

# Airport Concessions Disadvantaged Business Enterprise Program at RDU



Raleigh-Durham Airport Authority

# Welcome & Introductions

- Thiané Carter, Director of Small Business Programs
  - Kimberly Stewart, Director of Concessions
  - Rob Hale, Vice President of Commercial Management
  - David Freedman, Senior Vice President of Commercial Management & Chief Revenue Officer
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- Registered attendees list will be posted online with the presentation





# Agenda

- **Learn about the RDU Concessions Program**
  - Upcoming opportunities and how to prepare
- **Learn what the ACDBE Program is at RDU**
  - How to engage as an ACDBE
  - Requirements for non-ACDBEs
- **Learn how to become certified as an ACDBE**



# What is a Concession?

A **concession** is a for-profit business located on an airport engaged in the sale of consumer goods or services to the public or a business not located on the airport with activities that take place on an airport under an agreement with the airport or another concessionaire.

- Food & beverage, retail operators, personal services, ATM, currency services
- Management contracts, advertising businesses, electronic businesses
- Businesses that provide goods or services to concessionaires
  - Suppliers, retail goods, paper goods, uniform services, insurance providers, legal services
- Rental car and related services







# RDU Concessions Program

RDU Concessions is **evolving**

- Traveler experience and expectations are changing
- Importance of safety & confidence of travelers along entire journey
- Concessions must rise to the challenge
  - Touchless technology
  - Grab & Go offerings



# RDU Concessions Program

Exploring **new business models** beyond traditional concession opportunities

- Event announcement early 2021
- Food & Beverage Request for Proposals (RFPs) early 2021: three units
  - Restaurant and Bar
  - Coffee/Tea and Pastry/Sandwich
  - Tapas/Sushi/Wine Bar and Coffee
- Next Steps
  - Release RFP
  - Pre-Proposal early 2021





# What is an ACDBE?

- An **ACDBE** is a for-profit, small business **owned, managed and controlled** by socially and economically disadvantaged individual
  - Minority or women-owned with personal net worth and business size standards
- Must undergo a certification process to be certified in North Carolina as an ACDBE







# What is the ACDBE Program?

- Originated in Atlanta in the 1970s by Mayor Maynard Jackson
- US Department of Transportation issued **49 CFR Part 23**, “Participation by Disadvantaged Business Enterprises in Airport Concessions”
- Designed to increase opportunities for minority and women-owned companies to participate in airport concessions
- Required for airports receiving Federal funding





# ACDBE Program Objectives

The regulations and the ACDBE program seek to achieve several objectives:

- Create a **level playing field** on which ACDBEs can compete fairly
- To **ensure nondiscrimination** in the award and administration of concessions opportunities
- To ensure that only firms that **fully meet the eligibility standards** are permitted to participate as ACDBEs;
- To help **remove barriers** to the participation of ACDBEs in opportunities for concessions





# ACDBE Program Objectives

- To ensure that the ACDBE program is **narrowly tailored** in accordance with applicable law
- To provide appropriate flexibility to airports in establishing and providing opportunities for ACDBEs.





# ACDBE Program Requirements

- ACDBE program requires that RDU sets goals for the participation of ACDBEs in concessions activities
- Goals represent the percentage of revenues that ACDBE firms could expect to achieve **absent of discrimination and its effects** based on the availability of ACDBEs
  - Goal for ACDBEs in **car rental concessions** activities
  - Goal for ACDBEs in **non-car rental concessions** activities







# ACDBE Overall Goals

- Every 3 years, RDU analyzes the availability of ACDBEs to participate in concessions opportunities. This analysis represents all concessions opportunities over the 3-year period.
- RDU has recently completed this analysis; the overall ACDBE goals are:
  - Car rental concession goal: 1.7%
  - Non-car rental concession goal: 29.3%



# How Does RDU Achieve the Overall Goals?

1. The overall goals are submitted to the Federal Aviation Authority (FAA).
2. Each time an RFP is issued, RDU will analyze the opportunity and assign a contract goal. **Proposers must meet or exceed the goal or efforts in good faith to meet the goal in the proposal.**
3. Leaseholders must meet the contract goal or make efforts in good faith to meet the goal.
4. RDU compiles the ACDBE participation of each lease and submits the overall ACDBE participation to the FAA annually



# RFPs & ACDBE Goals

- Many of RDU's RFP will include a contract goal for the participation of ACDBEs within their proposal.
- The contract goal may be greater or less than the 3-year overall goal.
- Both ACDBE and non-ACDBE proposers must comply with the ACDBE program.





