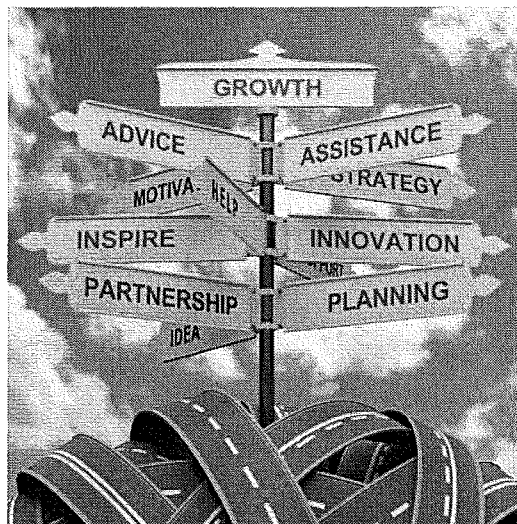


ACRP

REPORT 126

A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities



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ACRP REPORT 126

**A Guidebook for Increasing
Diverse and Small Business
Participation in Airport
Business Opportunities**

EXSTARE FEDERAL SERVICES GROUP, LLC®
Alexandria, VA

IN ASSOCIATION WITH

ROSALES LAW PARTNERS LLP
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AIRPORT COOPERATIVE RESEARCH PROGRAM

Airports are vital national resources. They serve a key role in transportation of people and goods and in regional, national, and international commerce. They are where the nation's aviation system connects with other modes of transportation and where federal responsibility for managing and regulating air traffic operations intersects with the role of state and local governments that own and operate most airports. Research is necessary to solve common operating problems, to adapt appropriate new technologies from other industries, and to introduce innovations into the airport industry. The Airport Cooperative Research Program (ACRP) serves as one of the principal means by which the airport industry can develop innovative near-term solutions to meet demands placed on it.

The need for ACRP was identified in *TRB Special Report 272: Airport Research Needs: Cooperative Solutions* in 2003, based on a study sponsored by the Federal Aviation Administration (FAA). The ACRP carries out applied research on problems that are shared by airport operating agencies and are not being adequately addressed by existing federal research programs. It is modeled after the successful National Cooperative Highway Research Program and Transit Cooperative Research Program. The ACRP undertakes research and other technical activities in a variety of airport subject areas, including design, construction, maintenance, operations, safety, security, policy, planning, human resources, and administration. The ACRP provides a forum where airport operators can cooperatively address common operational problems.

The ACRP was authorized in December 2003 as part of the Vision 100-Century of Aviation Reauthorization Act. The primary participants in the ACRP are (1) an independent governing board, the ACRP Oversight Committee (AOC), appointed by the Secretary of the U.S. Department of Transportation with representation from airport operating agencies, other stakeholders, and relevant industry organizations such as the Airports Council International-North America (ACI-NA), the American Association of Airport Executives (AAAE), the National Association of State Aviation Officials (NASAO), Airlines for America (A4A), and the Airport Consultants Council (ACC) as vital links to the airport community; (2) the TRB as program manager and secretariat for the governing board; and (3) the FAA as program sponsor. In October 2005, the FAA executed a contract with the National Academies formally initiating the program.

The ACRP benefits from the cooperation and participation of airport professionals, air carriers, shippers, state and local government officials, equipment and service suppliers, other airport users, and research organizations. Each of these participants has different interests and responsibilities, and each is an integral part of this cooperative research effort.

Research problem statements for the ACRP are solicited periodically but may be submitted to the TRB by anyone at any time. It is the responsibility of the AOC to formulate the research program by identifying the highest priority projects and defining funding levels and expected products.

Once selected, each ACRP project is assigned to an expert panel, appointed by the TRB. Panels include experienced practitioners and research specialists; heavy emphasis is placed on including airport professionals, the intended users of the research products. The panels prepare project statements (requests for proposals), select contractors, and provide technical guidance and counsel throughout the life of the project. The process for developing research problem statements and selecting research agencies has been used by TRB in managing cooperative research programs since 1962. As in other TRB activities, ACRP project panels serve voluntarily without compensation.

Primary emphasis is placed on disseminating ACRP results to the intended end-users of the research: airport operating agencies, service providers, and suppliers. The ACRP produces a series of research reports for use by airport operators, local agencies, the FAA, and other interested parties, and industry associations may arrange for workshops, training aids, field visits, and other activities to ensure that results are implemented by airport-industry practitioners.

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Project 01-25

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FOREWORD

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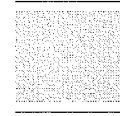
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ACRP Report 126: A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities is a compilation of industry best practices and other measures airports can utilize to attract and enhance participation in their contract opportunities. The guidebook identifies best practices and outlines applicable federal requirements to enable consistent administration of the federal DBE Program. It includes an overview of federal programs, grant assurances, and enabling legislation; discusses options for coordinating and integrating local efforts and programs with federal requirements; offers contracting methods to promote and increase opportunities for diverse business participation; and addresses roles and responsibilities for administering business diversity programs with particular emphasis on the importance of engaging the DBELO (disadvantaged business enterprise liaison officer) in the airport procurement process. Various contracting models, team structures, and other strategies for obtaining diversity (e.g., joint-ventures, partnerships) are discussed, as are impediments to the success of diverse businesses and what airports can do to alleviate the impediment. The guidebook also provides case studies of six airports that are successful in their efforts to achieve increased participation of diverse businesses in their contract opportunities. A glossary of terms and an appendix of available industry resources are also included.

This is a guidebook for airport operators and businesses to promote more airport contract opportunities to disadvantaged business enterprises (DBEs), airport concession disadvantaged business enterprises (ACDBEs), minority-owned businesses, woman-owned businesses (MBEs and WBEs), and other small and local businesses. These businesses, referred to as “diverse businesses” in this guidebook, provide a variety of services or products utilized in airport contracts. Collectively, “airport contracts” encompass federally funded projects, concessions, passenger facility charge-funded projects, and goods and services used in daily airport activities.

