

CIVIL RIGHTS OVERVIEW



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CIVIL RIGHTS ACT OF 1964





OVERVIEW OF CIVIL RIGHTS

The FAA's office of Civil Rights manages the following with respect to Airport Civil Rights Programs:

- DBE
- ACDBE
- Title VI
- ADA

AMERICANS WITH DISABILITIES ACT (ADA)

- Applicable Laws and Regulations
 - Section 504 of the Rehabilitation Act
 - 28 CFR Parts 35 and 36 (DOJ)
 - 49 CFR Parts 37, 38 and 49 CFR Part 27 (FAA)
 - FAA Order 1400.9A
- Requirements ensure nondiscrimination on the basis of disability in programs or activities receiving Federal assistance
- Airport owners/operators are required to have an ADA/Section 504 Coordinator and detailed complaint process
- ADA Requirements are passed on to airport contractors, tenants and licensees

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

- 49 CFR Part 26
- Ensures all business enterprises have a fair opportunity to compete for Federally-funded contracts
- Airport authorities are required to follow DBE requirements in order to receive Federal funds
- Must set an annual goal of anticipated DBE participation and monitor results

WHAT IS A DBE?

- For-profit, small business (under SBA size standard and gross receipts under \$23.98 million)
- At least 51% is owned by one or more individuals who are socially and economically disadvantaged
- The management and daily business operations are handled by at least one of these disadvantaged owners.
- Must be certified in the proper NAICS code to be counted toward the contract goal.

ECONOMIC DISADVANTAGE

49 CFR §26.67

- An individual is presumed to be economically disadvantaged if he or she has a personal net worth under \$1.32 million, but this presumption is rebuttable.
- Presumption of disadvantage is rebutted if he or she is able to accumulate substantial wealth. Examples include:
 - average adjusted gross income of the owner over the most recent three year period exceeds \$350,000 (if not unusual, not reinvested, and without offsetting losses); or
 - total fair market value of the owner's assets exceed \$6 million

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

- 49 CFR Part 23 and 49 CFR Part 26
- Ensures nondiscrimination in the award and administration of opportunities for *concessions* by airports receiving Federal assistance
- Primary airports (>10,000 enplanements) must have an ACDBE Program
 - ACDBE Liaison Officer (May be the same as DBE Liaison Officer)
 - Documented Monitoring Program
 - Submission of an annual report (March 1st) that includes shortfall analysis
 - ACDBE Goal Requirements

ACDBE GOAL REQUIREMENTS

- Airport owners/operators must establish two ACDBE overall goals if concession revenue is more than \$200,000
 - Car rentals
 - All other concession activities
- Goals are set on a tri-annual basis
 - Step 1: Must determine the base figure for availability of ACDBEs in geographic area
 - Step 2: Determine, what, if any, adjustments need to be made based on relevant evidence

WHAT IS A CONCESSION?

- 49 CFR § 23.3
- A business, located on an airport, that is engaged in the sale of consumer goods or services to the public under an agreement with the airport, another concessionaire, or the owner or lessee of a terminal, if other than the airport; or
- A business that, even if it does not maintain an office, store, or other business location on an airport (as long as the activities take place on the airport), manages contracts and subcontracts, is a web-based or other electronic business in a terminal or which passengers can access at the terminal, is an advertising business that provides advertising displays or messages to the public on the airport, or is a business that provides goods and services to concessionaires.

WHAT IS AN ACDBE?

- For-profit, small business (with some exceptions, gross receipts under \$56.42 million)
- At least 51% is owned by one or more individuals who are socially and economically disadvantaged; and
- The management and daily business operations are handled by at least one of these disadvantaged owners.

Also must be certified in the applicable NAICS code.

JOINT VENTURES IN CONCESSIONS

- A joint venture is an association of an ACDBE firm and one or more firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, **and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.**
- Must still meet all of the requirements of 49 CFR Parts 23 and 26
- Airport must verify that the work committed to ACDBEs is actually performed by the ACDBEs
- For counting ACDBE participation in joint ventures, refer to 49 CFR § 23.55(d) and the July 2008 FAA "Joint Venture Guidance."

