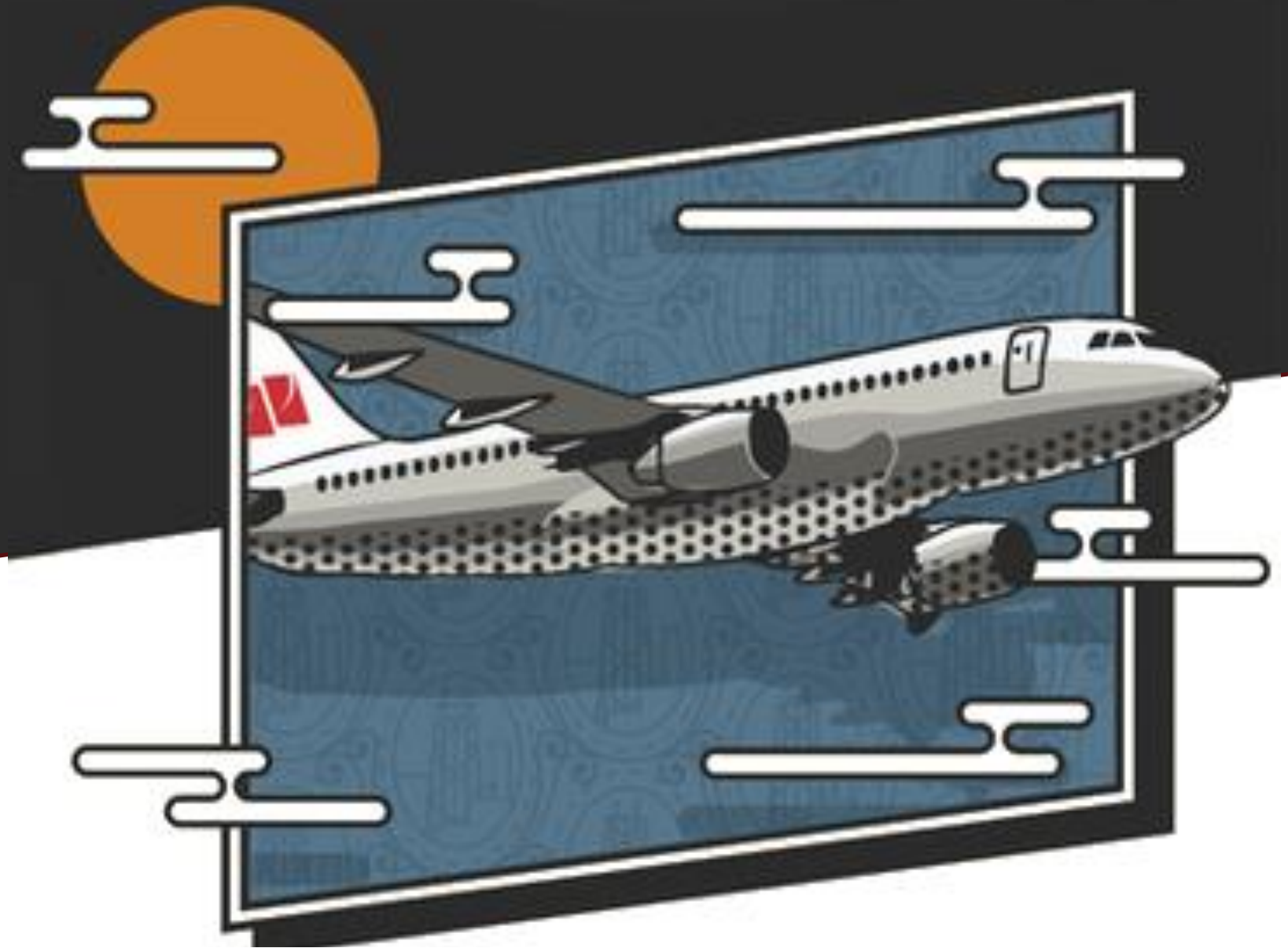




40th Annual
Airport Law Workshop



Session 15

ACDBE, TITLE VI AND CIVIL RIGHTS

Speakers

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Introduction

- Title VI & ACDBE & civil rights is a very broad topic for session
- Minutia important but for today...
- Legal vs Administration
- A good team is key
- Goal of Session



Coverage/Overview

Title VI

- Baseline legal foundations
- Expansion of Scope of Protection
- Administrative Components
- Limited English Proficiency

