

AMAC/Car Rental Work Group

Responses to Comments Re: Recommendations to Realize Greater ACDBE and DBE Goods and Services Supplier Opportunities Within the Car Rental Industry

INTRODUCTION

The AMAC/Car Rental Work Group appreciates the comments that were submitted to AMAC about the Work Group's recommendations to increase DBE and ACDBE goods and services supplier opportunities within the airport car rental industry, which are contained in a White Paper that will ultimately be submitted to the USDOT and FAA. The Work Group has reviewed and discussed all comments submitted by the July 26, 2013 deadline. The comments (grouped by topic) and respective responses are listed below (comments expressing agreement with recommendations are not listed). Additionally, the White Paper will be edited, as needed, to address certain comments.

COMMENTS AND RESPONSES

National and Regional Goals

Comment:

A 10% national goal and 10% regional goals will dilute the DBE/ACDBE car rental program for airports with higher DBE/ACDBE goals by diminishing the efforts of such airports to accomplish goals higher than 10%.

Response:

The Car Rental Work Group thinks a fundamental component of increasing ACDBE and DBE participation in airport car rental operations is to recognize the car rental industry's customary procurement of certain "supplies" (including in particular vehicles) on a national and/or regional basis. Consequently, the Work Group's recommendations include establishing national and regional supply and supplier categories for particular goods and services. National and regional goals are a means by which the national and regional supply and supplier concepts can be effectively monitored and measured.

Furthermore, the Work Group believes that implementation of other key recommendations contained in its White Paper (including mandatory interstate certification and adjustments to personal net worth limits and size standards) will result in an overall increase of qualified ACDBEs and DBEs being available to work within the car rental industry. This, in turn, will likely net higher ACDBE

and DBE goals across the country, along with increased ACDBE/DBE participation at airports where ACDBE car rental goals are currently higher than 10%.

Joint Venture/Ownership Opportunities for DBEs/ACDBEs Within the Car Rental Industry

Comment:

All opportunities have not been put on the table -- only subcontracting opportunities are being discussed. Joint venture/ownership opportunities need to be considered.

Comment:

We recommend that the issue of *“Insufficient Countable [Disadvantaged] Business Participation”* should not only be resolved by encouraging greater participation as suppliers of goods and services, but should be broadened to include participation through direct ownership arrangements. We understand that direct ownership arrangements may take on various forms, including joint ventures, franchises, licenses and management agreements. The direct ownership model, especially joint ventures, has proved successful in the food and retail concession industry, as well as large construction. Obviously, the necessary alignments will need to be made to address the significant revenues and costs associated with operating a car rental business...We strongly believe that a franchise model will be an ideal model for [disadvantaged] business participation. However, these franchise opportunities are not currently available at airport locations. We contend that national car rental companies that franchise throughout the county, but choose not to do so at airports, appear to be acting in bad faith of 49 CFR Part 23.

Comment:

Why aren't joint ventures being mandated?

Response:

The Car Rental Work Group understands that DBE/ACDBE participation can be achieved through various forms, including subcontracts, joint ventures and/or other ownership arrangements. The Work Group also recognizes that the car rental industry is highly competitive and capital intensive. Moreover, the industry is predominated by corporate ownership that dictates key business components, including operational, pricing and market/consumer requirements. Thus, this industry is distinctively different from retail, as well as food and beverage, concessions. Consequently, business practices that work in these concession industries are typically not practical in the car rental industry.

The White Paper is not intended to mandate a specific business model. Rather, the Work Group's recommendations are designed to increase opportunities for DBEs/ACDBEs within the car rental industry in whichever arrangements are best suited for the parties involved. And, in the case of car rental ownership arrangements, some of the recommendations are intended to make that possibility more likely than not (e.g., recommendations regarding adjusting the personal net worth limit).

Business Size Standards and Personal Net Worth Limits

Comment:

My chief concern at this point is ... that the players in the arena of the car rental industry are some of the biggest corporations in the world and in order to compete even locally a DBE or ACDBE supplier has to almost already exceed the monetary constraints that limit participation in the program. For that reason...come up with a realist formula to address the disparity between what would be a reasonable buy in to compete in a relatively sparse number of supplier categories.

