



FY 2015

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

AND

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

PROGRAM

COMPLIANCE REVIEW REPORT OF THE

PORT OF SEATTLE (PORT)

SEATTLE-TACOMA INTERNATIONAL AIRPORT (SEA-TAC)

SEATTLE, WA

REPORT ISSUED: April 24, 2015
PREPARED BY THE
FEDERAL AVIATION ADMINISTRATION
OFFICE OF CIVIL RIGHTS

U.S. Department of Transportation Federal Aviation Administration

JURISDICTION AND AUTHORITIES

The Federal Aviation Administration (FAA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (DOT) to conduct civil rights compliance reviews. Reviews are undertaken to ensure compliance of applicants, recipients, and sub-recipients with 49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and 49 CFR, Part 23 Participation by Disadvantaged Business Enterprises in Airport Concessions, referenced in this report as Part 26 and Part 23, respectively. Also, specific sections of the programs are referenced using the nomenclature (23.xx) and (26.xx) in this document.

Part 26 requirements apply to recipients of DOT funds under certain programs including airport funds under 49 U.S.C. 47101 et seq. The program is narrowly tailored under the law. It is designed to allow firms that meet certain eligibility standards to compete fairly, to remove barriers to DBE firms seeking to participate in DOT-funded programs, to assist in developing firms that can compete in the marketplace outside of the DBE program, and to provide flexibility to recipients of federal funds in creating opportunities for DBE firms.

Part 23 requirements apply to airports that had received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code. The requirements under this part apply to those airports classified as primary airports by the National Plan of Integrated Airport Systems (NPIAS). Part 23 is mandated by 49 U.S.C. 47107(e) and addresses the airport concessions disadvantaged business enterprises (ACDBEs) at airports receiving funds under the Airport Improvement Program (AIP). The requirements of this part became effective April 21, 2005 and have been revised several times.

OBJECTIVES

The purposes of Part 26 and Part 23 as stated in the regulations are:

- To ensure nondiscrimination in the award and administration of airport concessions and DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs.
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in airport concessions and DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

SCOPE OF REVIEW

This review process is a high level examination of Seattle-Tacoma International Airport (SEA-TAC) and the Port of Seattle (PORT) compliance with Parts 26 and 23. Unlike a comprehensive audit where testing and extensive examination of records are normal procedures, this compliance review is designed to maximize available resources in assessing an organization's general understanding and implementation of procedures to meet requirements. Some areas may be more heavily scrutinized than others based on review finding of other recipients, recently released guidance or final rules, or reports that FAA may have received about a specific sponsor's compliance.

To maximize the effectiveness of this review, FAA has identified regulatory requirements prior to the review that have higher priorities in the review process. The review also compared the actual implementation of the Part 26 and Part 23 requirements with the written descriptions found in the DBE and ACDBE programs and reviewed contract files, internal documents, and information from contractors and subcontractors. Interviews were conducted with sponsor officials. Three focus group sessions were held with prime contractors, subcontractors, prime concessionaires, ACDBE firms, and other relevant personnel.

REVIEW PROCESS

The review process began with a desk review of the airport's DBE and ACDBE Programs. This review focused only on the operations of the Seattle-Tacoma International Airport. We sent a letter to SEA-TAC and the PORT on January 21, 2015, notifying it of the planned on-site review. In the notification letter we requested that the airport send us certain information and respond to questions.

Documents reviewed to verify compliance of requirements under 49 CFR Part 26:

- A. Airport organization chart, showing DBELO's position.
- B. Records documenting monitoring of contracts with DBE participation.
- C. Sample forms used to monitor monthly DBE participation.
- D. Site visits record.
- E. Sea-Tac's approved DBE Triennial Goal.
- F. Copy of DBE accomplishment reports for the most recent three years.
- G. List of all active FAA funded projects.
- H. List of active FAA funded projects that have DBE participation, identifying DBE goal and actual contract percentage achieved to date.
- I. Sample of an FAA funded contract.
- J. Sample of a contract that includes a DBE goal requirement.

Documents reviewed to verify compliance of requirements under 49 CFR Part 23:

- A. Sea-Tac’s organization chart, showing ACDBELO’s position.
- B. Records documenting monitoring of contracts with ACDBE participation.
- C. Sample forms used to monitor monthly ACDBE participation.
- D. Records documenting site visits to concessions locations.
- E. Copy of your approved ACDBE Triennial Goal.
- F. Copy of accomplishment reports for the most recent three years.
- G. List of all active concession contracts.
- H. List of all active concession contracts that have ACDBE participation, identifying ACDBE goal and actual contract percentage achieved to date.
- I. Copy of the top three revenue generating concession contracts.
- J. Complete listing of all concession contracts including start date, end date, possible contract extensions, and total potential term including possible extensions.