Although federal, state, and local statutes and regulations require airport operators to promote diverse business participation in their contracts, some airport operators take voluntary steps to achieve diverse business participation. Airports of all sizes implement programs that may vary with respect to their specific requirements, but many of the methods for promoting airport contracts to diverse businesses can be applied broadly.

Under ACRP Project 01-25, research was conducted by Exstare Federal Services Group, LLC, in association with Rosales Law Partners LLP and WHP Research, Inc. To supplement information from the literature review, 112 airport industry stakeholders, including airport board members, chief executives, DBELOs, business owners, government officials, and others were interviewed.



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Introduction to the Guidebook

1.1 Purpose of the Guidebook

The purpose of *ACRP Report 126: A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities* is to provide an easy-to-use reference to assist airports with promoting airport opportunities to diverse businesses. The guidebook is not a “How-to” guide. It shares industry practices that airports of all sizes utilize to achieve a higher degree of diverse business participation in their contracts. For the purposes of this guidebook, “airport contracts” means construction, professional services, goods and services, and concessions contracts at U.S. airports. “Diverse businesses” means disadvantaged business enterprises (DBEs), airport concession disadvantaged business enterprises (ACDBEs), minority-owned business enterprises (MBEs), woman-owned business enterprises (WBEs), and small business enterprises (SBEs).

Many federal, state, and local statutes and regulations require airport operators to develop and implement policies and methods to ensure that diverse businesses have equal and fair opportunities to seek and participate in airport contracts. Some airport operators also take voluntary steps to promote diverse business participation. State and local programs may vary with respect to their specific requirements, but many of the methods for promoting and achieving diversity and inclusion can be applied broadly. A variety of the policies, practices and procedures airports have implemented to do so are discussed herein.

1.2 Methodology and Data Collection

The development of the practices and solutions offered in this guidebook resulted from data collected through a comprehensive review of literature and supplemented by interviews with airport industry stakeholders.

1.2.1 Research Approach

1.2.1.1 Literature Review

A review of more than 470 documents provided the overarching framework on the state of practice and implementation of DBE, ACDBE, MBE/WBE, SBE and local business enterprise (LBE) programs, collectively referred to as business diversity programs. The literature includes legislative, legal and regulatory documents, industry publications containing information on airport business diversity program matters, case law, airport policies and procedures documents, contract solicitations and agreements, disparity studies, government and industry presentations, airport reports on the economic impact of diverse businesses, and other papers related to the research.

Relevant data on airports of varying resources, sizes, access to diverse businesses, and ownership/government structures were assessed to pinpoint useful policies and practices, and to assist in determining the approach for categorizing, organizing, and presenting the collected information. The literature review also identified industry stakeholders for interviews and airports for case studies.

1.2.1.2 Stakeholder Interviews

To supplement information from the literature review, 112 airport industry stakeholders participated in interviews conducted either during one of four focus groups, by phone, in-person, or on-line via a webinar. To ensure that the primary objectives of the research were covered, the interviews included a set of common interview objectives while encouraging open-ended dialogue.

Airport interviewees included board members/commissioners; chief executives; concession managers; disadvantaged business enterprise liaison officers (DBELOs); engineering, planning, and construction development managers; attorneys; procurement and purchasing managers; and public affairs/community relations managers. Among other key duties, these individuals develop and implement policies, manage business diversity programs, provide legal support, engage in community and contractor relations, handle solicitation processes, and administer contracts.

Owners and senior executives of majority-owned and diverse businesses that perform architectural/engineering/planning, construction, concession, other professional services, and consultant contracts also were interviewed, as well as U.S. DOT and FAA officials and trade association representatives. In addition, the ACI-NA Business Diversity Committee dedicated a portion of its September 22, 2013, meeting to a discussion of topics that aided in the development of this guidebook.

1.3 Potential Benefits of the Guidebook

The guidebook reflects current industry policies and practices to enhance opportunities for diverse businesses to participate in airport contracts. Although the guidebook is intended for use by airport operators, a variety of stakeholders that includes concessionaires, professional service providers, trade associations, and other individuals and entities involved in supporting and engaging in the development, management, and execution of airport business diversity programs can benefit from the information contained herein.

The guidebook offers potential benefits, including, but not limited to:

- Providing executable solutions that an airport of any size can adopt to assist with its efforts to engage more diverse businesses in airport contracts.
- Helping elected officials and other policymakers recognize opportunities for broader inclusion of diverse businesses in airport contracts.
- Providing an understanding of how airports can be instrumental in eliminating barriers and helping to build the capacity of diverse businesses.
- Offering guidance on utilizing DBELOs effectively in the airport procurement process.
- Industry resources to assist in policymaking, goal-setting, data collection, and education of individuals on DBE and ACDBE Program policies and requirements.

1.4 Navigating the Guidebook

Chapter 1, Introduction to the Guidebook, presents an overview of the purpose of the guidebook and the methodology and data used to develop it. This introductory chapter also discusses the potential benefits of the guidebook and how it is organized.

Chapter 2, Federal Disadvantaged Business Enterprise Programs, presents an overview of the legal background for the DBE and ACDBE Programs, including the enabling legislation, airport grant assurances, federal regulations, and constitutional parameters. This chapter also discusses integrating local efforts and policies with federal requirements.

Chapter 3, Non-Federal Business Enterprise Programs, provides illustrations of airports' policies and practices that promote diversity in small, local, MBE, and WBE programs. It also addresses the legal foundation for creating small and local programs.

Chapter 4, Policy and Implementation Roles and Responsibilities, presents a discussion of governing bodies, chief executives, and other airport personnel engaged in setting policy and implementing functions to execute business diversity programs. The chapter provides a comprehensive discussion of the roles and responsibilities of DBELOs and the importance of their engagement in the airport procurement process. The role of airports in disputes between primes and diverse businesses is also discussed.

