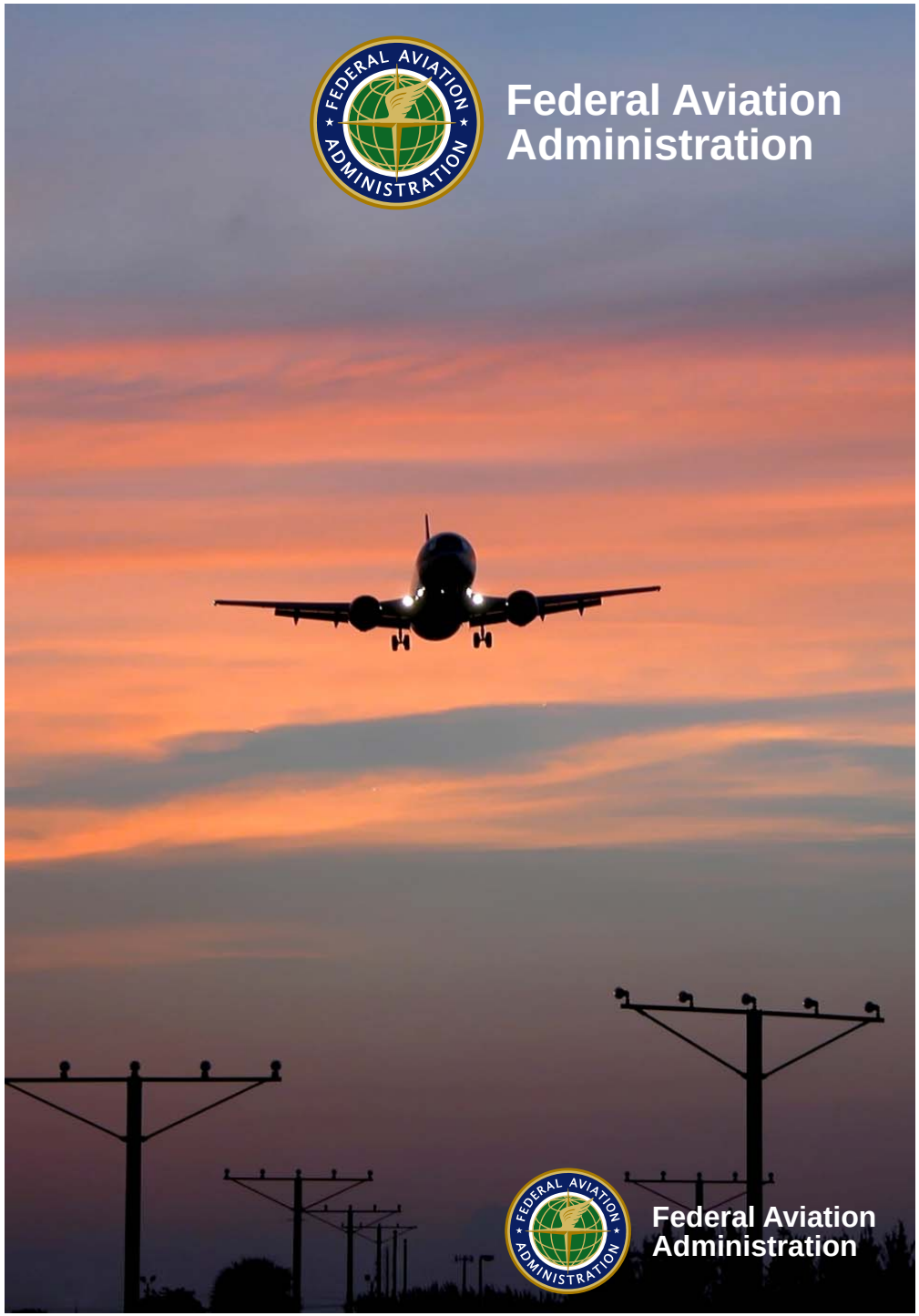
Civil Rights Requirements

ACDBE Program

Prepared for: 2018 Southwest Airport Conference

Presented by: Dolores Leyva
Office of Civil Rights
DBE/ACDBE Compliance Specialist
ASW

Date: January 31, 2018



What do these Terms Mean?

