2. Active Participants List

- Number of ACDBEs that have participated or attempted to participate
- Number of all businesses that have participated or attempted to participate
- Divide ACDBEs by all businesses to get base figure for relative availability

# 5 Approaches to Calculate the ACDBE Goal

## 3. Disparity Study Data

- ❑ Percentage figure derived from data in a valid, applicable disparity study.





# 5 Approaches to Calculate the DBE Goal

## 4. Goal from another Recipient

- Same or substantially similar market
- Goal can be used as base figure



# 5 Approaches to Calculate the DBE Goal

## 5. Alternative Methods

- ❑ Demonstrable evidence of local market conditions and designed to attain a goal rationally related to relative availability of ACDBEs in your market area

# Identify Method Selected

Be sure to identify which method you have selected to determine your base figure.





# Step 2

# Adjustment to Base Figure



# Step Two Adjustment: Things to Remember

- Do not mix/divide goods and services purchases by gross receipts
- Divide gross receipts by gross receipts or goods and services by goods and services

*Apples to Apples and Oranges to Oranges!*

- Continuing effects of past discrimination?  
Must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought



# Step Two Adjustment

Recipient must examine all available evidence and determine what adjustments, if any, are necessary

- Current capacity of ACDBEs to perform work as measured by volume of work ACDBEs have performed in recent years
- Evidence from disparity study (if not already accounted for in base figure)

**Step Two adjustment not required but if you don't, you must include an explanation.**

# Step Two Adjustment – cont'd.

- (2) If base figure is goal of another recipient, adjust it for differences in your market area and your concessions program.
- (3) If available, consider evidence from related fields affecting opportunities for ACDBEs to form, grow and compete; including, but not limited to:
  - (i) Statistical disparities in ability of ACDBEs to get financing, bonding and insurance required to participate in your program;
  - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

# Step Two Adjustment – cont'd.

(e) No requirement for prior FAA concurrence with overall goal number.

However, if FAA's review suggests overall goal has not been correctly calculated, or that method for calculating goals is inadequate, FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If additional time is needed to collect data or take other steps to develop an approach to setting overall goals, request approval of FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

- (1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and
- (2) Avoid imposing undue burdens on non-ACDBEs.



# Examples of What to Use for Step 2 Adjustment

## *Median Past ACDBE Participation (MPP)*

- Use median ACDBE participation data from past 3 to 5 years to demonstrate capacity (percentages)
- If MPP figure is very similar to Step One base figure, you are not required to make adjustment for past participation



# Step Two: Adjustment, cont'd.

## *Other Evidence*

- Information from disparity studies
  - Lack of access to financing
  - Statistical employment data
  - Other data affecting likely ACDBE participation, e.g., drastic changes in the economy



# Race-Neutral/Race-Conscious Breakdown

- Projection of Race-Neutral and Race-Conscious Participation
- Maximum Feasible Portion of Overall Goal using Race-Neutral Measures
  - Specify which race-neutral measures will be used
- **Must** Establish ACDBE Goals to Meet Remaining Portion of Goal

# Race-Conscious Measures

9<sup>th</sup> Circuit Recipients

*AK, AZ, CA, HI, ID, MT, NV, OR, WA*

**Does not apply to ACDBE Program.**



*Western States Paving Co. v. Washington Dept. of Transportation, 407 F. 3d 983 (9th Cir. 2005)*

# Race-Conscious Measures

- Race-Conscious measures:
  - Concession-specific goals for particular concession opportunities
    - If intent is to get ACDBE participation through direct ownership arrangement with ACDBE, calculate goal as percentage of total estimated annual gross receipts from concession
    - If goal applies to purchases of goods and services, calculate goal by dividing estimated dollar value of such purchases from ACDBEs by total estimated dollar value of all purchases to be made by concessionaire

# Race-Conscious Measures

- Race-Conscious measures, cont'd.:
  - Concession-specific goals for particular concession opportunities
    - Competitors must make GFE to meet goal
    - Administrative procedures of contract goals in 49 CFR 26.51-53 apply
  - Negotiation with potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in operation of the concession
  - Other methods, with prior FAA approval



# Goal Methodology Content?



# What Information Should I Include with my Overall Goal Submittal?

Description of methodology used to establish goal including:

- base figure and evidence calculated
- adjustments made to base figure and evidence relied on for adjustments
- summary listing of relevant available evidence in jurisdiction, and explanation of how you used that evidence to adjust base figure
- projection of portions of overall goal you expect to meet through R/N and R/C, respectively

# What Information Should I Include?

- Goal Amount - Discuss the proposed goal and identify the period. Note information you have excluded.

