

## Supporting Statement A

### Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

12120-NEW

#### Summary

The Federal Aviation Administration (FAA) requests the Office of Management and Budget's (OMB) approval of a new information collection. A review by the Department of Transportation (Department/DOT) identified various aspects of the Airport Concession Disadvantaged Business Enterprise (ACDBE) program that have existed as requirements for a long period of time, several decades in some cases, that contain collections of information that have not yet received OMB approval.

**1. Circumstances that make the collection of information necessary.** The Airport Concession Disadvantaged Business Enterprise (ACDBE) program is mandated by statute, including the FAA Reauthorization Act of 2018 (**Public Law Number 115-254**) and **49 U.S.C. 47113** and **49 U.S.C. 47107**.

**Public Law Number 115-254**, provides among other requirements, congressional findings of a strong basis that there is a compelling need for the continuation of the airport disadvantaged business enterprise (DBE) program and the ACDBE program to address race and gender discrimination in airport related business.

Title 49, United States Code, Section **47107 and 47113**, empowers the Secretary of Transportation to approve project grant applications for airport development projects only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individuals (as defined in section 47113(a) of this title).

Title 49, Code of Federal Regulations, **part 23** (49 CFR part 23) prescribes, among other things, rules concerning participation by airport concessionaire disadvantaged business enterprises (ACDBEs) in the concessions activities of airports receiving Federal financial assistance from the airport improvement program (AIP) of the Federal Aviation Administration (FAA):

#### **Subpart B – ACDBE Programs**

§ 23.21, Who must submit an ACDBE program to FAA, and when?

§ 23.27, What information does a recipient have to retain and report about implementation of its ACDBE program?

§ 23.29, What monitoring and compliance procedures must recipients follow?

#### **Subpart D – Goals, Good Faith Efforts, and Counting**

§ 23.45, What are the requirements for submitting overall goal information to the FAA?

§ 23.57, What happens if a recipient falls short of meeting its overall goals?

### **Subpart E – Other Provisions**

§ 23.75, Can recipients enter into long-term, exclusive agreements with concessionaires?

### **49 CFR Appendix A to Part 23 - Uniform Report of ACDBE Participation**

This collection activity supports DOT’s strategic goal of supporting and engaging people and communities to promote safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation related disparities, adverse community impacts, and health effects.

**2. How, by whom, and for what purpose the information is to be used.** Respondents to this collection are primary airport recipients of FAA financial assistance.

Respondents submit information using the FAA Civil Rights Connect System (FAA Connect). FAA Connect is an electronic web-based FAA Office of Civil Rights external programs information system. FAA Connect has been developed as one centralized resource for the Disadvantaged Business Enterprise (DBE), Airport Concessions DBE (ACDBE), Title VI, and Americans with Disabilities Act (ADA) Programs records. FAA Connect provides a personal Dashboard identifying user’s (respondent’s) account program assignments and statuses and includes guidance and training information under Alerts and Training (also available on the home screen). The structure of the system includes an airport file (Airports) containing sections including DBE/ACDBE Programs, Goals (including a Goal Setting Tool) and Uniform Form Reports, Title VI, ADA, Compliance Reviews, Complaints, Inquiries, and Online Compliance Assessments to assist you with checking your airport’s compliance. The system also includes a Document Vault and a Help Desk. FAA Connect is located at:

<https://faa.civilrightsconnect.com/FAA/login.asp>.

Reference attached **FAA Civil Rights Connect Airport User Guide**.

This information includes the following information collection instruments:

#### **A. Submission of ACDBE program plan to the FAA – Reporting Requirement**

49 CFR 23.21 requires respondents to submit an ACDBE program to the FAA for approval. Paragraph (d) of section 23.21 requires recipients that make any significant changes to their ACDBE programs to provide an amended program to the FAA for approval before implementing the changes. Respondents submit their ACDBE programs electronically by entering a brief program narrative and uploading their programs into FAA Connect. The FAA evaluates submitted ACDBE programs to determine whether they include all the provisions and measures required by the regulation. ACDBE programs submitted by respondents are used by the FAA to determine whether they meet the conditions of eligibility for FAA financial assistance.