- **Definitions**
- **Airport Concessions DBE (ACDBE)**
  - 49 CFR Part 23 Subpart A – General
- **Disadvantaged Business Enterprise (DBE)**
  - 49 CFR Part 26 Subpart A – General

Training Objectives

- **Knowledge of the ACDBE program, goal and reporting requirements**
- **Understanding the role of a ACDBE Liaison Officer (ACDBELO)**
- **Identifying resources available**

What are the Objectives of the USDOT's ACDBE Program?

- **To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance**
- **To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions**
- **To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law**

What are the Objectives of the USDOT's ACDBE Program?

- **To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs**
- **To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance**
- **To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs**

What is the Role of the ACDBELO?

- **The ACDBELO is responsible for:**
  - Developing
  - Implementing and
  - Monitoring the ACDBE Program

In coordination with other appropriate officials

What is an ACDBE Program?

- **Written document that meets regulatory requirements of Part 23**
- **Explains how the Recipient will implement the ACDBE Program at its airport(s)**
- **Identifies the ACDBE Liaison Officer**

How does this Differ from the DBE Program?

- **Specific to airport concessions activities**
- **Primary airports <u>must</u> have ACDBE programs**
  - Non-primary airports must take appropriate outreach steps
- **Recipients establish two ACDBE Overall Goals**
  - Car rentals
  - Concession activities other than car rentals

What are some Key Points about the ACDBE Program?

- **Part 23 prohibits Long-Term, Exclusive (LTE) agreements with concessionaires**
  - Airport must seek FAA approval for LTE agreements prior to execution (see §23.75)
- **Joint ventures are common**
  - Count only the "distinct, clearly defined portion of the work…the ACDBE performs with its own forces"
- **Count 100% of goods provided by an ACDBE regular dealer**

What about ACDBE Goals?

- **Goals are set on a triennial basis**
- **Part 23 requires Recipients to set two distinct goals for the goal-setting period**
  - Concessions other than car rental
  - Car rental concessions
- **Car rental concessions goals most often based on goods & services purchases and expenditures**

ACDBE Overall Goals for Airport Grant Recipients:

Due by October 1

Airport Type	Region	Date Due	Period Covered
Large & Medium Hub Primary	All	2017	2018/2019/2020
Small Hub Primary	All	2018	2019/2020/2021
Non-Hub Primary	All	2019	2020/2021/2022

Who is required to submit an Overall Goal?

- **If your annual car rental concession revenues, 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 car rental overall goal.**
- **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.**

Base for ACDBE Goal

- **Total gross receipts of car rental operations at your airport**
- **Does not include gross receipts of other concessions**
- **Estimated participation if “level playing field” for firms to work as concessionaires**
- **Determine if firms in your market area have suffered discrimination with concession opportunities**

Direct Ownership Requirement

- **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 <u>gross receipts</u> from the concession.**
- **Cannot require car rental companies to change their corporate structure to provide for direct ownership arrangements.**

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.**

Market Area

Geographical area in which substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

Steps to Calculating the Overall Goal

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*

Steps to Calculating the Overall Goal

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, <u>to the extent it is not already accounted for in your base figure</u>.

Step 1

Approaches to Calculate the 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 the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes.*
- *Information about the CBP data base may be obtained from the Census Bureau at their Web site, http://www.census.gov/epcd/cbp/view/cbpview.html*

Relative Availability = (# of ACDBEs) ÷ (# of all businesses)

5 Approaches to Calculate the ACDBE Goal

2. Active Participants List

- Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years.

- Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years.

Relative Availability = (# of ACDBEs who have participated or attempted to participate) ÷ (# of all businesses)

5 Approaches to Calculate the ACDBE Goal

3. Disparity Study Data

Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

4. Goal from another Recipient

If another airport in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

5 Approaches to Calculate the DBE Goal

5. Alternative Methods

Methodology must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

Is it likely that all or most of the goal will be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs?

- Permissible Alternative - structure the goal entirely in terms of purchases of goods and services.

