

# REFORMING THE U.S. DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAMS

## A WINNING APPROACH: RECOMMENDATIONS TO REALIZE GREATER ACDBE AND DBE GOODS AND SERVICES SUPPLIER OPPORTUNITIES AND PARTICIPATION WITHIN THE CAR RENTAL INDUSTRY

### I. INTRODUCTION

#### *A. Applicable Current Federal Regulations*

Generally, Airports that average at least \$200,000 in car rental concessions revenue over a three-year period must set an overall triennial Airport Concessions Disadvantaged Business Enterprise (ACDBE) goal for car rental operations separate from an overall triennial ACDBE goal for non-car rental concessions (See 49 CFR § 23.41(b)). Car rental concessions are also governed by a variety of different rules for counting ACDBE participation (See 49 CFR § 23.53). The objective of these regulations is to enhance the participation of certified minority- and women-owned firms as goods or services suppliers to the car rental companies' Airport concessions operations.

#### *B. The Issue – Insufficient Countable Minority and Women-Owned Business Participation*

Historically, ACDBE and DBE participation in car rental concessions has been a difficult and often divisive subject for Airports, car rental companies and federal regulatory agencies. Despite long-standing regulations designed to encourage minority- and women-owned firms as certified car rental goods and services suppliers, substantial successes in this area have generally not been realized by car rental firms and Airports across the country. Car rental companies and Airports generally agree that this dilemma is due, in large part, to certain unique aspects of the car rental industry's purchasing practices that are different from the purchasing practices of other industries. These distinguishing features include the significant aggregate costs associated with operating a car rental business, and the fact that a vast portion of these costs are for vehicle fleet purchases. Thus, a different approach is warranted for setting goals and counting minority- and women-owned business participation in car rental concessions.

## 1. Car Rental Industry's Viewpoint

In the past and today, car rental companies constantly find it virtually impossible to meet ACDBE goals or to even locate ACDBE-certifiable firms due to inconsistent interpretation and application of the ACDBE and DBE program certification requirements, the incompatibility of certain certification rules with usual and customary car rental industry procurement practices, impractical methodology for counting participation, including in particular fleet purchases, and hollow reporting requirements.

## 2. Airports' Viewpoint

Also contributing to the dilemma is what Airports have and continually describe as a lack of consistent access to accurate, complete information about car rental companies' procurement processes and total expenses (including fleet and non-fleet purchases), rendering it difficult, and at times impossible, to set meaningful, yet obtainable ACDBE goals. Further, the dearth of usable and quality data likewise hinders Airports from meeting their obligations to accurately track and monitor actual ACDBE participation.

### ***C. Efforts to Address the Issue***

#### 1. The Past

The first concerted effort to address the concerns noted above commenced in 1997. Following a process of meetings and continuing dialogue, in March 1999 the Airport Minority Advisory Council (AMAC) and the American Car Rental Association (ACRA) entered into a Memorandum of Understanding (MOU) concerning the treatment of car rental operations under the applicable federal regulations. AMAC is a national non-profit trade association that promotes the full use of minority-owned, women-owned and disadvantaged-owned businesses in Airport contracting. ACRA represents car rental companies on legislative issues pertaining to the industry. In the wake of U.S. Department of Transportation (USDOT) rulemaking clarifying that purchases of goods and services was a method by which disadvantaged business participation goals could be met, the MOU was intended to establish guidelines for counting car rental disadvantaged business participation that differed from the counting methodology that governed non-car rental concessions contracts. In essence the MOU represented the mutual appreciation of the two organizations that a different

methodology and approach was needed with respect to these matters in recognition of consolidation of the car rental industry (that effectively eliminated participation via franchise opportunities) and the high dollar expenses and revenue volumes of car rental operations at many Airports. Unfortunately, the goal of substantially increasing the participation of certified firms as goods and services suppliers to car rental concessionaires has not been realized.

*2. 2012 Congressional Findings Show Compelling Need for Continuation of ACDBE and DBE Programs to Address Race and Gender Discrimination in Airport-Related Business*

Moreover, in Section 140(a) of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012, titled “Minority and Disadvantaged Business Participation,” Congress made the following findings about the continuing need for the Airport disadvantaged business enterprise program:

(1) While significant progress has occurred due to the establishment of the Airport disadvantaged business enterprise program ...discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in Airport-related markets across the Nation. These continuing barriers merit the continuation of the Airport disadvantaged business enterprise program.

(2) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits. This testimony and documentation shows that race- and gender-neutral efforts alone are insufficient to address the problem.

(3) This testimony and documentation demonstrates that discrimination across the Nation poses a barrier to full and fair participation in Airport-related businesses of women business owners and minority business owners in the racial groups detailed in parts 23 and 26 of title 49, Code of Federal Regulations,

and has impacted firm development and many aspects of Airport-related business in the public and private markets.

(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the Airport disadvantaged business enterprise program and the Airport concessions disadvantaged business enterprise program to address race and gender discrimination in Airport-related business.

### 3. A New Approach

After many years of undesirable results, the car rental industry and AMAC reunited in 2012 to effectively address this critical issue. They formed a Work Group comprised of representatives of AMAC member Airports across the country and car rental companies. (Attached is a list of all Work Group members – see Exhibit A.) The group was tasked with designing a comprehensive proposal to reform the ACDBE program to ultimately yield a substantive increase in actual ACDBE participation in car rental concessions. The group collaborated over the last year and worked within four subcommittees, which focused on the following key components of the program: ACDBE certification standards, criteria for counting ACDBE participation, reporting requirements, and regulations modifications. The subcommittees' collective work culminated in this White Paper, which details all facets of the new recommended approach. The contents of this paper were reviewed by AMAC's Board of Directors in May 2013 and approved for submission to AMAC's membership for review and comments on June 9, 2013. Additionally, all AMAC members (which include approximately 500 Airports, aviation businesses and professionals, and government officials) have had the opportunity to review and provide written questions and/or comments about the proposal in its entirety during a formal "Comments and Questions Period." Moreover, AMAC members, car rental industry stakeholders and other interested parties had the opportunity to participate in an open discussion about the recommendations at a session held during AMAC's 2013 Airport Business Diversity Conference in June 2013. The overall proposal will also be discussed with Airports Council International–North America and American Association of Airport Executives representatives.