*Example #1: Recipient's overall goal for non-car rental concessions during the period beginning October 1, 20XX and ending September 30, 20XX is XX.X%. The goal is expressed as a percentage of the total estimated value of purchases of goods and services for non-car rental concessions at the Airport. The overall goal is expected to remain at the current percentage level for each of the fiscal years during the three-year period.*

*Previous 3-year average concession revenues are \$1M Over the next three years, the airport: – expects consistent revenue – estimates revenues to existing concessions will grow by 5% (e.g., inflation + increased passenger traffic) – does not anticipate major changes to increase or decrease concession revenue • Base for goal is \$1,050,000*

# What Information Should I Include? - cont'd.

- Background Information - Provide a general overview of the airport and the concession opportunities

*Example: Recipient is preparing to issue a Request for Proposal for ... It is anticipated that the # of contracts will be awarded for a term of X years. It is estimated that the non-car rental concessions will generate gross revenue in excess of \$XXX annually.*

*In accordance with the regulation regarding ACDBE participation in Airport Concessions, we have conducted research to determine an appropriate ACDBE goal for this opportunity.*

# What Information Should I Include? - cont'd.

- Disclose Existing non-car rental concessions, terms of contract, etc.

**CONCESSION GOALS**  
**GOAL PERIOD: FROM 10/01/2011 to 9/30/2014**

Concessionaire	Concession	Contract Commencement Date	Contract Termination Date
Host International	Central Food/Beverage	*11/14/11	11/13/21
McDonald's	Fast Food	2/15/12	2/14/22
Carl's Junior	Fast Food	*11/14/11	11/13/21
Hudson Group	News/Gift/Specialty - Terminals A & C	*11/14/11	11/13/21
Paradies Shops	News/Gift - Terminals B & C	*11/14/11	11/13/21
Rietkerk Enterprises, LLC dba Caterina's	Specialty Shop A	03/01/96	Mo-to-Mo
Creative Croissants	Specialty Shop B	03/01/96	Mo-to-Mo
Taste, Inc. dba Vino Volo	Specialty Shop C	07/20/11	07/19/16
Subway	Specialty Shop D	*11/14/11	11/13/16
Rietkerk Enterprises, LLC dba Caterina's	Specialty Shop E	*11/14/11	11/13/16
JCDecaux Airport, Inc.	Advertising	01/01/05	12/31/11
Smarte Carte	Luggage Cart	09/01/09	10/31/12
PTS Payphones	Telephones	06/24/03	06/30/11

# What Information Should I Include? - cont'd.

- **Market Area – Explain how the market area was identified? What sources did you use? How you determined the boundaries of the market area?**

Sample Language: Based on the opportunities we have determined that the market area for ... (type of opportunity) the purchase of goods and services is (list cities/counties/parishes, etc.



# What Information Should I Include? - cont'd.

- **Step 1 - What method did you use to determine the goal?**

Example: Given the fact that .... (state reason), we have elected to base the Non-Car Rental ACDBE goal on the (explain selection).

The regulation provides for counting ACDBE participation for car rentals as follows: (§23.53)

# What Information Should I Include? - cont'd.

- NAICS Code analysis: Make sure you are analyzing the correct NAICS codes.

Example: NAICS code analysis...