Response:

The Car Rental Work Group agrees that the current business size standards and personal net worth limits are inconsistent with the capital requirements needed to successfully operate a business that provides goods and /or services used within the car rental industry. This has resulted in the exclusion of qualified, ready, willing and able DBEs and ACDBEs from these opportunities. Thus, the Work Group's recommendations recognize the need for reasonable adjustments to the current business size and personal net worth standards.

Local ACDBE/DBE Participation

Comment:

The [White Paper] should include more effort to increase the use of existing and new ACDBE/DBE participation at the local level. One way to do this might be to have the proposed "Airport Regional Goal Setting Task Force" identify the number and types of businesses, in a region, that typically provide goods and services to concession car rental firms. Modify 49 CFR Part 23 to require Airports with car rental concessions to outreach to the firms identified by the Task Force. Finally, report the results of this outreach to the FAA along with normal annual ACDBE reporting. As a result, at some point in the near future, after the number of certified ACDBE/DBE firms is "sufficient," then the requirement to identify, outreach, and report can be removed from Part 23.

Response:

The main objective of the Car Rental Work Group's recommendations is to increase contracting opportunities for, and actual participation by, ACDBEs and DBEs in the car rental industry, including ACDBEs/DBEs that operate in local markets. The Work Group believes that the cumulative effect of the recommendations will be an overall increase in ACDBE and DBE opportunities, as well as actual participation including at the local level, in airport car rental operations.

Comment:

National purchases used to support corporate offices [should not] be counted towards the [ACDBE] goal; only local purchases.

Response:

Allowing national supplies procured from ACDBE/DBE-certified suppliers for corporate car rental company offices to be counted towards meeting ACDBE/DBE goals is directly aligned with the Car Rental Work Group's recommendations for establishing "national" and "regional" supply and supplier categories. Thus, the Work Group does not agree that only "local" purchases should count towards meeting ACDBE/DBE car rental goals.

Dealer Development Programs

Comment:

I do not agree with counting all or half of fleet purchases from women and minority car dealers who are involved in small business development programs. Dealers are brokers; thus, only the "fees" should be counted and the dealer of course should be certified.

Response:

The current federal regulations that govern ACDBE participation in car rental operations allow for the counting of "purchases or leases of vehicles from any vendor that is a certified ACDBE." *See 49 CFR 23.53(a)*. The Car Rental Work Group's recommendations are not intended to modify the current regulations in this regard. Rather, the recommendations are intended to garner a greater pool of ACDBE-certified dealership candidates.

Fuel and Bulk Lubrication Suppliers

Comment:

The NAICS codes should be changed to remove the requirement that fuel and bulk lubrication suppliers must take physical possession of such products.

Response:

While the Car Rental Work Group does not anticipate including this level of detail in the final White Paper, the Work Group recognizes the significance of the suggested changes in NAICS codes for fuel and bulk lubrication suppliers if national and regional supply and supplier categories are incorporated in ACDBE/DBE program regulations.

Long Term Exclusive Agreements

Comment:

Title 49 CFR §23.75 prohibits sponsors (e.g., airports) from entering into long-term, exclusive (LTE) contracts. Pursuant to the FAA guidance (June 10, 2013), *Principles for Evaluating Long-Term, Exclusive Agreements in the ACDBE Program* (Guidance), the term “exclusive” includes the absence of any ACDBE participation. The Guidance also outlines the limitations on entering into LTE agreements and provides that LTE agreements are only awarded upon FAA approval. We contend that car rental companies, an entire category of business activity at airports, are operating absent ACDBEs; and thus, are operating as “exclusives”. Have these LTE agreements been approved by the FAA?

