

ACDBE Certification Workshop

Presented by: ACC, Inc.
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Agenda

- ▶ Governing regulations
- ▶ Definitions and basic requirements
- ▶ Application
- ▶ Common issues
- ▶ Personal net worth

Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Regulations

- ▶ 49 CFR Part 26 – DOT (i.e. FHWA, FTA, & FAA) DBE program for recipient contracting – Subpart D governs certification for DBEs and ACDBEs
- ▶ 49 CFR Part 23 – FAA ACDBE program for airport concessions
- ▶ *Regulations are available at <http://osdbu.dot.gov> or <http://ecfr.gpoaccess.gov>*

ACDBE Certification

- ▶ Applicants must show that they meet size, group membership, ownership, and control standards by a preponderance of the evidence.
- ▶ The applicant bears the burden of proving, by a preponderance of evidence, that it meets eligibility criteria

What is an ACDBE?

- ▶ *Airport Concession Disadvantaged Business Enterprise (ACDBE)* means a concession that is a for-profit small business concern:

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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What is a Small Business Concern?

- ▶ *Small business concern* means a for-profit business that meets one of the following requirements:
- ▶ (a) Gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$52.47 million.
- ▶ (b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a):
 - ▶ (1) Banks and financial institutions: not to exceed \$275 million in assets;
 - ▶ (2) Car rental companies: Gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$69.97 million
 - ▶ (3) Pay telephones: not to exceed 1,500 employees.

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What are the Presumed Disadvantaged Groups?

- ▶ Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) Black Americans
 - (ii) Hispanic Americans
 - (iii) Native Americans
 - (iv) Asian Pacific Americans
 - (v) Subcontinent Asian Americans
 - (vi) Women
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA

Other Requirements

- ▶ In addition to being a member of a presumed disadvantaged group or making an individual showing of disadvantage, individuals must not exceed the personal net worth cap.

Personal Net Worth Cap

- ▶ The personal net worth standard used in determining eligibility for purposes of certification is \$750,000. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

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Ownership and Control

- ▶ The regulation deal extensively with ownership and control.
- ▶ Both are important in establishing ACDBE eligibility.
- ▶ The following slides contain a few of the requirements/guidelines from the regulation.

Ownership

- ▶ The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

Ownership

- ▶ The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Ownership

- ▶ You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—
 - Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - Involved in the same or a similar line of business; or
 - Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

Control – Independence

- ▶ Only an independent business may be certified as a DBE.
- ▶ An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- ▶ Of particular importance and subject to scrutiny:
 - Relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - Present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE of the potential DBE firm
 - Relationships with prime contractors
 - Consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

Control

- ▶ A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

Control

- ▶ The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - A disadvantaged owner must hold the highest officer position in the company
 - In a corporation, disadvantaged owners must control the board of directors
 - In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Control

- ▶ The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations.
- ▶ In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

ACDBE Certification



▶ The Process:

- Eligibility Review based on submission of:
 - Application
 - PNW and supporting documentation
- On-Site Review
- Analysis/Recommendation
- Review by Unified Certification Program
- Decision

Procedures

- ▶ In accordance with:
 - 49 CFR part 23
 - Applicable sections of part 26, subpart D
- ▶ McCarran International Airport is a member of the Nevada Unified Certification Program (NUCP)
- ▶ Certification is ultimately granted through the NUCP

Certification Application

- ▶ McCarran International Airport utilizes the standard Uniform Certification Application required by 49 CFR part 26
- ▶ Section I

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? __ Yes, on __/__/__ State: _____ __ No
	8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
	SDB	

Certification Application

- ▶ Section 2 – General Information
 - A – Contact Information
 - B – Business Profile – Primary activities of the firm, Date started, number of employees, gross receipts, etc.
 - C – Relationship to other businesses
 - D – Immediate family members

Certification Application

- ▶ Section 3 – Ownership – Complete for EACH disadvantaged owner
 - A – Background Information – Name, address, gender, ethnicity
 - B – Ownership Interest
 - C – Disadvantaged status – includes PNW

Certification Application

▶ Section 4 – Control

- A–Officer and Directors
- B–Management
- C–Inventory
- D–Reliance on other firms
- E–Financial Information
- F–Sources, Amounts and Purpose of money loaned
- G–Contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years
- H–Current Licenses/Permits
- I–Three largest contracts
- J–Three largest active jobs

Certification Application

- ▶ Affidavit of Certification – signed and notarized for each owner upon whose disadvantaged status is relied

