



Airport Concession Disadvantage Business Enterprise

15 MINUTES OF ACDBE: FROM THE GLOBAL TO THE GRANULAR

Airport Concession Disadvantaged Business Program Overview

- ▶ Federal program to offer opportunities for small businesses owned and controlled by disadvantaged individuals to participate in business at airports.
- ▶ 10% *aspirational goal* for DBE and ACDBE participation on national level.
- ▶ Statutory obligations: 49 U.S.C. §47113, Grant Assurances 49 U.S.C. §7107(e)(1) and *FAA Modernization and Reform Act of 2012* amended by *FAA Extension, Safety, and Security Act (2016)*.

Airport Concession Disadvantaged Business Program Overview

- ▶ FAA regulations for concessions program is 49 C.F.R. Part 23 and non-concessions is 49 C.F.R. Part 26.
- ▶ ACDBE rules apply to on-airport businesses that engage in the “sale of consumer goods or services to the public” and to management contracts.
 - ▶ Does not apply to ground transportation for passengers unless they lease space at the airport.

Airport Concession Disadvantaged Business Program Overview

- ▶ Must establish goals for ACDBE participation in two separate categories: car rentals and all other concessions.
- ▶ Goals should reflect the amount of participation that would have occurred absent discrimination and must be adjusted for local circumstances.
- ▶ FAA reviews program that airport establishes to meet the goals.

Airport Concession Disadvantaged Business Program Overview

- ▶ Must include race-neutral measures.
- ▶ Must include race-conscious measures if race-neutral not expected to meet overall goal.
- ▶ Cannot use:
 - ▶ Quotas
 - ▶ Set-asides
 - ▶ Local preferences
- ▶ Must have FAA's consent for exclusive concession agreements longer than 5 years.

Nitty-Gritty of Compliance Documents

- ▶ https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
- ▶ 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates all possible provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program. The source of requirements addressed within this document are identified within the section for each individual clause.
- ▶ 2) Federal laws and regulations require that a sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications **regardless of whether or not the project is federally funded**. (emphasis added)

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
Breach of Contract	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) BA – Total Facility	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) B.A. – Manufactured Product	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
Disadvantaged Business Enterprise	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$3,500	NIS	REQD	REQD	REQD	REQD	n/a
Energy Conservation Requirements	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Equal Employment Opportunity	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
Federal Fair Labor Standards Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Foreign Trade Restriction	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
Lobbying Federal Employees	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
Occupational Safety and Health Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition of Segregated Facilities	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
Recovered Materials	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
Rights to Inventions	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Seismic Safety	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Tax Delinquency and Felony Conviction	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Termination of Contract	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Veteran’s Preference	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

Nitty-Gritty of Compliance Documents

- ▶ Sponsor must incorporate applicable provisions in all its procurements and contract documents. Provisions flow to subcontracts and sub-tier agreements, unless otherwise stated.
- ▶ Sponsor must **not** incorporate the entire guidelines, whether by reference or by inclusion in whole. Incorporation may lead to ambiguity and improper application that “unnecessarily increases price.”

Nitty-Gritty of Compliance Documents

- ▶ Sponsor must incorporate provisions using mandatory language “**without change**” (bold in original) except to adapt as necessary (e.g. use sponsor’s name).
- ▶ Sponsor must verify state or local law does not conflict with or alter the Federal law or regulations.
- ▶ Sponsor that fails to “properly” incorporate applicable clauses “at risk for audit findings or denial of Federal funding.”

SECTION 27.1 – ACDBE, DBE, and Small Business Utilization

27.1.1 The City encourages Lessee to voluntarily utilize _____ as much as possible in accordance with the service standards of this Lease.

27.1.2 Lessee acknowledges it proposed the following utilization for this Lease.

c. Participation as Partners as a percentage of _____ percent (___%), DBE _____ percent (___%).

d. Participation as suppliers of goods and services as a percentage of _____ percent (___%) operating expenses or cost of goods sold. Lessee: ACDBE _____ percent (___%), DBE _____ percent (___%), Small Business _____ percent (___%).