Table 5 – Adjusted Availability: Food & Beverage (Based on Active Participant List (APL)) FFY 12 – 14 Goal Period					
Identified Potential Concepts	NAICS Description	NAICS Code	% from APL	Est. Gross Revenue	ACDBE Gross
Casual Dining Restaurant	Full-service restaurant	722110	36.1%	\$11.9	\$4.30
Bar w/ Food	Drinking places (alcoholic beverages)	722410	41.2%	\$12.7	\$5.2
Gourmet Coffee w/ or without prepared foods and/or baked goods & Snack Food	Snack and nonalcoholic beverage bars	722213	55.0%	\$8.8	\$4.8
Gourmet Food Market	All other specialty food stores	445299	0.0%	\$1.9	\$0
Quick Service Restaurant & Café/Bistro	Limited-service restaurants	722211	48.0%	\$23.2	\$11.1
<b>Total Food &amp; Beverage</b>				<b>\$58.5</b>	<b>\$25.4</b>
<b>\$25.4 Million ÷ \$58.5 Million = 43.4%</b>					

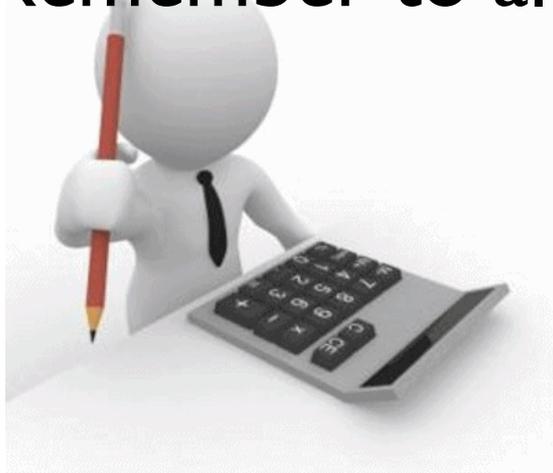
# What Information Should I Include? - cont'd.

## Sample NAICS code analysis...

<b>Table 6 - Adjusted Availability: Merchandise (Based on Active Participant List (APL)) FFY 12 - 14 Goal Period</b>					
<b>Identified Potential Concepts</b>	<b>NAICS Description</b>	<b>NAICS</b>	<b>% from APL</b>	<b>Est. Gross Revenue</b>	<b>ACDBE Gross</b>
Newsstand and Sundries	News dealers and newsstands	451212	60.0%	\$24.1	\$14.5
Spa Service	Other personal care services	812199	0.0%	\$1.3	\$0.0
Travel Items and Locally Themed Concept	Other general merchandise stores	452990	33.3%	\$1.3	\$.4
Electronics & Gadgets	Radio, television, and other electronics stores	443112	0.0%	\$2.7	\$0
Bookstore	Book stores	451211	57.1%	\$4.5	\$2.6
Apparel	Clothing and clothing accessories stores	448000	58.3%	\$1.8	\$1.0
Accessories and Leather Goods	Luggage and leather goods stores	448320	20.0%	\$1.3	\$.3
Sports Merchandise and Apparel	Sporting goods stores	445110	33.3%	\$.8	\$.3
Jewelry	Jewelry stores	448310	60.0%	\$1.2	\$.7
Children's Gifts and Toys	Hobby, toy, and game stores	451120	25.0%	\$.6	\$.2
Candy	Confectionery and nut stores	445292	50.0%	\$.3	\$.2
<b>Total Merchandise</b>				<b>\$35.7</b>	<b>\$20.2</b>
<b>\$20.2 Million + \$35.7 Million = 56.6%</b>					

# What Information Should I Include? - cont'd.

- Narrative portion should clearly discuss your calculations, assumptions, regulation references and requirements, etc.
- Remember to always show your work!