Availability = (Estimated $ value of purchases from ACDBEs) ÷ (Estimated $ value of all purchases to be made by car rental companies)

Identify Method Selected

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

Step 2 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 2 Adjustment: Things to Remember

- **Examine all relevant evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal**
- **If base figure is goal of another recipient, adjust it for differences in your market area and your concessions program**
- **If available, consider evidence from related fields affecting opportunities for ACDBEs to form, grow and compete**
- ***Past ACDBE Participation***

Step 2 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

- **Race-Conscious measures:**
  - Concession-specific goals for particular concession opportunities
  - Concession-specific goals for particular concession opportunities
  - Competitors must make GFE to meet goal (See Guidance)
  - Administrative procedures of contract goals in 49 CFR 26.51-53 apply

What Information Should I Include with my Overall Goal Submittal?

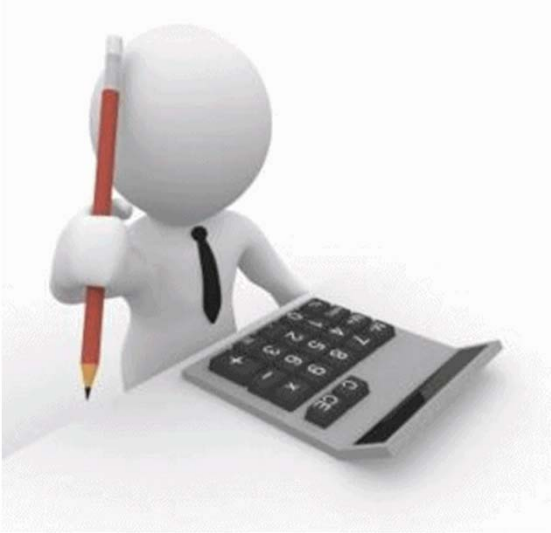
- **Description of methodology used to establish goal including:**
  - base figure and evidence calculated
  - adjustments made to base figure and evidence relied on for adjustments
  - summary listing of relevant available evidence in jurisdiction, and explanation of how you used that evidence to adjust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

What Information Should I Include? - cont'd.

- **Goal Amount- Discuss the proposed goal and identify the period. Note information you have excluded.**
- **Background - Provide a general overview of the airport and the concession opportunities**
- **Market Area – Explain how the market area was identified? What sources did you use? How you determined the boundaries of the market area?**

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!**



Consultation

Small Business Community and Stakeholder Engagement – Requirement!

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

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

Accountability Report (Shortfall Requirements)

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures
- Concessions undertaken during the FY
- ACDBE participation on these projects
- Reasons for the Shortfall
- Specific Steps to Achieve Goal in Upcoming Fiscal Year
- Milestones for Implementing these Steps

What is a Typical ACDBE Goal Submittal Timeline?

June 1

Identify Opportunities

July 1

Identify ACDBEs & Non-ACDBEs

July 30

Consultation Process

August 15

Publicize Goals

October 1

Last day to submit Goals

What is the Role of the ACDBELO in Developing, Implementing, and Monitoring the ACDBE Program?

Coordination!

Program development and goal-setting processes

- Solicitation and contract language requirements
- Ensuring appropriate monitoring is happening
- Ensuring prior FAA approval is sought for LTE agreements before execution
- Ensuring organization understands what is considered a concession for Part 23
- Contact person regarding program for FAA and community

What is the Role of the ACDBELO in Developing, Implementing, and Monitoring the ACDBE Program?

- **Report by March 1:**
  - Non Car Rental Cumulative ACDBE Participation
  - Non Car Rental New ACDBE Participation
  - Car Rental Cumulative ACDBE Participation
  - Car Rental New ACDBE Participation
- **List of Participating Certified ACDBEs**

Uniform Report of ACDBE Participation

UNIFORM REPORT OF ACDBE PARTICIPATION

"Please refer to the Instructions sheet for directions on filling out this form"

1. Name of Recipient:			
2. Contact Information: Preparer's Name: _____ Phone No. ( ) _____ Fax No. ( ) _____ email address: _____			
3a. Federal fiscal year in which reporting period falls:	FY ∫Oct. 1, to Sep. 30,	3b. Date This Report Submitted:	
4. Current Non-Car Rental ACDBE Goal:	Race Conscious Goal %	Race Neutral Goal %	ACDBE OVERALL Goal %

