

Formula 1 to Paragraph (c)

Future Year PNW Cap = [\$1,600,000] *	$\frac{\text{Q1-Q4 Average Household Net Worth of Future Year} / \text{Total Households of Future Year}}{\text{Q1-Q4 Average Household Net worth of 2019} (\$106,722,704 \text{ million} / \text{Total Households of 2019} (128,579))}$
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[89 FR 55088, July 3, 2024]

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not perform work or provide services relevant to the airport’s concessions program.

[70 FR 14508, Mar. 22, 2005, as amended at 89 FR 24961, Apr. 9, 2024]

§ 23.39 What are other ACDBE certification requirements?

(a) The provisions of § 26.83(c)(1) of this chapter do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Visit the firm’s principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. You must review those persons’ résumés and/or work histories. You must maintain a complete audio recording of the interviews. The certifier must also visit one or more active job sites (if there is one). These activities comprise the “on-site review”

(OSR), a written report of which the certifier must keep in its files.

(2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;

(3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;

(7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and

(8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this chapter.

(b) In reviewing the Declaration of Eligibility required by § 26.83(j) of this chapter, you must ensure that the

ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

(c) For purposes of this part, the term *prime contractor* in § 26.87(j) of this chapter includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of § 26.63(c)(2) of this chapter do not apply. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.63(c)(1) of this chapter.

(e) You must use the Uniform Certification Application found in part 26 of this chapter without change. However, you may provide in your ACDBE program, with the written approval of the concerned Operating Administration, for supplementing the form by requesting specified additional information consistent with this part. The applicant must state that it is applying for certification as an ACDBE and complete all of section 5.

(f) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

[89 FR 24961, Apr. 9, 2024]

Subpart D—Goals, Good Faith Efforts, and Counting

§ 23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for con-

cessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

(c) The requirements of this section do not apply if no new concession opportunities will become available during the goal period. However, recipients must take appropriate outreach steps to encourage available ACDBEs