#### **B. Annual report on ACDBE participation – Reporting Requirement**

49 CFR 23.27 requires respondents with approved ACDBE programs to submit a “Uniform Report of ACDBE Participation” (Uniform Report) each year, by March 1. Respondents

submit Uniform Reports electronically by entering the following information requested in the 49 CFR Appendix A to Part 23 - Uniform Report of ACDBE Participation into FAA Connect:

- Overall percentage goals of ACDBE participation and their race-conscious (RC) and race-neutral (RN) components;
- New and continuing car rental concession opportunities and activity under the ACDBE program during the reporting period;
- Total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services at the airport;
- Number of lease agreements, contracts, etc., in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services;
- Total gross revenues in each participation category for ACDBEs;
- Total gross revenues attributable to race-conscious and race-neutral measures, respectively;
- Overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it; and
- The following information for each ACDBE firm participating in the ACDBE program during the period: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of the agreement, including options to renew; (4) Dates that material amendments have been or will be made to the agreement (if known); and (5) Estimated gross receipts for the firm during the reporting period.

The information collected from Uniform Reports assists the FAA in conducting program oversight of recipients' ACDBE programs, identifying trends or problem areas in the program, and ensuring that the ACDBE program is achieving its goal of encouraging ACDBE participation in concession-related opportunities.

### **C. Monitoring and compliance procedures – Recordkeeping Requirement**

49 CFR 23.29 requires respondents to include in their ACDBE programs specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means the recipient uses to ensure compliance.

Respondents implement these monitoring and enforcement mechanisms to verify that the work committed to ACDBEs is actually performed by the ACDBEs. These mechanisms must include a written certification that recipients reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements, and monitored the work on-site at their airport for this purpose.

Respondents are required per **49 CFR 23.27** to keep record of all written certifications, contracts, site-visits and other related documents, for a minimum of three years following the end of a concession agreement or other covered contract. The FAA evaluates this information via compliance reviews and investigations to determine whether respondents have the appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program.

#### **D. Submit overall goal information to the FAA – Reporting Requirement**

49 CFR 23.45 requires respondents to set and submit to the FAA an overall goal for ACDBE participation in concession opportunities every three years. These goals must be narrowly tailored specific to its market area. Subparagraph (d)(5) of section 23.51 requires respondents to include with their overall goal submission a description of the methodology they used to establish the goal; a projection of the portions of the overall goal that they expect to meet through race-neutral and race-conscious means, respectively; and the basis for the projection. Respondents electronically submit their overall ACDBE goals by entering a brief narrative and uploading their goal methodologies to FAA Connect.

The FAA reviews the goal setting methodologies, submitted by respondents triennially, to ensure that they are developed consistent with regulatory requirements and DOT official guidance.

#### **E. Shortfalls in meeting the overall ACDBE goals – Reporting and Recordkeeping Requirement**

49 CFR 23.57 requires respondents to submit or retain an analysis and corrective actions (shortfall analysis) if the awards and commitments shown on their Uniform Report at the end of any fiscal year are less than the overall goal applicable to that fiscal year. Respondents must submit or retain a shortfall analysis to be regarded by the Department as implementing their ACDBE program in good faith.

- i. Respondents consisting of CORE 30 airports or other airports designated by the FAA to submit, within 90 days of the end of the fiscal year, an analysis and corrective actions to the FAA for approval. These respondents may submit their shortfall analyses with their annual Uniform Reports in FAA Connect, or separately, by submitting it to their FAA regional specialist within 90 days of the end of the fiscal year.
- ii. Respondents that are not a CORE 30 airport must retain the shortfall analysis in their records for three years and make them available to the FAA, on request, for their review.

The FAA evaluates shortfall analyses to determine whether respondents are compliant with the requirements of Part 23 and therefore subject to the remedies in § 23.11 and other applicable regulations, for failing to implement their ACDBE programs in good faith.

#### **F. Approval of long-term, exclusive (LTE) agreements – Reporting Requirement**

49 CFR 23.75 requires respondents to submit certain documentation and information to the FAA to obtain approval to enter into long-term exclusive (LTE) agreements for concessions. LTE Agreements are generally prohibited under the regulation to limit the situation where an entire category of business activity is not subject to competition for an extended period of time through the use of a LTE agreement. However, respondents may enter into LTE

agreements if special local circumstances exist that warrant a LTE agreement and the FAA approves its plan.

Currently, respondents submit their LTE agreements to their FAA regional specialist for approval and specialist uploads the agreement to FAA Connect. FAA Connect is being updated to accept LTE agreements, and when available the FAA Civil Rights Connect Airport User Guide, will be updated with instructions for respondents to upload the information.

Paragraph (c) of section 23.75 lists the information and documents that respondents must provide in order to enter into LTE agreements:

- A description of the special local circumstances that warrant a long-term, exclusive agreement;
- A copy of the draft and final leasing and subleasing or other agreements with specific provisions;
- Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership;
- Documentation that ACDBE participants are properly certified;
- A description of the type of business or businesses to be operated e.g., location, storage and delivery space, “back-of-the-house facilities” such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed;
- Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE; and
- Information on the estimated gross receipts and net profit to be earned by the ACDBE.

