



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

Federal Aviation Administration
Western-Pacific Region

Civil Rights Office, AWP-9
15000 Aviation Blvd.
Lawndale, CA 90261

December 31, 2012

Gael Tarleton, Commissioner
Rob Holland, Commissioner
Port of Seattle
P.O. Box 1209
Seattle, Washington 98111-1209

Dear Commissioners:

This is in regard to your letter dated September 28, 2012, as well as to the SeaTac Small Business Association's letter dated October 31, 2012. Both letters request the Federal Aviation Administration (FAA) to provide guidance on a Proposed Substitute Motion, as amended, Regarding Airport Concession Disadvantaged Business Enterprises and Other Small Business at Seattle-Tacoma International Airport dated September 11, 2012. The Port of Seattle Commission (Commission) passed this motion directing the Seattle-Tacoma International Airport (SeaTac) to undertake efforts to extend current leases or negotiate new leases with certain Airport Concession Disadvantaged Business Enterprise (ACDBE) firms.

The FAA commends the Commission's commitment to ensure that SeaTac implements and maintains an ACDBE program in accordance with 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions. We reviewed the proposal passed by the Commission, dated September 11, 2012. Our initial review is limited to the documents you have presented and is without the benefit of input from concessionaires that may be directly affected by this proposal. We have several areas of concern with the overall proposal and anticipate that entering into leases based on this proposal could subject the Sponsor to a formal complaint under 14 CFR Part 16 (Part 16), Rules of Practice for Federally Assisted Airport Enforcement Proceedings. In the event a Part 16 complaint is filed, the FAA will have the opportunity to review all sides of the issue through formal pleadings and the final agency decision could be significantly more restrictive than the concerns outlined in this letter. The following represents a summary of our initial concerns with respect to 49 CFR Part 23:

- 1) Section 2 of the Proposal may violate 49 CFR, Sections 23.45(e) and 23.51(a)(b), by establishing an aspirational 30% ACDBE goal without the required description of the methodology used to calculate the goal and without demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all ready, willing and able businesses available to participate in the SeaTac's ACDBE program.

- 2) Section 3 of the Proposal may violate 49 CFR Section 23.61 by establishing a quota and/or a set-aside for concessionaire leases by requiring SeaTac to extend or enter into new leases for current ACDBE and other small businesses as direct tenants.
- 3) Section 3 of the Proposal may violate 49 CFR Section 23.79 by requiring SeaTac to increase the number of direct tenants, especially small locally-owned businesses. A local geographic preference is not permitted in the ACDBE program.
- 4) Section 3 of the Proposal may violate Federal Airport Improvement Program (AIP) Grant Assurance #24, Fee and Rental Structure depending on the lease structure. Assurance #24 requires the airport to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. The FAA's *Policy and Procedures Concerning the Use of Airport Revenue* (64 FR 7696; February 16, 1999) reiterates this requirement and interprets this assurance to require that the airport receive fair market value for non-aeronautical facilities and services. The airport tenants identified in the pending State legislation as concessionaires are non-aeronautical in nature, and as such, must pay fair market value commercial rates for their airport property.

FAA strongly recommends that the Commission review the motion passed on September 11, 2012, and take appropriate action to ensure compliance with the ACDBE program. As we stated above, this represents our initial concerns with the documents we have reviewed and does not represent a final agency decision. In addition, this response does not bind the FAA to any particular resolution in the event that a complaint is filed regarding the issues addressed herein.

If you have any questions, please contact me at (310) 725-3948, or via email at michael.freilich@faa.gov.

Sincerely,



Michael D. Freilich, Director
Civil Rights, Western-Pacific Region
& DBE Compliance

cc: ACR-1
ACR-4
JoAnne Robinson, DOT Office of the General Counsel
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Patricia Deem, AGC-620
Joelle Briggs, ANM-620
Peter Doyle, SEA-ADO
Mark Reis, CEO SeaTac
Deanna Zachrisson, ACDBELO SeaTac
SeaTac Small Business Association

September 28, 2012

Mr. Robert C. Ashby
Deputy Assistant General Counsel for Regulation
US Department of Transportation
Office of the General Counsel
1200 New Jersey Ave., SE
Washington, DC 20590

Dear Mr. Ashby:

We are seeking the guidance of the Federal Aviation Administration on a matter related to the Port of Seattle Commission's interest in encouraging fair and appropriate participation of Disadvantaged Business Enterprises in the concessions program at Seattle-Tacoma International Airport.

The Port Commission has had a long-standing commitment to the ACDBEs at Sea-Tac. In addition to our commitment to achieving the FAA-approved participation goals, we have stayed vigilant as to the impact on the ACDBEs of changes in the economy and activity levels at Sea-Tac.

On September 11, 2012, the Commission passed the enclosed motion, directing the staff to undertake efforts to extend current leases or to negotiate new leases with ACDBEs. The Commission also created a temporary Commission Committee, of which we are the two members, to oversee implementation of the motion.

As you will note in section 3, the Commission conditioned any lease extensions or new leases on their permissibility "by Federal Regulations." In Section 6, the Commission specifically directs our Committee to "seek guidance from the Federal Aviation Administration as to the terms allowable under Section 5." Based on the several sections of the Motion, we interpret the "terms allowable" to refer to the many elements or factors associated with lease negotiation, including ACDBE eligibility, the nature of the actual lease terms, and the impacts of possible new leases on the airport's ability to attract new direct tenants.

With this letter, we are formally requesting the guidance of the FAA as to the appropriateness of the policy direction, and the Port's implementation, of the Motion. We would suggest that Mr. Paul Bintinger, Senior Port Counsel, be your initial contact on this matter. Mr. Bintinger can be reached at 206-787-3335 or at Bintinger.p@portseattle.org.

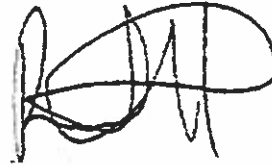


We want to thank you in advance for all of your assistance and respectfully request your expedited review of and guidance on this matter.

Sincerely,



Gael Tarleton
Commissioner



Rob Holland
Commissioner

Cc: Kurt Beckett
Craig Watson
Mark Reis
Deanna Zachrisson
Jim Schone
Mary Gin Kennedy

Enclosure – September 11, 2012 ACDBE Commission Motion