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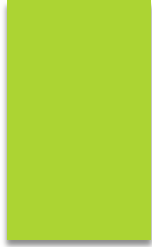
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DBEs should not be involved, as they cannot be counted for anything related to concessions.

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Cannot require commitments to ACDBEs separately from other small businesses and remain race-neutral



C. **Equal Opportunity**

The City extends to all Respondents an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Small Business Enterprises (SBEs) whenever practical. Respondents are encouraged to call the City's Equal Opportunity Department at 602-261-1111 or visit their website at: <https://phoenix.diversitycompliance.com/> for assistance in applying SBEs.



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SBE is a local program. This is not the required non-discrimination clause from Part 23 or the Title VI solicitation notice.

D. **Award Recommendation**


All award recommendations will be posted on

<https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations>

When the City posts the award recommendation, this RCS will be available upon request for Respondent. The award recommendation file consists of the RCS, any addenda, advertising and evaluation panel consensus scoring, evaluation process documents, pre-response meeting documents, Q&A, signed conflict of interest statements used in this process and confirmation of the RCS's posting to the phoenix.gov solicitation website.

website:

this RCS
ement file
valuation

the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. 

Contractor agrees to include the foregoing in all subsequent contracts that it enters and cause those businesses to include said statement in their further agreements.

3. To the extent that the Contractor is required by 49 CFR Part 23, the concessionaire shall not discriminate on the basis of race, national origin, or sex in connection with the award, performance, or administration of any concession agreement, maintenance agreement, lease agreement, or other agreement covered by this contract. 

performance of any concession agreement, maintenance agreement, lease agreement, or other agreement covered by this contract.

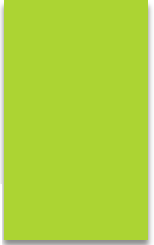
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This is not the verbatim language required by §23.9. It is also not just an ACDBE requirement; consider renaming the clause in the header.

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This statement is not the verbatim language from §26.13(b), it is out of date, and is not applicable to concessions agreements. If the City wants to have a standard supplement, it should consider creating separate documents for concessions and all others.

Contractor agrees to include the foregoing in all subsequent contracts that it enters and cause those businesses to include said statement in their further agreements.



B. Assurances

1. Contractor shall furnish its services on a fair, equal basis to all users of the Airport.
2. Contractor shall charge fair, reasonable and not excessive rates for each unit or services; provided that, Contractor may offer volume and non-discriminatory discounts, rebates or other special rates to volume purchasers. Non-compliance with this requirement shall constitute a breach of this Contract for which the City of Phoenix and the United States shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.
3. Contractor warrants 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 on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or disability, including, without limitation, Section

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These are not the Title VI assurances from the required federal contract provisions document of December 2017.

Supplemental Terms and Conditions to All Ai

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I don't see the Title VI Solicitation Clause in this solicitation.

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport and/or Phoenix Goodyear Airport, in accordance with
2. "Contract" includes any and all City of Phoenix subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.
4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.
2. Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.
3. Contractor warrants that no person shall, on the ground of race, sex, age or disability, be excluded from participation in the program, or otherwise be excluded from the general public. Contractor further warrants that it will comply with all federal, state and local Executive Orders, and rules promulgated thereunder, on the grounds of race, creed, color, national origin, sex, age or disability, without limitation, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

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These are not the general civil rights provisions or Title VI assurances from the required federal contract provisions document of December 2017.

H. Respondent-Incurred Costs

All costs incurred by the Respondent in connection with this RCS shall be borne solely by the Respondent. Under no circumstances shall the City be responsible for any costs associated with the Respondent's Response or the RCS process.

I. City's Sole Determination of Responsiveness and Right to Investigate

Responses will be reviewed for documentation completeness, and compliance with the RCS requirements. The City has the sole right to determine responsiveness and responsibility, and the sole determination of the Respondent's integrity, skill, capability, and ability for conducting the work to be performed.

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Responsiveness?