

Title 49 - Transportation

Subtitle A - Office of the Secretary of Transportation

Part 23 - Participation of Disadvantaged Business Enterprise in Airport Concessions

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

Source: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

Subpart E - Other Provisions

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

- (a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.
- (b) You may enter into a long-term, exclusive concession agreement only under the following conditions:
 - (1) Special local circumstances exist that make it important to enter such agreement, and
 - (2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.
- (c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:
 - (1) A description of the special local circumstances that warrant a long-term, exclusive agreement.
 - (2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:
 - (i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§ 23.47 through 23.49 of this part.
 - (ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.
 - (iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.
 - (3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.
 - (4) Documentation that ACDBE participants are properly certified.
 - (5) 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).
 - (6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.
 - (7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

