

Key West International Airport



ACDBE Program & Policies
April 23, 2018



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ACDBE PROGRAM & POLICIES
KEY WEST INTERNATIONAL AIRPORT

ACDBE GOAL PROCESS & POLICY

The Key West International Airport (The Airport) establishes separate overall three-year goals for the participation of Airport Concession Disadvantage Business Enterprise (ACDBE) in rental car and non-rental car concession-related contracting opportunities pursuant to CFR 49 Part 23 Regulations. The overall goal covers a three-year period and the Key West International Airport reviews the goals annually to make sure the goals continue to fit the Airport's circumstances. The Key West International Airport's overall goals provide for participation by certified ACDBEs and is not be divided into group-specific goals.

It is the policy of the Key West International Airport, as defined in 49 CFR Part 23, to:

1. Ensure that ACDBE's have an equal opportunity to receive and participate in FAA-assisted contracts;
2. Ensure nondiscrimination in the award and administration of FAA-assisted contracts;
3. Create a level playing field on which ACDBE's can compete fairly for opportunities for concessions;
4. Ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
5. Ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBE's'
6. Help remove barriers to the participation of ACDBE's in opportunities for concessions at airports receiving Federal financial assistance; and
7. Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for ACDBE's.

The Key West International Airport's Senior Business Manager has been designated as the DBE Liaison Officer (DBELO). In that capacity, he/she is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the Key West International Airport in its financial assistance agreements with the FAA.

The Key West International Airport has disseminated this policy statement to all the components of our organization. We have also distributed this statement to the ACDBE and non-ACDBE business communities that perform work on airport concessions by placing this notice in the contract documents for federal projects and in regional media publications.

Executed: Beth Leto
Beth Leto, DBELO
Designee for Key West International Airport

Date: 4/23/18

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METHODOLOGY

Per 49 CFR Part 23.45, the described methodology is used to determine the ACDBE goals for rental cars and concessions other than rental cars. A determination of the goal setting process includes identifying a base figure for the relative availability of ACDBEs based on demonstrable evidence of the availability of ready, willing and able ACDBEs as compared to the availability of all businesses participating on FAA-assisted contracts. The second step in the methodology is to adjust the base figure, relying on an examination of additional evidence including historical ACDBE participation, local expertise, and the consultation process and anticipated changes in FAA-assisted contracting over the upcoming years.

PUBLIC PARTICIPATION

The Airport posts a notice of ACDBE goals on the Airport's DBE website. The notice lists the proposed ACDBE goals for rental car concessions and non-rental car concessions for the FAA FY timeframe. The notice informs the public that the proposed goal and its rationale are available for inspection during normal business hours at the Airport Manager's Office for 30 days following the date of the notice and informs the public that the Airport is accepting comments on the goals for 45 days from the date of the notice. The notice includes addresses to which comments can be sent and the addresses where the document can be reviewed. The goal methodology is available for review by the public at the Airport's DBE website at <http://eyw.com/page/Disadvantaged-Business-Enterprise>.

FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

Per 49 CFR Part 23.9, the Key West International Airport meets the non-discrimination requirements provided in 49 CFR Part 26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this section.

The Key West International Airport takes the necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements, and has included the following assurances in all concession agreements and management contracts:

"This agreement is subject to the requirements of the FAA regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23."

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COMPLIANCE PROCEDURES AND ENFORCEMENT PROVISIONS

Per 49 CFR Part 23.11, the Key West International Airport has established provisions for compliance and enforcement.

Compliance Procedures – The Key West International Airport understands that if it fails to comply with any requirement 49 CFR Part 23, the Airport may be subject to formal enforcement action under Part 26.103 or 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), and 47122.

Availability of Records – Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for ACDBE certification and supporting information. However, this information will be transmitted to USDOT in any certification appeal proceeding under 49 CFR Part 26.89 or to any other state to which the individual's firm has applied for certification under 49 CFR part 26.85.