# How Do Proposers Meet ACDBE Goals?

## Direct ownership ACDBE participation

- Direct leases
- Subleases
- Joint ventures

## Indirect ACDBE participation

- Suppliers/ subcontracts



# How Do Proposers Meet the ACDBE Goal?

- **Direct ownership arrangement** – ACDBE owns and controls a concession through a direct lease, joint venture, partnership, sublease or other arrangement.
- Proposers are required to make good faith efforts to explore all available options to meet goals, **to the maximum extent practicable**, through **direct ownership arrangements** with ACDBEs.
- Participation is calculated by comparing the total revenues from concessions to the revenues generated by the ACDBE firm.





# How Do Proposers Meet ACDBE Goals?

## Direct Leases

- A lease between the Authority and an ACDBE; 100% ACDBE participation

## Subleases

- An operator with a direct lease subleases location(s) to an ACDBE
- ACDBE participation is equal to the gross receipts from the ACDBE location(s) only





# What is a Joint Venture?

An “association of an ACDBE firm and one or more other firms to carry out a single, business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge

and

in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.”





# Meeting ACDBE Goals – Joint Ventures

- Only the portion of distinct, clearly defined work performed by the ACDBE can be counted towards the goal
- FAA provided joint venture [guidance](#) to airports which may be helpful to proposers
- RDUAA will examine each JV agreement prior to accepting the proposed participation to determine the amount of ACDBE participation



# Meeting ACDBE Goals - Subcontracts

- Indirect ACDBE participation
- The purchase of goods and services from an ACDBE
- Participation is determined by comparing the cost of the purchase to gross receipts of the business





# How Do Proposers Meet the ACDBE Goal?

Non-ACDBE proposers should analyze each RFP to determine whether there is an opportunity for **direct ownership arrangements** with ACDBE firms:

- Is there an opportunity to sublease one or more locations to an ACDBE operator?
- Is there an opportunity for meaningful participation through a joint venture partnership?

Proposers may also propose to meet the ACDBE goal through the **purchase of goods and services** from certified ACDBEs.



# ACDBE Goals and Good Faith Effort

If a proposer does not meet the ACDBE goal in its proposal, the proposer is still eligible for contract award if it can provide **documentation** that it took **all necessary and reasonable steps to achieve the ACDBE goal** by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient ACDBE participation.

RDU will determine whether a proposer has made good faith efforts by analyzing its documented efforts.



# Good Faith Determination

The efforts should be those that one could reasonably expect if the bidder were actively and aggressively trying to meet the ACDBE contract goal. Mere pro forma efforts are not good faith efforts to meet the ACDBE contract requirements.







## Good Faith Efforts Documentation

Identifying ACDBEs, including suppliers and soliciting through all reasonable and available means the interest of all certified, capable ACDBEs.

- Networking at pre-proposal and networking events
- Advertising and/or providing written notices to ACDBEs



# Good Faith Effort Considerations

Selecting portions of the contract to be performed by ACDBEs in order to increase the likelihood that the ACDBE goals will be achieved.

- This includes, where appropriate, breaking out specific activities into economically feasible units to facilitate ACDBE participation, even when the prime contractor might otherwise prefer to self-perform
- For example, subleases or individual locations within a joint venture to be distinctly operated by an ACDBE





# Good Faith Effort Considerations

Negotiating in good faith with interested ACDBEs

- Documentation of such negotiation includes the names and contact information of ACDBEs which were considered; a description of the work or scope for which they were considered; and evidence as to why the agreement could not be reached for ACDBEs.