## II. OVERVIEW OF NEW APPROACH

The key components of this proposal, which are integral to effectuating meaningful change in the ACDBE program for car rental concessions, are:

### ***A. Maintain National and Local ACDBE Goals; Implement New Regional ACDBE Goals; Mandate a Uniform ACDBE Goal-Setting Methodology***

#### 1. The Problems

- a) It is virtually impossible for car rental concessionaires to meet ACDBE goals established by Airports based solely on vendors in local markets.
- b) The lack of uniformity in methodology used by Airports to calculate ACDBE goals for Airport car rental concessions can cause undue administrative burdens for car rental concessionaires.

#### 2. The Solutions

- a) Implement new “regional” ACDBE goals for Airports grouped in regions that mirror FAA regions across the country to complement existing national goal.
- b) Establish “Airport Regional Goal Setting Task Force” for each Airport region.
- c) Mandate Airports to uniformly use “gross receipts” methodology for calculating ACDBE car rental goals.

### ***B. Modify ACDBE Certification Standards to Increase the Pool of Qualified ACDBE and DBE Firms to Provide Goods and Services for Car Rental Concessions and Remove Barriers that Discourage Qualified Minority- and Women-Owned Firms from Applying for ACDBE and/or DBE Certification***

#### 1. The Problems

- a) Current ACDBE and DBE regulations encourage but do not require interstate certification reciprocity and thus impede qualified ACDBE- and DBE-certified firms seeking to participate in multi-state Airport car rental concessions by requiring them to endure unnecessary multiple certification processes.
- b) National and regional suppliers are customarily used in the car rental industry but are not fully recognized in current ACDBE and DBE program regulations and often result in the exclusion of all or part of the value of goods or services provided by such vendors from counting toward ACDBE participation goals.

- c) Current size standards for ACDBE and DBE firms do not consider unique characteristics of the car rental business resulting in the exclusion of participation by qualified minority- and women-owned businesses from counting toward ACDBE participation goals.
- d) Current personal net worth (PNW) standard does not reflect current market conditions within the car rental industry resulting in the exclusion of participation by qualified minority- and women-owned businesses from counting toward ACDBE participation goals.
- e) Current personal net worth (PNW) standard unfairly excludes certain personal financial guarantees of ACDBE and DBE owners when determining owners' financial liabilities resulting in the exclusion of participation by qualified minority- and women-owned businesses from counting toward ACDBE participation goals.
- f) The requirement for ACDBE certification of DBE-certified firms that provide goods and/or services to car rental operators creates a barrier to, and thus excludes, the participation of qualified DBEs from Airport car rental concessions.

## 2. The Solutions

- a) Mandate interstate certification reciprocity.
- b) Establish "national supply and supplier" and "regional supply and supplier" categories for certain goods and services (e.g., vehicles, fuel, tires) to fully account for car rental companies' customary use of national and regional suppliers.
- c) Establish size standards that are commensurate with national and regional supplier categories within the car rental industry.
- d) Adjust personal net worth (PNW) limits for national and regional suppliers within the car rental industry.
- e) Characterize certain personal financial guarantees of ACDBE and DBE owners as liabilities for PNW calculations.
- f) Eliminate requirement for qualified DBE-certified firms to also obtain ACDBE certification.

***C. Modify Counting Rules to Align with the Recommended Changes to ACDBE Certification Standards and Include Automobile Dealer Development Programs***

***1. The Problems***

- a) Participation of certified ACDBEs that provide goods and/or services to car rental concessionaires on a national or regional basis are not counted if the ACDBEs are not certified in each state where the ACDBEs provide goods and/or services to Airport car rental concessionaires.
- b) Automobile Dealer Development Programs are not counted toward ACDBE participation goals although they meet the spirit of the ACDBE and DBE programs.

***2. The Solutions***

- a) With interstate certification reciprocity, count the total value of goods and/or services provided by national and regional suppliers toward the national and/or respective regional ACDBE car rental goals.
- b) Count Automobile Dealer Development Programs toward meeting national, regional and/or ACDBE car rental goals, as appropriate.

***D. Establish Uniform Reporting Format and Schedule for ACDBE and DBE Participation in Airport Car Rental Concessions; Airports' Obligations to Report Annually to the FAA ACDBE and DBE Participation Accomplishments and Obligations to Monitor and Ensure Compliance with ACDBE and DBE Program Rules Remain Unchanged***

***1. The Problems***

- a) Inconsistencies in Airports' requirements for car rental concessionaires' reporting of ACDBE participation create administrative burdens by requiring car rental concessionaires to maintain a multitude of ACDBE report formats and schedules.
- b) Inconsistencies and lack of completeness in ACDBE participation information reported to Airports by car rental concessionaires make it difficult for Airports to accurately report to the FAA accomplishments for meeting car rental ACDBE participation goals.

## 2. The Solutions

- a) Car rental companies will submit a “Regional Report” of ACDBE and non-ACDBE purchases made from vendors within the local geographic market of each Airport in each region in a standardized format at least quarterly.
- b) Airports’ obligations for annual reporting to the FAA remain unchanged.
- c) Airports’ obligations for monitoring ACDBE and DBE participation and ensuring compliance with ACDBE and DBE program rules remain unchanged.