Confidentiality – The Key West International Airport safeguards from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Cooperation – All participants in the Department's ACDBE program are required to cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g. with respect to recipients, a finding of noncompliance; with respect to ACDBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a concessionaire which uses ACDBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Intimidation and Retaliation – The Key West International Airport, concessionaire, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Airport understands that it is in noncompliance with Part 23 if this prohibition is violated.

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ADMINISTRATIVE PROVISIONS

Per 49 CFR Part 23.23, the Key West International Airport has designated the DBE Liaison Officer (DBELO) to be:

Ms. Beth Leto
Key West International Airport
3491 South Roosevelt Boulevard
Key West, Florida 33040
Phone: (305) 809-5200
Email: leto-beth@monroecounty-fl.gov

In this capacity, the DBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the Key West International Airport complies with the provisions of 49 CFR Part 23. The DBELO has direct, independent access to the Key West International Airport concerning ACDBE program matters. Resources available to the DBELO which are adequate to support this program include Key West International Airport administration and such other Airport resources as may be deemed appropriate for the implementation of this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include, but may not be limited to the following:

- a) Gathers and reports statistical data, compliance information and other information as required by the FAA;
- b) Reviews third party contracts and purchase requisitions for compliance with this program;
- c) Works with Key West International Airport to set overall annual goals;
- d) Ensures that concession opportunity notices and requests for proposals are available to DBEs in a timely manner;
- e) Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and race-conscious contract specific goals) and monitors results;
- f) Analyzes the Key West International Airport's progress toward goal attainment and identifies ways to improve progress;
- g) Participates in pre-bid or pre-proposal meetings;
- h) Advises on ACDBE matters and achievement;
- i) Participates with the legal counsel and others to determine concessionaire compliance with good faith efforts; and
- j) Acts as liaison to the State of Florida Uniform Certification Program (UCP) as a non-certifying member.

DBE Directory – The publicly-available Florida Unified Certification Program (UCP) Disadvantaged Business Enterprise (DBE) Directory, which is maintained by the Florida Department of Transportation, is used by the Airport as the sole ACDBE/DBE Directory of certified firms. The Florida UCP DBE Directory is available on-line at:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

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This DBE Directory identifies firms eligible to participate as ACDBEs, which have been certified by a Florida UCP member. The database lists the firm name, contact information, and Certified NAICS codes.

RECORD KEEPING REQUIREMENTS

Per 49 CFR Part 23.27, the Key West International Airport provides reports of ACDBE participation to the FAA annually, by or before March 1, to demonstrate commitments and attainments, as required by FAA reporting forms, including the “Uniform Report of ACDBE Participation” (49 CFR Appendix A to Part 23). The Airport retains sufficient basic information of ACDBE participation for a minimum of three (3) years to be considered by the FAA to be in compliance with Part 23.

MONITORING AND ENFORCEMENT MECHANISMS

Per 49 CFR Part 23.29, the Key West International Airport implements and carries-out appropriate mechanisms to ensure compliance with the program requirements by all program participants and describes and set forth these mechanisms in the Key West International Airport’s ACDBE Program.

Actions for Noncompliance of Participants – The Key West International Airport provides appropriate means to encourage ACDBE goal compliance. These means include:

- 1) Provide prime concessionaires and/or car-rental companies access to the Key West International Airport’s ACDBE Program and Goal Methodology Reports to ensure awareness of the Airport’s overall goals; and
- 2) Meet, as required, with airport concessionaires and/or rental-car companies to discuss ACDBE goals, reporting requirements, compliance responsibilities, shortfalls, and other related issues.

Monitoring Contracts and Work Sites – The Key West International Airport reviews contracting records and engage in active monitoring of work sites to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs to which the work was committed. Work site monitoring is performed by the DBELO or designee. Contracting records are reviewed by the DBELO or designee.