According to FAA AIP grant history, in the most recent three years, the FAA awarded SEA-TAC three (3) Airport Improvement Program (AIP) grants for the planning and development of public-use airports that are included in the NPIAS. This review focused on active FAA funded projects funded the by following grants:

FY-2015

- Noise Insulation Project \$ 11,664,739.00

FY-2014

- Noise Insulation Project \$ 6,538,453.00

FY-2013

- EGSE Infrastructure (VALE) \$ 7,725,000.00

A site visit has been conducted, as noted below:

Review Conducted By FAA Staff:	Ricky Watson, ACR-4; Keturah Pristell, ACR-4; and Supriya Raman, ACR-3	Site Visit Date(s):	March 24-25, 2015
SEA-TAC:	Mark Reis, Managing Director Aviation Division; James R. Schone, Director, Aviation Business Development; Deanna Zachrisson, Business Leader, Airport Dining & Retail / ACDBELO; Castina Ridge, Concessions Program Manager Business Development;		
Port of Seattle:	Luis Navarro, Director, Office of Social Responsibility; Mian Rice, Manager/DBELO, Small Business Program & Policy ; Tina Boyd, Small Business Analyst, Small Business Program & Policy		

DESCRIPTION / HISTORY OF THE SEATTLE-TACOMA INTERNATIONAL AIRPORT (Sea-Tac):

The Seattle-Tacoma International Airport (Sea-Tac) is owned and operated by the Port of Seattle. Sea-Tac is the largest airport in the Pacific Northwest region of North America and the nation’s 15th busiest airport. The airport is located in the eponymous city of SeaTac, Washington, approximately twelve miles south of downtown Seattle, and is the primary airport for the Seattle metropolitan area. The airport has flights to cities throughout North America, Europe, the Middle East, and Asia. It is the main hub for Alaska Airlines and its regional subsidiary Horizon Air, whose headquarters are near the airport. It is a Large Hub airport and an international gateway to Asia and Europe. In 2014 the airport served over 37 million passengers, and it continues to rapidly grow. This is evident in part by the recent Sea-Tac concessions program total gross receipts averaging a year over year increase of 7.5-12% which is 5-10 points higher than the national average

Seattle’s Seaport and Airport generate nearly 200,000 jobs throughout the region with payroll in excess of \$6.8 billion. Five commissioners, elected at large by the voters of King County, Washington, serve four-year terms and establish Port of Seattle policy. The chief executive officer, in carrying out these policies, leads 1,700 employees in five divisions.

FINDINGS: PORT OF SEATTLE - Title 49 CFR Part 26 – AIRPORT CONSTRUCTION

PART 1 –DBE Program Questions:

Administrative Requirements

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
1	Do you have an FAA approved DBE Program in place? (§ 26.21(b))	YES	The Port of Seattle (PORT) 2012 DBE Program was approved by the FAA on June 15, 2012. The DBE program is made available for public review by accessing the Port of Seattle’s website at http://www.portseattle.org/About/Organization/Pages/Small_Business.aspx	NO	N/A
2	Did you sign and disseminate your DBE Policy Statement? (§ 26.23)	YES	The DBE policy statement was disseminated to the Port of Seattle and to trade organizations. Also, it was distributed to DBE and non-DBE business communities that perform work for the Port of Seattle on DOT assisted contracts. <i>Recommended Enhancement:</i> It is recommended that the PORT’s newly appointed Chief Executive Officer, Ted Fick review, sign, and re-distribute the PORT’s current DBE Program.	NO	6/10/15
3	Does your DBE Liaison Officer have independent program implementation authority and independent (direct) access to the Airport Director/CEO? (§ 26.25)	YES	Mian Rice, Manager, Small Business Program & Policy, serves as the Liaison Officer for the DBE Program. Mr. Rice has direct, independent access to Ted Fick, Chief Executive Officer, Sea-Tac.	NO	N/A
4	Do you make reasonable efforts to use DBE financial institutions as well as encourage prime contractors on DOT assisted contracts to make use of DBE financial institutions? (§ 26.27)	NO	The PORT has reviewed the availability of DBE financial institutions, as part of the process in updating their DBE Program. The PORT did not find any financial institutions in their market area or within the State of Washington; however, the PORT will continue to assess the market periodically.	NO	N/A
5	Do you conduct regular outreach sessions to ensure the inclusion of DBE firms in your DBE program? (§ 26.51)	YES	The PORT’s Office of Small Business Program & Policy conducts monthly outreach events in its market area.	NO	N/A
6	Has your Small Business element been implemented? (§ 26.39)	YES	The PORT has developed its Small Business Program Element (SBPE) in accordance with 49 CFR Section 26.39. To date the PORT has not utilized its SBPE on any federally funded projects. <i>Recommended Enhancement:</i> In order to possibly increase the DBE participation on federally funded projects in a race neutral environment, the PORT should consider using its small business program element.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
7	Does your DBE program have a method to address over-concentration? (§ 26.33)	YES	The PORT has reviewed past federal assisted projects as well as non-federal assisted projects and did not identify any overconcentration of DBE firms.	NO	N/A
8	Do you submit your annual overall goal by August 1, every three years, pursuant to the schedule established by FAA? (§26.45(f))	YES	The PORT submitted its FY 13-15 Overall DBE goal methodology on July 12, 2012 in accordance with FAA's established schedule.	NO	N/A
9	Has the Airport DBE goal methodology been approved by the FAA? (§ 26.45)	YES	The PORT's FY 13-15 overall DBE goal methodology was approved by the FAA on July 13, 2012.	NO	N/A
10	In the past three years, has the Airport had any complaints filed alleging that it did not comply with the DBE regulations?	NO	The PORT has not received any formal or informal DBE complaints of alleged violation of 49 CFR Part 26.	NO	N/A
11	Does the Airport have an FAA approved business development for mentor-protégé program? (§ 26.35(b))	NO	The PORT has not elected to develop mentor-protégé program.	NO	N/A

