



DBE

Reauthorization Requests

Training provision, inflationary adjustment suggested for Part 23

Nobody today believes the dollar is worth the same amount it was 28 years ago. However, the \$750,000 personal net worth cap (PNW) instituted in 1979 by the U.S. Small Business Administration remains the standard calculating figure for concessionaires wishing to run airport-based businesses under airport concessions disadvantaged business enterprise (ACDBE) status.

Though this outdated figure was instituted as a blanket rule in the Carter years, DBEs have only recently been subjected to its parameters. The 1999-instituted Title 49 Part 26 standards regulating participation by DBEs in Department of Transportation (DOT) financial assistance programs preceded the March 2005 CFR Title 49 Part 23 standard, which specifically outlines DBE requirements for airport concessions.

Since the final rule was published in the Federal Register 30 months ago, the DOT is sticking with the \$750,000 personal net worth test as part of the "narrowly tailored" eligibility criteria for DBE certification.

Critics such as William Kirk, legal counsel to the Airport Minority Advisory Council (AMAC), are not so sure of this rationale and has been vocal in opposition to this policy.

"A net worth test puts an artificial ceiling on the ability to grow," Kirk said. "We have this program because of race and gender. Once your income grows, your problems as a woman, ethnic minority or small business don't go away."

With the near-term prospects for DOT on its own to repeal or substantially modify the current PNW quite slim, Kirk said the DBE community must learn to live with it. However, AMAC has suggested to Congress that the \$750,000 cap be adjusted to match inflation.

"The number selected by the DOT was not rationally or empirically grounded," Kirk said.

"If you want to have an average news and gift concession, the build-out alone will be between \$500,000 to \$750,000. Then you add on working capital and in order to get into business, and unless you have tremendous savings you are

going to have to borrow \$500,000 to \$1 million. In order to borrow that, you are going to have to have some assets or ability to provide security to a financial source commensurate with the money they are going to lend you."

The DBE community must learn to live with the personal net worth regulation, Kirk contends, because lawmakers will not change it at this point. On a positive note, AMAC was able to persuade DOT to exclude assets in aggregate of \$2 million from the net worth calculation. On the downside, airport officials responsible for certification decisions are generally not used to looking at financial statements or conversant with accounting concepts necessary to analyze and come up with net worth.

"The DOT regulations give you some guidance, but they are not particularly well defined for this purpose," Kirk said. "For a lot of people involved in the certification arena, this is all new to them and we're not seeing the level of consistency in how this is being done."

"One thing we are doing in the FAA reauthorization bill is making sure Congress mandates uniform training. The House bill would require that within a reasonable amount of time, FAA and DOT would have to come up with a curriculum."

Everyone who is going to be involved in certification has to go through that curriculum to be credentialed in order to get a substantive education on what the rules are and how you do it."

Should the legislation pass with the current DBE training provision, Kirk anticipates a year for DOT to build the curriculum. A third party could be contracted to draft the curriculum for DOT.

AMAC made specific suggestions to congressional staff for the House version, and the Senate has similar, albeit broader, verbiage directing DOT to come up with training provision.

"AMAC is working with congressional staff to see how we can continue the momentum and perfect the bill," Kirk said. "Personal net worth is still problematic, but we have to live with it. Incrementally, we are trying to improve it until there is an opportunity to change it." ■