

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and

location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator—* (1) *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

## PART 23—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

### Subparts A–E [Reserved]

### Subpart F—Implementation of Section 511(a)(17) of the Airport and Airway Improvement Act of 1982, as Amended

- Sec.  
 23.89 Definitions.  
 23.91 Applicability.  
 23.93 Requirements for airport sponsors.  
 23.95 Elements of Disadvantaged Business Enterprise (DBE) concession plan.  
 23.97 Appeals of certification denials.  
 23.99 Rationale for basing overall goals on the number of concession agreements.

- 23.101 Information required when none of the overall annual goals is 10 percent or more.
- 23.103 Obligations of concessionaires and competitors.
- 23.105 Privately-owned terminal buildings.
- 23.107 Prohibition on long-term, exclusive concession agreements.
- 23.109 Compliance procedures.

APPENDIX A TO SUBPART F—SIZE STANDARDS FOR AIRPORT CONCESSIONAIRES  
 SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY  
 SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

AUTHORITY: 42 U.S.C. 200d *et seq.*; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

SOURCE: 45 FR 21184, Mar. 31, 1980, unless otherwise noted.

### Subparts A–E [Reserved]

### Subpart F—Implementation of Section 511(a)(17) of the Airport and Airway Improvement Act of 1982, as Amended

SOURCE: Amdt. 1, 57 FR 18410, Apr. 30, 1992, unless otherwise noted.

#### § 23.89 Definitions.

*Affiliation* has the same meaning the term has in regulations of the Small Business Administration, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly

- (a) One concern controls or has the power to control the other, or
- (b) A third party or parties controls or has the power to control both, or
- (c) An “identity of interest” between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

*Concession* means a for-profit business enterprise, located on an airport subject to this subpart, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor. Businesses

which conduct an aeronautical activity are not considered concessionaires for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight-carrying capacities; fixed base operators, flight schools; and sky-diving, parachute-jumping, flying guide services, and helicopter or other air tours.

(a) Appendix A to this subpart contains a listing of the types of businesses that are frequently operated as concessions.

(b) Examples of entities that do not meet the definition of a concession include suppliers, flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, individual taxis with permits, telephone and electric utilities, skycap services under contract with an air carrier, and management contracts.

(c) Concessions may be operated under the following types of agreements:

- (1) Leases.
- (2) Subleases.
- (3) Permits.
- (4) Contracts.
- (5) Other instruments or arrangements.

*Concessionaire* means one who operates a concession.

*Disadvantaged business* shall have the same meaning as set forth in 49 CFR part 26, except it shall be a small business concern, as defined in this subpart, not as defined in 49 CFR part 26.

*Material amendment* means a substantial change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope, of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

*Primary airport* means a commercial service airport which is determined by the Secretary to have more than 10,000 passengers enplaned annually.

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*Small business concern* means a firm, including all its domestic and foreign affiliates, that qualifies under the applicable size standard set forth in appendix A to this subpart. In making a size determination, all affiliates, regardless of whether organized for profit, must be included. A firm qualifying under this definition that exceeds the size standard after entering a concession agreement, but that otherwise remains eligible, may continue to be counted as DBE participation until the current agreement, including the exercise of options, expires.

(a) The Secretary may periodically adjust the size standards in appendix A to this subpart for inflation.

(b) A firm that was certified as a minority/woman/or disadvantaged business enterprise (MBE/WBE/DBE) prior to the effective date of this subpart, pursuant to a requirement in § 23.43(d) in effect prior to March 4, 1999 (See 49 CFR Parts 1 to 99 revised as of October 1, 1998.) or FAA guidance implementing section 511(a)(17) of the Airport and Airway Improvement Act of 1982, as amended, that has exceeded the size standard, may be counted as DBE participation until the current agreement, including the exercise of options, expires, provided that the firm remains otherwise eligible.

*Socially and economically disadvantaged individuals* shall have the same meaning as set forth in 49 CFR part 26.

*Sponsor* means the recipient of an FAA grant.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999]

### § 23.91 Applicability.

This subpart applies to any sponsor that has received a grant for airport development authorized by the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987.

### § 23.93 Requirements for airport sponsors.

(a) *General requirements.* (1) Each sponsor shall abide by the non-discrimination requirements of § 26.7 with respect to the award and performance of any concession agreement covered by this subpart.

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(2) Each sponsor shall take all necessary and reasonable steps to foster participation by DBE's in its airport concession activities.

(3) The following statements shall be included in all concession agreements executed between the sponsor and any firm after the effective date of this subpart.

