

Disadvantaged Business Enterprise (DBE) Program Provision in the Airport and Airway Improvement Act

DBE Provisions - Sections 505(d) and 511(a)(17) and (h)

Section 505(d). Disadvantaged Business Enterprises.

(1) GENERAL RULE. Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available under subsection (a) in a fiscal year beginning after September 30, 1987, shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) DEFINITIONS. For purposes of this subsection:

(A) SMALL BUSINESS CONCERN. The term "small business concern" has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632); except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of \$16,015,000, as adjusted by the Secretary for inflation.

(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS. The term "socially and economically disadvantaged individuals" has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged for purposes of this subsection.

(3) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES. State or airport sponsor shall annually survey and compile a list of the small business concerns referred to in paragraph (1) and the location of such concerns in the State.

(4) UNIFORM CERTIFICATION. The Secretary shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a concern qualifies for purposes of this subsection. Such minimum uniform criteria shall include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred. [49 U.S.C. App. 2204]

Section 511(a)(17)

The airport owner or operator will take such action as may be necessary to ensure that, to the maximum extent practicable, at least 10 percent of all businesses at the airport which sell food, beverages, printed materials, or other consumer products or which provide ground transportation, baggage carts, automobile rentals, or other consumer services to the public are small business concerns (as defined by the Secretary by regulation) owned and controlled by socially and economically disadvantaged individuals (as defined under section 505(d)(2XB)).



Section 511(h)(b) Administration of DBE Assurance.

(1) **MANAGEMENT CONTRACTS.** In administering subsection (a)(17) of this section, an airport owner or operator is authorized to meet the overall percentage goal established under such subsection by including businesses operated through management contracts and subcontracts. The dollar amount of a management contract and subcontract with a DBE firm shall be added to the total of DBE participation in airport concessions and to the base from which the airport's overall percentage goal is calculated. The dollar amount of management contracts and subcontracts with non-DBE firms and the gross revenues of business activities to which management contracts and subcontracts pertain shall not be added to this base.

(2) **PURCHASE OF GOODS AND SERVICES.** Except as provided in subsection (h)(3), an airport owner or operator may meet the overall percentage goal established under subsection (a)(17) of this section by including the purchase from DBEs of goods or services used in businesses conducted on the airport, provided that good faith efforts shall be made by the airport owner or operator and the businesses conducted on the airport to explore all available options to achieve, to the maximum extent practical, compliance with such goal through direct ownership arrangements, including, but not limited to, joint ventures and franchises.

(3) PROVISION FOR CAR RENTAL FIRMS.

(A) In complying with subsection (a)(17) of this section, an airport owner or operator shall include the revenues of car rental firms on the airport in the base from which the overall percentage goal set forth in such subsection is calculated.

(B) An airport owner or operator may require a car rental firm to meet any requirement imposed under subsection (a)(17) of this section through the purchase or lease of goods or services from DBE's. In the event an airport owner or operator requires the purchase or lease of goods or services from DBE's, a car rental firm shall be permitted to meet such requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern (as defined by the Secretary by regulation) owned and controlled by socially and economically disadvantaged individuals (as defined under section 505(d)(2)(B)).

(C) Nothing in this subsection or subsection (a)(17) of this section shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of such subsection or subsection (a)(17).

(4) GENERAL PROVISIONS.

(A) Nothing in this subsection or subsection (a)(17) shall preempt any State or local law, regulation, or policy enacted by the governing body of an airport owner or operator, or the authority of any State or local government or airport owner or operator to adopt or enforce any law, regulation, or policy relating to DBE's.

(B) An airport owner or operator shall be permitted to afford opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals to participate through direct contractual agreement with such concerns.



(5) EXCLUSION OF AIR CARRIER SERVICES. Air carriers in providing passenger or freight-carrying services and other businesses that conduct aeronautical activities at an airport shall not be included in the overall percentage goal set forth in subsection (a)(17) of this section for participation of small business concerns at the airport.