Chapter 5, Contracting Methods to Obtain Diversity, discusses a variety of contracting methods for promoting and achieving diverse business participation.

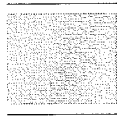
Chapter 6, Addressing Impediments to the Success of Diverse Businesses, discusses certification, proposal requirements, size of contracts, politics, and other issues that impede diverse businesses' success, and illustrates ways to alleviate these impediments.

Chapter 7, Strategies and Partnerships to Enhance Diverse Business Participation, discusses planning activities, disparity studies, training programs, community partnerships, and other strategies to help promote and maximize diverse business participation.

Chapter 8, Thinking Beyond Compliance, addresses community and economic benefits that diverse businesses contribute to their communities and to the airport industry.

Chapter 9, Case Studies, presents six case studies of small, medium, and large airports, highlighting their policies and practices for achieving diverse business participation in airport contracts.

The guidebook also provides two appendices. Appendix A presents a glossary that explains pertinent abbreviations and terms, and Appendix B presents a list of industry resources.



CHAPTER 2

Federal Disadvantaged Business Enterprise Programs

This chapter presents a legal overview of the federal DBE and ACDBE Programs (collectively called the Programs). It discusses the enabling legislation, grant assurances, general framework, and requirements of the federal regulations for concessions and for airport contracts funded under the FAA Airport Improvement Program (AIP). Important constitutional considerations also are discussed in this chapter.

U.S. DOT established the DBE Program for AIP-funded contracts and the ACDBE Program for airport concessions, including certain management contracts. The goal of the Programs is to ensure non-discrimination in awarding AIP-funded airport development contracts and airport concessions contracts. The U.S. DOT's Office of the Secretary sets rules and regulations for the Programs and FAA regional offices supervise local implementation of the Programs, ensuring that AIP grant recipients comply with legal and regulatory requirements.

2.1 Enabling Legislation

Congress has stated a goal of promoting economic development, emphasizing the promotion of small and disadvantaged businesses, and addressing discrimination in federally funded projects (*see, e.g.*, 49 U.S.C. §§ 47101; 47113; 47123). Congress also seeks to provide transportation contracting opportunities to small businesses owned and controlled by socially and economically disadvantaged individuals (*see, e.g.*, the Airport and Airway Improvement Act, as amended, at 49 U.S.C. § 47107 *et seq.*, which established the AIP). Consequently, under 49 U.S.C. § 47107(e)(1), the Secretary of Transportation (Secretary) is permitted to approve a project application for an airport development project only if the Secretary receives written assurances that the airport owner or operator will take the necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns owned and controlled by a socially and economically disadvantaged individual.

U.S. DOT and FAA distribute substantial funds nationwide to finance government transportation projects that meet these congressional goals and policies. To effectuate these congressional policies, U.S. DOT established the DBE Program in 49 CFR Part 26 (Part 26) and the ACDBE Program in 49 CFR Part 23 (Part 23).

The objectives of the Programs can be summarized as follows (quotes are from 49 CFR §§ 23.1; 26.1):

1. "To ensure non-discrimination" in the award and administration of opportunities for [airport] concessions and U.S. DOT-assisted contracts.
2. "To create a level playing field" on which DBEs and ACDBEs can compete fairly.

3. To ensure that the Programs' measures are "narrowly tailored in accordance with applicable law."
4. "To help remove barriers to the participation of ACDBEs in opportunities for [airport] concessions" and of DBEs in AIP-funded contracts.
5. "To assist the development of firms that can compete successfully in the marketplace" outside of the Programs.
6. To provide airports with "appropriate flexibility" in providing opportunities to DBEs and ACDBEs (117, 118).

Every public agency receiving an AIP grant after January 1988 is required to implement programs that comply with Parts 26 and 23.

2.2 Grant Assurances

Airport owners, sponsors, planning agencies, or other organizations that accept funds from FAA-administered financial assistance programs must agree to certain obligations known as "grant assurances." These grant assurances state that the recipient will not discriminate against anyone in connection with the award or performance of contracts covered by both the Programs on the basis of race, color, sex, or national origin. The grant assurances also extend to prime contractors and subcontractors, requiring them to include non-discrimination provisions in prime contracts, as well as in each subcontract a prime contractor signs with a subcontractor (49 CFR § 26.13 and 49 CFR 23.9(c)(1)–(2)). The grant assurance process thus extends the reach of the Programs beyond state and local governments, transportation agencies, and private entities that receive federal funds, to encompass their prime contractors and subcontractors as well.

2.3 49 CFR Part 26—Airport DBE Program

Part 26 contains the U.S. DOT's guidelines and requirements for the implementation of the federal DBE Program by airport grant recipients. Part 26 requires airport grant recipients to develop their own local plans to implement and enforce the requirements and objectives of the DBE Program in good faith.

Practice Tip: Airport grant recipients that reasonably anticipate awarding prime contracts of \$250,000 or less in a federal fiscal year for airport planning or development are not required to have a DBE program.

2.3.1 Program Policy Statement

In implementing the DBE Program, an airport must create, issue, and circulate a policy statement throughout its organization and to the business community that expresses commitment to the DBE Program, states the Program's objectives, and outlines the responsibilities for Program implementation (49 CFR § 26.23).

2.3.2 General Administrative Requirements

Part 26 contains administrative requirements for all airports implementing the Program in order to ensure that local DBE programs follow consistent federal standards.

