

FAA Tips for Goal Shortfall Analyses and Corrective Measures in the Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) Programs

Pursuant to the DBE and ACDBE regulations, 49 CFR §26.47(c) and 49 CFR §23.57(b) (49 CFR §23 is applicable to primary airports only) respectively, if a Core Airport's or other Airport's as designated by FAA, annual Federal Fiscal Year DBE and/or ACDBE participation, as evidenced in its Uniform Report of DBE Awards/Commitments and Payments (Uniform Report) and/or Uniform Report of ACDBE Participation falls short of its overall DBE goal and/or ACDBE goals (both non-car and car rentals goals) in any given year, then the Airport must provide to the FAA Civil Rights Regional Office (see attached contact list) a detailed analysis of the reasons for the shortfall that includes specific steps it has established to meet the goal for the new Fiscal Year. Airports must submit this analysis and corrective measures, in the form of a report, to the FAA Civil Rights Regional Office within 90 days of the end of the Fiscal Year, or by the end of the calendar year.

This document is intended to provide the FAA Civil Rights Regional Offices and Airports with tips on what an analysis should consider and what corrective measures could include. Note that in order to correctly calculate the Airport's shortfall, it is essential that the Airport first review and determine that the information in its DBE and/or ACDBE Uniform Report is accurate.

Each Shortfall Analysis should, at a minimum, include:

- The difference between the overall goal and DBE and/or ACDBE participation achieved;
- The difference between the race-neutral projection and the race-neutral participation achieved, as indicated on the Uniform Report;
- The difference between the race-conscious projection and the race-conscious participation achieved, as indicated on the Uniform Report;
- Specific and credible reasons for the shortfall; and
- Corrective measures tied to each specific reason for the shortfall.

The FAA Civil Rights Regional Offices should collaborate with their respective regional Airports throughout the year to track ongoing DBE awards and commitments and ACDBE non-car and car rental participation at primary airports, the number of contract awards based on Good Faith Efforts, and the effectiveness of race-neutral measures. Before the end of the year, each Airport should have anticipated the reasons for the shortfall and have planned or partially executed corrective measures.

Below are some examples as to why an Airport may have a DBE and/or ACDBE participation shortfall. In its Shortfall Analysis, an Airport should present any of these or other reasons for its shortfall.

Potential Reasons for Race-Neutral Shortfall and Possible Corrective Actions

Reason for Shortfall: DBE and/or ACDBE participation on contracts without goals is not being tracked and/or not being reported.

Corrective Action: Start tracking missing data.

Reason for Shortfall: Post-initial DBE commitments are not being tracked and/or not being reported.

Corrective Action: Start tracking missing data.

Reason for Shortfall: The Airport is lacking race neutral measures, or the race neutral measures are ineffective.

Corrective Action: Enhance race neutral measures such as improving your Airport's Small Business Element, unbundling projects, outreach (such as a Workforce Development workshop), mandatory subcontracting, and mandatory pre-bid meetings.

Reasons for Race-Conscious Shortfall and Possible Corrective Actions

Reason for Shortfall: The Airport set contract goals below race-conscious projections, the Airport did not monitor goal attainment on an ongoing basis, and/or the Airport did not adjust the contract goals as necessary during the year.

Corrective Action: The Airport should adjust its contract goal setting process. It may consider expanding its list of sub-contractable items, having FAA approve contract goals, assessing the process for sub-recipient contract goals, and/or reporting monthly every awarded contract so that the FAA can determine whether the Airport should consider adjusting contract goals.

Reason for Shortfall: Too many contracts are let without contract goals, or goals are not included on design contracts.

Corrective Action: Begin considering appropriate goals on all contract types

Reason for Shortfall: A significant percentage of contract dollars are awarded based on Good Faith Efforts.

Corrective Action: If Good Faith Efforts are not being adequately evaluated, train staff to engage in meaningful evaluations of GFE, such as comparing DBE/non-DBE quotes and considering commitments of other bidders, and monitor improvements.