Bid Processing and Contract Reviews

1	Do you maintain a bidders list of all firms who bid or quote whether or not the bidders were successful? (§ 26.11(c))	YES	The PORT Office of Small Business Program & Policy maintains an electronic Subcontractor Bidding Report (data system) of all projects bidders to included DBE firms.	NO	N/A
2	Does the bidders list capture information for both successful and unsuccessful subcontractors? (§ 26.11(c))	YES	The PORT's bidders' data system captures all required information for Federally-assisted contracts in accordance with 49 CFR Section 26.11(c).	NO	N/A
3	In situations where a DBE contract goal has been established, are bidders required to submit DBE information as required by regulation? (§ 26.53(b))	N/A	<p>The PORT is currently operating in a race-neutral environment.</p> <p>However in 2014 the PORT completed a Disparity Study and will be considering a race-conscious program during FY 16-18. The PORT has demonstrated a clear understanding of the requirements of having contract goal.</p> <p><i>Recommended Enhancement:</i></p> <p>It is recommended that the PORT works closely with the FAA's Regional DBE Compliance Specialist in establishing a race-conscious DBE Program.</p>	NO	N/A
4	In situations where a DBE contract goal has been established, during the review of good faith efforts, do	N/A	The PORT is currently operating in a race-neutral environment.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	you consider the guidance in Appendix A of the DBE program requirements? (§26.53(a))				
5	In the case of Good Faith Efforts reconsideration, are reconsideration decisions made by an official who did not take part in the original good faith effort determinations? (§ 26.53(d))	N/A	The PORT is currently operating in a race-neutral environment.	NO	N/A
6	Do you have a process in place to verify there is written confirmation from the DBE firm that it had agreed to participate in the contract as provided in the prime contractor's commitment?	N/A	The PORT is currently operating in a race-neutral environment.	NO	N/A
7	In situations where a DBE contract goal has been established, do you confirm that the DBE firm is certified in the specified NAICS codes prior to awarding the contract? (§ 26.53)	N/A	The PORT is currently operating in a race-neutral environment.	NO	N/A
8	Do you have a system to verify and audit that the required assurances are being incorporated in prime contracts and subcontracts? (§ 26.13(a))	YES	The PORT has established a system to verify that all relevant contracts are in compliance with 49 CFR Section 26.13(a).	NO	N/A
9	Do you have a prompt payment provision in your contracts that requires prime contractors to pay all subcontractors within 30 days of receipt of payment? (§ 26.29(a))	YES	The PORT has established a prompt payment provision. The provision requires all prime contractors to make payment to all sub-contractors including DBE firms within 10 days of receipt of payment from the PORT.	NO	N/A
10	Do you have a return of retainage provision in your contract that identifies one of three options allowed by the regulation? (§ 26.29(b))	YES	<p>The PORT holds retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor</p> <p><u>Recommended Enhancement:</u></p> <p>The Port should immediately implement the required contract language regarding prompt payment and retainage found in FAA Advisory Circular 150/5370-10F on pages 52-54 in the Partial Payments section that was release on 9/30/2011:</p> <p>http://www.faa.gov/documentlibrary/media/advisory_circular/150_5370_10F.pdf</p>	Yes	6/10/15

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11	Does the Airport have written certification that contracting records are being reviewed? (§ 26.37)	YES	The PORT has an electronic documented monitoring program in place for contracts. Prior to the project, the PORT DBELO reviews these contracting records to ensure that the required language and documents are contained within the system and contracts for each project. During the project, engineers record site reviews on their construction management/project checklist. The review checklist is maintained in the project folders.	NO	N/A