For example, airports must:

- Keep and maintain detailed records and bidders lists of DBE and non-DBE contractors and subcontractors who seek to work on federally funded contracts (§ 26.11).
- Designate a DBELO who is responsible for implementing all aspects of the airport's DBE program and who has direct and independent access to the airport's executive officer (49 CFR § 26.25; see also Chapter 4 in this guidebook).
- Thoroughly investigate services offered by financial institutions in their local community that are owned and controlled by socially and economically disadvantaged individuals, and make reasonable efforts to use these institutions and encourage prime contractors to use such institutions (49 CFR § 26.27).
- Add a "prompt payment" clause to all federally funded contracts requiring contractors to pay their subcontractors within 30 days of receipt of prime contract payments and establish appropriate enforcement mechanisms for ensuring prompt payment (49 CFR § 26.29; see also Chapter 6 in this guidebook).
- Keep and maintain a directory that identifies all certified DBEs, which must contain the firms' addresses and phone numbers, and which must list the types of work the firms have been certified to perform as DBEs (49 CFR §§ 26.31; 26.81(g)).
- Implement appropriate mechanisms to ensure compliance with the DBE program's requirements by all program participants and set forth these mechanisms in the airport's DBE program (49 CFR § 26.37).
- Include an element in the implementation of the airport's DBE program that structures contracts to facilitate small business competition (49 CFR § 26.39(a)).
- Set an overall goal for DBE participation in U.S. DOT-assisted contracts (49 CFR § 26.45).

Practice Tip: Several of the administrative requirements presented in this chapter are detailed in subsequent chapters; however, this Guidebook provides an overview of some of these provisions and is not exhaustive. Airports should thus carefully review 49 CFR, Part 26.

2.3.3 Implementing the Plan: Goal-Setting and Program Measure Development

It merits repeating that, beyond certain general duties, the DBE Program is not a uniform affirmative action program. Airports must design and implement their own DBE programs based on their unique circumstances. Airports must design programs to meet the overall aspirational goal of Section 26.45 for DBE participation in federally funded contracts over a 3-year period. The overall goal may be met using race- and gender-neutral means or, if necessary, using race- and gender-conscious means (49 CFR §§ 26.45; 26.51).

Setting an overall goal is a two-step process. As Step 1, the airport must develop a base figure for DBE participation based on the availability of DBEs in its own market area (§ 26.45(c)). This base figure may be derived from one or more sources such as:

- DBE directories and data from the Bureau of the Census.
- Bidders lists.
- The goal of another recipient of U.S. DOT funds in the same market or a substantially similar market.
- Data from a disparity study.
- Other demonstrable evidence of local market conditions.

In Step 2, the airport may adjust the base figure to account for factors that affect DBE availability (§ 26.45(d)). Such factors include but are not limited to:

- The current capacity of DBEs to perform work in the airport's DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.
- Evidence from disparity studies conducted anywhere within the airport's jurisdiction, to the extent that this has not already been accounted for in the base figure.
- Evidence (if available) from related fields that affect the opportunities for DBEs to form, grow, and compete.

In establishing an overall goal, the airport must consult with stakeholders, including minority, women's and general contractor groups, community organizations, and others that can be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, and the effects of discrimination on opportunities for DBEs. An airport's proposed overall goal must also be published for public comment (§ 26.45(g)).

An airport's proposed implementation of the DBE Program, including the detailed calculation of its overall DBE participation goal and projections of program measures designed to meet it, must be submitted to U.S. DOT (through FAA) for approval for each 3-year period (§ 26.45(f)).

After setting an overall DBE participation goal, an airport must design and implement a program that can meet it. An airport must meet the maximum feasible portion of its overall goal through race- and gender-neutral measures (§ 26.51(a)-(b)).

Practice Tip: Examples of neutral measures are set forth in 49 CFR § 26.51(b).

If an airport can meet its overall DBE participation goal through neutral means, it cannot implement race- or gender-conscious program measures (measures specifically designed to increase the participation of minority- or woman-owned DBEs, such as race-specific contracting goals). If an airport projects that it cannot meet its overall goal solely through neutral means, however, the DBE Program authorizes the use of race- and gender-conscious measures.

If an airport decides that race- or gender-conscious measures are needed, it must analyze which racial, ethnic, or gender groups are eligible for those measures. Although race- and gender-conscious measures generally may not be targeted at specific groups, U.S. DOT provides for a waiver if an airport determines that it does not need to include certain groups in those measures (§§ 26.51(e)(4); 26.15).

Practice Tip: If an airport's DBE program uses race- and/or gender-conscious measures, it must comply with specific constitutional standards (discussed in the Constitutional Parameters section of this Guidebook).

Airports must also be flexible in using race- and gender-conscious measures: If DBE participation exceeds an overall goal in any year, the airport must adjust race- or gender-conscious measures, and if it falls short, the airport must modify its neutral measures to meet the overall goal (§ 26.51(f)). DBE quotas are prohibited, and contracts may be set aside for DBEs only in extreme circumstances (§ 26.43). Airports must also take corrective measures if an overconcentration of DBEs in one area unduly burdens non-DBEs (§ 26.33).

An airport's overall goal is aspirational: The airport is not penalized for failing to meet its goal, but must make "good faith" efforts to do so (49 CFR § 26.47(a)). If a goal is not met, however, the airport must analyze why it did not meet the goal and establish specific steps and milestones to address the deficiency (§ 26.47(c)).

Practice Tip: U.S. DOT provides "good faith" procedures in 49 CFR § 26.53 and related guidance in Appendix A of Part 26. Section 26.55 describes how airports count DBE participation to meet overall goals.

2.3.4 Compliance and Enforcement

An airport is not eligible to receive grant funds unless (1) FAA has approved its DBE Program Plan (DBE Plan) and (2) the airport is in compliance with its DBE Plan (49 CFR § 26.21(c)). The DBE Plan must state the internal policies and processes established for compliance, monitoring, and enforcement (§ 26.37). Airports must annually report DBE participation achievements to FAA (§ 26.11(b)). Failure to comply with any of the regulatory requirements of the DBE Program may subject an airport to formal enforcement actions or sanctions by U.S. DOT, including the withholding, suspension, or termination of federal funds (§ 26.101(a)).

2.4 49 CFR Part 23—ACDBE Program

Part 23 constitutes the U.S. DOT's requirements for implementation of the ACDBE Program by airport grant recipients. Part 23 requires airports to develop, implement, and enforce a program for concession businesses that meet the goals of the ACDBE Program.