# Good Faith Effort Considerations

Effectively using the services of available minority/women community organizations; local, State, and Federal minority/women business assistance offices; and other organizations to provide assistance in the recruitment and placement of ACDBEs.

- Networking events
- Trade organizations
- Engaging with interested ACDBEs, maintaining contacts





# Questions



# ACDBE Certification Requirements



# What is the Benefit of ACDBE Certification?

ACDBE certification is a marketing tool which makes your business visible and more competitive to firms who may wish to partner. ACDBE certification does not guarantee that a proposal will be successful.



# Applying for ACDBE Certification

Applicants must show that they meet size, group membership, ownership, and control standards by a preponderance of the evidence.

The applicant bears the burden of proving, by a preponderance of evidence, that it meets eligibility criteria.



# Affidavit of Certification

**Program Objective:** To ensure that only firms that fully meet eligibility standards are permitted to participate as ACDBEs.

**All applicants must submit this signed and notarized statement:**

Any material or false statement or omission made in connection with this application is sufficient cause for denial of certification, revocation of prior approval, initiation of suspension or debarment proceedings, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable federal and state law.





# Certification Considerations

- Ownership
- Control
- Independence
- Group membership
- Family-owned/ operated business
- Business size standard
- PNW standard



# What is an ACDBE?

An ACDBE is a for-profit **small business** that concessionaire that:

1. is at least 51% percent owned by one or more individuals who are both **socially and economically disadvantaged**; and
2. Whose management and **daily business** operations are **controlled** by one or more of the socially and economically disadvantaged individuals who own it.



# What is a Small Business?

3-year average gross receipts less than \$56.42 million

Exceptions:

- Banks - \$1B
- Car rental companies - \$75.23M
- Pay telephones - 1,500 employees
- Automobile dealers - 350 employees





# What is Socially and Economically Disadvantaged?

Any individual who has been subjected to **racial or ethnic prejudice or cultural bias** within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.





# Who is Socially and Economically Disadvantaged?

- Black Americans
- Hispanic Americans
- Native Americans
- Asian-Pacific Americans
- Subcontinent Asian Americans
- Women



# Socially and Economically Disadvantaged

Applicants may be asked for additional documentation to substantiate membership in one of the groups:

An applicant should produce evidence that they have **held himself out to be a member of the group over a long period of time prior to application for certification** and whether the person is **regarded as a member** of the group by the relevant community.

- Applicants claiming Native American group membership must be members of a state or federally-recognized tribe
- Evidence may include Indian tribal roll cards, letters from a community group, education institution, religious leader





# Personal Net Worth

Any individual who has a personal net worth exceeding \$1.32 million is not a socially and economically disadvantaged individual, even if the individual is a member of a group presumed to be disadvantaged.

- Excluding personal residence
- Excluding applicant business







# Ownership

The regulations regarding **ownership** are very specific (49 CFR Part 26) regarding:

- Stock ownership
- Gifts or transfers of between disadvantaged individuals and non-disadvantaged individuals
- Capital contributions and investment by all owners



# Ownership

A firm must be at least 51% owned by socially and economically disadvantaged (SED) individuals.

- Corporations: SED individual must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
- Partnerships: 51% of each class of partnership interest must be owned by SED individual. Such ownership must be reflected in the firm's partnership agreement.



# Ownership

The firm's ownership by SED individuals, including their contribution of capital or expertise to acquire their ownership interests, must be **real, substantial, and continuing, going beyond pro forma ownership of the firm** as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.







# Control

- The regulations are very specific regarding the **control** of a firm.
- Only an independent business may be certified as an ACDBE.
  - An independent business is one the viability of which does not depend on its relationship with another firm or firms.





# Control

The SED owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

- A disadvantaged owner must hold the highest officer position in the company (CEO, President)
- Corporations: disadvantaged owners must control the board of directors
- Partnerships: one or more disadvantaged owners must serve as general partners, with control over all partnership decisions



# Control

- The SED owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations.
- The SED owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make **independent decisions** concerning the firm's **daily operations, management, and policymaking**. Generally, **expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient** to demonstrate control.