The collection of information under this section is necessary for FAA to carry out oversight responsibilities in determining whether special local circumstances warrant approval of an LTE agreement.

Responding to any part of this collection is required to obtain or retain a benefit (i.e., to receive Federal financial assistance for airport development projects).

### **3. Extent of automated information collection.**

FAA permits electronic submissions so that respondents have as much flexibility as possible in deciding how to collect, maintain, share, and submit information, as they are in the best position to decide what is least burdensome and most efficient for them. Respondents submit information using the FAA Civil Rights Connect System (FAA Connect). FAA Connect is an electronic web-based FAA Office of Civil Rights external programs information system. FAA Connect is located at: <https://faa.civilrightsconnect.com/FAA/login.asp>.

### **4. Describe efforts to identify duplication.**

The information in each of the collection instruments in this supporting statement is unique and is not available elsewhere because no other agency, including the SBA, administers an ACDBE program. Some firms already have SBA 8(a) certification when they apply for ACDBE certification. However, 8(a) program's information submission and eligibility requirements are not identical.

#### **5. Efforts to minimize the burden on small business.**

None of this collection instruments impose burden on small business.

#### **6. Impact of less frequent collection of information.**

The ACDBE program's overarching goal is to ensure nondiscrimination and create equity in the award and administration of opportunities for concessions by airports receiving FAA financial assistance. Each item below is a necessary element of the program that involves an information collection. The information collections described in this supporting statement are necessary to ensure primary airports carry out their mandated responsibility to provide a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. Eliminating these collection instruments and/or conducting them less frequently would hinder the Department's compliance and oversight efforts necessary to ensure goal of nondiscrimination and equity.

#### **7. Explain any special circumstances.**

49 CFR 23.75 (a) prohibits respondents from entering into "LTE for concessions without prior FAA approval. A recipient may have to collect information required by this section on a more frequent basis than quarterly if it intends to enter into more than one long-term, exclusive agreements for concessions per year. Doing it less than quarterly would hinder the Department's compliance necessary to ensure the goal of nondiscrimination and equity.

#### **8. Compliance with 5 CFR section 1320.8(d).**

The FAA published the following Federal Register Notices requesting public comment on the information collection:

- A 60-day was published on October 25, 2021, 86 FR 58999-59002.
- A 30-day Notice on March 18, 2022, 87 FR 15484-15487.

No public comments were received in response to either notice.

After publishing the 30-day Notice, the FAA found some errors in the calculations and information presented, which resulted in a lower burden estimate. The FAA published a correction to the 30-day notice on April 18, 2022, 87 FR 15484.

To further obtain the views of persons outside the agency, the FAA contacted fewer than 10 recipients and asked them specific questions about their experiences about the instruments described in this supporting statement.

## 9. Payments or gifts to respondents.

FAA does not provide any payment or gift to respondents.

## 10. Assurance of confidentiality.

49 CFR 23.11 establishes that the compliance and enforcement provisions of 49 CFR 26.109 apply to part 23 in the same way that they apply to FAA recipients and programs under part 26. As a result, FAA recipients must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for ACDBE certification and supporting information. However, FAA recipients must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.”

## 11. Justification for collection of sensitive information.

None of these collection instruments ask for sensitive information.

## 12. Provide estimates of the hour burden of the collection of information.

The Department coordinated efforts with the FAA to obtain burden estimates from a small number of respondents. The hour burden on respondents varies widely for multiple reasons. For example, some respondents have more staff/employees than others; some might have a staff of 25 while others have only 2 employees.

There are approximately 396 respondents to this collection overall, who are primary airport recipients of FAA financial assistance.

The average reporting burden is 43 hours per response (40,703 reporting hours/950 responses). This burden average will be displayed on the FAA Connect website.

### Burden Summary

SUMMARY	A. Program Approval (Reporting)	B. Annual Report (Reporting)	C. Monitoring & Compliance (Recordkeeping)	D. Goals (Reporting)	E.i. Shortfalls (Reporting)	E.ii. Shortfalls (Recordkeeping)	F. LTE Approval (Reporting)	Totals
# of Respondents (annually)	396	396	396	396/3	19	120	7	396
Responses per respondent	1	1	36	1	1	1	1	--
Total # of Responses	396	396	14, 256	132	19	120	7	15,326
Time per Response (hours)	28	56	153	53	21	21	6.25	---
Hour Burden (hours)	11,088	22,176	2,181,168	6,996	399	2,520	44	<b>2,224,391</b>
Cost Burden	\$552,515	\$1,105,030	\$108,687,601	\$348,611	\$19,882	\$125,572	\$2,180	<b>\$110,841,391</b>

### Details of Burden Estimates

#### A. Submission of ACDBE Program to the FAA – Reporting Requirement

The FAA received total annual burden hour estimates from eight respondents, two of each hub size (nonhub, small, medium and large), ranging from 19 to 40 hours. The average burden hour per recipient response, based on the information received from the eight respondents, is 28 hours. The FAA calculated the total annual cost burden by multiplying the total annual burden hours (28 hours × 396 responses) against the fully loaded state government wage rate of \$49.83.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 396.