2.4.1 Program Policy Statement

The ACDBE Program policy statement provision mirrors the policy statement provision in the DBE Program, requiring airports to issue and circulate a policy statement that expresses its commitment to the ACDBE Program, states its objectives, and outlines the airport's responsibilities for its implementation (49 CFR § 23.23(a)). Part 23 also requires airports to meet the same non-discrimination requirements provided in Part 26 (§ 26.7) with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement (§ 23.9).

2.4.2 General Administrative Requirements

The ACDBE Program incorporates several of the DBE Program's administrative requirements. For example, airports implementing the ACDBE Program must:

- Designate a DBELO who is responsible for implementing all aspects of the airport's ACDBE program, and who has direct and independent access to the airport's executive officer (§ 23.23(a)).
- Keep and maintain records about the implementation of the program, the certification of ACDBEs, and the award and performance of agreements and contracts sufficient "to enable the FAA to determine compliance with [the Program]" for a minimum of 3 years following the end of the concession agreement (49 CFR § 23.27).

- Keep and maintain a directory that identifies all certified ACDBEs, that contains the firms' addresses and phone numbers, and that lists the types of work the firms have been certified to perform as ACDBEs (§ 23.27).
- Set an overall goal for ACDBE participation in FAA-assisted contracts (49 CFR § 23.25(b)).

Practice Tip: Because the ACDBE Program borrows many requirements of the DBE Program, airports implementing both an ACDBE program and a DBE program may combine shared program requirements. Thus, an airport may issue one policy statement and appoint one DBELO for both of its programs (49 CFR § 23.23(b)).

2.4.3 Implementing the Plan: Goal-Setting and Program Measure Development

As with the DBE Program, airports must set aspirational, 3-year overall goals for ACDBE participation in their concession opportunities (49 CFR § 23.41(c)) and design program measures to meet the goals through neutral or race- and gender-conscious measures (49 CFR § 23.25). Airports must submit goals to FAA after consultation with stakeholders (49 CFR § 23.43), and the goals must be calculated based upon ACDBE availability in the airport's concessions market(s) (49 CFR § 23.51(b)).

Practice Tip: Two overall ACDBE participation goals must be established: one for car rentals and one for concessions other than car rentals (49 CFR § 23.41[a]). The goal-setting process also must be completed separately for each of the two overall goals (49 CFR § 23.51(a)(3)).

Stakeholders with whom airports must consult include, but are not limited to:

- Minority and women's business groups.
- Community organizations and trade associations representing concessionaires currently located at the airport.
- Existing concessionaires.
- Other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and the effects of discrimination on opportunities for ACDBEs (§ 23.43(b)).

ACDBE goal-setting generally follows the same two-step process outlined in the DBE Program. Airports must first develop a base figure based on the availability of ACDBEs in its own market area (§ 23.51(c)) and then determine if any adjustments are needed (§ 23.51(d)).

If an airport's annual revenues for car rental concessions averaged over the 3 years preceding the date on which it is required to submit overall goals do not exceed \$200,000, the airport is not required to submit an overall goal for car rental concessions. The same is true for concessions other than car rentals: If the annual revenues averaged over the 3 years preceding the date on which the airport would otherwise be required to submit overall goals do not exceed \$200,000, the airport is not required to submit a non-car rental overall goal (§ 23.41(b)).

After setting overall ACDBE participation goals, an airport must design program measures to meet them (§ 23.25). Airports must also meet the maximum feasible portion of the overall goals using race- and gender-neutral measures (§ 23.25(d)). Such measures include, but are not limited to:

- Identifying small businesses interested in participating as ACDBEs (§ 23.25(d)(1)).
- Structuring concessions to encourage ACDBE participation (§ 23.25(d)(3)).
- Providing technical support to ACDBEs (§ 23.25(d)(4)).
- Establishing a business development program (§ 23.25(d)(7)).

Practice Tip: Further examples of race- and gender-neutral ACDBE Program measures can be found in 49 CFR § 23.25(d).

If necessary, airports must also provide for race- and gender-conscious measures to meet the overall goals (49 CFR § 23.25(e)). If an airport's ACDBE program uses race- and/or gender-conscious measures, it must comply with the constitutional standards discussed in the section of this guidebook on constitutional parameters.

Although airports may not generally target specific groups with race- and gender-conscious measures, FAA allows for a waiver if necessary (49 CFR § 23.13(d)); however, the ACDBE program absolutely prohibits both quotas and set-asides to achieve overall goals (49 CFR § 23.61).

Practice Tip: FAA concurrence with the airport's overall goal (i.e., with the number itself) is not required. FAA may adjust the overall goal, however, or may require the airport to adjust the goal if its review suggests that the overall goal has been incorrectly calculated or that the method for calculating goals is inadequate. The adjusted overall goal is binding (49 CFR § 23.51(e)).

An airport's proposed implementation of the ACDBE Program, including the detailed calculation of its overall ACDBE participation goals and the projections of program measures designed to meet it, must be submitted to FAA for approval for each 3-year period (49 CFR § 23.21).

These overall goals are aspirational, and an airport will not be penalized for failing to meet its overall goals if it demonstrates good faith, explains its methodology, and establishes specific steps to enable it to meet its goal for the new fiscal year (49 CFR § 23.57(b)(1)-(2)).

Practice Tip: A general aviation airport that does not have scheduled commercial service is not required to have an ACDBE program but must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity (49 CFR § 23.21(e)).

2.4.4 Compliance and Enforcement

An airport's eligibility for federal financial assistance is conditioned on the submission of and FAA's approval of its ACDBE Plan (§ 23.21(b)). As with the DBE Program, an airport's ACDBE

program must establish appropriate monitoring and enforcement mechanisms to ensure continuing compliance with the regulatory requirements, and to ensure that work committed to ACDBEs is actually performed by them (49 CFR § 23.29). Airports must annually report ACDBE participation to FAA (§ 23.27). Failure to comply with any of the regulatory requirements of the DBE Program may subject an airport to formal enforcement actions or sanctions, including the withholding, suspension, or termination of federal funds (49 CFR § 23.11).