ACDBE

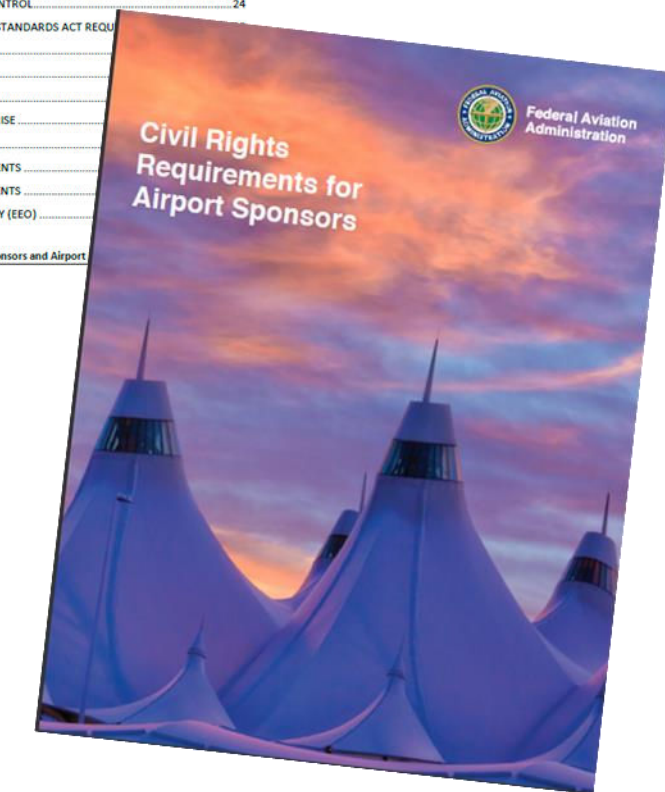
- Overview
- Selected Issues



Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

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Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects
Issued on June 19, 2018



Title VI of the Civil Rights Act of 1964

And other honorable mentions

- **The Beginning... Race, color, national origin**
- **Grant Assurances**
 - **What's the #1 rule...don't forget about #1!**
 - **Title VI of the Civil Rights Act of 1964**
 - **Special bonus material:**
 - **Rehabilitation Act of 1975**
 - **Age Discrimination Act of 1990**
 - **Executive Orders**
 - **Executive Order 11246 (affirmative action)**



Airport Law Club?

Title VI

No persons in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance

Airport and Airway Improvement Act of 1982

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000det seq.). This section is in addition to title VI of the Act

49 U.S.C. § 47123 (a)

Scope of Coverage

- ✓ Protected Classes: Race, Color, National Origin, Sex, Creed, Age
- ✓ “Program or Activity” – Title VI’s prohibitions apply organization-wide, not just to unit receiving the federal assistance
- ✓ “Federal Assistance” – Grants or loans of money, the grant or donation of federal property, provision of federal personnel



Regulations

- ✓ **DOT Regulations Implementing Title VI: 49 CFR Part 21**
 - ✓ Applies to any program for which federal financial assistance is authorized under a law administered by the Department [of Transportation] ...
 - ✓ Prohibits both
 - ✓ Disparate treatment and
 - ✓ Disparate impact
 - ✓ **Third Party Obligations** - Leases and contracts must contain a nondiscrimination clauses
 - ✓ **Notice** - Conspicuously display nondiscrimination poster
 - ✓ **Complaints** - Forward all Title VI complaints to the FAA
 - ✓ **Administration** - Availability of Part 21 regulations



