

## § 23.75

complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in § 23.21(e).

### **§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?**

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions.

(1) For purposes of this section, a long-term agreement is one having a term of more than ten years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years.

(2) For purposes of this section, an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement; and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term exclusive concession agreement, you must submit the following information to the FAA regional office, the items in paragraphs (c)(1) through (3) of this section must be submitted at least 60 days before the solicitation is released and items in paragraphs (c)(4) through (7) of this section must be submitted at least 45 days before contract award:

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(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the solicitation.

(3) ACDBE contract goal analysis developed in accordance with this part.

(4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals.

(5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation.

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable.

(7) Final long-term exclusive concession agreement, subleasing or other agreements.

(d) In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, you must submit the items in paragraphs (c)(1) and (3) through (7) of this section at least 45 days before contract award.

(e) In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, you must submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:

(1) A description of the special local circumstances that warrant the holdover.

(2) Anticipated date for renewal or re-bidding of the agreement.

(3) The method to be applied for renewal or re-bidding of the agreement.

(4) Submission of all items required under paragraphs (c)(3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

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### **§ 23.77 Does this part preempt local requirements?**

(a) In the event that a State or local law, regulation, or policy differs from