Monitoring Post Contract Award

1	Do you have monitoring mechanisms in place to ensure that work committed to DBEs at contract award or subsequently is actually awarded to DBEs to whom the work was committed? (§ 26.37(b))	N/A	The PORT is currently operating in a race-neutral environment	NO	N/A
2	Do you have monitoring mechanisms in place to verify that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to whom the work was committed and that those DBEs are managing their work and utilizing their own work forces, equipment, and materials? (§ 26.37)	YES	The PORT's Project manager monitors all worksites and verifies that work committed to DBE firms is actually being performed by the named DBE firms.	NO	N/A
3	In the case of post-award terminations, pre-award deletions or substitutions of DBE firms, do you have mechanisms in place to allow you to verify that the DBE has been notified AND given time to respond before approving the termination/substitution as well as verify the documented good cause that compels the termination before approving a termination/substitution? (§ 26.53(f))	N/A	The PORT is currently operating in a race-neutral environment. The PORT did explain its understanding of the termination requirements of 49 CFR 26.53(f) if it were to establish a race-conscious program. The PORT will ensure that a prime contractor not terminate a DBE subcontractor without prior written consent and for good cause. The prime contractor must give the DBE five days to respond to the prime contractor's notice.	NO	N/A
4	In situations where a DBE contract goal has been established and a DBE subcontractor is terminated or fails to complete its work on the contract, do you require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE to perform at least the same amount of work or to the extent needed	N/A	The PORT is currently operating in a race-neutral environment.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	to meet the established contract goal?(§ 26.37)				
5	Do you conduct regular site visits to verify that business names on equipment and vehicles are not covered with paint or magnetic signs as well as verify who employs the workers on site. Do you have written certification of this process? (§ 26.37)	YES	The PORT's Project manager verifies the ownership of all equipment and vehicles on worksites and names of the present employees.	NO	N/A
6	Do you have monitoring mechanisms in place that provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments? (§ 26.37)	YES	The PORT receives monthly accounts payable records and vouchers from the prime contractors to ensure that all subcontractors to include DBE firms are being paid.	NO	N/A
7	Do you randomly verify who orders and pays for the necessary supplies being used by the DBE subcontractor? (§ 26.37)	YES	The PORT does randomly verify who orders and pays for the necessary supplies being used by DBE firms.	NO	N/A
8	Do you have prompt payment mechanisms in place to ensure retainage is returned to all subcontractors upon substantial completion of their work on the project? (§ 26.29)	NO	<p>The PORT requires all prime contractors to return retainage to all sub-contractors to include DBE firms after the subcontractor's work is satisfactorily completed.</p> <p>The Port relies on common business practices, that subcontractors will contact the Port when a prime contractor has not released their retainage within 30 days of satisfactory completion of the accepted work by the subcontractors. Upon notification, the Port investigates with the prime to identify the delay.</p> <p><i>Recommended Enhancement:</i></p> <p>The Port must proactively monitor prime contractor compliance with prompt payment and retainage requirements through a documented process. Relying on complaint notifications is not sufficient. See USDOT Q&A on subject.</p>	YES	6/10/15
9	Do you have a monitoring mechanism in place to verify that prime contractors pay all subcontractors within 30 days of receipt of payment? (49 CFR 26.29 (a))	YES	The PORT receives monthly accounts payable records and vouchers from the prime contractors to ensure that all subcontractors to include DBE firms are paid within 10 days of receipt of payment.	NO	N/A
10	Do you conduct compliance reviews, audits and/or assessments of all program participants (e.g.,	YES	The PORT conducts both monthly and quarterly audits to ensure DBE participation	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	contractors, subcontractors, suppliers)? (§ 26.37(a))		on federally assisted contracts.		

DBE Participation Reporting

1	Do you count the DBE firm's value of work toward contract goals only if the DBE performs a Commercially Useful Function (CUF)? (§ 26.55(c))	YES	The PORT only counts the work performed by the DBE firms that perform a Commercially Useful Function on federally assisted projects.	NO	N/A
2	Do you allow a DBE firm's participation to count toward the DBE goal if the firm was not certified at the time it executed the contract with the Prime contractor? (§ 26.55(f))	YES	The PORT counts DBE participation for DBE firms that are certified prior to the execution of a contract with the prime contractor.	NO	N/A
3	Do you ensure that the contractor has actually paid its DBEs and is in compliance with all program requirements before determining whether a contractor met its DBE goal? (§ 26.55(h))	YES	The PORT requires all prime contractors to make payment to all sub-contractors to include DBE firms within 10 days of receipt of payment from the PORT.	NO	N/A
4	If a DBE firm's certification eligibility is removed during performance of a subcontract, do you deduct that subcontract amount from the Airport's overall goal? (§ 26.55(g))	NO	The PORT only counts the amount of work performed by the DBE firm prior to the removal of the certification.	NO	N/A
5	In the case where a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal, do you count the DBE participation as Race-neutral? (§ 26.55(a))	YES	The PORT is currently operating in a race-neutral environment. All DBE participation is counted as race-neutral.	NO	N/A
6	Were you required to submit a Uniform Report of DBE Awards/Commitment and Payments for federal FY 2014? (§ 26.11)	YES	The PORT submitted its annual Uniform Report of DBE Awards/Commitment and Payments for federal FY 2014 via the FAA dbE-Connect system, on December 11, 2014. The FAA reviewed and approved the annual report on December 12, 2014.	NO	N/A
7	Have you achieved your annual goal each year in the past three years? (§ 26.47(c))	NO	The PORT did not achieve its last three years overall DBE goal by utilizing race-neutral means.	NO	N/A
8	In any years that you did not meet the DBE goal, did you analyze the reasons why the goal was not achieved and established specific steps to correct the problem? (§	YES	The PORT was required to prepare a DBE goal accountability report for both FY 2013 and FY 2014. The overall DBE goal was analyzed to determine why the goal was not achieved. On January 9, 201, the PORT submitted the FY-14 analysis to	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
	26.47(c)		<p>the FAA for approval. The FAA issued the concurrence letter on January 14, 2014.</p> <p>Note: In 2014, the PORT also conducted a Disparity Study in the PORT's market area. The PORT is now determining if race-conscious measures would better correct the shortfall problem.</p>		

FINDINGS: SEA-TAC - Title 49 CFR Part 23 – AIRPORT CONCESSIONS

PART 1 –ACDBE Program Questions:

Administrative Requirements

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
1	Do you have an FAA approved ACDBE Program in place? (§ 23.21(a))	YES	Sea-Tac’s ACDBE Program was approved by the FAA on September 30, 2011. The ACDBE program available for public review by accessing the Port of Seattle’s website at http://www.portseattle.org/Business/Airport-Concessions/Documents/2014_%202017acdbe_plan_signed.pdf	NO	N/A
2	Did you sign and disseminate your ACDBE Policy Statement? (§ 23.21)	YES	Sea-Tac’s ACDBE policy statement was signed by former Port CEO Tay Yoshitani shortly before his retirement on September 30, 2014. <i>Recommended Enhancement:</i> It is recommended that the PORT’s newly appointed Chief Executive Officer, Ted Fick review, sign and re-distribute SEA-TAC’s ACDBE Program Policy Statement	NO	6/10/15
3	Does your ACDBE Liaison Officer have independent program implementation authority and independent (direct) access to the Airport Director/CEO? (§ 23.23)	YES	Deanna Zachrisson, the ACDBELO, is the Business Leader for the Airport Dining and Retail Program and meets regularly with the Airport Director regarding program issues in general and ACDBE matters when they arise. The ACDBELO has ready access to Ted Fick, Chief Executive Officer, Sea-Tac.	NO	N/A
4	Do you submit your annual overall goal by October 1, every three years pursuant to the established schedule? (§ 23.45)	YES	Sea-Tac submitted its FY 15-17 overall ACDBE goal to the FAA on September 10, 2014. The airport has consistently submitted its three-year overall ACDBE goal in a timely fashion.	NO	N/A
5	Has the Airport ACDBE goal methodology been by approved by the FAA? (§ 23.45)	YES	Sea-Tac’s ACDBE Program was approved by the FAA on October 2, 2014.	NO	N/A

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			In advance of the program submittal, Sea-Tac has consulted with FAA staff regarding the methodology used to calculate the 3-year participation goal. Sea-Tac uses an alternative methodology due to the small number of ACDBE-certified firms in the Airport's market area.		
6	Does your ACDBE program provide for seeking ACDBE participation in all types of concession activities rather than concentrating participation in one category or a few categories to the exclusion of others? (§23.25 (c))	YES	Sea-Tac Airport encourages participation by ACDBEs in all areas of concessions. In particular, the Airport has sought to increase small business opportunities for a variety of types of ACDBE firms including those that provide airport goods and services. The airport also provides supportive services to potential ACDBE firms regarding certification efforts. Additionally, as the airport's concessions program is redeveloped over the next number of years, Sea-Tac intends to implement a "vendor/supplier" program to facilitate relationships between tenants and providers of goods and services for the airport.	NO	N/A
7	Does your ACDBE program require businesses subject to ACDBE goals (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs? (§23.25 (g))	YES	Sea-Tac currently administers a race-neutral program. Currently, Sea-Tac has a number of prime concessionaire leases dating back to 2002-2003 that contain ACDBE goals. Sea-Tac has required these concessionaires to explore a broad means of achieving those goals. These prime concessionaires are all close to or exceeding their goals. In the future, Sea-Tac has articulated a desire to grow the number of small/minority owned businesses to include ACDBE firms as direct lessees. This is because Sea-Tac has found that direct relationships with these small business tenants are more effective for their concessions program because both parties have a vested interest in the success of these businesses.	NO	N/A
8	Do you conduct regular outreach sessions to ensure the inclusion of ACDBEs firms in your ACDBE program? (§ 23.25(e))	YES	Sea-Tac has two different types of outreach sessions that are intended to ensure the inclusion of ACDBE and other small/minority-owned businesses in the program. First, Sea-Tac hosts an annual ACDBE event that is a forum for such	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENED CORRECTIVE ACTION (if Any)	Compliance Issue	Action Due Date
			<p>businesses to learn more about growing their business, promoting services, and relevant matters for ACDBEs. Secondly, Sea-Tac hosts outreach events as new business opportunities become available. The publicity for these events is particularly targeted to small and minority owned businesses; for example one form of publicity is with advertisements in minority publications and online media.</p> <p>Lastly, Sea-Tac plans to conduct joint outreach with the state ACDBE certification agency in order to grow interest in the program participation overall.</p>		
9	Does the Airport assess potential for ACDBE participation when an extension, an option to renew, or a material amendment of a concession agreement is made? (§ 23.71)	YES	<p>The airport has had the opportunity to make several changes to improve the concessions program since the majority of the existing leases are expiring soon. For example, the airport has tiered and staggered lease expiration dates on a four year expiration/renewal schedule in order to allow opportunities to come up for bid more frequently. Most recently, Sea-Tac has negotiated with prime concessionaires HMS Host and Hudson to return several units for new leasing (Host- 6 units, Hudson- 7 units). Many of these units will be appropriate for future small businesses to have direct ownership agreements to include ACDBE firms. As an innovative approach to that end, the airport has also created smaller unit spaces that are easier for small businesses to bid on and handle since the required initial investments (based on square footage) for large spaces can be cost prohibitive to smaller firms.</p>	NO	N/A
10	If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, does the Airport submit an appropriate adjustment to the overall goal to the FAA for approval? (§ 23.45(j))	YES	<p>When Sea-Tac adds a new concession opportunity, Airport staff evaluates the anticipated gross sales if they have the potential for ACDBE participation and if the increased sales projections would warrant an appropriate adjustment to the FAA goal.</p> <p>Due to the size of current ACDBE participation (\$41.5 million in FY 2013-14), a \$200,000 increase would not measurably affect participation levels, nonetheless the Airport would consult with the FAA about an adjustment as appropriate.</p>	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
11	Does the airport have Long Term (5+ years) and Exclusive contract(s) currently in place? (§ 23.75)	YES	<p>There are two Long Term and Exclusive contracts currently in place. The Airport has a five-year agreement with Smarte-Carte which transitioned into holdover on January 31, 2015. The Airport also holds a 10-year agreement with Clear Channel, which was executed in late 2007. In the process of preparing for the FAA audit, staff was unable to locate a letter from the FAA providing approval of an exclusive for this agreement, which does not have ACDBE participation.</p> <p><u>Recommended Action:</u></p> <p>Sea-Tac must submit a request for waiver approval from the FAA to include both Long Term and Exclusive contracts.</p>	YES	6/10/15