### **III. SPECIFIC RECOMMENDATIONS**

#### ***A. Maintain National and Local ACDBE Goals and Implement New Regional ACDBE Goals; Mandate a Uniform ACDBE Goal-Setting Methodology***

##### 1. The Problems

###### *a) ACDBE Participation Goals Established by Airports Solely on Local Markets Are Virtually Impossible for Car Rental Companies to Meet*

Currently, car rental companies continuously find it nearly impossible to meet ACDBE goals established by individual Airports for the multitude of issues discussed herein, including in particular current certification and counting standards, which have resulted in a woefully insufficient pool of ACDBE and DBE certified firms to participate in Airport car rental operations. Thus, car rental companies and Airports alike rely upon the existing national albeit aspirational goal for ACDBE participation in Airport car rental concessions.

###### *b) Lack of Uniformity in Methodology Used By Airports to Calculate ACDBE Goals Causes Administrative Burdens for Car Rental Concessionaires*

The existing USDOT ACDBE and DBE program regulations allow for two approaches to calculate Airport car rental ACDBE participation goals, at the program sponsor’s discretion: 1) percent of gross receipts or 2) percent of the value of goods and services purchases of Airport car rental concessionaires. Allowing each Airport to decide the methodology for calculating ACDBE participation goals can create an administrative quagmire for car rental concessionaires, which must track and report data about their operations in accordance with each individual Airport’s practices.



## 2. The Solutions

### a) *Implement New “Regional” ACDBE Goals to Complement Existing National Goal; Establish Airport Regional Goal Setting Task Force for Each Airport Region*

An essential component of a more effective approach to garner greater participation incorporates “regional” goals to complement the USDOT’s current ten percent (10%) aspirational national goal. Under this model, all Airports will be assembled into regions that mirror the FAA regions, and initially each “regional” goal will be set at 10% for the same three-year goal-setting period currently in place.

Additionally, an “*Airport Regional Goal Setting Task Force*” would be formed for each Airport region. Each Task Force would be comprised of one representative from each Airport in the region, and at least one representative from a car rental concessionaire operating at Airports within the region. The Task Force would periodically convene to review the collective ACDBE and DBE car rental participation at all Airports in the respective Task Force’s region in conjunction with the individual three-year ACDBE car rental goals set by each Airport within the region. Each Task Force would also be responsible for evaluating the availability of ACDBEs and DBEs in the region to provide goods and/or services to car rental operators. During the third year of the initial three-year period for the 10% regional goals, each Task Force would also assess if any adjustment of its regional goal is warranted or if the 10% regional goal should be continued for the next three-year period.

### b) *Uniform Use of Gross Receipts Methodology for Calculating ACDBE Car Rental Goals Can Eliminate Administrative Burdens for Car Rental Companies*

Airport car rental concession fees are typically based upon a car rental concessionaire’s gross receipts. Thus, each car rental company is required to regularly report the amount of its gross receipts to each Airport at which the company is operating. Since Airport car rental concessionaires must report their respective gross receipts to Airports for calculating concession fees, then directing Airports to uniformly use the gross receipts methodology is the most practical and efficient approach for calculating ACDBE car rental goals. This recommended edict is conditioned on appropriate adjustments being made to the current size standards that apply to businesses that provide goods and services to Airport car rental concessionaires, including in particular size standards for automobile dealers. If, however,

needed adjustments to size standards are not made, then no changes are recommended to the status quo for calculating ACDBE goals.

***B. Modify ACDBE Certification Standards to Increase the Pool of Qualified ACDBE and DBE Firms to Provide Goods and Services for Car Rental Concessions and Remove Barriers that Discourage Minority- and Women-Owned Firms from Applying for ACDBE and/or DBE Certification***

***1. The Problems***

Car rental companies state that from time to time they utilize legitimate minority- and women-owned firms that do not have either ACDBE or DBE certification, and thus, cannot be counted toward goals for ACDBE or DBE participation. Hence, the current USDOT ACDBE and DBE certification requirements were reviewed to identify: (1) barriers in the regulations that discourage minority- and women-owned firms from applying for certification — particularly those firms that likely meet the programs' eligibility requirements; and (2) rules changes needed to implement revised ACDBE and DBE certification requirements to include minority- and women-owned firms that are certified as national and/or regional car rental suppliers, including in particular minority- or women-owned automobile dealers. These issues were reviewed from the perspective of the following key stakeholders, whose interests are substantially aligned:

- Airports – who have program administration/implementation concerns, as well as an interest in maximizing participation opportunities for certified ACDBE and DBE firms.
- Minority- and Women-Owned Firms – who seek business opportunities and updated certification rules that are consistently applied.
- Car Rental Companies – who seek to maximize ACDBE and DBE supplier opportunities consistent with usual and customary car rental industry business practices.
- FAA and USDOT – who oversee ACDBE and DBE development, program administration and compliance.

Given the issues noted above, the key problems may be summarized as follows: (1) The unfortunate and all too common practice of a certifying jurisdiction not giving recognition to the certification granted by a firm's home state; (2) lack of recognition of national and regional

suppliers that are customarily used in car rental operations; (3) ACDBE and DBE program firm size standards that are at odds with national and/or regional car rental concessionaire goods or services contract opportunities that are consistent with industry usual and customary practices; (4) a current “Personal Net Worth” regime that is generally inconsistent with respect to the financing requirements for such national or regional opportunities (regardless of the race or gender of firm owners); (5) unfair exclusion of personal financial guarantees of ACDBE and DBE owners in ACDBE certification eligibility decisions; and (5) the unnecessary burden of requiring DBE-certified firms that provide goods and/or services to car rental operators to also obtain ACDBE certification. Accordingly, each stakeholder group has acknowledged that administrative improvements to the existing certification regime would be beneficial and each shares an interest in maximizing supplier opportunities for, and actual participation of, certified firms. To meet these ends, the following reforms to ACDBE and DBE certification standards are vital.

