

# 8<sup>th</sup> Annual FAA National Civil Rights Training Conference for Airports August 1-3, 2017



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

*Office of Civil Rights*

ACHIEVING SAFETY  
THROUGH DIVERSITY



**Federal Aviation  
Administration**

# **Car Rental ACDBE Program Requirements and Best Practices**

*Office Of Civil Rights*

*ACHIEVING SAFETY  
THROUGH DIVERSITY*

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**August 3, 2017**



# Presentation Disclaimer

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

# Topics To Be Covered:

- Goal setting
- Reporting
- Shortfall analysis
- Good faith effort requirements
- Best practices discussion

# Objective of Car Rental Goal

## **§23.51(a)**

Your objective in setting a goal is to estimate percentage of the base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

# Who is required to submit an Overall Goal?

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

(b) If your annual car rental concession revenues (not MAG), 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.

# Base for Car Rental Goal

## **§23.49 What is the base for a recipient's goal for car rentals?**

Except in the case where you use the alternative goal approach of §23.51(c)(5)(i)-(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

# Which Approach?

- Direct Ownership
- Goods and Services
- Other Methods?



# 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.

# Direct Ownership Requirement

- 49 U.S.C. § 47107(e)
- Car rental company must make a good faith effort to meet its ACDBE goal by exploring all options available to meet the goal to the maximum extent possible.
- Car rental company cannot be required to change its corporate structure to provide for direct ownership arrangements with ACDBEs to meet its ACDBE goal.

# Goods and Services Purchases

- All or most of the goal is likely to be met through the purchases of goods or services from ACDBEs?
- Calculate car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies. Contact your regional specialist for assistance with NAICS codes.

§23.51(c)(5)(ii)

# Other Methods

- You may use other methods to determine a base figure for your overall goal. Any methodology you choose 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. (§23.51(c)(5)(i))

# Determining Base of Goal – Gross Receipts

- If goal is based on gross receipts (total revenue of concession), the base of goal should be total gross receipts of car rental operations at your airport over the period that covers the goal.
- To calculate the base of the goal consider the previous three years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

# Determining Base of Goal – Gross Receipts

## Gross Receipts (Revenue) for Previous 3 Years

### ALL Car Rental Concessions

Fiscal Year	Car Rental Revenue	Increase
2014	9,860,234	
2015	10,222,345	3.7%
2016	11,089,000	8.5%

**Average yearly growth:  $3.7+8.5/2 = \text{Rounded } 6\%$**

# Determining Base of Goal – Gross Receipts

[*Recipient*] estimates that revenues to existing concessions will grow by 6% each year over the next three years due to [*inflation and increased passenger traffic or other reasons*].

**Example:**       $\$11,089,000 + 6\% = \$11,754,340$   
                      $\$11,754,340 + 6\% = \$12,459,600$   
                      $\$12,459,600 + 6\% = \$13,207,176$

$\$11,754,340 + \$12,459,600 + \$13,207,176 = \$37,431,416$  is the recipients base of goal for car rental revenue.

# Determining Base of Goal – Gross Receipts

[*Recipient*] does not anticipate any major changes that would increase or decrease concession revenues over next three years.

$$\text{\$11,089,000} \times 3 \text{ years} = \text{\$33,267,000}$$

**Therefore, the recipient's base of goal is the car rental revenue of \$33,267,000 .**



# Base of Goal: Alternative goal approach of §23.51(c)(5)(ii) – ALL Car Rental Goods and Services Purchases

<b>Fiscal Year</b>	<b>Purchases (Expenditures) Car Rental</b>	<b>Increase</b>
<b>2014</b>	<b>860,234</b>	
<b>2015</b>	<b>940,560</b>	<b>9.3%</b>
<b>2016</b>	<b>1,015,000</b>	<b>7.9%</b>

Average yearly growth:  $9.3+7.9/2$  = Rounded 9%

# Base of Goal: Alternative goal approach of §23.51(c)(5)(ii) – **Goods and Services Purchases**

The [*Recipient*] estimates that purchases will grow by 9% each year over the next three years due to [*increased passenger traffic or other reasons*].

**\$1,015,000 + 9% = \$1,106,350**

**\$1,106,350 + 9% = \$1,205,922**

**\$1,205,922 + 9% = \$1,314,455**

**\$1,106,350 + \$1,205,922 + \$ 1,314,455 = \$3,626,727**

**\$3,626,727 is the recipients base of goal for goods and services purchases.**

# Base of Goal: Alternative goal approach of §23.51(c)(5)(ii) – **Goods and Services Purchases**

The [*Recipient*] does not anticipate any major changes that would increase or decrease concession revenues over next three years.

$$\text{\$1,015,000} + \text{\$1,015,000} + \text{\$1,015,000} = \text{\$3,045,000}$$

**Therefore, the recipient's base of goal is the car rental goods and services purchases of \$3,045,000**



## Step 1

# Approaches to Calculate the Car Rental Concessions ACDBE Goal

# Five 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

# Five 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 County Business Patterns (CBP) data base may be obtained from Census Bureau at:  
<http://www.census.gov/epcd/cbp/view/cbpview.html>*

$$\text{Relative Availability} = (\# \text{ of ACDBEs} ) \div (\# \text{ of all businesses})$$

**\*Look to Relevant Data Sources to Supplement Your Directory.**

# Five 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)*

# Five 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.



# Five Approaches to Calculate the DBE Goal

## **4. Goal from another Recipient**

If another DOT Recipient 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.