Bid Processing and Contract Reviews

1	In situations where an ACDBE contract goal has been established, are bidders required to submit ACDBE information as required by regulation? (§ 23.25(e))	N/A	<p>Sea-Tac currently administers a race-neutral program.</p> <p>A few of the airport's older contracts contained ACDBE contract goals and in those RFPs/RFQs, contract goals were attached regarding ACDBE participation. The most recent solicitations included an encouragement to seek ACDBE participation, but no contract goals were present. Proposers voluntarily proposed participation in many cases, however.</p>	NO	N/A
2	In situations where an ACDBE concession goal has been established, during the review of good faith efforts, do you consider the guidance in Appendix A of the DBE program requirements? (§ 23.25(e))	N/A	Sea-Tac currently administers a race-neutral program.	NO	N/A
3	In situation of good faith efforts reconsideration, are reconsideration decisions made by an official who did not take part in the original good faith efforts determinations? (§ 23.25(e))	N/A	Sea-Tac currently administers a race-neutral program.	NO	N/A
4	Does the Airport verify that there is written confirmation from the ACDBE that it had agreed to participate in the contract as provided in the prime RFP/RFQ? (§ 23.29(e))	YES	A written confirmation of an ACDBE's agreement to participate in a contract was required as part of the RFP process.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
5	Does the Airport include enforcement provisions to ensure compliance of part 23 in concession agreements? (§ 23.29)	YES	Sea-Tac maintains an effective contract enforcement program to assure compliance with Part23. This includes regular site visits, interviews with employees, and review of daily sales generated by ACDBEs.	NO	N/A
6	Does the Airport have a system to verify and audit that the required assurances are being incorporated in concession contracts? (§ 23.29)	YES	Sea-Tac's concession contracts are audited on a routine basis, and these audits, initiated by the Port of Seattle Commission Audit Committee, assure that the required assurances are incorporated. Sea-Tac recently introduced a new SharePoint based workflow approval system and plans to incorporate a "check" that contracts are reviewed by the ACDBELO for compliance.	NO	N/A
7	Does the Airport have written certification that all contracts, leases, joint venture agreements, or other concession-related agreements are being reviewed? (§ 23.29)	YES	Sea-Tac is currently transitioning from a manual 'routing list' system of written tracking and verification. As part of that process, the Port's legal department expert for the ACDBE program verifies that all agreements are reviewed.	NO	N/A
8	Does the Airport require the concessionaire awarded the contract/agreement to make available upon request a copy of all ACDBE contracts, leases, joint venture agreements, or other concession-related agreements? (§ 23.25(e))	YES	Sea-Tac requires prime concessionaire operators as well as direct lease tenants to provide relevant documentation to the airport upon request.	NO	N/A

Monitoring Post Contract Award

1	Do you have monitoring mechanisms in place to ensure that work committed to ACDBEs at contract award or subsequently is actually <u>awarded</u> to ACDBEs to whom the work was committed? (§ 23.25(e))	YES	Sea-Tac works closely with all tenants in the daily operation of their businesses. This daily interaction assures that the work for contracts committed to ACDBEs have actually been awarded to them.	NO	N/A
2	Do you have monitoring mechanisms in place to verify that work committed to ACDBEs at contract award or subsequently is actually <u>performed</u> by the ACDBEs to whom the work was committed and those DBEs are managing their work, utilizing their own work forces? (§ 23.25(e))	YES	Sea-Tac works closely with all tenants in the daily operation of their businesses. This daily interaction assures that the work for contracts awarded to ACDBEs are actually performed by them.	NO	N/A

