

## **WHAT ARE THE GOOD FAITH EFFORTS OBLIGATIONS OF CAR RENTAL COMPANIES TO MEET ACDBE GOALS AT AN AIRPORT?**

- Airport recipients are required to establish an annual overall ACDBE goal for car rental concession opportunities pursuant to 49 C.F.R. § 23.41(a) (2016).
- Once the overall ACDBE goal for car rental concession operations is established, individual goals are set by the airport for each car rental company operating at the airport.
- By statute (49 U.S.C. § 47107(e) (2014)), a car rental company must make a good faith effort to meet its ACDBE goal by exploring all options available to meet the goal to the maximum extent possible. The variety of options include the purchase of goods and services from ACDBE vendors. This, in turn, includes, but is not limited to, the purchase or lease of vehicles from an ACDBE vendor, vehicle repair services provided by ACDBEs, janitorial services, insurance, and management fees or commissions earned by ACDBEs.
- Under the statute cited above, a car rental company cannot be required to change its corporate structure to provide for direct ownership arrangements with ACDBEs to meet its ACDBE goal. However, a car rental company may choose to meet all or some portion of its goal through direct ownership arrangements with ACDBEs to comply with its good faith efforts obligation. In other words, a car rental company may engage in joint ventures, franchises, or subleases with an ACDBE to meet its ACDBE goal but cannot be required to do so.
- The ACDBE program regulation at 49 C.F.R. § 23.25(f) (2016) is intended to implement the statutory good faith efforts obligation. It states that: “[Recipients’] ACDBE program must require businesses subject to ACDBE goals at the airport (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 DBEs.
- As explained by the Department in the preamble to the final rule adopting section 23.25(f): “Both in the statute and in paragraph (f), this requirement operates in the context of the ability of airport businesses to meet ACDBE goals through the purchase of goods and services from ACDBE vendors. While meeting goals through the purchase of goods and services is authorized, it is important for ACDBE goals to encourage the participation of ACDBEs in a variety of ways. It is a healthier situation for ACDBE programs, for example, if ACDBE participation [at] a business or airport comes not only

through goods and services purchases but also through concessions run by ACDBEs.” This speaks to encouraging the participation of car rental concessions owned and operated by ACDBEs in addition to the purchase of goods and services from ACDBEs. See 70 Fed. Reg. 14496 (March 22, 2005).

- The parenthetical language in 49 C.F.R. § 23.25(f) (2016) does not excuse car rental companies from the general obligation imposed on businesses subject to ACDBE goals to make good faith efforts to meet the goal. The parenthetical “except car rental companies” is intended only to implement the statutory limitation in 49 U.S.C. § 47107(e)(4) (2014) against requiring car rental companies to change their corporate structure to include direct ownership arrangements as a means of meeting ACDBE goals. See *id.*
- Airports are expected to rigorously review the quality, quantity and intensity of the good faith efforts made by the car rental companies to meet their ACDBE goal on a regular basis to ensure compliance. Airports should review 49 C.F.R. Part 26, Appendix A “Guidance Concerning Good Faith Efforts” that is made applicable to concession specific goals pursuant to 49 C.F.R. § 23.25(e) (2016). Many of the efforts described in Section IV of Appendix A would also apply to car rental companies. A failure by the car rental company to demonstrate sufficient good faith efforts may result in a finding of non-compliance with ACDBE program requirements and must be enforced by the airport. Failure by the airport to do so may result in a finding of non-compliance against the airport.

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 C.F.R. part 23.