2.5 Constitutional Parameters

This section of the guidebook discusses the constitutionality of the Programs and provides guidance on important constitutional issues that airports must consider when planning and implementing their own local DBE and ACDBE programs, especially if they use race-conscious program measures.

2.5.1 Overview

As a result of the U.S. Supreme Court's rulings in *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989), and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), any federal program that uses race or ethnicity as a basis for making decisions is subject to "strict scrutiny," which is the most rigorous standard of judicial review.

Nevertheless, courts have consistently found the regulations contained in 49 CFR Part 26 (the DBE Program) constitutional as written. Courts have also allowed local DBE programs to use the race-conscious measures authorized by Part 26 where there was sufficient evidence of discrimination to support the use of those measures.

Although courts have yet to consider the constitutionality of the regulations contained in Part 23 (the ACDBE Program), the two Programs are similar enough that judicial decisions concerning the DBE Program can provide guidance for the ACDBE Program.

Both Programs also permit use of gender-conscious program measures. Although gender is typically reviewed under a less rigorous "intermediate" judicial standard, gender-based programs that have been reviewed under the "strict" judicial standard have also been found constitutional (e.g., *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 961 (10th Cir. 2003)).

2.5.2 "Facial" Constitutionality

To pass constitutional muster under the "strict scrutiny" test, federal statutes and regulations that use race or ethnicity as a basis for making decisions must be (1) supported by a "compelling interest," and (2) "narrowly tailored" to achieve that interest. Courts first consider if the statutes or regulations meet these requirements as they are written (i.e., whether they are "facially" constitutional). Several important cases have established that the statutes and regulations underlying the DBE Program are facially constitutional, including the following:

- *Northern Contracting, Inc. v. State of Illinois*, 472 F.3d 715 (7th Cir. 2007).
- *Western States Paving Co. Inc. v. Washington State Dep't of Transp.*, 407 F.3d 983 (9th Cir. 2005).
- *Sherbrook Turf, Inc. v. Minnesota Dep't of Transp.*, 345 F.3d 964 (8th Cir. 2003).
- *Adarand Constructors, Inc. v. Slater* (Adarand VII), 228 F.3d 1147 (10th Cir. 2000).

2.5.3 "As Applied" Constitutionality

Once a federal statute or regulation has been held facially constitutional, courts next consider whether it is constitutional "as applied." Thus, in the context of the implementation of a

DBE program, courts would analyze whether a state program using race-conscious measures is supported by a “compelling interest” and whether the program has been “narrowly tailored” to achieve that interest.

A state’s DBE program does not need to independently show a compelling interest. Congress’ compelling nationwide interest in preventing discrimination can be used to justify implementation of the DBE Program. Thus, typically the important factor in analyzing the constitutionality of a state’s program is whether it is narrowly tailored. To make this decision, courts examine whether the state’s program demonstrates a sufficient evidentiary basis for using race-conscious program measures.

Generally, a state’s program has a sufficient evidentiary basis when it relies on detailed, independent studies. This is why U.S. DOT recommends the use of objective evidence, such as disparity studies, which can establish a significant statistical basis for the use of race-conscious program measures.

Anecdotal evidence of discrimination generally is not sufficient by itself, but a state’s program can rely on anecdotal evidence to complement statistical evidence. Examples of anecdotal evidence would include specific instances in which minority-owned DBEs were:

- Denied contracts despite being the low bidder.
- Wrongfully considered unqualified.
- Refused work after being awarded contracts.
- Excluded by “good-old-boy” networks.
- Otherwise harassed to discourage contract participation.

Court cases that address the use of anecdotal evidence of discrimination include *Associated General Contractors of America, San Diego Chapter, Inc. v. Caltrans*, 713 F.3d 1187 (9th Cir. 2013), in which the court held that Caltrans’ substantial statistical and anecdotal evidence provided a strong basis in evidence of discrimination and that the program was narrowly tailored, and *Associated General Contractors Inc. v. Coalition for Economic Equity*, 950 F.2d 1405, 1315 (9th Cir. 1991).

In the case of subcontractors, anecdotal evidence of discrimination includes instances in which minority-owned DBEs were:

- Replaced with majority subcontractors after being listed on proposals.
- Denied subcontracts despite being the low bidder.
- Cancelled from projects after contract award.
- Paid late to discourage participation.
- Wrongfully berated for work within industry standards.

Pertinent court cases include *Coral Const. Co v. King County*, 941 F.2d 910, 917–18 (9th Cir. 1991) and *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 748 F. Supp. 1443, 1452 (N.D. Cal. 1990).

Practice Tip: State programs are not required to provide anecdotal evidence of discrimination. Statistical evidence alone can justify race-conscious measures.

2.6 Integrating Local Efforts and Policies with Federal Requirements

Although Part 23 and Part 26 generally prohibit favoritism toward local businesses in the award of federally funded contracts, these same regulations expressly allow grant recipients to harmonize state and local requirements with their DBE Plan and ACDBE Plan, subject to certain

legal limitations. This section of the guidebook aims to provide airports with the tools necessary to integrate their local policies with the Programs and answers the compelling question, How can airports adopt and implement policies that include local businesses and concessionaires while complying with the Programs?

2.6.1 Preemption: Legal Overview

“Preemption” is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such a national character that federal laws preempt or take precedence over state or local laws. Federal law will therefore preempt state and local laws in three instances: (1) when the federal law contains an express preemption provision; (2) when a state or local law is in actual conflict with federal law; or (3) where there is no clear conflict, but Congress intended the federal law to occupy the field (U.S. Const. Art. VI, cl. 2; *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *Aeroground v. City and County of San Francisco*, 170 F. Supp. 2d 950, 954 (N.D. Cal. 2001)).