*a) Current ACDBE and DBE Regulations Encourage but Do Not Require Interstate Certification Reciprocity and Create an Impediment for Qualified ACDBEs and DBEs Seeking to Participate in Multi-State Airport Car Rental Concessions*

The USDOT ACDBE and DBE programs have one set of rules designed and intended to have nationwide effect. All Airport recipients of USDOT/FAA financial assistance are required to sign an assurance that its ACDBE and DBE programs will be administered in accord with the USDOT ACDBE and DBE rules. While, the ACDBE and DBE rules currently encourage full reciprocity by and between certifying jurisdictions, notably they do not require it. Recent USDOT/FAA regulatory guidance encourages acceptance of home-state certifications unless there is “good cause” to believe that the certification has been granted in error. In practice, however, this “encouragement” is uniformly ignored as certifying entities outside of the home-state often require such a firm to submit a complete “new” certification application, with all supporting documents, as well as undergo another arduous review, even if there is no “good cause” to do so.

Non-home-state certifiers routinely defend their decisions to disregard a home-state certification decision on the basis of what they assert is variability in the quality of certification reviews (i.e., as between varying certifying entities). However, this argument is insufficient justification to continue the devastating effects of ignoring home-state certifications while precluding the clear

benefits of interstate certification reciprocity. This issue can be adequately addressed through training for certification officials and staff. In fact, legislation recently enacted by the U.S. Congress directs the FAA to institute a mandatory training program for persons who are involved in, or responsible for making, ACDBE and DBE certification determinations, and the FAA has begun implementing such a program.

As noted above, the failure of a non-home state certifier to completely accept a firm's home state certification serves as a significant impediment for ACDBE- and/or DBE-certified firms who might otherwise pursue car rental subcontracting or other opportunities outside of their home-state. And, since it is often reported that some minority- and women-owned firms are discouraged from applying for ACDBE or DBE certification in their home state by what many consider a cumbersome certification process, one can easily surmise that requiring national and regional firms to undergo multiple certification processes exacerbates this problem. Thus, this practice has the unintended effect of severely limiting the pool of minority- and women-owned suppliers for Airports and car rental companies.

*b) National and Regional Suppliers Are Customary in the Car Rental Industry but Are Not Fully Recognized in Current Regulations Resulting in the Exclusion of All or Part of the Value of Goods or Services Provided by Such Vendors*

A close examination was conducted of the categories of goods and services typically procured by car rental companies locally, as well as goods and services procured on a regional and national basis, and the rationale for these purchasing decisions. For example, car rental industry representatives provided information illustrating why sourcing items such as fuel, tires, cleaning fluids, insurance and automobiles (fleet) locally is not economically or practically feasible, given the quantities purchased and related pricing, as well as respective competitive market factors. As documented by some Airport disparity studies there is strong reason to believe that there are minority- and women-owned firms who could source these products but, in large part, are precluded from pursuing these business opportunities due to a variety of factors — including discrimination in the general marketplace, and because certain aspects of current ACDBE and DBE program rules make it very unlikely that such firms would qualify as an ACDBE and/or DBE. Moreover, car rental companies cited certain instances where they have

successfully identified a minority or women-owned company<sup>1</sup> to supply certain goods on a national or regional basis, but these contracts and the revenues earned by the firm are not counted toward the company's or the Airport's ACDBE or DBE participation goals because the firms do not meet the ACDBE or DBE certification requirements. Typically, this is caused by the firms exceeding the current "size" standards and/or the business owners exceeding the current "personal net worth" (PNW) limits.

*c) Current Size Standards for ACDBE and DBE Firms Do Not Consider Unique Characteristics of the Car Rental Business Resulting in the Exclusion of Qualified Minority- and Women-Owned Businesses From Counting Toward ACDBE Goals*

Under current USDOT ACDBE and DBE program rules, the size of an ACDBE or DBE firm (or program applicant) is evaluated on the basis of U.S. Small Business Administration (SBA) size standards for the specific type of work the firm performs (or seeks to perform)<sup>2</sup>. The SBA categorizes firms under codes and sub-codes of the North American Industry Classification System (NAICS). The primary metric for each such code is a specific gross revenues limit measured over a rolling three-year period—with a cap of \$22.41 million for all DBE firms regardless of industry sector or the type of work performed by the firm<sup>3</sup>, and \$56.42 million for ACDBE firms<sup>4</sup>. As alluded to previously, many of the SBA size classifications adopted by the USDOT for use in the ACDBE program conflict with national and/or regional car rental concessionaire goods or services contract opportunities and in this respect are inconsistent with industry usual and customary practices.

*d) Current Personal Net Worth (PNW) Standard Does Not Reflect Current Market Conditions Resulting in the Exclusion of Qualified Minority- and Women-Owned Businesses from Counting Toward ACDBE Goals*

The PNW cap does not take into account market requirements for financing concessions or supplier growth opportunities that can be fostered by the ACDBE and DBE programs (and that

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<sup>1</sup> Typically the firms have been certified as minority or woman owned by the National Minority Supplier Development Council (NMNSDC) or the Women's Business Enterprise National Council (WBENC).

<sup>2</sup> See 13 CFR § 121

<sup>3</sup> See 49 CFR § 26.65

<sup>4</sup> See 49 CFR § 23.33

have been denied to minority or women entrepreneurs because of their ethnicity, race or gender). The USDOT/FAA recently adjusted the DBE PNW cap from \$750,000 to \$1.32 million.<sup>5</sup> The adjustment was intended to raise the cap to simply reflect the current day purchasing power of the original \$750,000 PNW cap. In this respect, the PNW limit is not based on an assessment of current day contract financing requirements or lending underwriting criteria.