The Airport maintains a written certification, as illustrated in **Appendix 1**, that contracting records have been reviewed and work sites have been monitored at least once for each contract. Each reviewed ACDBE-related: contract, lease, joint venture agreements, or other concession-related agreements is required to have its own signed and dated written certification and be maintained in the respective project files.

CERTIFICATION PROCESS

The Key West International Airport is a non-certifying member of the Florida Unified Certification Program (UCP). The Airport does not provide DBE or ACDBE certification. To be certified as a DBE or ACDBE, a firm must meet all certification eligibility standards required by 49 CFR Part 26 for DBEs, and 49 CFR Part 23 for ACDBEs.

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Firms interested in becoming certified as an ACDBE or renewing certification as an ACDBE are directed to apply with a certifying agency of the Florida UCP. For information about certification, firms should contact a member of the Florida UCP within its area at the following website:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/UCPMemberList.aspx>

RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION

Per 49 CFR Part 23.45, the Key West International Airport’s goal is to meet the maximum feasible portion of its ACDBE goals by using race-neutral means of facilitating ACDBE participation. The Disadvantaged Business Enterprise Liaison Officer (DBELO) carefully monitors the award and actual ACDBE participation and adjusts future ACDBE goals to consider race-neutral and race-conscious participation accordingly.

The historical results of ACDBE participation are reviewed to determine the potential need for race-conscious goal setting. Race-neutral efforts (i.e., not establishing contract goals or advertising ACDBE goals) have historically not been successful in the absence of defined ACDBE goals at the Airport.

For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to the following:

- ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures;
- ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal;
- ACDBE participation on a prime contract exceeding a concession specific goal; and;
- ACDBE participation through a subcontract from a prime contractor that did not consider a firm’s ACDBE in making the award.

In order to ensure that the ACDBE program is narrowly tailored to overcome the effects of discrimination, if the Airport uses concession-specific goals, it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation and will track and report race-neutral and race conscious participation separately.

The Airport may use any of the following race-conscious measures to meet the overall goal:

- Establish concession-specific goals for particular concession opportunities;
- Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession; and
- With prior FAA approval, other methods that takes a competitor’s ability to provide ACDBE participation into account in awarding a concession.

OVERALL GOALS

Per 49 CFR Part 23.51, The Key West International Airport establishes goals that most accurately represent the estimated percentage of ACDBE participation that would occur if there were a “level playing field” for firms to work as concessionaires for the Key West International Airport, in the absence of discrimination.

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See the current Key West International Airport's ACDBE Goal Methodology Report for details regarding the current ACDBE goals at the airport.

The following outlines the process established to determine the ACDBE Goals:

- **Market Area Determination** – The market area is defined by the geographical area in which the majority of firms which seek to do concessions business with the Airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located.
- **Step 1: Determining a Base Figure** – In order to determine the relative availability of ACDBEs in the area of car rental concessions, the availability of ACDBE car rental concessions in the market area must be compared to the overall availability of all car rental concessions in the market area. The Census Bureau's County Business Patterns database is used to determine the overall availability of all car rental concessions in the market area. The Florida Unified Certification Program (UCP) on the FDOT DBE Directory website is used to determine the availability of ACDBE car rental concessions in the market area.
- **Step 2: Adjustment Base Figure** – After calculating a base figure of the relative availability of ACDBEs, the Airport examines evidence to determine whether to adjust the base figure to arrive at the overall goal. The Office of Small and Disadvantaged Business Utilization's (OSDBU) website identifies numerous examples of the various types of data to examine in order to adjust the Step 1 Base Figure to narrowly tailor the goals to the precise local market. Step 2 is intended to adjust the "base figure" percentage from Step 1 to reflect, as accurately as possible, the ACDBE participation the Airport would expect in the absence of discrimination. The factors listed as follows are considered in order to determine whether an adjustment to the Step 1 Base Figure is appropriate for the overall goal.

