

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No.	<u>7b</u>
Date of Meeting	<u>June 23, 2016</u>

DATE: May 18, 2015
TO: Ted Fick, Chief Executive Officer
FROM: Deanna Zachrisson, Business Leader, Airport Dining and Retail
Luis Navarro, Director, Office of Social Responsibility
SUBJECT: Port of Seattle Airport Concessions Disadvantaged Business Enterprise (ACDBE) and Disadvantaged Business Enterprise (DBE) Program FAA Compliance Review Update

SYNOPSIS

This briefing will summarize the recent favorable outcome of a compliance review by the Federal Aviation Administration (FAA) of the ACDBE and DBE programs.

Under the United States Department of Transportation (US DOT) 49 CFR (Code of Federal Regulations) Part 23 and Part 26, the FAA Office of Civil Rights is responsible for ensuring compliance by grant recipients, such as the Port, with both the ACDBE and DBE programs, and the programs are subject to regularly scheduled as well as random audits. The ACDBE program is specific to concession contracts in airport commercial businesses such as food service and retail, and the DBE program specifically concerns federally assisted airport projects in construction and consulting services. While the two programs are very different due to the nature of the businesses they encompass, they share many of the same regulatory requirements.

In the final audit summary, the FAA found that both the ACDBE and DBE programs are managed in accordance with the spirit and intent of the program and compliant with federal regulations. In particular, the FAA auditors commended the Port for having “with innovation restructured its (airport) concessions program overall and its unit spaces to be more attractive to small business firms, including ACDBEs.” The ACDBE program has been subject to examination and audit on numerous occasions in the last decade, and in each instance has been praised for its efforts of inclusion and attention to compliance.

BACKGROUND

In January 2015, the FAA notified the Port of its intent to conduct a regular compliance review of the ACDBE and DBE programs. For the ACDBE program, FAA staff required the Port to provide advance copies of a variety of documents such as leases, sales reports, site visit reports, certification documents and participation reporting. For the DBE program, FAA auditors also required supporting documentation, including the

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Port's approved three-year DBE program plan and contract-related forms. For both programs, the FAA required the completion of a comprehensive questionnaire about contracting and management practices by Port staff. In the case of the DBE portion, OSR worked closely with the Central Procurement Office (CPO) to ensure full responses to the FAA. In mid-March, three FAA auditors devoted a week to onsite review, including two full days at the Airport. Port staff also participated with the FAA auditors in a visit to Washington State's certifying entity, the Olympia Office of Minority and Women Owned Business Enterprises (OMWBE) to examine DBE and ACDBE certification practices. The results of the review were received on April 24, 2015 and are detailed separately below for the respective programs. The results of the review were presented to the Port Audit Committee on May 7, 2015.

ACDBE Program

Currently, gross sales generated by ACDBE businesses is 22% of total program gross sales for fiscal year 2013-14, slightly above its 2014-2017 goal of 21.2%. The statute authorizing the ACDBE program established a national aspirational goal of 10% for airport concessions. ACDBE programs are required to use race-neutral measures in the first instance to achieve its goal participation.

In addition to reviews of documentation prior to arrival, Port staff met with the auditors, responded to their questions and provided other supporting documents. The auditors visited ACDBE businesses throughout the airport and interviewed managers and employees. The auditors also met with groups of ACDBE and non-ACDBE operators.

In the final compliance report (Exhibit A), the auditors noted that ACDBEs "are happy to be doing business at Sea-Tac and appreciate the support provided to small businesses and the spirit of customer service it promotes."

The audit offered technical assistance in three areas:

1. The FAA requested that the Port's new CEO Ted Fick replace Tay Yoshitani as the signatory on the program documents. This task has been completed and updated with the FAA.
2. The two exclusive contracts for Airport advertising and luggage carts should have waivers on-file for ACDBE participation. The Port submitted a waiver request and the FAA notified the Port of its approval.
3. There is currently no ACDBE participation in the rental car business at the Airport. This is a common occurrence at airports, and in the case of Sea-Tac, is a result of a lack of certified ACDBEs able to participate. Auditors suggested that the Port should work with OMWBE to encourage certification among firms that could serve the rental car business.

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The new leadership at OMWBE already has improved the collaboration with the Port in the last three years and they have participated in numerous joint meetings and events to provide information about their certification process. Knowledge and resource constraints still limit their ability to significantly increase certifications.

The FAA noted the recent written complaints they have received about the Airport's ACDBE program, but did not find this to be a compliance concern. The FAA representatives indicated a willingness to return to Seattle in the future to meet with Port Commission and staff to provide an overview of the ACDBE program and its goals.

ACDBE Program Objectives

Historically, airport concessions in U.S. airports have been dominated by a few large companies operating under monopoly or near-monopoly contracts. As a result, the FAA enacted the ACDBE program in March 1987 in order to help small, minority-owned businesses gain access to opportunities in airports. One of the key objectives of the program is: "to create a level playing field on which ACDBEs can compete fairly for opportunities for concessions." The program is designed to mitigate the effects of discrimination, and at the same time is intended to promote the ideals of entrepreneurship and open competition. The intent of the program is to provide the opportunity for ACDBEs to become successful and grow to be able to compete successfully against larger companies and ultimately graduate from the program to make way for new ACDBE companies.