5. NON-CAR RENTAL CUMULATIVE ACDBE PARTICIPATION	A Total Dollars (Everyone)	B Total Number (Everyone)	C Total to ACDBEs (dollars) [E+F]	D Total to ACDBEs (number)	E Total to ACDBEs /Race Conscious (dollars)	F Total to ACDBEs/Race Neutral (dollars)	G Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Management Contracts							
Goods and Services							
Total Cumulative Non-Car Rental ACDBE Participation							

6. NON-CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD	A Total Dollars (Everyone)	B Total Number (Everyone)	C Total to ACDBEs (dollars) [E+F]	D Total to ACDBEs (number)	E Total to ACDBEs /Race Conscious (dollars)	F Total to ACDBEs/Race Neutral (dollars)	G Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Management Contracts							
Goods and Services							
Total Non-Car Rental New ACDBE Participation							

Uniform Report of ACDBE Participation

7. Current Car Rental ACDBE Goal:	Race Conscious Goal %	Race Neutral Goal %	ACDBE OVERALL Goal %				
	A	B	C	D	E	F	G
8. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs/Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Goods and Services							
Total Cumulative Car Rental ACDBE Participation							

Page 2

	A	B	C	D	E	F	G
9. CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs /Race Conscious (dollars)	Total to ACDBEs/Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
Prime Concessions							
Subconcessions							
Goods and Services							
Total Cumulative Car Rental New ACDBE Participation							

	A	B	C	D	E	F	G	H
10. CUMULATIVE ACDBE PARTICIPATION BY RACE/GENDER	Black Americans [numbers & dollars]	Hispanic Americans [numbers & dollars]	Asian-Pacific Americans [numbers & dollars]	Asian - Indian Americans [numbers & dollars]	Native Americans [numbers & dollars]	Non-Minority Women [numbers & dollars]	Other (i.e. not of any other group listed here) [numbers & dollars]	TOTALS [A+B+C+D+E+F+G] [numbers & dollars]
Car Rental								
Non-Car Rental								
Total Cumulative Race/Gender ACDBE Participation								

What *Resources* are Available for Developing, Implementing, and Monitoring the ACDBE Program?

- **Your CEO- You should have direct access!**
- Sample ACDBE Program
- Joint Venture Guidance
- Principles for Evaluating Long-Term, Exclusive Lease Agreements
- Car Rental Companies Good Faith Efforts Requirements
- Guidance for the Uniform Report
- Official Q&A's for Part 23
- ACDBE Goal Shortfall Analysis

FAA Regional Compliance Specialists

Region	Specialist	Phone	E-mail
Alaskan Region – *AK*	Sonia Cruz	310-725-3940	sonia.cruz@faa.gov
Central Region – *IA, KS, MO, NE*	Ofelia Medina	310-725-3945	ofelia.medina@faa.gov
Eastern Region – *DE, MD, NJ, NY, PA, VA, WV*	Alexander Horton	310-725-3947	alexander.horton@faa.gov
Great Lakes Region – *IL, IN, MI, MN, ND, OH, SD, WI*	Nancy Cibic	847-294-7182	nancy.cibic@faa.gov
New England Region – *CT, ME, MA, NH, RI, VT*	Thomas Knox	310-725-3942	thomas.knox@faa.gov
Northwest Mountain Region – *CO, ID, MT, OR, UT, WA, WY*	Sonia Cruz	310-725-3940	sonia.cruz@faa.gov
Southern Region – *AL, FL, GA, KY, MI, NC, SC, TN, Puerto Rico, Virgin Islands*	Keturah Pristell	404-305-5734	keturah.pristell@faa.gov
Southwest Region – *AR, LA, NM, OK, TX*	Dolores Leyva	310-725-3939	dolores.leyva@faa.gov
Western-Pacific Region – *American Samoa, AZ, CA, Guam, HI, NV*	Gene Roth	404-305-5256	gene.e.roth@faa.gov

Any questions?

The End