

§ 23.105

§ 23.105 Privately-owned terminal buildings.

(a) Awards of concession agreements that are made by private owners of terminal buildings are covered by this subpart. Airport sponsors subject to this subpart shall levy the applicable requirements on the terminal owner through the agreement with the owner or by other means, except that certification shall, in the case of primary airports, be performed by the airport sponsor. The sponsor shall ensure that the terminal owner complies with these requirements.

(b) If the terminal building is at a primary airport, the sponsor shall obtain from the terminal owner the overall goals and other elements of the DBE concession plan required under § 23.95. This information shall be incorporated into the concession plan and goals established by the sponsor and submitted to the FAA in accordance with this subpart.

(c) If the terminal building is at a commercial service airport (except primary), general aviation, or reliever airport, the sponsor shall ensure that the owner complies with the requirements in paragraph (c) of § 23.93.

§ 23.107 Prohibition on long-term, exclusive concession agreements.

(a) Except as provided in paragraph (b) of this section, sponsors shall not enter into long-term, exclusive agreements for the operation of concessions. For purposes of this section, a long-term agreement is one having a term in excess of five years. Guidelines for determining whether an agreement is exclusive, as used in this section, have been included in the FAA's "DBE Program Development Kit for Airport Grant-in-Aid Recipients." This publication can be obtained from any FAA Regional Civil Rights Officer or from the FAA Office of Civil Rights, 800 Independence Avenue, SW., Washington, DC 20591, Attention, ACR-4.

(b) A long-term, exclusive agreement is permitted under this subpart, provided that:

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

(2) The responsible FAA regional civil rights officer approves of a plan

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for ensuring adequate DBE participation throughout the term of the agreement.

(c) Approval of the plan referenced in paragraph (b)(2) of this section relieves the sponsor of the need to obtain an exemption under the procedures of § 23.41(f) and the Notice of Policy (45 FR 45281, July 3, 1980). The Notice of Policy can be obtained from the FAA Office of Civil Rights at the address given in paragraph (a) of this section.

(d) Sponsors shall submit the following information with the plan referenced in paragraph (b)(2) of this section:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement, e.g., a requirement to make certain capital improvements to a leasehold facility.

(2) A copy of the draft and final leasing and subleasing or other agreements. The long-term, exclusive agreement shall provide that:

(i) One or more DBE's will participate throughout the term of the agreement and account for at least 10 percent of the annual estimated gross receipts.

(ii) The extent of DBE participation will be reviewed prior to the exercise of each renewal option to consider whether an increase is warranted. (In some instances, a decrease may be warranted.)

(iii) A DBE that is unable to perform successfully will be replaced by another DBE, if the remaining term of the agreement makes this feasible.

(3) Assurances that the DBE participation will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documents used by the sponsor in certifying the DBE's.

(5) A description of the type of business or businesses to be operated, location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the DBE's chance to succeed.

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

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(7) Information on the estimated gross receipts and net profit to be earned by the DBE.

§ 23.109 Compliance procedures.

In the event of noncompliance with this subpart by a sponsor, the FAA Administrator may take any action provided for in section 519 of the Airport and Airway Improvement Act of 1982, as amended.

APPENDIX A TO SUBPART F—SIZE STANDARDS FOR AIRPORT CONCESSIONAIRES

MAXIMUM AVERAGE ANNUAL GROSS RECEIPTS IN PRECEDING 3 YEARS
[In millions of dollars]

| Concession | Amount |
|--|---------------------|
| Food and beverage | 30.00 |
| Book stores | 30.00 |
| Auto rental | 40.00 |
| Banks | ¹ 100.00 |
| Hotels and motels | 30.00 |
| Insurance machines and counters | 30.00 |
| Gift, novelty, and souvenir shop | 30.00 |
| Newstands | 30.00 |
| Shoe shine stands | 30.00 |
| Barber shops | 30.00 |
| Automobile parking | 30.00 |
| Jewelry stores | 30.00 |
| Liquor stores | 30.00 |
| Travel agencies | 30.00 |
| Drug stores | 30.00 |
| Pastries and baked goods | 30.00 |
| Luggage cart rental | 30.00 |
| Coin-operated T.V.'s | 30.00 |
| Game rooms | 30.00 |
| Luggage and leather goods stores | 30.00 |
| Candy, nut, and confectionery stores | 30.00 |
| Toy stores | 30.00 |
| Beauty shops | 30.00 |
| Vending machines | 30.00 |
| Coin-operated lockers | 30.00 |
| Florists | 30.00 |
| Advertising | 30.00 |
| Taxicab | 30.00 |
| Limousines | 30.00 |
| Duty free shops | 30.00 |
| Pay telephones | ² 1,500 |
| Gambling machines | 30.00 |
| Other concessions not shown above | 30.00 |

¹As measured by total assets
²As measured by number of employees.

SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY

- Name of firm _____
- Address of firm _____
- Phone Number of firm _____
- Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) _____
- Nature of firm's business _____

- Years firm has been in business _____
- Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

| a—Name | b—Race | c—Sex | d—Years of ownership | e—Ownership percentage | f—Voting percentage |
|--------|--------|-------|----------------------|------------------------|---------------------|
| | | | | | |

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

- Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:
 - Financial decisions _____
 - Management decisions, such as—
 - Estimating _____
 - Marketing and sales _____
 - Hiring and firing of management personnel _____
 - Purchases of major items or supplies _____
 - Supervision of field operations _____

9. For each of those listed in question 8, provide a *brief* summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.

11. Identify any owner (see item 7) or management official (see item 8) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

12. What are the gross receipts of the firm for each of the last two years?

Year ending _____
\$ _____
Year ending _____
\$ _____

13. Name of bonding company, if any: _____

Bonding limit _____
Source of letters of credit, if any _____

14. Are you authorized to do business in the state as well as locally, including all necessary business licenses?