

## § 23.27

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

### **§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?**

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

### **§ 23.29 What monitoring and compliance procedures must recipients follow?**

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to

## 49 CFR Subtitle A (10–1–11 Edition)

ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

### **Subpart C—Certification and Eligibility of ACDBEs**

#### **§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?**

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (*see* part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

#### **§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?**

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its 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