The guidelines include: disparity studies, historical ACDBE participation, or other factors such as consultation. Disparity studies may be used to make adjustments as a percentage figure as long as the data is derived from a valid, applicable study. The consultation process may be used to reach out to organizations within the market area to determine if there has been past discrimination in the following areas:

- Public contracting;
- Discrimination in private contracting;
- Discrimination in credit, bonding or insurance;
- Data on employment, self-employment, training or union apprenticeship programs; and/or
- Data on firms' formation.

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COUNTING CAR RENTAL ACDBE PARTICIPATION

Per 49 CFR Part 23.53, the Key West International Airport counts car rental ACDBE participation toward the overall goals through vendor purchases or leases, direct ownership arrangements, car rental operations, goods and services, and/or national or regional contracts.

The following are included in the total gross receipts for car rentals:

- Purchases or leases of vehicles from an ACDBE vendor, but the Airport must submit to the FAA documentation of the good faith efforts the Airport has made to obtain ACDBE participation from other ACDBE providers of goods and services.
- Direct ownership arrangements.
- Car rental operations:
 - Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services;
 - Count the entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the concessionaire towards ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
- Goods and services as provided in 49 CFR Part 26.55 and Part 23.55 (below). In the event of any conflict between these two sections, 49 CFR Part 23.55 controls.
- National or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. The Airport uses the proportion of its applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

The following are not included in the total gross receipts for car rentals:

- The gross receipts of non-car rental operations;
- The dollar amount of a management contract or subcontract with a non-ACDBE;
- The gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains;
- Any portion of a firm's estimated gross receipts that is not be generated from a concession; and
- Any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

COUNTING CONCESSIONS ACDBE PARTICIPATION

Per 49 CFR Part 23.55, the Key West International Airport counts concession ACDBE participation toward the overall goals through concession agreement, management contract or subcontract, sub-concessionaire or subcontractor, joint ventures, *bona fide* services and/or goods.

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The following are included in the total gross receipts for concessions:

- A concession agreement, the total dollar value of gross receipts an ACDBE earns.
 - If under a sub-concession agreement or subcontract with a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE. Do not count any of the gross receipts earned by the non-ACDBE.
- A management contract or subcontract, the total dollar value of gross receipts an ACDBE earns.
- Joint Venture, a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces towards ACDBE goals.
- *Bona fide* service, the entire amount of fees or commissions charged by an ACDBE, provide that, the Airport determines this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to:
 - Professional; technical; consultant; legal; security systems; advertising; building, cleaning and maintenance; computer programming, or managerial.
- Goods obtained from an ACDBE manufacturer, 100% of the cost.
- Goods purchased or leased from an ACDBE regular dealer, 100% of the cost.
- Goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer:
 - The entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves;
 - The entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

The following are not included in the total gross receipts for concessions:

- The gross receipts of car rental operations;
- The dollar amount of a management contract or subcontract with a non-ACDBE;
- The gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains;
- Any portion of a firm's estimated gross receipts that is not be generated from a concession; and
- Costs incurred in connection with the renovation, repair, or construction of a concession facility.

ACCOUNTABILITY PROCESS

Per 49 CFR Part 23.57, the Key West International Airport cannot be penalized or treated by the FAA as being in noncompliance with Part 23, because the ACDBE participation in a fiscal year falls short of an overall goal unless the Key West International Airport fails to administer its ACDBE program in good faith. The Key West International Airport understands that to be considered to be in compliance with Part 23, an approved ACDBE Program and overall ACDBE goal must be maintained, and this ACDBE Program must be administered in good faith.

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The Key West International Airport has established an accountability process, in accordance with 49 CFR Part 23.57(b), in order to be in good faith with program intent should the ACDBE goals for the awards and commitments fall short of the ACDBE Program's overall goals.