LONG TERM EXCLUSIVE (LTE) AGREEMENTS

- 49 CFR § 23.75
- Prohibits airports from entering into LTE agreements for the operation of concessions
 - Permissible under some limited conditions
- “Exclusive” is defined as a type of business activity that is conducted solely by a single business entity on the entire airport
 - Includes the absence of any ACDBE participation.
- LTE agreements create barriers to opportunities and impact the ability of sponsors to make good faith efforts to meet ACDBE goals
- FAA **must** approve all LTE agreements before award

FAA GUIDANCE ON DBE/ACDBE

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/

- Appendix A to Part 26 – Guidance Concerning Good Faith Efforts
- Car Rental Companies Good Faith Efforts Obligations to meet ACDBE goals at an Airport
- Guidance on Counting ACDBE Advertising Services
- Joint Venture Guidance – 07/2008
- Principles for Evaluating Long-term, Exclusive Agreements in the ACDBE Program

USDOT GUIDANCE ON DBE/ACDBE

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-guidance>

- Official Questions and Answers (Q&A's) Disadvantaged Business Enterprise Program Regulation (49 CFR 26)
- Official FAQs on ACDBE Program Regulations (49 CFR 23)
- Certification appeal decisions.
- New official Q&A's recently issued regarding:
 - Timely Processing of Certification Applications
 - Not using state/local M/WBE goals on federally-assisted contracts
 - Prompt payment of subcontractors sample language

NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION 49 CFR PART 21 AND 49 USC § 47123

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, creed, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

Airport sponsors may not, on the basis of race, color or national origin:

- Deny any individual service, financial aid, or benefit under the program
- Provide any service, financial aid, or benefit that is different from that provided to others
- Subject an individual to segregation or separate treatment

DOES TITLE VI AND 49 CFR § 21.3 APPLY TO MY AIRPORT?

Title VI and Part 21 apply to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance such as:

- Use of grants made in connection with the Federal-aid Airport Program;
- Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration;
- Use of U.S. land acquired for public airports under Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and
- Money paid, property transferred, or other Federal financial assistance extended pursuant to an approved application.

SCOPE OF TITLE VI

Contracts:

- AIP contracts
- PFC contracts
- Local contracts

Services:

- Concessions
- Parking
- Surface transportation

Community access:

- Airport Employment
- Job Advertisements
- FBO Operations

TITLE VI – EXAMPLES OF REQUIRED ACTIONS

Required Actions:

- Forward to the FAA all Title VI complaints of discrimination, including resolution efforts within 15 days of receipt;
- Display the nondiscrimination poster at various locations;
- Update all contracts to include the mandatory Federal nondiscrimination contract clause;
- Provide language assistance to the Limited English Proficiency (“LEP”) populations;
- Address LEP population in the Airport Emergency Evacuation Plan; and
- Analyze Environmental Justice Implications.

REQUIRED UNLAWFUL DISCRIMINATION POSTER

Not to be altered

Must be strategically placed
in high traffic areas as well
as employee areas

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator:
Phone:
Address:

Discriminación Ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador:
Teléfono:
Dirección:



U.S. Department of Transportation
Federal Aviation Administration

14C-01080

TITLE VI – REQUIRED CONTRACT PROVISION

FAA Civil Rights Compliance office has *suggested* language:

- General Civil Rights language:

“The Lessee assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance and that it shall comply with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the DOT - effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended.”



MANDATORY!

TITLE VI

LIMITED ENGLISH PROFICIENCY

Limited English Proficiency Individual is a person who does not speak English as their primary language and has limited ability to read, write, or understand English.

Four Factor Analysis:

1. Number of LEP persons at your Airport – Airport is required to know;
2. Frequency of contact with Services;
3. Importance of the Service provided by the Airport – if a delay or denial of access to a particular Service could have serious health or life threatening implication, it is probably “important”; and
4. Resources available to the Airport and cost.



O'Hare International Airport

Similar Air Trade Area, different language frequency!