“A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW”

Major Certification Issues

- ▶ Ownership
- ▶ Control
- ▶ Independence
- ▶ Family-Run Businesses
- ▶ Size Standard
- ▶ PNW Standard

Denial/Withdrawal Policies

- ▶ **INELIGIBLE FIRMS** (firms who are denied certification):
Firms who have been determined as ineligible to participate in the DBE/ACDBE program and have been denied certification based on 49 CFR, Parts 23 and 26 requirements may reapply after twelve (12) months from the date of denial.
- ▶ **WITHDRAWING APPLICATIONS:**
Firms who withdraw their application may reapply after six (6) months from the date of withdrawal. Firms may only withdraw once. Any firm resubmitting after an initial withdrawal will not be allowed to withdraw their application a second time.

Personal Net Worth

- ▶ To be eligible for certification as an ACDBE the disadvantaged owners of a firm may not have a personal net worth (as defined by the regulation) in excess of \$750,000

Definition of Personal Net Worth

- ▶ *Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted.
- ▶ An individual's personal net worth does not include the following:
 - Ownership interest in applicant firm
 - Equity in primary place of residence
 - Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of \$3 million.
 - An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Personal Net Worth

- ▶ The Personal Financial Statement should be completed on the standard form
- ▶ Referenced sections should be completed
- ▶ The form should include only the individual's assets and share of assets held jointly or as community property with the individual's spouse.
- ▶ Tax returns and other relevant supporting documentation should be included
- ▶ Information will be verified

Personal Net Worth

▶ Assets

- Cash on Hand & In Banks
- Savings Accounts
- IRA or Other Retirement Account
- Life Insurance – Cash Surrender Value Only (Complete Section 8)
- Stocks and Bonds (Describe in Section 3)
- Primary Residence (Describe in Section 4A)
- Other Real Estate (Describe in Section 4B)
- Automobiles – Present Value (Describe in Section 5A)
- Other Personal Property (Describe in Section 5B)
- Value of the Ownership Interest in the Applicant Business (Describe in Section 5C)
- Other Assets (Describe in Section 5D)

Example – Section 4A

	4A Primary Residence	4B Other Real Estate		
	Primary Residence	Property A	Property B	Property C
Type of Property	Single Family Home	Vacation Condo	Land	Rental Condo
Address	Street Address, Include City, State Zip	Street Address, Include City, State Zip	Street Address, Include City, State Zip	Street Address, Include City, State Zip
Date Purchased	1/1/1997	2/1/2003	3/1/2001	4/1/2005
Original Cost	\$450,000	\$250,000	\$100,000	\$125,000
Present Market Value	\$650,000	\$200,000	\$150,000	\$100,000
Name and Address of Mortgage Holder	Name of Bank Street Address, Include City, State Zip	Name of Bank Street Address, Include City, State Zip	Name of Bank Street Address, Include City, State Zip	Name of Bank Street Address, Include City, State Zip
Mortgage Account Number	123456	234567	345678	456789
Mortgage Balance	\$275,000	\$200,000	\$0	\$85,000
Monthly Payment	\$1,800	\$1,500	\$0	\$700
Status of Mortgage	CURRENT	CURRENT	PAID IN FULL	CURRENT

(Describe and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Personal Net Worth

▶ Liabilities

- Accounts payable
- Notes Payable to Banks and Others (Describe in Section 2)
- Installment Account (Auto)
- Installment Account (Other)
- Loan on Life Insurance
- Mortgages on Real Estate (Describe in Sections 4A and 4B)
- Unpaid Taxes (Describe in Section 6)
- Other Liabilities(Describe in Section 7)

Personal Net Worth

- ▶ Issues:
 - Valuation of businesses
 - Valuation of property
 - Discrepancies in comparison to tax returns
 - Reposting business liabilities as personal liabilities

Personal Net Worth

- ▶ An exclusion of up to a maximum of \$3 million is available. The rules for claiming this exclusion are:
 - Only assets supporting obligations for which the individual is currently liable, which are properly documented, and for which his or her personal assets are encumbered, should be counted toward this exclusion.
- ▶ Eligibility for the exclusion is verified



DBE Fraud Schemes

False Eligibility



- ▶ The DBE does not belong to one of the recognized socially or economically disadvantaged groups
- ▶ The DBE provides false information concerning size or financial status
- ▶ Hidden assets or false statements concerning origination of capital