Regulations

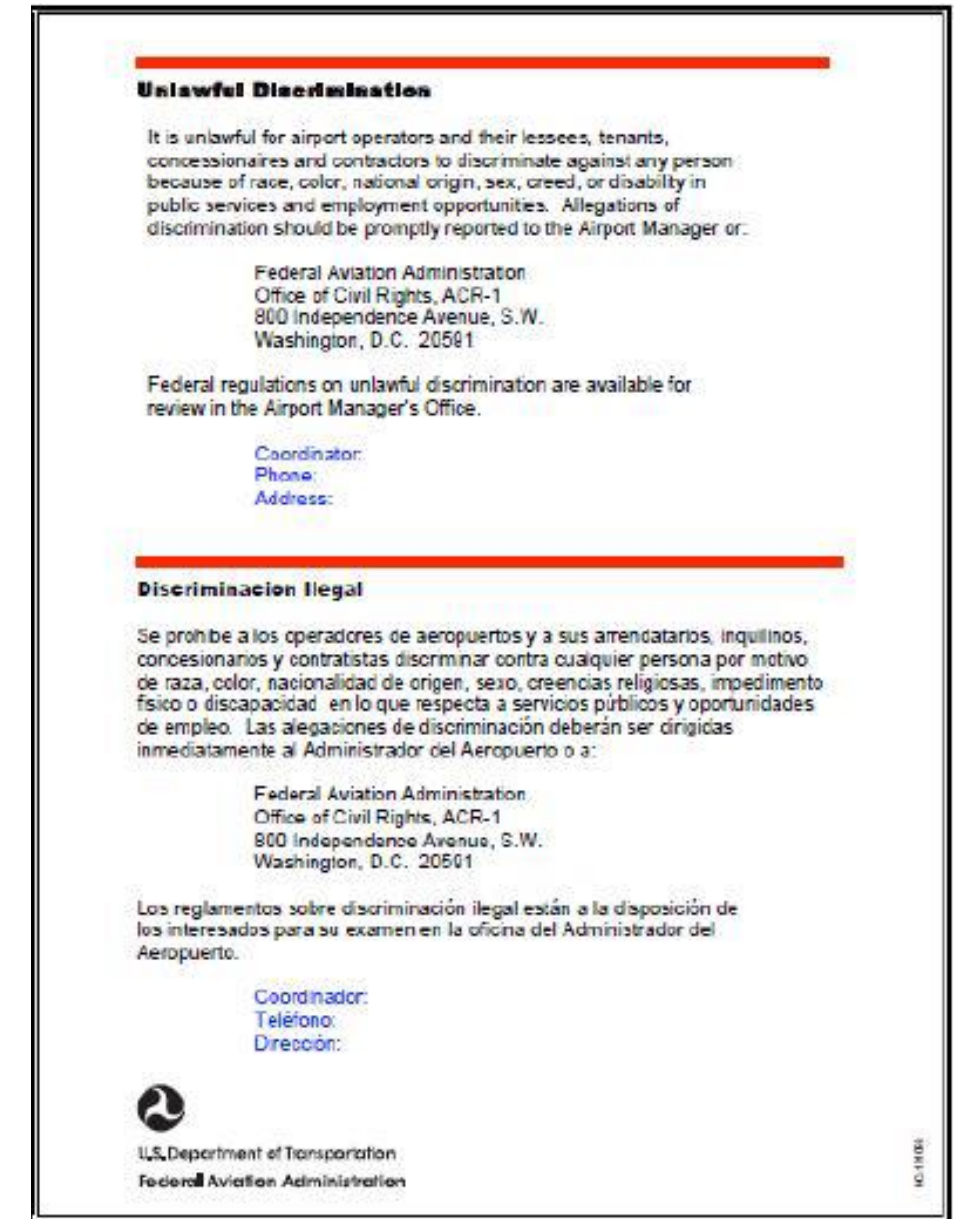
- ✓ DOT Regulations Implementing Title VI: 49 CFR Part 21
 - ✓ Compliance Reports and Data Collection
 - ✓ Recipients should be maintaining records and collecting data that shows compliance with Title VI
 - ✓ Employment Opportunities at Airport
 - ✓ Equal employment opportunity with airport, tenants
 - ✓ Outreach to the minority business
 - ✓ Advise the local minority business community of opportunities at the airport
- ✓ DOJ Regulations Implementing Title VI: 28 CFR Part 42

**Obligatory
Details**

The Poster!

- ✈ The poster must be... POSTED!
- ✈ Coordinator, do you have a coordinator?
- ✈ Documents, do you have the documents?

“The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.” 49 CFR Part 21, Appendix C (b)(2)



Limited English Proficiency

- Wait, wait, WHAT?
- Executive Order 13166 – “Improving Access to Services for Persons with Limited English Proficiency” dated August 11, 2000
- Federal Register 70 FR 74087 (December 14, 2005) – “Department of Transportation Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) persons”

Title VI and its regulations require recipients to take reasonable steps to ensure ‘meaningful’ access to the information and services they provide.”

Federal Register 65 FR 50123
(August 16, 2000)

The Title VI Plan

Have a Plan!