(i) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 23, subpart F.

(ii) "The concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements."

(b) *Additional requirements for primary airports* (1) Sponsors of primary airports shall implement a disadvantaged business enterprise (DBE) concession plan containing the elements listed in § 23.95. Sponsors of more than one primary airport shall implement a separate plan for each location that has received assistance for airport development. The plan shall be submitted to the appropriate FAA Regional Office for approval.

(2) The sponsor shall review and update the plan at least annually. The updated plan shall include any information required under § 23.95 that was not available to the sponsor when the previous submission was made. Updated plans shall be submitted to the appropriate FAA Regional Office for approval.

(c) *Additional requirements for nonprimary airports.* Sponsors of commercial service airports (except primary), general aviation and reliever airports are not required to implement a DBE concession plan but shall take appropriate outreach steps to encourage available DBE's to participate as concessionaires whenever there is a concession opportunity.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999]

**§ 23.95 Elements of Disadvantaged Business Enterprise (DBE) concession plan.**

(a) *Overall annual DBE goals.* (1) The sponsor shall establish an overall goal for the participation of DBE's in concessions for each 12-month period covered by the plan. The goals shall be consistent with the process for setting overall goals set forth in 49 CFR 26.45.

(2) Sponsors shall calculate the overall DBE goal as a percentage of one of the following bases:

(i) The estimated gross receipts that will be earned by all concessions operating at the airport during the goal period. (Where the terms of a concession agreement do not provide for the sponsor to know the gross receipts, the sponsor shall use the net payment to the airport for such agreements and combine these figures with the estimated gross receipts from other agreements, for purposes of making this calculation. The plan shall indicate which concession agreements do not provide for the sponsor to know the gross receipts.)

(ii) The total number of concession agreements operating at the airport during the goal period.

(3) The plan shall state which base the sponsor proposes to use for calculating the overall goals. Sponsors proposing to use the base described in paragraph (a)(2)(i) of this section shall submit a rationale as required by § 23.99.

(4) Sponsors who will employ the procedures of paragraph (a)(2)(i) of this section shall exclude from the overall goal any portion of a firm's estimated gross receipts that will not be generated from a concession activity.

*Example.* A firm operates a restaurant in the airport terminal which services the travelling public and under the same lease agreement, provides in-flight catering service to the air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering service are excluded.

(5) Sponsors who will employ the procedures of paragraph (a)(2)(i) of this section shall use the net payment to the airport for banks and banking services, including automated teller ma-

chines (ATM) and foreign currency exchanges.

(6) To the extent practicable, sponsors shall seek to obtain DBE participation in all types of concession activities and not concentrate participation in one category or a few categories to the exclusion of others.

(7) Airport sponsors may establish an overall annual goal exceeding 10 percent.

(b) *Goal methodology.* (1) The plan shall contain a description of the methodology used in establishing each of the overall DBE goals. The methodology shall include information on the concessions that will operate at the airport during the period covered by the plan and the potential for DBE participation. For each concession agreement, the sponsor shall provide the following information, together with an additional information requested by the Regional Civil Rights Officer:

(i) Name of firm.

(ii) Type of business (e.g. bookstore, car rental, baggage carts).

(iii) Beginning and expiration dates of agreement, including options to renew.

(iv) For new agreements, method of solicitation proposed by sponsor (e.g. request for proposals, invitation for bids).

(v) Dates that material amendments will be made to the agreement (if known).

(vi) Estimated gross receipts for each goal period established in the plan.

(vii) Identification of those concessionaires that have been certified under this subpart as DBE's.

(viii) An indication of those concessions having potential for participation by DBE's.

(2) The plan shall include a narrative description of the types of efforts the sponsor intends to make, in accordance with paragraph (h) of this section, to achieve the overall annual goals.

(3) Sponsors who will include a DBE contract goal or other requirements in solicitations for concession agreements shall state those requirements in the plan.

(4) If none of the overall goals set under paragraph (a)(2)(i) or (a)(2)(ii) of this section is 10 percent or more, the sponsor shall submit the information

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and follow the procedures outlined in § 23.101.

(c) *DBE set-asides.* (1) Where not prohibited by state or local law and determined by the sponsor to be necessary to meet DBE goals, procedures to implement DBE set-asides shall be established. The DBE plan shall specify the concessions to be set-aside.

(2) If a state or local law prohibits the use of set-asides in the award of concessions, a citation of the appropriate authority shall be included in the plan.