*e) Current Personal Net Worth (PNW) Standard Unfairly Excludes Certain Personal Financial Guarantees of ACDBE and DBE Owners When Determining an ACDBE or DBE Owner's Financial Liabilities Resulting in the Exclusion of Qualified Minority- and Women-Owned Businesses from Counting Toward ACDBE Goals*

When determining “liabilities” for PNW purposes under the ACDBE and DBE program rules, all personal financial guarantees given by a business owner are generally treated as “contingent liabilities” and therefore are not taken into account when determining an individual’s personal net worth. Surprisingly, the current ACDBE and DBE rules make no provision for personal guarantees that are given and/or that are an express condition from the lender for receiving financing for the business. In this respect, the ACDBE and DBE rules conflict with usual and customary business lending and underwriting standards.

Banks are subject to certain small business lending tests by federal and state regulators. For this reason, the vast majority of loans and financings are made in the name of the business entity rather than the name(s) of the business owner(s). Nevertheless, banks as a matter of course require business owners to execute personal repayment guarantees as a condition to receive a loan or line of credit. The guarantees are reflected in loan documents and those agreements clearly express the bank’s right and intention to seek repayment from the business owner(s) if there is a default. As noted previously, the USDOT rules generally regard these types of personal guarantees as “contingent liabilities” that should not be counted as liabilities for PNW purposes even though this practice is contrary to customary underwriting standards.

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<sup>5</sup> The \$750,000 PNW cap was first established by the SBA in the late 1970s for use in a contracting program. DOT adopted the SBA cap as a DBE eligibility requirement in 2000 and in 2005 for ACDBE eligibility.

This matter was explored with bank lending officers who confirmed that such guarantees are a significant factor in evaluating the credit worthiness of a potential borrower<sup>6</sup>.

*f) Requirement that Certified DBEs Also Obtain ACDBE Certification Creates a Barrier that Excludes Qualified DBEs from Airport Car Rental Concessions*

Airports and car rental companies agree that one of the biggest hurdles to accurately capturing participation by socially and economically disadvantaged firms in car rental operations is caused by the restriction that a DBE-certified firm that does not also have ACDBE certification cannot be counted towards meeting an ACDBE goal. Moreover, this rule directly contradicts one of the enumerated objectives of the ACDBE program regulations:

“[t]o help remove barriers to the participation of ACDBEs in opportunities for concessions at Airports receiving DOT financial assistance.” 49 CFR § 23.1(e).

The requirement for ACDBE-certification actually creates a barrier for qualified “ready, willing and able” minority- and women-owned businesses from working in the Airport car rental industry as many of these businesses choose to avoid the added burden of enduring an ACDBE-certification process. It is also important to note that the definition of an “ACDBE” is essentially identical to the definition of a “DBE” with the only difference being that an ACDBE must also be a “concession.” Furthermore, many DBEs provide goods and/or services that are routinely used by car rental companies but, from a technical standpoint, are not concessions (for example, vehicle washing, oil changes and other routine vehicle maintenance). Given the unique aspects of the car rental industry which have resulted in limited ACDBE participation opportunities within car rental concessions, the intended benefits of this additional condition are clearly outweighed by the resulting detriment.

## *2. The Solutions*

### *a) Mandate Interstate Certification Reciprocity*

Fully eliminating barriers created by a lack of mandated interstate certification reciprocity will benefit small minority- and women-owned businesses, Airports and car rental companies alike by broadening the pool of qualified ACDBE- and DBE-certified firms who are potential car rental

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<sup>6</sup> It is also customary for the SBA to require personal guarantees on loans it guarantees.

industry suppliers. In addition, interstate certification reciprocity will enable Airports and car rental companies to more accurately capture the full extent of business being conducted with minority- and women-owned firms in car rental operations, as well as the economic impact of their Airport concessions activities.

Thus, there is compelling justification for mandating full reciprocal acceptance of home state ACDBE and DBE certification decisions made after a firm goes through the rigorous process required for a new certification applicant. Consequently, certifying agencies must be mandated to accept a home-state's ACDBE and/or DBE certification for a vendor that is located outside of its jurisdiction but which is seeking or actually conducting business within the new state unless actual "good cause" exists for rejecting the home state's certification.

The reasons for determining "good cause" to reject a home state's certification that are contained in the current regulations (specifically, 49 CFR § 26.85 (d)(2)) should remain unchanged, with one caveat – the USDOT or FAA issues a ruling explaining that state "community property" rules are not applicable to ACDBE and DBE certifications, and, thus, cannot be considered when making ACDBE and DBE certification determinations. This issue should be treated like individual state requirements for state business licenses. While a state can clearly follow community property laws, these principles are not related to ACDBE or DBE certification.

*b) Establish "National Supply and Supplier" and "Regional Supply and Supplier" Categories to Fairly Distinguish the Car Rental Industry*

Given the unique nature of car rental concessions and their impact on the overall measurement of an Airport's ACDBE and/or DBE programs, the ACDBE and DBE program rules require further modification to wholly include the concepts of "national" and "regional" car rental industry goods and services supplies and suppliers.<sup>7</sup> These concepts are consistent with the following stated objectives of the ACDBE and DBE programs:

- To help remove barriers to the participation of ACDBEs in opportunities for concessions at Airports receiving DOT financial assistance. 49 CFR § 23.1(e).

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<sup>7</sup> While current ACDBE program regulation 49 CFR § 23.53(f) recognizes the use of national and regional contracts by car rental concessionaires, the regulation has very limited application.



- To assist the development of firms that can compete successfully in the marketplace outside the DBE program. 49 CFR § 26.1(e).
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for ACDBEs [and DBEs]. 49 CFR § 23.1(f); 49 CFR § 26.1(f).