Elements of the Title VI Plan:

1. **Policy Statement**

- DOT Order 1000.12C, Ch. II, Sec. 3, Part d

2. **Administration Information (Grants, Contacts)**

- 49 CFR Part 21 Appendix C (b) *

- DOT Order 1000.12C, Ch. II, Sec. 3, Part e

3. **Grant and Procurement Assurances**

- 49 CFR § 21.7 (a)(1)

- 49 CFR Part 21 Appendix C (b) *

- FAA Airport Improvement Program (AIP) Grant Assurances*

4. **Title VI Coordinator Responsibilities**

- 49 CFR 21, Appendix C (b)

5. **Nondiscrimination Notice**

- 49 CFR Part 21 Appendix C (b)(2)(ii) *

**Here comes a lot
of stuff!**

The Title VI Plan

Have a Plan!

Elements of the Title VI Plan:

6. **Community Statistics – Demographic Data Collection**

- 49 CFR § 21.9(b) & (c)
- DOT Order 1000.12C, Ch. II, Sec. 3, Part a

7. **Analysis for Community Impacts**

- DOT Order 1000.12C, Ch. II, Sec. 3, Parts a-c

8. **Limited English Proficiency (LEP) Planning**

- Executive Order 13166

9. **Transit Connection Planning**

- 49 Part CFR 21 Appendix C (a)(1)(ix) *



The Title VI Plan

Have a Plan!

Elements of the Title VI Plan:

10. Minority Business Outreach

- 49 Part CFR 21 Appendix C (a)(1)(x) *

11. Training

12. Compliance Reviews, Audits, Lawsuits, and Other Investigations

- DOT Order 1000.12C, Ch. II, Sec. 3, Part e

13. Title VI Complaint Processing

- 49 CFR §21.11
- 49 CFR § 21 Appendix C (b)(3) *
- 28 CFR § 42.406(d)