(d) *Accomplishments in achieving DBE goals.* The plan shall contain an analysis of the accomplishments made by the sponsor toward achieving the previous year's goal. The plan shall show the effect of those results on the overall level of DBE participation in the airport's concessions.

(e) *Explanation for not achieving a goal.* (1) If the analysis required under paragraph (d) of this section indicates that the sponsor failed to meet the previous year's overall goal, the plan shall include a statement of the reasons demonstrating why failure to meet the goal was beyond the sponsor's control.

(2) If the FAA determines that the reasons given by the sponsor are not sufficient justification, or if the sponsor fails to state any reasons, the FAA may require the sponsor to implement appropriate remedial measures. Such measures may include an adjustment to the overall goals of the concession plan.

(f) *Certification procedures.* (1) The certification procedures set forth in 49 CFR part 26, subpart E are applicable to this subpart. Sponsors may count toward their overall goals only those firms that have been certified in accordance with the procedures of that section.

(2)-(3) [Reserved]

(4) Prior to making a certification determination, the sponsor shall perform an on-site visit to the offices of the firm and to any of its facilities that may be necessary to validate the certification information obtained from the firm.

(g) *Certification standards.* (1) Sponsors shall use the same standards for ownership and control as contained in 49 CFR part 26, subpart D in deter-

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mining whether a firm may be certified as a DBE.

(2) Businesses operating under the following structures may be eligible for certification as DBE's under this subpart:

(i) Sole proprietorships.

(ii) Corporations.

(iii) Partnerships.

(iv) Other structures that provide for ownership and control by the socially and economically disadvantaged owners.

(3) A business operating under a franchise (or license) agreement may be certified if it meets the standards in this section and the franchisor is not affiliated with the franchisee.

In determining whether affiliation, as defined in § 23.89, exists, the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on a franchisee by its franchise agreement generally shall not be considered, provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchisor by virtue of such provisions in the franchise agreement, control, and, thus, affiliation could arise through other means, such as common management or excessive restrictions upon the sale of the franchise interest.

(4) Joint ventures described in § 23.53(d) are eligible for certification as DBE's under this subpart.

(h) Businesses operating under the following arrangements are not eligible for certification as DBE's under this subpart:

(1) Limited partnerships, in which a non-DBE is the general partner.

(2) Other arrangements that do not provide for ownership and control by the socially and economically disadvantaged owners.

(i) *Good faith efforts.* The sponsor shall make good faith efforts to achieve the overall goals of the approved plan. The efforts shall include:

(1) Locating and identifying DBE's who may be interested in participating as concessionaires;

(2) Notifying DBE's and other organizations of concession opportunities and

encouraging them to compete, when appropriate;

(3) Informing competitors for concession opportunities of any DBE requirements during pre-solicitation meetings;

(4) Providing information concerning the availability of DBE firms to competitors to assist them in meeting DBE requirements; and

(5) When practical, structuring contracting activities so as to encourage and facilitate the participation of DBE's.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999; 64 FR 34570, June 28, 1999]

#### § 23.97 Appeals of certification denials.

The procedures concerning the appeal of a denial of certification set forth in 49 CFR 26.89 are applicable to this subpart.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999]

#### § 23.99 Rationale for basing overall goals on the number of concession agreements.

(a) A sponsor who proposes to calculate the overall DBE goals as a percentage of the number of concession agreements shall submit information with the DBE plan to demonstrate that one of the following applies to the airport:

(1) In order to attain an overall DBE goal of 10 percent on the basis of gross receipts, the airport would need to award a disproportionate percentage of the opportunities to DBE's. This rationale may address a time period that extends beyond that covered by the current plan; or

(2) Other circumstances at the airport exist that do not make it feasible to use gross receipts as the basis for calculating the goals.

(b) If the FAA approves of the request, the sponsor shall not be required to provide further justification during subsequent years of the plan, unless requested by the FAA to do so.

(c) If the FAA determines that the information submitted by the sponsor fails to justify the requested goal-setting procedure, the sponsor shall resubmit the plan. The goals in the revised plan shall be calculated as a percent-

age of gross receipts, as outlined in paragraph (a)(2)(i) of § 23.95.

#### § 23.101 Information required when none of the overall annual goals is 10 percent or more.

(a) A sponsor requesting approval for a concession plan in which none of the overall annual DBE goals is 10 percent or more shall provide information on the following points:

(1) The sponsor's efforts to locate DBE's in the relevant geographic area that are capable of operating the concessions that will become available;

(2) The sponsor's efforts to notify DBE's of concession opportunities and to encourage them to compete;

(3) Any consideration given by the sponsor, when practical, to structuring contracting procedures so as to encourage and facilitate DBE participation. For example, a sponsor may consider using competitive means to award a concession that would otherwise be renegotiated without competition.