#	QUESTION/REGULATION REFERENCE	Response	FINDINGS / RECOMMENDED CORRECTIVE ACTION (If Any)	Compliance Issue	Action Due Date
3	In the case of post-award terminations, pre-award deletions or substitutions of ACDBE firms, do you have mechanisms in place to allow you to verify that the ACDBE has been notified AND given time to respond before approving the termination/substitution as well as verify the documented good cause that compels the termination before approving a termination/substitution? (§ 26.25(e))	YES	Sea-Tac is currently operating in a race-neutral environment. Sea-Tac did explain its understanding of the termination requirements of 49 CFR 26.53 in a race-conscious program that also apply to 49 CFR Part 23. Sea-Tac will ensure that a Prime not terminate an ACDBE without prior written approval and without documented good cause for termination/substitution of ACDBE firm if the airport were to choose to have a race conscious program.	NO	N/A
4	In situations where an ACDBE contract goal has been established and an ACDBE firm is terminated or fails to perform, do you require the prime concessionaire to make good faith efforts to find another ACDBE firm to substitute for the original ACDBE to participate in the contract to the extent needed to meet the established contract goal? (§ 23.25(e))	YES	Currently Sea-Tac primarily administers a race-neutral program. A few older concession contracts contained contract goals. In those instances, Sea-Tac requires prime concessionaires with an established ACDBE goal to demonstrate good faith efforts to find another ACDBE firm to substitute for the original ACDBE participant. In late 2014, one ACDBE tenant elected to sell its business to the prime concessionaire. Sea-Tac is requiring this prime concessionaire to make efforts to find a new ACDBE; however, it recognizes that this endeavor will be very difficult if not unlikely due to the fact that only two years remain on the lease.	NO	N/A
5	Do you or designee conduct regular concession site visits to verify who employs the employees on site, as well as who manages the location. If so, do you have written certification of this process? (§ 23.29)	YES	Castina Ridge, Assistant ACDBELO, conducts regular site visits at all locations throughout the terminal including ACDBE locations. Sea-Tac has developed a questionnaire and checklist which contain information on interviews with employees at the locations. During the site visits, the ACDBELO randomly interviews both employees and managers to ensure they are aware of the owner of the business. All site visit information is documented and preserved in ACDBE files. In addition, each program operator conducts daily terminal walks to monitor the operations of all tenants.	NO	N/A

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6	Do you review monthly ACDBE participation reports? (§ 23.29)	YES	Sea-Tac maintains a daily sales reporting system which all tenants are required to use to report sales by which staff can monitor participation reports. In addition, monthly reports of participation are provided by the Port's accounting department to the management of the concession program in order to monitor participation on a monthly basis.	NO	N/A
7	Do you conduct compliance reviews, audits and/or assessments of all program participants (e.g., prime concessionaires, sub-concessionaires, joint venture partners)? (§ 23.29)	YES	Sea-Tac conducts multiple types of audits of all program participants. Sea-Tac's concession contracts (Prime and sub-concessionaires) are audited on a routine basis, and these audits, initiated by the Port of Seattle Commission Audit Committee, assure that the required assurances are incorporated. Sea-Tac recently introduced a new SharePoint based workflow approval system and plans to incorporate a "check" that contracts are reviewed by the ACDBELO for compliance.	NO	N/A
8	Have you undertaken an internal review of your joint venture agreements, if any, in order to verify that they are in compliance with the FAA Joint Venture Guidance? (§ 23.29)	YES	In conjunction with the FAA's 2010 joint venture audit, the airport worked with its only joint venture, Airport Management Services/Hudson Group, to restate their joint venture agreement in order to comply with the guidance. Since that time, the Airport has monitored the management of that joint venture.	NO	N/A

ACDBE Participation Reporting

1	Do you count toward concession contract goals the value of work only if the ACDBE performs a Commercially Useful Function (CUF)? (§ 23.55(a))	NO	Sea-Tac only counts ACDBE participation if the work has a commercially useful function as verified by the ACDBELO & ACDBELO assistant's periodic reviews.	NO	N/A
2	Do you allow an ACDBE to count toward the ACDBE goal if it was not certified at the time its contract was executed? (§ 23.55/26.87(j))	NO	Sea-Tac only counts participation by ACDBEs certified prior to the execution of the contract. There are instances when an ACDBE is not certified in Washington at the time of award, but must be certified by the time that the contract is executed.	NO	N/A

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3	Do you count the DBE participation and any costs incurred in connection with the renovation, repair, or construction of a concession facility (build-out)? (§ 23.55(k))	NO	Sea-Tac only counts ACDBE participation that provides a service or product to the public.	NO	N/A
4	When an ACDBE performs as a participant in a joint venture, do you only count 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 toward ACDBE goals? (§ 23.55(d))	YES	Sea-Tac only counts the specific sales generated by that portion of the gross receipts that are equal to the distinct, clearly defined portion of the work commensurate with the ownership share in the joint venture.	NO	N/A
5	When counting participation of fees or commissions (i.e. professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial) charged by an ACDBE firm, do you review to ensure the amount is reasonable and not excessive as compared with fees customarily allowed for similar services?. (§ 23.55(e))	YES	Sea-Tac does not have any management agreements which contain ACDBE participation. In such an instance, Sea-Tac would assure the service fees are reasonable. In the one joint venture agreement at the airport, Sea-Tac has reviewed fees charged to ACDBEs and has assured by consulting with other airports that such fees were reasonable in comparison to typical fees charged in the marketplace.	NO	N/A
6	In the case where an ACDBE wins a prime concession through customary competitive procurement procedures or is awarded a sub-concessionaire on a prime concession contract that did not carry an ACDBE goal, do you count the ACDBE participation as Race-neutral participation? (§ 23.55(a))	YES	Sea-Tac has a completely race-neutral program so all forms of participation are counted as race-neutral.	NO	N/A
7	Were you required to submit the Uniform Report of ACDBE participation for federal FY 2014? (§ 23.55)	YES	Sea-Tac has been required to submit the Uniform Report and has completed this in a timely manner.	NO	N/A
8	In the past three years, have you consistently achieved your annual goal for concessions other than car rentals? (§ 23.57)	YES	In the past three years, Sea-Tac has consistently exceeded its annual goal for concessions participation.	NO	N/A
9	In the past three years, have you consistently achieved your annual goal for car rental concessions? (§ 23.57)	YES	Due to the lack of certified ACDBE firms which offer goods & services in the State of Washington, Sea-Tac has established an 0% Overall ACDBE Goal for car rental concessions. <i>Recommended Enhancement:</i> Sea-Tac should work closely with Office of Minority and Women's Business Enterprise to increase the number of qualified and certified ACDBE firms which could offer goods &	NO	N/A