* FAA Specific Requirement



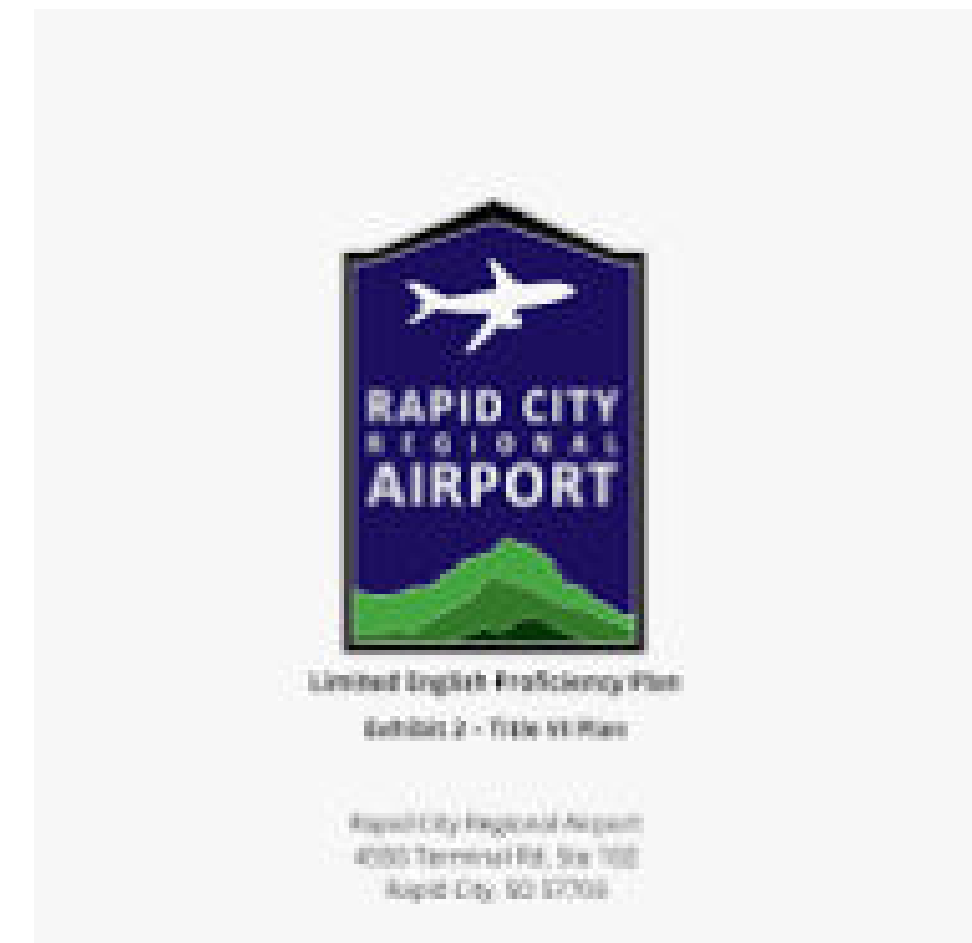
**Last
One!**

LEP – Four – Factor Analysis

Overview

✈ Recipients should apply these four factors to determine the extent of their obligation to provide LEP services:

1. Number/proportion of LEP persons in a recipient's area
2. Frequency of contact between LEP individuals and the recipient's services
3. Importance of the service provided by the recipient
4. Resources available to the recipient and costs



ACDBE

On Topic, Two Parts

Part 23:

ACDBE – Airport Concession Disadvantaged Business Enterprise
– see 49 CFR Part 23

Part 26:

DBE – Disadvantaged Business Enterprise
– see 49 CFR Part 26

Which airports are required to have an ACDBE program?

- ✓ Primary airports that receive Airport Improvement Program grants
- ✓ An ACDBE program is required as a condition of grant funding



What are the objectives of the USDOT ACDBE program?

- ✓ To ensure nondiscrimination in the award and administration of opportunities for concessions by airport sponsors receiving DOT financial assistance
- ✓ To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions
- ✓ To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law



What is an airport concession?

Concession means one or more of the types of for-profit businesses that serve the traveling public listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the traveling public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport:

- Management contracts and subcontracts,
- a web-based or other electronic business in a terminal or which passengers can access at the terminal,
- an advertising business that provides advertising displays or messages to the public on the airport, or
- a business that provides goods and services to concessionaires.

ACDBE Program: Recipient Responsibilities

Implementation of program is a legal obligation and failure to carry out its terms shall be treated as a violation of GAs and Rules.

Responsibilities:

- Implement program in good faith
- Stay up-to-date on regulations and guidance
- Apply good practices to ensure airport compliance

What is an ACDBE Program Plan?

- ✓ Written document that meets regulatory the requirements CFR 49, Part 23
- ✓ Explains how the Recipient will implement the ACDBE Program at its airport(s)
- ✓ Includes contract assurances and non-discrimination language required by federal law
- ✓ Identifies the ACDBE Liaison Officer
- ✓ Includes Small Business Element

**Sample
template
updated July
2024**



Key Elements about the ACDBE Program

- ✓ Specific to airport concessions activities
- ✓ Primary airports must have ACDBE programs
- ✓ Non-primary airports must take appropriate outreach steps
- ✓ Recipients establish two ACDBE Overall Goals
 - Car rentals
 - Concession activities other than car rentals

What do ACDBE Program Plans Involve?

- Airports must use of race-neutral measures to strive for having the ACDBE participation needed to meet overall goals through such measures.
- In addition to the efforts that concessionaires make, the airport must make efforts to
 - Identify ACDBEs and other small businesses who may be interested in participating as concessionaires; and
 - Notify ACDBEs of concession opportunities and encourage them to compete



ACDBE Program – Key Concepts

- Part 23 prohibits Long-Term, Exclusive (LTE) agreements with concessionaires
 - 10 years or more
 - Airport must seek FAA approval for LTE agreements prior to execution (see §23.75)
 - Standards/Practice Tips
 - “Material Amendments” trap

- Joint ventures are often used to qualify as an ACDBE
 - One may only count only the “distinct, clearly defined portion of the work... the ACDBE performs with its own forces”
 - One may count 100% of goods provided by an ACDBE regular dealer

ACDBE Overall Goals

Part 23 requires Recipients to set two distinct goals:

- ✓ Concessions other than car rental
- ✓ Car rental concessions

Car rental concessions goals most often based on goods & services purchases and expenditures

The goals represent ACDBE participation the Recipient would expect to see in the absence of discrimination

ACDBE GOALS (continued)

The ACDBE Goal is NOT your ACDBE Program

The airport's goal methodology often included as an appendix or attachment to the Program Plan

Sometimes these are referred to a triennial goal because goals are set on a triennial basis, covering three federal fiscal years, FFY 24-26