*Frequency:* Once, unless the recipient makes a significant change to its ACDBE program and is required to submit an amended program to the FAA for approval.

*Number of Responses:* 396.

*Total Annual Burden Hours:* 11,088 hours

*Total Annual Burden Costs:* \$552,515.04.

### **B. Annual Report on ACBE Participation – Reporting Requirement**

The FAA received total annual burden hours from eight respondents, two of each hub size (nonhub, small, medium and large), ranging from 15 to 96 hours. The average burden hour per response based on the information received from the eight respondents, is 56 hours. The FAA estimated the total annual cost burden by multiplying the total annual burden hours (56 hours × 396 responses = 22,176) against the fully loaded state government wage rate of \$49.83.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 396.

*Frequency:* Once per year.

*Number of Responses:* 396.

*Total Annual Burden Hours:* 22,176 hours.

*Total Annual Burden Costs:* \$1,105,030.08.

### **C. Monitoring and Compliance Procedures – Recordkeeping Requirement**

The FAA received total annual burden hours from eight respondents, two of each hub size (nonhub, small, medium and large), ranging from 0 to 416 hours. The annual burden hours for this requirement can be zero if a recipient does not have any concessions or any ACDBE participation to monitor. The average burden hour per response, based on the information received from the eight respondents, is 153 hours. The FAA believes these estimates, and in particular the higher estimates, included burden hours for customary and usual business practices rather than burden hours for the paperwork-specific requirements. However, the FAA did not receive any comments on these wide-ranging estimates from the publication of either its 60-day or 30-day notices. Notwithstanding the unreasonably high burden estimates provided, the FAA will use the average of these estimates (153 hours) for its total annual burden hour and costs calculations.



Accordingly, the FAA estimated the total annual cost burden by multiplying the total annual burden hours (153 hours × 14,256 responses = 2,181,168) against the fully loaded state government wage rate of \$49.83.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 396.

*Frequency:* 36 times per year (3 times per month).

*Number of Responses:* 14,256.

*Total Annual Burden Hours:* 2,181,168 hours;

*Total Annual Burden Costs:* \$108,687,601.44.

#### **D. Submit Overall Goal Information to the FAA – Reporting Requirement**

The FAA received total annual burden hours from eight respondents, two of each hub size (nonhub, small, medium and large), ranging from 1 to 120 hours. The average burden hour per response, based on the information received from the eight respondents, is 53 hours. The FAA divided the total number of respondents subject to the requirement by three (396 / 3) to reflect that ACDBE overall goals are submitted on a triennial basis. Thus, approximately 132 respondents are required to report ACDBE overall goal information to the FAA each year. Accordingly, the FAA estimated the total annual cost burden by multiplying the total annual burden hours (53 hours × 132 responses = 6,996) against the fully loaded state government wage rate of \$49.83.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 396 / 3.

*Frequency:* Annually.

*Number of Responses:* 132.

*Total Annual Burden Hours:* 6,996 hours.

*Total Annual Burden Costs:* \$348,610.68

#### **E. Shortfalls in Meeting Overall ACDBE Goals – Reporting and Recordkeeping Requirement**

The total annual number of respondents to this collection under 49 CFR 23.57 is approximately 19 CORE 30 airports and 120 airports other than the CORE 30, totaling approximately 129 responses (19 reporting responses and 120 recordkeeping responses).

The FAA estimates 19 respondents are subject to reporting shortfall analyses and corrective actions each year and 120 respondents are subject to retaining shortfall analyses and corrective actions each year. This estimate is derived from the number of airport recipients whose ACDBE awards and commitments shown on their Uniform Report of ACDBE Participation were less than their overall goals for fiscal year 2020.

The FAA surveyed eight respondents, two of each hub size (nonhub, small, medium and large), for burden hour estimates. Of the eight, the FAA received responses from only two

respondents, one small hub airport and another medium hub size airport. The burden hour estimates received from these two respondents ranged from 2 to 40 hours, providing an average burden hour per response of 21 hours.