Midway International Airport

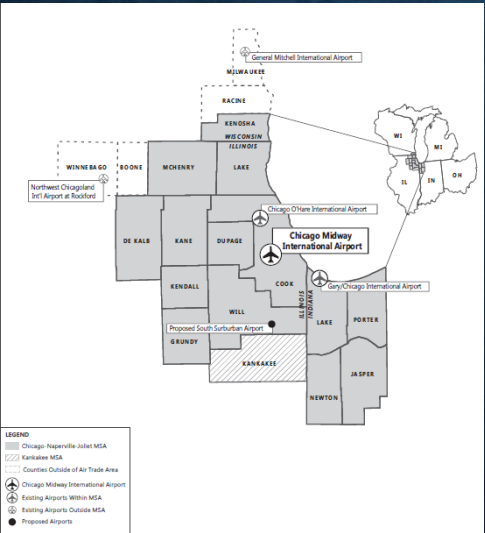
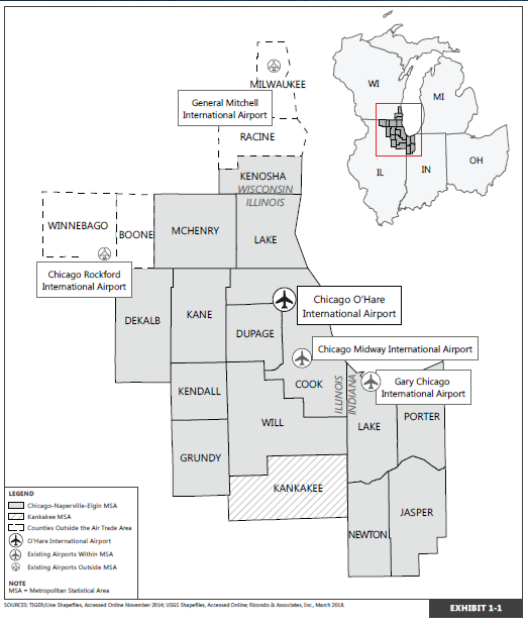
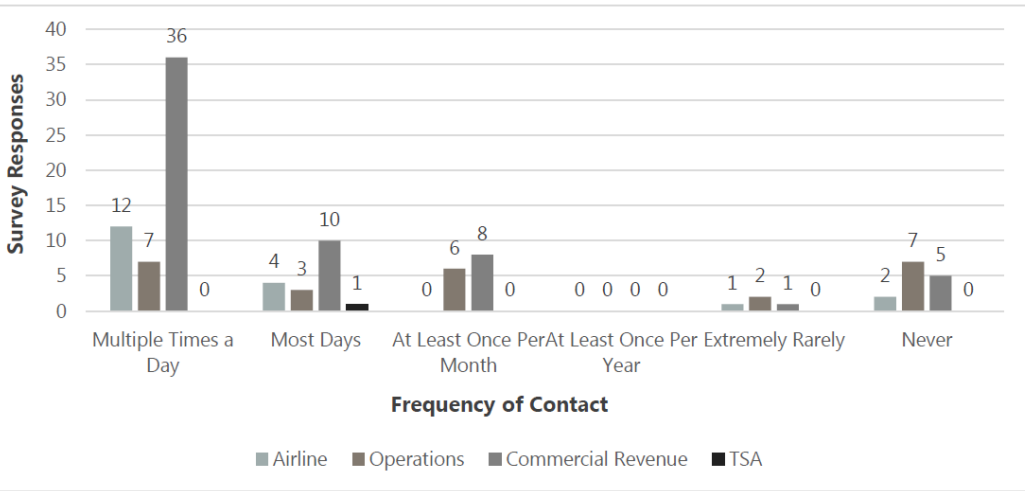
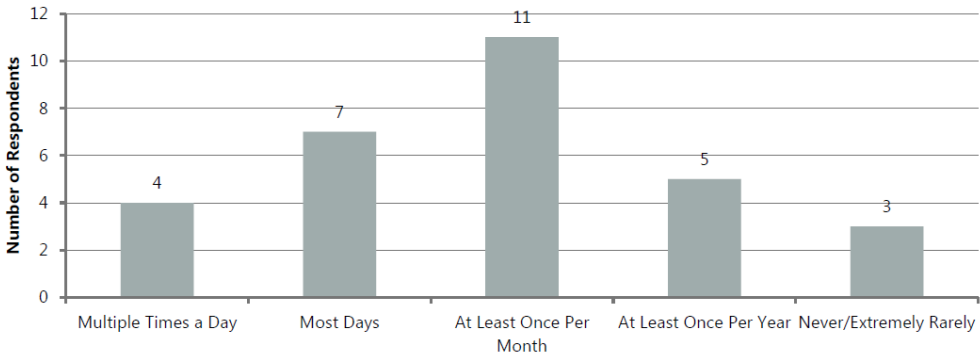


Exhibit 2-5: How Frequently Do You Communicate with Members of the Public Who Speak Chinese?