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			<p>services to car rental companies. Sea-Tac should periodically review availability of certified ACDBE firms that could provide goods and services to car rental firms and consider adjusting/revising the goal in the future if appropriate. Sea-Tac should also periodically encourage the car rental firms to make good faith efforts to utilize ACDBE firms for goods and services purchases even without a goal in place.</p>		
10	<p>In the past three years, have you had any complaints filed alleging that the Airport did not comply with ACDBE regulations?</p>	NO	<p>Sea-Tac has been the subject of two complaints in the last three years.</p> <p>The first complaint was filed by a group of HMSHost subtenants after the passage of a Port of Seattle Commission motion that would provide those ACDBES only with the opportunity to negotiate new non-competitive leases. The Port of Seattle Commission solicited the input of the FAA on the permissibility of the motion, and the ACDBE tenants also sent a written complaint about Sea-Tac and its support for the Commission motion. The airport did not move forward with implementation of the motion based on the concerns of the FAA.</p> <p>In late 2014, the FAA received a written complaint from a community activist in support of an ACDBE participant alleging non-compliance. The matter is currently being litigated in Federal court.</p>	NO	N/A
11	<p>Do you have an FAA approved business development or mentor-protégé program? (§ 23.25)</p>	NO	<p>Sea-Tac does not currently have an FAA approved business development or mentor-protégé program.</p> <p>However, Sea-Tac has sponsored mentorship programs for new small businesses, minority businesses, and ACDBE businesses. For example, when a new ACDBE business entered the Airport in 2013 another ACDBE participant with experience of the Airport environment, both as a subtenant ACDBE and a joint venture partner, acted as a mentor to this new operator. Other current ACDBE tenants also have expressed their willingness to mentor new small minority owned businesses.</p>	NO	N/A

REVIEW SUMMARY

The Federal Aviation Administration (FAA) Office of Civil Rights would like to thank you for your participation in this FY 2015 DBE & ACDBE Compliance Review. We appreciate the substantial effort taken by Seattle-Tacoma International Airport in providing numerous documents and meeting with the FAA team during this on-site visit. Your timely response and active participation was an essential element in the successful completion of this important initiative. The collective assessments made during the review have been incorporated into this report.

The FAA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub-recipients in order to provide technical assistance, note best practices, identify areas for improvement, and ensure program compliance. This review has examined the Airport's compliance with the DBE Program and ACDBE Program. Observations and comments have been registered in each area that was examined.

Areas requiring your attention have been noted as a Compliance Issue under each specific question-corrective action must be taken by each set deadline. To supplement this year's review, we conducted four focus group meetings with prime contractors, DBEs, master/prime concessionaires, as well as ACDBEs. The primary objective during these meetings was to evaluate the administration of the DBE and ACDBE program from the participants' perspective. We found that participants are happy to be doing business at SEA-TAC. They appreciate the support the Airport offers to small businesses as well as the spirit of customer service it promotes. They appreciate the open communication and inclusion. In addition, most participants felt that SEA-TAC has designed and implemented its DBE and ACDBE Programs with the spirit and intent of 49 CFR Parts 23 and 26. However, participants also noted that they would like more transparency and inclusion in the DBE & ACDBE goal setting processes. They would also like to be notified more directly of upcoming opportunities and goals during the goal-setting comment periods. As required in 49 CFR 26.45(g), the PORT should begin posting DBE data on their public website regarding DBE Goal Setting public participation, and ensure thorough consultations, including with local and currently participating firms, are conducted for both the DBE and ACDBE Goal Setting processes.

The airport has many positive areas of note within its DBE & ACDBE programs. For example, it is very commendable that the airport has innovatively restructured its concessions program overall and its unit spaces specifically to be more attractive to small business firms including ACDBEs. While SEA-TAC has many positive aspects of the DBE and ACDBE Programs, based on the findings, we have designed specialized technical assistance to focus on the following areas of concern: (1) New CEO should review and sign the DBE and ACDBE Program Policy Statements; (2) DBE program must develop a prompt payment mechanisms to return retainage (3) Two Long Term and Exclusive Leases require FAA review and approval; and (4) Lack of ACDBE participation from Car Rental Concessions.

The FAA Office of Civil Rights looks forward to continuing to work with you in ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs," and 49 CFR Part 23, "Participation of Disadvantaged Business Enterprise in Airport Concessions."

REPORT PREPARED BY:

RICKY WATSON
Northwest Mountain DBE Compliance Specialist

KETURAH PRISTELL
Southern Region DBE Compliance Specialist

Recommended Resources:

FAA website, http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/fed_reg/
FAA dbE-Connect System, <https://faa.dbesystem.com/Default.asp?>

U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization <http://www.osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/index.cfm>
DOT Departmental Office of Civil Rights <https://www.civilrights.dot.gov/disadvantaged-business-enterprise>