(4) If appropriate, an explanation why the nature of a particular concession makes DBE participation through a sublease, joint venture, partnership, or other arrangement not economically feasible.

(b) The FAA regional civil rights officer approves a plan which does not contain any overall goals of at least 10 percent if he or she determines that based on the information submitted by the sponsor under paragraph (a) of this section and any other available information;

(1) The sponsor is making all appropriate efforts to increase DBE participation in its concessions to a level of 10 percent; and

(2) Despite the sponsor's efforts, the goals submitted by the sponsor represent the reasonable expectation for DBE participation, given the availability of DBE's.

#### § 23.103 Obligations of concessionaires and competitors.

(a) Sponsors may impose requirements on competitors for concession agreements as a means of achieving the DBE goals or a portion of the goals established under paragraph (a) of § 23.91 of this subpart, provided that the DBE

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participation specified in the solicitation or other request is an eligible arrangement, as defined in this subpart.

(b) Nothing in this subpart shall require any sponsor to modify or abrogate an existing concession agreement (one executed prior to the date the sponsor became subject to this subpart) during its term. When options to renew such agreements are exercised or when a material amendment is made to the agreement, the sponsor shall assess the potential for DBE participation and include any opportunities in the goals established under paragraph (a) of § 23.95.

### § 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

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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 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,

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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.

(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 OF PART 23—  
SIZE STANDARDS FOR AIRPORT CON-  
CESSIONAIRES**

**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 .....	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

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

Concession	Amount
Limousines .....	30.00
Duty free shops .....	30.00
Pay telephones .....	<sup>2</sup> 1,500
Gambling machines .....	30.00
Other concessions not shown above .....	30.00

<sup>1</sup> As measured by total assets  
<sup>2</sup> As measured by number of employees.

**SCHEDULE A TO PART 23—INFORMATION  
FOR DETERMINING MINORITY BUSI-  
NESS 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 own- ership	e—Owner- ship per- centage	f—Vot- ing per- centage

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

8. 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

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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?

15. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as an MBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

**AFFIDAVIT**

“The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of \_\_\_\_\_ (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**49 CFR Subtitle A (10-1-03 Edition)**

Date \_\_\_\_\_  
Corporate Seal (where appropriate).

Date \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

[Seal]  
Notary Public \_\_\_\_\_  
Commission expires \_\_\_\_\_

**SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY**

(This form need not be filled in if all joint venture firms are minority owned.)

- 1. Name of joint venture \_\_\_\_\_
- 2. Address of joint venture \_\_\_\_\_
- 3. Phone number of joint venture \_\_\_\_\_
- 4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.) \_\_\_\_\_

(a) Describe the role of the MBE firm in the joint venture. \_\_\_\_\_

(b) Describe very briefly the experience and business qualifications of each non-MBE joint venturer: \_\_\_\_\_

5. Nature of the joint venture’s business \_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of MBE ownership? \_\_\_\_\_

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)

- (a) Profit and loss sharing.
- (b) Capital contributions, including equipment.
- (c) Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and “firm” those individuals (and their titles) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

- (a) Financial decisions \_\_\_\_\_
- (b) Management decisions, such as:
  - (1) Estimating \_\_\_\_\_
  - (2) Marketing and sales \_\_\_\_\_
  - (3) Hiring and firing of management personnel \_\_\_\_\_
  - (4) Purchasing of major items or supplies \_\_\_\_\_

(c) Supervision of field operations \_\_\_\_\_

NOTE: If, after filing this Schedule B and before the completion of the joint venture’s

work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

davit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_  
Commission expires \_\_\_\_\_  
[Seal]

AFFIDAVIT

“The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

_____ Name of Firm	_____ Name of Firm
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date

Date \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_  
Commission expires \_\_\_\_\_  
[Seal]  
Date \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affi-

**PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart A—General**

- Sec.
- 24.1 Purpose.
- 24.2 Definitions.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

**Subpart B—Real Property Acquisition**

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

**Subpart C—General Relocation Requirements**

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation planning, advisory services, and coordination.
- 24.206 Eviction for cause.
- 24.207 General requirements—claims for relocation payments.
- 24.208 Aliens not lawfully present in the United States.
- 24.209 Relocation payments not considered as income.