# Five 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.

# Identify Method Selected

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



# Step 2

## Adjustment to Base Figure

# Step 2 Adjustment: Things to Remember

- Divide gross receipts by gross receipts or goods and services by goods and services

***Apples to Apples and Oranges to Oranges!***

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

- 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

- If the airport had 0% participation in past years, do not use 0% past participation to adjust the Step 1 goal.



# Step 2 Adjustment: Things to Remember

- An adjustment to Step 1 can be made based on outreach
- “We are adjusting the goal upward to \_\_\_\_ % based on potential outreach efforts to certified ACDBEs”

Note: You must rationally explain your adjustment in your methodology.



# Car Rental Goal Setting - Step 2

- Examine all relevant evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal
- You must consider:
  - Current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and
  - Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.



## Step 2, cont'd.

**If your Step 1 base figure is the goal of another recipient, you must adjust it in Step 2 for differences in your market area and your concessions program**



## Step 2, cont'd.

- If available, consider evidence from related fields affecting opportunities for ACDBEs to form, grow and compete, including:
  - Statistical disparities in ability of ACDBEs to get financing, bonding and insurance required to participate in your program;
  - 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 2, cont'd.

- If making adjustment to base figure to account for continuing effects of past discrimination, or effects of an ongoing ACDBE program, adjustment must be based on demonstrable **evidence** that is logically and directly related to the effect for which the adjustment is sought.



# 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

# 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
    - 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
    - If intent is to get ACDBE participation through a direct ownership arrangement with an ACDBE, calculate goal as percentage of total estimated gross receipts from concession

# Race-Conscious Measures

- Race-Conscious measures, cont'd.:
  - Concession-specific goals for particular concession opportunities
    - Car rental firms must make GFE to meet goal (See Guidance)
    - Administrative procedures of contract goals in 49 CFR 26.51-53 apply

# Race-Conscious Measures

9<sup>th</sup> Circuit Recipients

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

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

**Does not apply to ACDBE  
Program**





# 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 bidders for opportunities are informed during pre-solicitation meetings about how ACDBE program will affect procurement process
6. Provide info to bidders 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

# 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)

# Assistance - Car Rental Goals

- **Contact your regional compliance specialist for assistance**
- **Contact national car rental companies for assistance if needed:**
  - Avis and Budget: Lynn Boccio: [lynn.boccio@avisbudget.com](mailto:lynn.boccio@avisbudget.com)
  - Enterprise, National, and Alamo: Lee Lewis: [llewis@erac.com](mailto:llewis@erac.com)
  - Hertz: Sharon Griffin [sgriffin@hertz.com](mailto:sgriffin@hertz.com)

# Reporting - ACDBE Uniform Form

- 2017 Reports Due March 1, 2018
- Reporting for past fiscal year
- Future Enhancement to ACDBE Uniform Form in FAA Connect
  - Will allow you to identify whether goal is based on gross receipts or goods and services purchases
  - Must report gross receipts regardless of method chosen

# Reporting - ACDBE Uniform Form

<b>7A. Current Car Rental ACDBE Gross Receipts Car Rental Goal:</b>	Race Conscious Goal _____ %    Race Neutral Goal _____ %    ACDBE OVERALL Goal _____ %						
<b>7B. Current Car Rental ACDBE Goods and Services Purchases Goal:</b>	Race Conscious Goal _____ %    Race Neutral Goal _____ %    ACDBE OVERALL Goal _____ %						
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
<b>8A. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION</b>	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							

<b>8B. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION</b>	<b>Total Expenditure Dollars (Everyone)</b>	<b>Total Number (Everyone)</b>	<b>Total to ACDBEs (dollars) [E+F]</b>	<b>Total to ACDBEs (number)</b>	<b>Total to ACDBEs /Race Conscious (dollars)</b>	<b>Total to ACDBEs/Race Neutral (dollars)</b>	<b>Percentage of total dollars to ACDBEs [C/A]</b>
Goods and Services							
Total Cumulative Car Rental ACDBE Participation by Expenditures							

# Timeframe for Shortfall Analysis Submittal

**ACDBE 23.57** – April 1 (30 days after  
Uniform Form submittal)



# Accountability Report (Shortfall Requirements)

- A recipient that does not meet its overall ACDBE goal **in any given year** must prepare a written analysis of **why the goal was not met** and **corrective measures** to be taken to address shortfall.
- 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
- Core 30 airports must submit to FAA for review and approval. All others must keep on hand for three years.

# Good Faith Efforts Expectations - Airports

- Rigorously review quality, quantity and intensity of good faith efforts
- Review Part 26, Appendix A “Guidance Concerning Good Faith Efforts”
- Must comply with ACDBE program requirements or may result in finding of non-compliance by FAA



# Expectations – Car Rental Companies

Failure by car rental company to demonstrate sufficient good faith efforts may result in a finding of non-compliance with ACDBE program requirements and must be enforced by the airport. Airport could be found to be non-compliant if it is not enforcing good faith effort requirements.



# Best Practices Discussion

# Questions?



**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/)



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