In the era when the program first began, most airport contracts were still controlled by large companies. So, the most common opportunities for ACDBEs were created by large companies that were required by airports to create ACDBE opportunities. Typically, a large prime concessionaire company would award non-competitive opportunities to minority-owned businesses under the condition that they could become ACDBE-certified. Participation also could be achieved similarly in a joint venture arrangement. Large prime concessionaires that operate multiple units would only offer these opportunities to those able to be certified as ACDBEs as a means of meeting a contractual obligation.

For this reason, it is not uncommon that there are few certified ACDBEs beyond those actually already operating in airports. Of the 25 firms currently certified in Washington as ACDBEs in food service, retail and passenger services, 15 already operate at Sea-Tac. There are only 38 certified ACDBEs of any kind in the State of Washington (Exhibit B). In the last year, as a result of increased outreach and partnership with OMWBE, the number of certified ACDBEs within food service, retail and passenger services has increased slightly. Efforts continue to broaden the pool of available ACDBE operators as both potential lessees and also as suppliers to other businesses.

In recent years, the trend in ACDBE participation has gone from subleasing opportunities to joint ventures and direct participation where the airport engages in

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leases directly with the disadvantaged businesses. When the Port executed its last generation of leases with large operators in 2003, the Airport's ACDBE participation, like other airports, consisted of subtenants and joint venture partners with the large prime concessionaires. As the Airport has continued developing its hybrid leasing model (a management model that combines large prime concessionaires with multiple units with smaller operators of single or few units), the Port has added a number of ACDBEs holding leases directly with the Port. Today, many more airports offer contract packages for a small number of locations, termed unbundling, an approach more suited for ACDBEs with limited capital capacity.

Previous FAA Audits

Since 2006, several examinations and audits have taken place, detailed below:

2006-2008 Part 16 Discrimination Complaint

Beginning in 2006, the FAA undertook a comprehensive examination of the Airport's ACDBE program as the result of a Part 16 discrimination complaint by an ACDBE subtenant to the Airport's largest food service operator. The tenant alleged racial discrimination in the management of the concessions program, and in particular, the leasing of units in the Central Terminal. After investigation and evaluation, the FAA dismissed the complaint in 2008.

2010 Joint Venture Audit

The FAA issued new guidance on joint ventures in 2009 and conducted nationwide audits of ACDBE joint ventures in airports. Sea-Tac was found to be compliant with existing guidelines and provided technical assistance to the Airport Management Services LLC (dba Hudson) joint venture to restate elements of their joint venture agreement to align with new FAA guidance.

2012 Title VI Audit

The ACDBE program was one focus of a broad Title VI Non-Discrimination audit of 49 CFR Part 21 for federally assisted airports. The process consisted of a review of the Port's overall Title VI program as well as requests for advance documentation and responses to auditor questions. The FAA auditors interviewed concessionaires that currently are in contractual relationships and found "the consensus was that business relationships are strong and that the Airport does a good job of notifying the business community of opportunities." Furthermore, the audit found that the Airport "handles all bids in a fair and equitable manner." The elements of the ACDBE program were found to be in compliance. In addition, auditors praised Sea-Tac's on-going outreach efforts to promote new opportunities in the dining and retail program.

2014 Office of Inspector General

As part of a congressional reauthorization bill, the DOT Office of the Inspector General was tasked with the study of major airports' ACDBE programs in order to understand why so few companies fulfill the objective of graduating from the program and creating

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new entrance opportunities for new ACDBEs. The audit found that the underlying conditions of limited opportunities and infrequent turnover, access to capital for investment, and a lack of familiarity with public sector contracting processes as major barriers, as well as a tendency to award to already existing ACDBEs. Sea-Tac was noted specifically for its successful efforts of unbundling of leases and direct leasing with ACDBEs in order create more small and minority-owned business opportunities.

DBE Program

The Port has a DBE Program as approved by the FAA in June 2012. The program has a three-year overall DBE participation goal of 5.44 percent calculated based on a formula provided by the FAA utilizing a combination of past utilization on projects and available DBEs in the market place. The Port currently manages the DBE program as a 'race neutral' program that encourages, but does not require DBE participation in eligible projects, which is a significant factor in the current low level of participation by DBEs. A new three-year DBE goal must be submitted to the FAA by August 1, 2015.

The DBE program audit provided recommendations in three areas:

1. As with the ACDBE program, the FAA requested that the Port's new CEO Ted Fick replace Tay Yoshitani as the signatory on the program documents. This task was completed.
2. In order to possibly increase DBE participation on federally funded projects it is recommended that the PORT works closely with the FAA's Regional DBE Compliance Specialist in establishing a race-conscious DBE Program. This recommendation is under consideration.

ATTACHMENTS TO THIS BRIEFING

- Exhibit A: 2015 FAA Compliance Review Report
- Exhibit B: Current Certified ACDBEs
- Exhibit C: POS and ACDBEs Handout
- Exhibit D: DBE Compliance Review presentation.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- May 7, 2015 – Audit Committee Briefing