Although the Programs are federal laws, they do not preempt state or local law. The Programs’ enabling legislation clearly states that the Airport and Airway Improvement Act does not preempt “a [s]tate or local law, regulation, or policy enacted by the governing body of an airport owner or operator . . . or the authority of a [s]tate or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises” (49 U.S.C. § 47107(e)(5)(a)-(b)).

Part 23 makes this explicit for the ACDBE Program, stating, “nothing in this part preempts any [s]tate or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any [s]tate or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs” (49 CFR § 23.77; *see also* 70 Fed. Reg. 14496, 14507 (Mar. 5, 2005)).

Unlike Part 23, Part 26 does not discuss preemption so there is no analogue to Section 23.77 for airports implementing DBE programs. Because both the Programs derive their authority from the same enabling legislation, however, the DBE Program—like the ACDBE Program—will preempt state or local law only if the state or local law actually conflicts with the federal law and regulations.

2.6.2 Local Preferences

One area where there is an actual conflict between the Programs and local authority is local geographic preference. Both the Programs contain provisions that, in most cases, directly conflict with local policies that give preference to DBEs or ACDBEs located within a particular geographic area.

2.6.2.1 ACDBE Program and Local Geographic Preferences

Part 23 prohibits a grant recipient from using any local geographic preferences in its program measures (49 CFR § 23.79). The regulation defines a local geographic preference as “any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over an ACDBE from other places in obtaining business as, or with, a concession” at an airport (§ 23.79). Thus, local policies granting local geographic preferences conflict with Part 23 and would be preempted.

2.6.2.2 DBE Program and Local Geographic Preferences

49 CFR Part 18 (Part 18) sets forth the administrative requirements for grants made by the U.S. DOT to state and local governments. In certain areas, including procurement, states are to

“expend and account for grant funds according to their own laws and procedures” (53 Fed. Reg. 8034-01 (Mar. 11, 1998); *see also* 49 CFR § 18.36(a)). However, grant recipients may not use “statutorily or administratively imposed in-[s]tate or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable [f]ederal statutes expressly mandate or encourage geographic preference” (§ 18.36(c)(2)). Thus, local policies granting state or local geographical preferences in the evaluation of grant bids or proposals conflict with Part 18 and would be preempted.

Practice Tip: Certain services, such as architectural and engineering services, are exempted from this general prohibition on local preferences (49 CFR § 18.36(c)(2)).

As discussed in this chapter’s section on grant assurances, the grant assurance process applies the regulatory provisions to an airport’s ACDBE program. Thus, with the exception of architectural and engineering services, a geographic preference would conflict with Part 26 and be preempted.

2.6.2.3 Issues to Consider When Integrating Local Policies

Airports that want to adopt and implement policies that include local businesses and concessionaires while complying with the Programs have several issues to consider:

- Part 23 provides guidance to airports that wish to apply state or local laws, regulations, or policies that differ from the requirements of the ACDBE Program.
 - The airport must provide a copy of the state or local law, regulation, or policy to FAA when submitting its implementation of the ACDBE Program. (§ 23.77(b)–(d); *see also* 70 Fed. Reg. 14496, 14507 (Mar. 5, 2005)).
 - FAA will determine whether the law, regulation, or policy conflicts with the ACDBE Program (§ 23.77(b)).
 - FAA will not approve an ACDBE Plan if it contains provisions that are inconsistent with Part 23 (§ 23.77(d)).
 - If FAA determines that the law, regulation, or policy is not in conflict with the ACDBE Program, the airport must write and administer the state or local law, regulation, or policy separately from its implementation of the ACDBE Program (§ 23.77(c)). Thus, there must be “a separate program document for [the state or local laws, regulations or policies], and the [f]ederal and state/local additional programs, respectively, must be administered in a clearly distinct manner” (70 Fed. Reg. 14496, 14507 (Mar. 5, 2005)).

U.S. DOT has expressed concern that “additional or more stringent local or state requirements that go beyond the provisions of Part 23 could implicate the federal ACDBE Program in matters of questionable constitutionality” (70 Fed. Reg. 14496, 14507 (Mar. 5, 2005)).

Practice Tip: When applying state or local requirements to its implementation of the ACDBE Program, an airport should remain cognizant of the constitutional limitations discussed in the section of this guidebook that addresses constitutional parameters.

- Part 26 does not specifically address preemption, or how an airport should integrate a state or local law, regulation, or policy into its implementation of the federal DBE Program. Nonetheless, given that both the DBE Program and the ACDBE Program are authorized under the

same enabling legislation—which specifically states that the Programs do not preempt state or local law—it would be prudent for an airport establishing a DBE program to follow the same procedures as those set forth in Part 23 (§ 23.77(a)-(d)) for ACDBE programs and to submit to FAA for approval, as part of its DBE Plan, the state or local laws that it would like to apply.

- When implementing either of the Programs, airports should keep in mind the general preemption framework of Parts 26 and 23, and take care not to implement local policies that are in actual conflict with the federal provisions.

Subsequent chapters of this guidebook expand on the framework introduced in this chapter and explore creative techniques airports are employing to ensure the participation of locally based small businesses in airport concessions and AIP-funded contracts. Policies and programs to promote and retain local firms can be successfully designed and implemented notwithstanding the federal regulatory prohibition against granting a local geographic preference in the award of AIP-funded contracts and concessions.



CHAPTER 3

Non-Federal Business Enterprise Programs

This chapter provides illustrations of policies and practices frequently used to promote business diversity in airport contracts outside of the Part 23 and Part 26 Programs. It also discusses the U.S. DOT's mandatory requirement that airport operators have a small business element of their DBE programs.