SOURCE: Chicago Department of Aviation, December 2017.
PREPARED BY: Ricondo & Associates, Inc., December 2017.

Exhibit 2-4: How Frequently Do You Communicate with Members of the Public Who Speak Chinese?



SOURCE: Chicago Department of Aviation, July 2017.
PREPARED BY: Ricondo & Associates, Inc., August 2017.

TITLE VI – ENVIRONMENTAL JUSTICE ("EJ")



Environmental Justice ensures no low-income or minority population bears a disproportionate burden of effects resulting from Federal funding recipients actions.

FHWA Environmental Justice brochure (useful overview):
<https://www.tn.gov/content/dam/tn/tdot/civilrights/ej2000.pdf>

CASE STUDIES

Compliance Review Process

- Notice
- Document and employee “gathering”
- Interview process- timing
- Follow up research and documentation
- FAA required and recommended action chart
- Close out of compliance review

ADDITIONAL RESOURCES

FAA Annual Civil Rights Training Conference for Airports

https://www.faa.gov/about/office_org/headquarters_offices/acr/comm_civ_support/

LEP.Gov

<https://www.epa.gov/ejscreen>

FAA ADA Self-Assessment Form (FAA website under 7th National Civil Rights training) & FAA Order 1400.9A

FAA Title VI Self-Assessment (FAA website under 7th National Civil Rights training)

FAA Required Contract Provisions for AIP and Obligated Sponsors (FAA website, Procurement and Contracting Under AIP)



YOVANNIE RODRIGUEZ, ESQ.

Yovannie Rodriguez is a shareholder at Marchena and Graham, P.A. She is a member of the firm's Airport Practice Group. Born in Bayamon, Puerto Rico, Ms. Rodriguez has been practicing law in the Orlando area and with Marchena and Graham, P.A. since being admitted to the Florida Bar in October 1999. Ms. Rodriguez's practice is concentrated in civil rights, Federal and local small business policies and programs, municipal finance, corporate law, business transactions, real estate transactions, government and contract law. She has drafted current Airport Concession Disadvantaged Business Enterprise ("ACDBE") policies as well as a Title VI Policy and Limited English Proficiency Plan. Additionally, Ms. Rodriguez has drafted the training materials for airport employees and tenants regarding Title VI.



Ms. Rodriguez has reviewed certifications, attended appeal hearings and assisted in drafting responses to such appeals. As a result, Ms. Rodriguez has compiled an attorney work product data base of appeals to include small business irregularities, good faith efforts, certification reviews, and participation by small business. Throughout her years experience in airport law, Ms. Rodriguez has worked with concession, construction and purchasing department staff on numerous matters including preparation of request for proposal documents, bid invitation documents and contracts for concessions. Ms. Rodriguez also provides counsel in preparation and setting of goals for DBE, ACDBE, MWBE and LDB programs.

Recently, Ms. Rodriguez has counseled on the use of the various small business programs for a capital improvement program involving \$3.5 billion in infrastructure development including an intermodal complex, related improvements, transportation infrastructure, a new terminal complex, development of procurement plans, contract documents, risk management and insurance/bonding plans, as well as, small business participation whether through the DBE or MWBE or LDB programs, depending on the funding.

KATHARINE WHISLER, ESQ.

Katharine Whisler is an attorney at the City of Chicago Law Department in the Aviation, Environmental, and Regulatory Division. She specializes in municipal procurement and contracting, and federal regulatory areas, particularly as it relates to Chicago's airports: O'Hare and Midway International. Katharine also has expertise in intellectual property law, among other areas. Prior to joining the City of Chicago Law Department, Katharine was an attorney in the City's Department of Procurement Services. Before joining the City, she was a clerk for Judge Lester Foreman in the Circuit Court of Cook County and, prior to that, worked in the ABA Book Publishing Division handling copyright clearances, reprint licenses, and other publishing agreements.



She earned her J.D., magna cum laude, from Chicago-Kent College of Law in 1999. She is also a graduate of the School of the Art Institute of Chicago with a degree in fine art and the University of Iowa with a degree in English literature.