Under this essential new component, certain goods and services that car rental companies routinely procure on a national or regional level would be categorized as “national” and/or regional *supplies*” (for example, vehicles, fuel and tires). Likewise, specific vendors that provide such “national” and/or “regional” goods or services would be designated as “national and/or regional *suppliers*.” An example of a “national *supplier*” is *Santa Monica Ford*, which is an ACDBE that is certified in California and from which The Hertz Corporation procures vehicles for use in its operations across the country. An example of a “regional *supplier*” is *Fuel Facility Management, Inc.*, which is an ACDBE that is certified in Florida and Tennessee and operates consolidated rental car facilities (CONRACs) at several airports. This company has expressed interest in becoming a “national supplier” and has a pending application for ACDBE certification in Chicago, Illinois. The methodology for counting ACDBE- or DBE-certified vendors with a national and/or regional designation is discussed below in Section III.C.

*c) Establish Size Standards That Are Commensurate  
With National and Regional Supplier Categories*

The USDOT and FAA are asked to work with AMAC and ACRA to: (1) identify the goods and services used and typically procured by car rental concessionaires on a national, regional or local basis; (2) cross reference these items to their current NAICS codes; and (3) jointly tailor the gross revenue limits for the codes with reference to usual and customary car rental industry procurement practices. The goal of the collaboration should be to establish a unique set of size standards that have revenue limits that are appropriate and compatible with the concept of regional and national ACDBE and DBE car rental suppliers.<sup>8</sup>

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<sup>8</sup> For example, in consultation with AMAC and other stakeholders, the DOT/FAA would use this process to examine the usual industry standards for fuel suppliers or automobile dealer suppliers.

*d) Adjust Personal Net Worth (PNW) Limits  
For National and Regional Suppliers*

As noted previously, adopting the concept of national and regional ACDBE and DBE car rental goods and services suppliers is a significant first step toward minority and women-owned firm's being able to compete and realize these opportunities. The second step is to make corresponding adjustments to the ACDBE and DBE size standards for these categories of ACDBEs and DBEs. A needed third step is to make conforming adjustments to the PNW cap applicable to majority minority or women firm owner(s) of a company seeking certification as a national or regional ACDBE and/or DBE car rental concessions supplier. Business lending and bonding requirements associated with national or regional supply contracts are likely formidable—and will most certainly require the firm and/or its owners to have more financial resources than what the current ACDBE and DBE PNW cap will support – especially given the recent change to the ACDBE and DBE program PNW that was simply an inflationary adjustment. Accordingly, USDOT should raise the PNW beyond the current limit for these potential categories of certified firms.<sup>9</sup>

*e) Characterize Certain Personal Financial Guarantees of ACDBE  
and DBE Owners as Liabilities for PNW Calculations*

In order to accurately evaluate the financial status of an ACDBE or DBE owner or applicant, the PNW rules must characterize personal guarantees that are specifically given as a condition for loans related to the firm's business as a liability for PNW calculation purposes.

*f) Eliminate Requirement for Qualified DBE-Certified  
Firms to Also Obtain ACDBE Certification*

This impediment is easily remedied by removing the requirement that qualified DBE-certified firms who provide goods and services to car rental concessionaires in the regular course of their businesses must also obtain ACDBE certification to count toward meeting goals for participation by disadvantaged businesses in Airport car rental concessions.

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<sup>9</sup> Such an increase is not incompatible with the “narrow tailoring” concept embodied in the design of the DBE program. Disparity studies and anecdotal evidence consistently demonstrate that minority and women-owned firm's face barriers to full participation in the marketplace because of the race or gender of their owners. We are not aware of studies that show that such discrimination stops when such an owner's net worth exceeds the current PNW cap.

## ***C. Modify Counting Rules to Align with Recommended Changes to ACDBE Certification Standards and Include Automobile Dealer Development Programs***

### ***1. The Problems***

#### ***a) Participation of Certified ACDBEs that Provide Goods and/or Services to Car Rental Concessionaires on a National or Regional Basis Are Not Fully Counted***

While current ACDBE program regulations (specifically, 49 CFR § 23.53(f)) recognize, to a certain extent, the use of national and regional contracts within car rental concession operations, the total value of the goods or services provided by an ACDBE on a national and/or regional basis to an Airport car rental concessionaire is not counted unless the ACDBE is certified by each state in which it is conducting business. Rather, only the value of the goods or services provided to an Airport in a state in which the ACDBE is certified is counted.

#### ***b) Automobile Dealer Development Programs Meet the Spirit of the ACDBE and DBE Programs but Are Not Counted Toward ACDBE or DBE Participation Goals***

The major auto manufacturers have created “dealer development” programs to create ownership opportunities for minority and women entrepreneurs. These structured programs provide various forms of management and operations training, as well as financial assistance to minorities and women who have experience, but lack sufficient capital to own or purchase a dealership outright. The intent of these programs (much like the purpose of the Airport ACDBE and DBE Mentor-Protégé programs) is to provide opportunities for these entrepreneurs to participate in the automobile retail industry and ultimately to become the sole owner(s) of an automobile dealership. Typically, the minority or woman entrepreneur actually runs the dealership and acquires most of its ownership interest while participating in the “dealer development” program, but may be subject to certain temporary limitations on their ownership interest in a financing or acquisition agreement. Even though the minority or woman entrepreneur may have the ability and authority to make policy decisions and otherwise manage the day-to-day operations of the dealership, as the ACDBE and DBE program rules are currently constructed and/or interpreted the entrepreneur would likely be deemed not to have full ownership and sufficient control over the business preventing the firm from obtaining ACDBE and/or DBE certification.