# Race-Neutral/Race-Conscious Breakdown

- Projection of Race-Neutral and Race-Conscious Participation
- Maximum Feasible Portion of Overall Goal using Race-Neutral Measures
  - Specify which race-neutral measures will be used
- **Must** Establish ACDBE Goals to Meet Remaining Portion of Goal

# Race-Neutral Measures

1. Locate and identify ACDBEs and other small businesses who may want to participate as concessionaires
2. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate
3. Structure concession activities to as to encourage and facilitate ACDBE participation
4. Provide technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing

# Race-Neutral Measures

5. Ensure competitors for opportunities are informed during pre-solicitation meetings about how ACDBE program will affect procurement process
6. Provide info to competitors concerning availability of ACDBE firms to assist them in obtaining ACDBE participation
7. Establish a business development program, technical assistance program or other steps to foster ACDBE participation in concessions



# Race-Conscious Measures

9<sup>th</sup> Circuit Recipients

*AK, AZ, CA, HI, ID, MT, NV, OR, WA*

**Does not apply to ACDBE Program.**

*Western States Paving Co. v.  
Washington Dept. of  
Transportation, 407 F. 3d 983  
(9th Cir. 2005)*



# Consultation

## Small Business Community and Stakeholder Engagement – **Requirement!** (§23.43)

- Minority organizations; women's groups; community organizations; trade associations representing concessionaires; existing concessionaires; other officials or organizations who might have info concerning availability of disadvantaged businesses, effects of discrimination on opportunities for ACDBEs, and your efforts to increase participation

# When is My Goal Due?

**49 CFR Part 23** Primary Airports -- 3-Year Overall **ACDBE Goals** DUE: **OCTOBER 1**

Airport Size	Region	Due	Period Covered	Next Goal Due
Non-Hubs	All	2013	2014/2015/2016	2016 (2017/2018/2019)
Large/Medium Hubs	All	2014	2015/2016/2017	2017 (2018/2019/2020)
Small Hubs	All	2015	2016/2017/2018	2018 (2019/2020/2021)

# ACDBE – Submittal Process

- No requirement to obtain prior FAA concurrence with overall goal
- If FAA's review suggests overall goal has not been correctly calculated, or that method for calculating goals is inadequate, FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

# ACDBE – Submittal Process

- Need additional time?
  - Request approval of FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:
    1. Reflect relative availability of ACDBEs in your market area to maximum extent feasible given the data available to you; and
    2. Avoid imposing undue burdens on non-ACDBEs



# New Concession Opportunity?

§23.45(i)

If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.



# Accountability Report (Shortfall Requirements)

- A recipient that does not meet its overall DBE or ACDBE goal **in any given year** must submit a written analysis to the FAA of **why the goal was not met** and **corrective measures** to be taken.
- Analyze reasons for difference between overall goal and awards/commitments in that year
- Establish specific steps to correct problems in order to fully meet goal for new fiscal year
- Timeframe: Okay to Turn in by March 29th

# Accountability Report (Shortfall Requirements)

- **Core 30 Airports**
- FAA Approval = In Compliance
- **All Other Airports** must analyze and prepare corrective action plan but do not have to submit to FAA. Maintain records for three years and make available to FAA, upon request
- FAA may require modifications to overall goal methodology: Changes to RC/RN projections or additional RC/RN measures



# ACDBE Shortfall Submission Dates: What If...

Your FY 2015-2017 is 20% Goal

**FY 2015**: Achieved 20% ACDBE Participation  
= No Shortfall Submission Required

**FY 2016**: Achieved 17.8% ACDBE  
Participation = **Shortfall Submission Required**

**FY 2017**: Achieved 19% ACDBE Participation  
= **Shortfall Submission Required**

# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures
- Concessions undertaken during the FY
- ACDBE participation on these projects
- Reasons for the Shortfall**



# Drafting a Corrective Action Plan: Elements

- ❑ **Specific Steps to Achieve Goal in Upcoming Fiscal Year**
- ❑ **Milestones for Implementing these Steps**





# Accountability Report (Shortfall Requirements)

Recipient is in non-compliance if **ANY** of the following occur:

- Does not submit analysis and corrective actions to FAA timely
- FAA disapproves of analysis or corrective actions
- Does not fully implement corrective actions or FAA's imposed conditions for acceptance

# Q & A

# Federal Aviation Administration-Office of Civil Rights

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/](http://www.faa.gov/about/office_org/headquarters_offices/acr/)

Office Of Civil Rights

ACHIEVING SAFETY  
THROUGH DIVERSITY



Federal Aviation  
Administration