Response:

It is the Car Rental Work Group’s opinion that the commenter’s interpretation is inconsistent with the entire context of 49 CFR §23.75 and the FAA’s corresponding Guidance about this regulation. The Guidance on this subject indicates that this regulation is intended to prohibit a single business entity/individual from conducting all operations of a particular type of concession (e.g., food and beverage) at an airport. Thus, this provision does not apply to airports at which more than one car rental company operates.

Suggestions for Expanding Opportunities for ACDBEs and DBEs

Comment:

The local market adjacent to the airport may have the potential of providing off-airport sites a collaborative venue of services that capture new business, share revenue sources while providing a less ominous financial level of initial participation in the program. *I can foresee the agency operators having shuttling crews that accommodate the shuttling of vehicles to the airport and a congruent number of vehicles from the airport driven by agency drivers who report to the airport when directed. This type of matrix or ones like it can be effective while extending base level opportunities to the local small businessman not to mention a host of other positives that are derived from airport agencies not having to sustain a complete crew of drivers and all of the commensurate costs that is entailed by doing so.*

Comment:

Depending upon state laws, I recommend that a group of ACDBE/DBE companies form a limited Liability Partnership (LLP), to do business with a car rental agency, to meet the 10% goals. Each partner in the LLP would have a specific responsibility. For example, each business partner could provide one of the following: sell cars; insurance; advertising; QA/QC consultant; fuel; maintenance/repair/tires.

Comment:

I would like to see consideration on a way for off-airport agency operators to buy into some aspects of the on-airport business. I know that with some [creative] thinking there can be over-lapping opportunities that both enhance customer services and offer a marketplace consideration for a force of people that have been intimately connected to the business.

Response:

The Car Rental Work Group applauds innovative business arrangements and opportunities for ACDBEs and DBEs to participate in airport car rental operations. The creative-thinkers are encouraged to present these, as well as other, suggestions to their respective local airports, who are best equipped to determine the feasibility of the ideas for their particular market.

Limit Terms of Car Rental Supplier Contracts

Comment:

For the near-term, car rental service and support contracts might...be limited to three years or less to ensure the turnover in existing national, regional, and local contracts eventually offer an opportunity to new ACDBE/DBEs. Today, car rental managers understandably like the subcontractor (goods and service providers) firms they are working with today because they are familiar with these subcontractors. In my opinion, there must be a reason for the car rental manager to offer a contract opportunity to an unfamiliar subcontractor.

Response:

The Car Rental Work Group does not think imposing a limit of three years on car rental subcontracts will foster greater ACDBE or DBE participation but could unreasonably increase administrative and/or operational costs of airports, ACDBE/DBE firms, and car rental companies.

Car Rental Work Group Composition/Representatives

Comment:

We assert that the Car Rental Work Group should have included direct participation from ACDBE certified principals of minority- and women-owned firms (ACDBES), just as it included direct participation of AMAC member airports and national car rental companies. While the AMAC membership includes all three stakeholder groups – airports, car rental companies and ACDBEs – the ACDBE group is the only stakeholder group without direct participation.

Response:

In hindsight, the Car Rental Work Group acknowledges that it would have been ideal to have certified ACDBEs that provide goods and/or services to the car rental industry directly participate in the Work Group. However, the opinions of ACDBEs, as expressed to airport DBE program managers and staff, as well as to car rental company representatives, were considered during development of the recommendations. Moreover, ACDBEs and DBEs have had the opportunity to directly convey their opinions about the recommendations during the 2013 AMAC Business Diversity Conference and subsequent public comment period.

White Paper Format

Various comments were received about the format of the White Paper, including in particular the presentation of the “problems” and “solutions,” and clarification of several points. Many of the suggestions about the format are currently being incorporated in the final White Paper.

NEXT STEPS

The Car Rental White Paper is being edited to address various comments received from AMAC members. Upon completion of the edits, the final White Paper will be presented to AMAC’s Board of Directors for approval to submit the document to the USDOT and FAA. The Work Group anticipates submitting the final White Paper to AMAC’s Board in the fall of 2013. In the meantime, Work Group representatives will continue networking with business and other partners to educate them about the recommendations.