## 2. The Solutions

### *a) Count the Total Value of Goods and/or Services Provided By National and Regional Suppliers Toward the National And/Or Respective Airport Regional ACDBE Goals*

With a fully functioning interstate reciprocity system, a car rental concessionaire's expenditures with national and regional ACDBE and DBE suppliers would be counted toward the national goal or the ACDBE goal of each Airport in the particular region where the suppliers provide goods and/or services, even if the suppliers are not actually located within a particular Airport's local market. The written format in which car rental companies will report national and regional ACDBE and DBE participation is discussed in section D below and shown on the attached Exhibit B.

### *b) Count Automobile Dealer Development Programs Toward Meeting National, Regional and/or Local ACDBE Goals, As Appropriate*

USDOT rules should be modified so that car rental fleet purchases from minority and women dealers in Automobile Dealer Development programs are counted (partially or in full) toward the national, regional and/or local ACDBE participation goals, whichever is most appropriate for the particular automobile dealer. The "ACDBE and DBE Business Development" and "Mentor-Protégé" program elements of the ACDBE and DBE programs may serve as useful starting frameworks to accomplish this needed change.<sup>10</sup> Both program elements seek to further the development of ACDBEs and DBEs including supporting them in moving into non-traditional areas of work and/or to enhance their competitive prospects outside of the ACDBE and DBE programs.

*Special Note:* *The recommendations to allow the counting of the value of vehicles purchased or leased from a national or regional ACDBE dealer or from an ACDBE dealer involved in an Automobile Dealer Development Program are not intended to negate the current regulatory requirement that a car rental concessionaire must make good faith efforts to obtain ACDBE participation from non-automobile dealer ACDBE vendors. (See 49 CFR 23.53(b))*

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<sup>10</sup> See 49 CFR Part 26, Appendix C – DBE Business Development Program Guidelines, and Appendix D – Mentor-Protégé Program Guidelines

***D. Establish Uniform Reporting Format and Schedule for ACDBE and DBE Participation in Airport Car Rental Concessions; Airports' Obligations to Report Annually to the FAA ACDBE and DBE Participation Accomplishments and Obligations to Monitor and Ensure Compliance with ACDBE and DBE Program Rules Remain Unchanged***

***1. The Problems***

***a) Inconsistencies in Airports' Requirements for Car Rental Concessionaires' Reporting of ACDBE Participation Create Undue Administrative Burdens***

Airports routinely state that car rental companies do not report their respective revenues and value of their expenditures with ACDBE and non-ACDBE firms in the same formats or time intervals, if at all. Car rental companies complain that Airports inconsistently interpret regulations that govern reporting resulting in an administrative burden for the industry – that is, being required to maintain a variety of reporting formats and schedules for a multitude of Airports.

***b) Inconsistencies and Lack of Completeness in ACDBE Participation Information Reported to Airports by Car Rental Concessionaires Make it Difficult for Airports to Accurately Report to the FAA ACDBE Participation Accomplishments***

Airports also indicate that car rental companies often do not report or report infrequently on their respective company's ACDBE (or DBE) participation. In turn, Airports often find it difficult to accurately report to the FAA on the Airport's accomplishments for meeting its car rental ACDBE participation goals. This cycle, coupled with the "problems" identified above with current ACDBE (and DBE) certification and counting criteria, has resulted in deficient reporting, at best, and sometimes no reporting.

***2. The Solutions***

Under the recommended Interstate Certification and National and Regional Supplier concepts, the purpose for regular reporting of ACDBE and DBE participation would remain unchanged, as further explained below. However, a few modifications are warranted to ensure that accurate and complete information is reported timely and in the most efficient manner.

*a) Car Rental Companies Will Submit to Airports "Regional" Reports of ACDBE and Non-ACDBE Purchases In a Standardized Format at Least Quarterly*

Car rental companies will be required to generate reports by Airport regions, which mirror FAA regions. Each report will contain a cover page that summarizes the car rental company's national and regional goals, as well as the ACDBE, DBE, non-ACDBE and non-DBE expenditures for that particular region.

The "regional" reports will also contain individual worksheets for each Airport in the region detailing the ACDBE, DBE, non-ACDBE and non-DBE purchases made from vendors within that Airport's local geographic market and which contribute to the regional goal. The following detailed information will be included in this section of the report for each vendor:

- Vendor's name and address;
- Description of goods or services provided by the vendor;
- Vendor's ACDBE and/or DBE classification and certifying agency;
- Airport name;
- Dollar value of expenditures made for the particular reporting period made with the vendor; and
- Dollar value of total year-to-date expenditures made with the vendor.

Each individual Airport worksheet will also include the following summary information:

- Dollar value of total purchases made by the car rental company with ACDBE, DBE, non-ACDBE and non-DBE vendors during the reporting period;
- Dollar value of the car rental company's total gross receipts for the reporting period;
- Dollar value of total purchases made by the car rental company with ACDBE and DBE vendors during the reporting period; and
- Percentage value of total purchases made by the car rental company with ACDBE and DBE vendors as compared to all ACDBE, DBE, non-ACDBE and non-DBE purchases made by the car rental company during the reporting period.

The car rental companies will be required to file, electronically, a regional report with each Airport where it is conducting business no more frequently than on a quarterly basis. The reports

will be generated in a spreadsheet format, initially Microsoft Excel or a similar design until a more robust reporting tool can be developed.

The attached Exhibit B further illustrates the format of the report that car rental companies will file with individual Airports.

*b) Airports' Obligation to Report Annually to the FAA ACDBE and DBE Participation Accomplishments Remain Unchanged*

Each Airport's Disadvantaged Business Enterprise Liaison Officer (DBELO) will be required to continue following the current structure established by the FAA for reporting car rental ACDBE prime and sub-contracting expenditures annually with the requirement that DBE prime and sub-contracting expenditures will also be counted and reported.