Due every three years; schedule based on airport size

Monitoring Requirements of the ACDBE Program

The airport should work to Improve organization's potential to meet its ACDBE goals

Ensure compliance by all participants

The Airport

Concessionaries/primes/Joint Ventures

ACDBE and non-ACDBE Subcontractors

Prevent fraud and report if suspected



**NOT a "set it
and forget it"
endeavor !!**

Monitoring Requirements of the ACDBE Program

- ★ The airport must create and utilize a document to certify that ACDBE contracts and worksites are inspected
- ★ The airport must document- detail exactly what was reviewed, by whom, and when
- ★ The airport should train its personnel to know what to look for the USDOT Office of Inspector General “Red Flag” Indicators of DBE Fraud



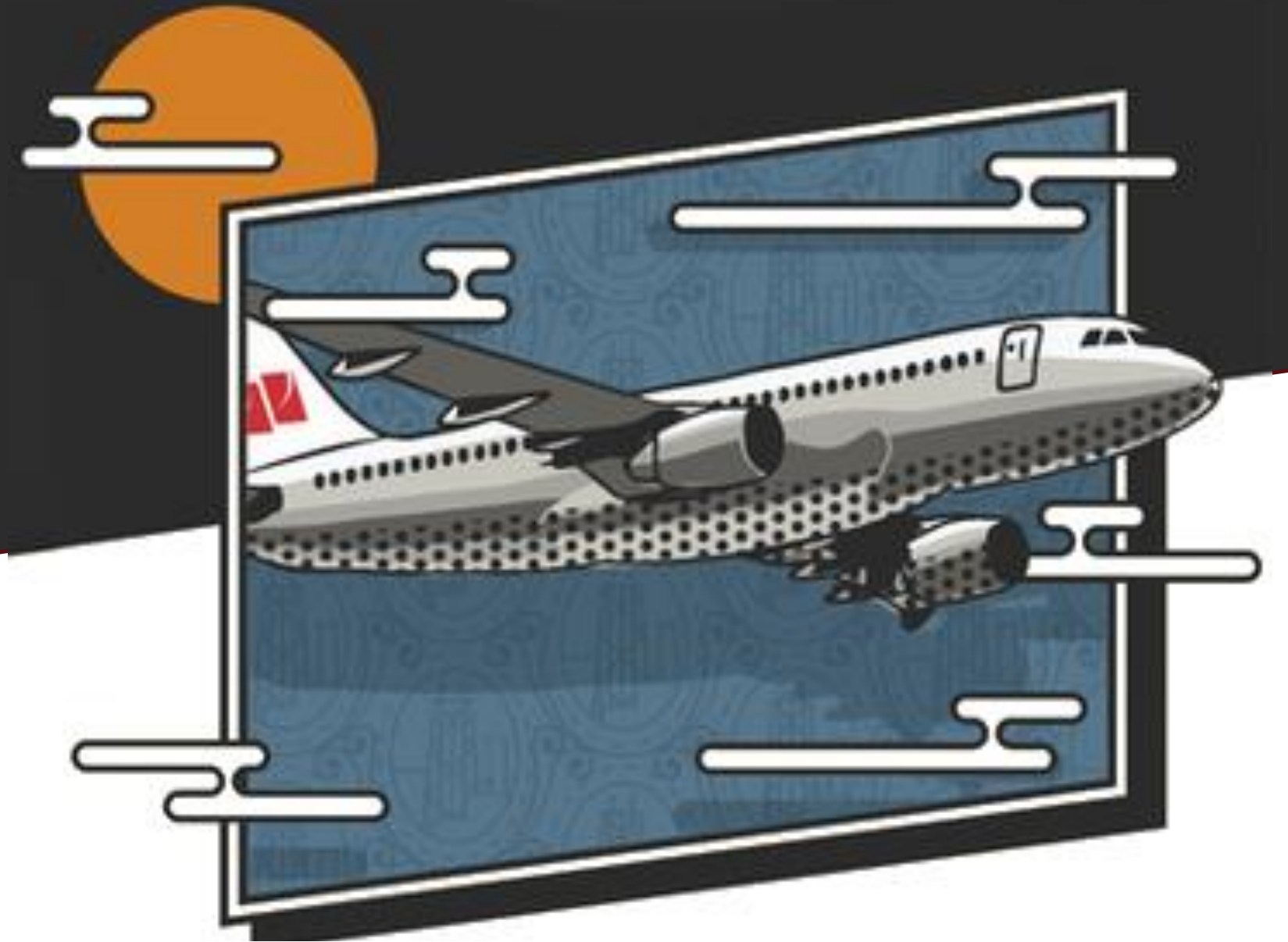
**This takes a
commitment
by the airport**

WHEW !





