



Final Rule Update: Long-Term Exclusive

ACDBE Program Modification

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Topics Covered

- Changes to “Long-term agreements”
- Final Rule Changes and Impacts
- Implementation Guidance





LTE Definition

- According to the final rule a “long-term agreement” is defined as any agreement between a sponsor and a single concessionaire or multiple consecutive concessionaires that has a term of more than 10 years in duration. “More than ten 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 ten years.
- The previous guidance stated an LTE was more than 5 years but that has been updated to 10 years





Final Rule Changes and Impacts

Rule Changes

- Extends the term length from 5 years to 10 years including any combination of base term and options or holdovers to extend the term.
- Clarifies the meaning of the term "exclusive"
- Changes the requirement on when documentation is required to a two-step review process.
- Requires submission of long-term exclusive concession agreements that become long term as a result of a holdover tenancy to FAA at least 60 days prior to the expiration of the current lease term.

Impacts

- Reduces administrative burden for smaller hub airports, approximately 80 percent of primary airports.
- Eliminates confusion around the definition of exclusive
- Facilitates review process to meet industry practice
- Adds oversight over short-term agreements that become long-term because of holdover tenancies





Long-Term Exclusive (LTE) Agreements (§ 23.75) documentation requirements

- Designates new timeframes for **submitting documentation to FAA for approval**
 - 60 days before solicitation is released
 - 45 days before contract award
- LTE Agreements as a result of holdover tenancies are now due
 - 60 days prior to the expiration of the current lease term.



Long-Term Exclusive – Competitive Solicitation

- **Two-Step Review Process (§ 23.75 (c)):**
- **Step 1: Documentation required 60 days before solicitation**
 - A description of the special local circumstances
 - A copy of the solicitation
 - ACDBE contract goal analysis
- **Step 2: Documentation required 45 days before contract award**
 - Documentation that ACDBE participants are certified in the appropriate NAICS code
 - A general description of the type of business or businesses to be operated by the ACDBE
 - Information on the investment and any unusual management or financial arrangements between the prime concessionaire and ACDBE
 - Final long-term exclusive concession agreement, subleasing or other agreements



Long-Term Exclusive – Direct Negotiations

Documentation required 45 days before contract award (§ 23.75 (d))

- A description of the special local circumstances
- ACDBE contract goal analysis
- Documentation that ACDBE participants are certified in the appropriate NAICS code
- A general description of the type of business or businesses to be operated by the ACDBE
- Information on the investment and any unusual management or financial arrangements between the prime concessionaire and ACDBE
- Final long-term exclusive concession agreement, subleasing or other agreements





Holdover Plans

Holdover plan due at least 60 days (§ 23.75 (e))

- 1) A description of the special local circumstances that warrant the holdover
- 2) Anticipated date for renewal or re-bidding of the agreement
- 3) The method to be applied for renewal or re-bidding of the agreement
- 4) Submission of all documentation required before contract award or an explanation as to why the item is not available or cannot be submitted





Local Geographic Preferences (§ 23.79)

- Must **not** use a local geographic preference.
- A local geographic preference is any requirement that gives a **concessionaire** located in one place (e.g., your local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at your airport.



Overview of ACDBE Reporting Requirements as it pertains to LTE agreements

REPORTING REQUIREMENT	PRIOR RULE	2024 FINAL RULE MODIFICATION
Definition of “long-term” in LTEs	5 years	Extended to 10 years.
Submission of LTE Concession Agreements to FAA	No date	Competitive Solicitation - 60 days before solicitation is released/ 45 days before contract award Direct Negotiation - 45 days before contract award Holdover - 60 days prior to the expiration of the current lease term



Implementation Guidance Topics

Will the change from a five-year term to a ten-year term for long-term, exclusive (LTE) concessionaire agreements affect existing agreements?

Yes. Extending the definition of long-term from five-year term to a ten-year term will affect existing agreements. Long-term is now defined in the Final Rule as an LTE agreement having a term of more than ten years, including any combination of base term and options or holdovers that extend the term of the agreement if the effect is a term of more than ten years.





Implementation Guidance Topics (continued)

Will the change in the long-term, exclusive agreement term impact holdovers?

Yes. The Final Rule provides that exclusive leases, agreements, or contracts that become long-term as the result of a holdover, absent an approved plan to release a solicitation for that opportunity or to renegotiate the lease or contract, are generally prohibited. Holdover provisions of an airport lease typically allow the airport sponsor to extend the terms of an existing airport lease without execution of a new lease.





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Implementation Guidance Topics (continued)

What are the new oversight and compliance requirements for LTE agreements?

If an agreement becomes long-term and exclusive as a result of a holdover, airport recipients must submit a “holdover plan” to the FAA for approval at least 60 days prior to the expiration of the current contract, agreement or lease.





Resources

- **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/)
- **DBE and ACDBE Final Rule**
<https://www.transportation.gov/DBEFinalRulehttps://www.transportation.gov/mission/civil-rights/disadvantaged-business-enterprise/final-rule-overview>
- **Implementation Guidance for the Final Rule (Part 23)**
https://www.transportation.gov/sites/dot.gov/files/2024-04/Part%2023%20Implementation%20Guidance%204.9.2024_0.pdf





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QUESTIONS



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