*c) Airports' Obligations to Monitor and Ensure Compliance with ACDBE and DBE Program Rules Remain Unchanged*

Under the recommended model, each Airport's obligations to ensure that firms in their ACDBE and DBE programs are fully compliant with all program requirements will remain unchanged. Thus, Airports will be continue to be responsible for verifying the accuracy of information reported by car rental concessionaires and communicating with each company about the results of its verification, including in particular discrepancies between reported information and monitoring findings. Moreover, preventing fraudulent activities in its ACDBE and programs by ensuring that ACDBE and DBE participation commitments are actually met will continue to be one of the Airports' most critical responsibilities.

#### **IV. CONCLUSION**

Despite long-standing federal regulations designed to promote the inclusion of minority- and women-owned firms in Airport car rental operations, appreciable success in this area has not been accomplished. Dissatisfied with these results, AMAC and the car rental industry have diligently worked together to develop a cohesive strategy that effectively removes barriers that have resulted in the continuous exclusion of ACDBEs and DBEs from participating in Airport car rental concessions. The recommendations developed by the AMAC/Car Rental Work Group and presented in this White Paper are designed to be implemented as a unified plan to realize greater ACDBE and DBE opportunities and actual participation within the car rental industry.

## **Exhibit A**

### ***AMAC/CAR RENTAL WORK GROUP MEMBERS***

*The recommendations in this White Paper are based upon consensus of the following  
AMAC Airport and Car Rental Industry Members/Representatives*

#### **Airports**

Houston Airport System	Carlecia Wright, Director Office of Business Opportunity
Indianapolis Airport Authority	Corey Wilson, Director Supplier Diversity / AMAC Board Member
Maryland Aviation Administration	Angela Martin, Director Office of Fair Practices
Miami Dade Aviation Department	Milton Collins/ Rosa Delgado Minority Affairs Division
Raleigh Durham Airport Authority	Farad Ali, Trustee & Secretary / AMAC Board Member
San Francisco International Airport	Sandra Crumpler, Manager Small Business Affairs Office

#### **AMAC**

Airport Minority Advisory Council	Shelby Scales, Chief Executive Officer and President
Diverse Resources	Amber Gooding, President
G M Allen Consulting Group	Genelle Allen, President

#### **Car Rental Companies**

Avis Budget Group, Inc.	Robert Bouta, Senior Vice President Properties & Facilities
Enterprise Holdings, Inc.	Sean Fitzgerald, Vice President Airport Properties & Relations / AMAC Board Member
The Hertz Corporation	John Torres, Director Supplier Diversity
K & L Gates LLP	William Kirk, Partner



# Exhibit B

(Page 1 of 2)

## SAMPLE "REGIONAL REPORT"

(Dollar values presented are for examples only and are not intended to reflect actual spend values)

**Example - Regional Report**

Avis Car Rental, LLC Diversity Spend Goals for Fiscal Year 2012

Avis Rent A Car System, LLC Fiscal Year 2012 Gross Airport Revenue	\$ 1,849,331,868
National Goal at 10% of Gross Airport Revenue	\$ 184,933,187

  

Avis Rent A Car System, LLC Fiscal Year 2011 Gross Airport Revenue for Northeast(NE) Region*	\$ 364,824,259
Northeast regional goal at 10% of Gross Airport Revenue for NE Region	\$ 36,482,426
Individual Airport Contribution	Contribution Amount
Buffalo Niagara International Airport	\$ 7,910,790
JFK International Airport	\$ 25,726,634
Portland International Jetport	\$ 177,933
Syracuse Hancock International Airport	\$ 516,294

and all other airports in the NE Region...

\*NORTHEAST (NE) Region includes the below states:  
Connecticut  
Delaware  
Maine  
Maryland  
Massachusetts  
New Hampshire  
New Jersey  
New York  
Pennsylvania  
Rhode Island  
Vermont  
Virginia  
West Virginia

All airports listed in the region and their contribution in the summary

Each airport will have their own tab where specific detail is given on purchases

Microsoft Excel - Book1

File Edit View Insert Format Tools Data Window Help Adobe PDF

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DBE Compliance Report						
JFK International Airport - 1302620						
Avis Rent A Car Systems, LLC						
Specific Airport Report						
REPORTING PERIOD:		4/2012	To	6/2012		
Vendor Name	Classification	Services Provided	Certification	Airport Division	Current Period Paid Amount	YTD Amount
Fairway Motors Chevy GM Rt 309 Nbox K Hazleton, PA 18201	WBE	Chevrolet New Cars and Truck Sales Parts & Service Subaru New Cars Sales, Parts & Service	WBENC - Women's Business Enterprise National Council - WBE	INDIANAPOLIS-DIST026	\$5,055,008.89	\$10,802,434.45
Hata Inc. 3231 Moorstown Drive Bath, PA 18104	DBE/MBE	Keys, Key Blanks and Key Cutting Equipment	City of Omaha, Nebraska - DBE/Florida Unified Certification Program - DBE/South Central Texas Regional Certification Agency - DBE/State of Oregon - MBE/UCP - Unified Certification Program - DBE	INDIANAPOLIS-DIST026	\$555.01	\$732.51
Santa Monica Ford 1230 Santa Monica Blvd. Santa Monica, CA 90404	DBE/MBE	New Car Dealership, cars, automotive dealer	City of Los Angeles, Department of Public Works - MBE/UCP - Unified Certification Program - DBE	INDIANAPOLIS-DIST026	\$4,847,721.19	\$8,956,174.35
Total Purchases		\$16,446,482.55	Totals		\$ 10,040,694.74	\$20,136,687.22
Total Gross Revenue		\$4,072,181.07				
Total DBE Purchases		\$10,040,694.74				
Avis Rent A Car Systems, LLC %		61.05%				

Suppliers Listed

JFK Tab Selected

Draw - AutoShapes