The total annual time burden for this collection is approximately 2,730 hours (420 reporting hours + 2,310 recordkeeping hours).

i. Reporting Requirement – CORE 30 Airports

The total estimated reporting burden under § 23.57(b)(3)(i) as described in this collection includes 19 respondents, 19 responses, and 399 hours annually, with an estimated cost of \$19,882.17.

ii. Recordkeeping – (Non-CORE 30 Airports)

The total estimated recordkeeping burden under § 23.57(b)(3)(ii) as described in this collection includes 120 respondents, 120 responses, and 2,520 hours annually, with an estimated cost of \$125,571.60.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 129.

*Frequency:* Annually depending on if the awards and commitments shown on a recipient's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year.

*Number of Responses:* 129.

*Total Annual Burden Hours:* 2,919 hours.

*Total Annual Burden Costs:* \$145,453.77.

## **F. Approval of LTE Agreements**

The FAA estimates seven respondents are required to submit LTE agreements to FAA for approval under § 23.75(c) each year. This estimate is derived from the total number of respondents (7) from whom the FAA received LTE agreements in fiscal year 2020.

The FAA received total annual burden hours from eight respondents, two of each hub size (nonhub, small, medium and large), ranging from 0 to 20 hours. The average burden hour per response, based on the information received from the eight respondents, is 6.25 hours. The FAA estimated the total annual cost burden by multiplying the total annual burden hours (6.25 hours × 7 responses = 43.75) against the fully loaded state government wage rate of \$49.83.

*Respondents:* Recipients of FAA grants for Airport Development.

*Number of Respondents:* 7.

*Frequency:* Annually depending on the number of leases and/or contracts with prime concessionaires that are long-term exclusive agreements and require FAA approval.

*Number of Responses:* 7.

*Total Annual Burden Hours: 43.75 hours.*

*Total Annual Burden Costs: \$2,180.06.*

### **Labor Cost Analysis**

Recipient staff hourly wage rate is rate taken from Bureau of Labor and Statistics' (BLS's) estimate of median wages for employees in “Business and Financial Operations Occupations” (SOC 13-000) working in “State Government, excluding schools and hospitals” (NAICS 999200) at [https://www.bls.gov/oes/current/naics4\\_999200.htm#13-0000](https://www.bls.gov/oes/current/naics4_999200.htm#13-0000). The wage rate (\$30.76/hour) is multiplied by 1.62 to get a fully loaded wage rate (compensation rate) of \$49.83 to account for the cost of employer provided benefits.

### **13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.**

There are no additional startup costs related to the collection of information, not already covered in question 12.

### **14. Estimates of costs to the Federal Government.**

The table below provides estimates of the annualized cost to the federal government. FAA employees who are involved with the ACDBE program **Equal Opportunity Specialists**, and are located throughout the United States including Los Angeles, CA, Washington, D.C., and New York, NY. To measure the burden on the federal government, this analysis estimates an FAA employee’s wage rate based on the average minimum and maximum wage rate of the 2021 ‘Core Compensation Plan Pay Band I’ wage rate for these geographical locations.

The average hourly compensation rate for a Specialist who works on the ACDBE program is \$53.91. Including a compensation factor of 1.75, the FAA employee’s compensation rate is **\$99.77**.

COLLECTION INSTRUMENT	ESTIMATED REVIEW TIME PER RESPONSE	ESTIMATED ANNUALIZED HOURS BURDEN	ESTIMATED ANNUALIZED COST BURDEN
1. Submission of ACDBE Program to the FAA	12 hours	4,752 hours	\$474,107
2. Annual Report on ACDBE Participation	2 hours	792 hours	\$79,018
3. Monitoring and Compliance Procedures	12 hours	384 hours	\$38,312
4. Requirements for Submitting Overall Goal Information to the FAA	3 hours	652 hours	\$65,050
5. Requirements Relating to Shortfalls in Meeting Overall ACDBE Goals	1 hours	9 hours	\$898
6. Requirements Relating to Approval of Long-Term, Exclusive (LTE) Agreements	1 hour	396 hours	\$39,509

		6,985 hours	<b>\$696,893</b>
--	--	-------------	------------------

**15. Explanation of program changes or adjustments.**

This is a request for a new collection of information approval. There are no program changes or adjustments.

**16. Publication of results of data collection.**

The FAA makes the information available upon request and shares limited subsets of the information from each program during training or presentations.

**17. Approval for not displaying the expiration date of OMB approval.**

FAA is not seeking this approval.

**18. Exceptions to the certification statement.**

None of the information collections in this supporting statement have such an exception.