# Control

- If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the SED persons who own and control a potential ACDBE firm of that type must possess the required license or credential.
- A SED owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.





# Control

A SED individual may control a firm even though one or more of the individual's immediate family members participate in the firm. If the SED owner cannot demonstrate — as distinct from the family as a whole — control of the firm, then the SED owners have failed to carry their burden of proof concerning control.





# Control

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual, ownership and/or control were transferred to a SED individual, and the non disadvantaged individual remains involved with the firm in any capacity, the SED owner must demonstrate that:

1. The was made for reasons other than obtaining ACDBE certification
2. The SED individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual



# Control

An ACDBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the SED owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.



# Control

Per regulations, these circumstances will be **scrutinized**:

- Relationships with non-ACDBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources
- Present or recent employer/employee relationships between the disadvantaged owner(s) of the potential ACDBE and non-ACDBE firms or persons associated with non-ACDBE firms
- Exclusive or primary relationships with prime contractors





# Questions



# How to Apply for ACDBE Certification

Firms that plan to do business with RDU can apply for ACDBE certification through the RDU Small Business Office. Other firms should apply through the North Carolina Department of Transportation (NCDOT).

Firms must be certified in North Carolina in order to count towards ACDBE goals.

Applicants from another state must be certified by their home state before applying in North Carolina.

- Use the Interstate Certification Request [form](#)



# What is the Application Process?

1. Firm submits the [application](#) to RDU Small Business.
  - Electronically: Submit a request to [smallbusiness@rdu.com](mailto:smallbusiness@rdu.com) for secure instructions
  - Mail: Send the application to Raleigh-Durham Airport Authority c/o Thiané Carter, Small Business Programs
    - USPS – PO Box 80001, Raleigh, NC 27623
    - UPS – 1000 Trade Drive, Morrisville, NC 27560
    - FedEx – 1000 Trade Drive, RDU Airport, NC 27623



# What is the Application Process?

2. Application Review - RDU will review the application for completeness. Applicants will be notified if any portion of the application or supplementary documents are missing.
3. Certification Review - RDU will review the application for certification. Additional documentation may be requested.
4. Site Visit – A site visit will be scheduled after all supplementary documentation has been submitted to RDU. A site visit is typically performed at the business location.
  - Site visits may be virtual due to the current health emergency



# What is the Application Process?

After the site visit, RDU will determine whether the firm is eligible for certification:

- If a firm is approved, the firm is added to the NCDOT Directory
- If a firm is denied, the firm may appeal the certification decision to NCDOT or reapply after 1 year.





# Certification Tips

- ✓ Use the [Supporting Documentation Checklist](#)
  - ✓ Provide checklist with the application
- ✓ Provide explanations for each item not provided
- ✓ Read the application carefully; respond to each question



Raleigh-Durham Airport Authority



## UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

### Required Documents for All Applicants

- ☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Signed loan and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ Licenses, license renewal forms, permits, and haul authority forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment.
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

### Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

### Corporation or LLC

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement(s)
- ☐ Minutes of all stockholders and board of directors meetings

- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

### Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these documents, you must supply them with your application or at the on-site visit.

- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (or life of firm, if less than three years)

### Suppliers

- ☐ List of product lines carried and list of distribution equipment owned and/or leased

# Certification Tips

- ✓ Respond to requests for information quickly
- ✓ Apply for certification prior to the issuance of an RFP
  - ✓ The RDU certification process typically takes 6 weeks after a complete application is received



# Helpful Links

ACDBE Certification Application – <https://tinyurl.com/acdbecert18>

49 CFR Part 23 – <https://tinyurl.com/acdberules>

49 CFR Part 26 – <https://tinyurl.com/dberules>

FAA Joint Venture Guidance – <https://tinyurl.com/jvguide>

Concessions 101 Event – <https://tinyurl.com/rdu101event>

Small Business Email Address – [smallbusiness@rdu.com](mailto:smallbusiness@rdu.com)