These steps include:

1. Analyze in detail the reasons for the difference between the ACDBE Program's overall goal and the Airport's awards and commitments, in the fiscal year that falls short of the goals.
2. Establish specific steps and milestones to correct the problems the Airport has identified in the analysis that enables the new fiscal year to fully meet the goals.
3. The Airport typically prepares an analysis and corrective actions developed under steps (1) and (2) of this section. The Airport retains a copy of analysis and corrective actions in records for a minimum of three years and will make it readily available to the FAA upon request.
4. The Airport may consider the following corrective actions that include, but are not necessarily limited to:
 - Modifications to the overall ACDBE goal methodology;
 - Changes in the race-conscious/race-neutral split; or
 - The introduction of additional race-conscious/race-neutral measures.

The Airport may be regarded as being in noncompliance, therefore subject to the remedies of 49 CFR Part 23.11 and other applicable regulations, if it fails to implement the ACDBE Program in good faith, if any of the following occur:

- a) The Airport does not submit its analysis and corrective actions to the FAA in a timely manner as required under 23.57(b)(3);
- b) FAA disapproves the Airport's analysis or corrective actions; or
- c) The Airport does not fully implement the corrective actions to which the Airport has committed or conditions that the Airport has imposed following review of the analysis and corrective actions.

QUOTAS AND SET-ASIDES

Per 49 CFR Part 23.61, the Key West International Airport does not, and will not use quotas or set-asides for ACDBE participation on FAA-assisted contracts and concessions.

APPENDIX 1
Key West International Airport
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Documentation of Airport Review of ACDBE-Related Contract
and On-Site Visit

DOCUMENTATION OF AIRPORT REVIEW OF ACDBE-RELATED CONTRACT
AND ON-SITE VISIT(S)
(CONSISTENT WITH 49 CFR PART 23.29)

AIRPORT NAME: _____
PROJECT NAME: _____
AIP PROJECT NUMBER: _____

PRIME CONCESSIONAIRE: _____
ADDRESS: _____
CONTACT NAME: _____
TEL/FAX/EMAIL: _____

NAME OF ACDBE FIRM: _____
ADDRESS: _____
CONTACT NAME: _____
TEL/FAX/EMAIL: _____
IS THIS ACDBE CONTRACTOR IN THE FL-UCP WEBSITE LISTED AS A ACDBE?: _____

ACDBE GOAL: _____
(ESTABLISHED BY AIRPORT)

ESTIMATED PARTICIPATION BY THIS ACDBE CONCESSIONAIRE AT INITIAL/ORIGINAL CONTRACT:

- 1) WAS THIS ACDBE CONCESSIONAIRE INCLUDED IN INITIAL CONTRACT OF PRIME CONCESSIONAIRE? _____
IF ANSWER IS NO, PRIME CONCESSIONAIRE MUST PROVIDE SUBSTITUTION LETTER TO EXPLAIN REASONS FOR
REMOVAL OF OTHER ACDBE CONCESSIONAIRE AND/OR ADDITION OF THIS ACDBE CONCESSIONAIRE
- 2) ESTIMATED PARTICIPATION AT INITIAL CONTRACT \$ _____
- 3) ESTIMATED PERCENTAGE OF TOTAL PROJECT FOR THIS ACDBE CONCESSIONAIRE: _____ %
- 4) DETAIL SPECIFIC WORK TO BE PERFORMED:

- 5) DATE OF ON-SITE VISIT: _____
- 6) WAS THIS ACDBE CONCESSIONAIRE ON-SITE DURING SITE VISIT?: _____
IF ANSWER IS NO, WHAT IS THE PRIME CONCESSIONAIRE'S EXPLANATION FOR WHY THIS ACDBE
CONCESSIONAIRE WAS NOT ON SITE DURING VISIT?: _____

- 7) ACTUAL ATTAINED PARTICIPATION (TO DATE) \$ _____
- 8) ACTUAL ATTAINED PERCENTAGE OF TOTAL PROJECT FOR THIS ACDBE CONCESSIONAIRE (TO DATE): _____ %

The undersigned certifies the review of ACDBE-related contract on-site visit(s) associated with this contract.

Name (Person Performing Review)

Signature

Date

Print Name/Title: _____

Email/Tel: _____