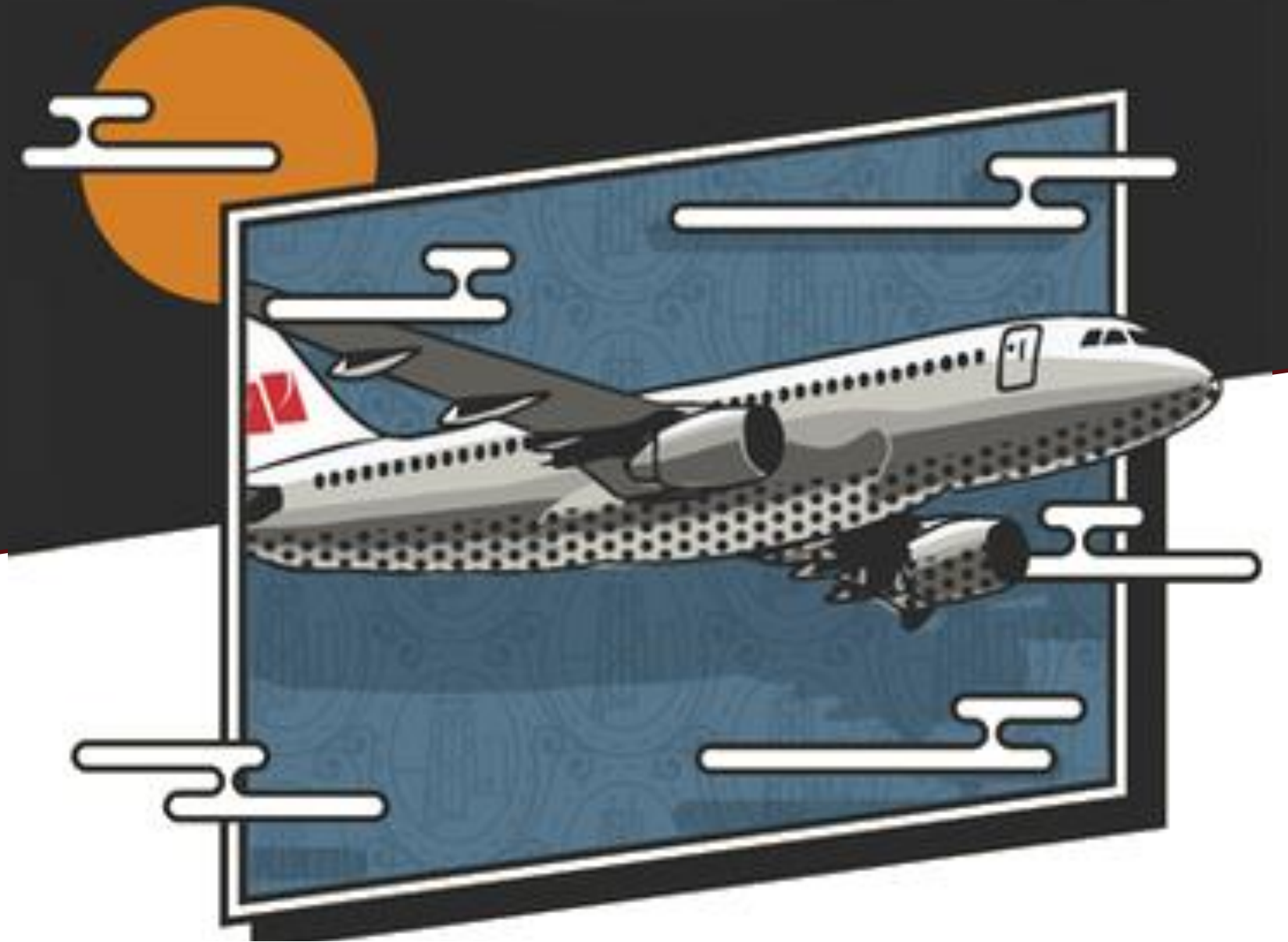
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QUESTIONS?



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THANK YOU!