Goods, services, and professional services contracts are examples of airport contracts included among the non-federal business enterprise programs commonly called local business enterprise (LBE) programs, small business enterprise (SBE) programs, and minority or women's business enterprise (MBE/WBE) programs. These programs also can include Passenger Facility Charge (PFC)-funded contracts, which have grown extensively over the years due in large part to the reduction of AIP grants and to the increased usage, primarily by large airports, of local PFC funding for gates, terminals, runways, taxiways, and other airport improvements.

General aviation airports usually do not have stand-alone, non-federal business enterprise programs. Their programs normally come under the purview of larger airports that also operate general aviation facilities.

Most LBE, SBE and MBE/WBE programs have eligibility criteria, such as personal net worth standards and business size limits. Airport contracts included in these programs often are set aside for smaller businesses.

The research for ACRP Project 01-25 identified several practices and policies that airports have adopted in their LBE, SBE, and MBE/WBE programs to increase diverse business participation. These practices and policies include:

- Establishing eligibility requirements, such as business size and personal net worth limits.
- Opening SBE program eligibility to small businesses regardless of where they are located.
- Dividing larger contracts into smaller-sized contracts.
- Encouraging MBE and/or WBE participation even if a firm does not meet eligibility criteria under a particular business diversity program.
- Establishing race-neutral participation goals.
- Including LBE, SBE, or MBE/WBE participation goals in solicitations.
- Limiting competition to firms under a certain business size.
- Limiting competition to firms within a designated locale.
- Limiting competition to MBE and WBE firms.
- Requiring firms of a certain business size to have an affirmative action plan and procurement policies.

- Making advance payments to smaller businesses in recognition that they may have limited access to working capital.
- Relaxing bonding and insurance requirements for contracts under a certain dollar level.
- Providing website access to lists of companies obtaining solicitations.
- Providing website access to directories of LBE, SBE, MBE, and WBE firms.
- Utilizing similar (or the same) types of eligibility and other requirements as those found in the Part 26 and Part 23 programs.
- Awarding bid preference points to local businesses competing for a contract.

3.1 Local Business Enterprise Programs

Local Business Enterprise (LBE) programs promote economic development and equal opportunity for all segments of the contracting community in jurisdictions where an airport is located. Airports across the country have implemented these programs to help level the playing field for diverse businesses to participate in airport contracts as prime contractors or subcontractors.

Most firms participating in LBE programs are required to have an established office or place of business within a designated locality and to meet other eligibility criteria. Some airports' LBE programs do not have qualification requirements, such as personal net worth standards and/or business size limits. The **Columbia Metropolitan Airport (CAE)**, for example, does not require certification for participation in its local program. Other LBE programs are reserved for MBE, WBE, and/or SBE firms.

Several other airport operators that have instituted LBE programs include:

- Metropolitan Washington Airports Authority (MWAA).
- Greater Orlando Aviation Authority (GOAA, also called the Authority).
- Miami-Dade Aviation Department.
- Jacksonville Aviation Authority (JAA).
- Metropolitan Nashville Airport Authority (Airport Authority).

MWAA has operated its race-neutral, Local Disadvantaged Business Enterprise (LDBE) program for Ronald Reagan Washington National Airport (DCA) and Washington Dulles International Airport (IAD) for more than 2 decades. The LDBE program applies to local small businesses without regard to the race or gender of the owner(s). For LDBE program purposes, MWAA defines a "small business" as a firm that is not dominant in its field and that meets MWAA's small business size standards for the goods it will be supplying or the services it will be performing in a specific solicitation. To be considered a local business, the firm has to be organized for profit and have an established office or place of business within a city, county, or town located within a 100-mile radius of Washington, D.C.'s Zero Milestone (zero mile marker). Business entities located within counties that fall partially within this boundary also are eligible to participate in the LDBE program. Firms have to apply to and receive LDBE certification from MWAA. LDBE-certified firms are eligible for any MWAA contract requiring LDBE participation.

Under the LDBE program, MWAA may set aside an airport contract, such as a contract for floor repair in the terminals at DCA and IAD, or printing and copying services, for 100 percent LDBE participation. In other instances, LDBE participation is required for a certain percentage of an MWAA contract, such as task-order-based architectural and engineering services. Other features of the LDBE program are relaxed bonding and insurance requirements for contracts valued at \$100,000 or below.

GOAA operates a Local Developing Business (LDB) program at Orlando International Airport (MCO) and Orlando Executive Airport (ORL), its general aviation/reliever airport. According to GOAA's policy statement,

The Local Developing Business (LDB) Program (Program) of the Authority is designed to promote the development of local businesses and to ensure the availability of firms to compete for work at its facilities. The Program is also designed to promote the economic vitality and employment opportunities in the Orlando SMSA [standard metropolitan statistical area] in order to sustain the continued growth at MCO and ORL. The Program will seek to provide full and equal business opportunities to all local developing businesses in the Authority's construction contracting, procurement, and professional services activities (175).

GOAA's LDB program has eligibility and certification requirements similar to MWA's LDBE program. GOAA's LDB program, however, has a personal net worth limit of \$1.5 million for construction management and construction-at-risk management contracts. Certain retainers and/or designated mobilization payments are also made available to LDB professional services, construction and procurement firms. These advance-payment features of GOAA's LDB program recognize that participating businesses may have limited access to working capital.

The **Miami-Dade Aviation Department**, an agency of the Miami-Dade County government, provides opportunities for small business participation on architectural and engineering projects at Miami International Airport (MIA) through the county's Community Business Enterprise (CBE) program. The CBE program utilizes gender- and race-neutral measures designed to provide contracting opportunities to small- and medium-sized architectural and engineering (A/E) firms. Under the CBE program, owners can have only one CBE-certified firm, and firms have to be located and performing a commercially useful function in Miami-Dade County. Architectural services firms cannot have average gross revenue for the last 3 years exceeding \$4.5 million. Engineering, surveying and mapping services, and landscape architecture services firms must have 3-year average gross receipts not exceeding \$6 million.

Miami-Dade County Ordinance No. 98-30 requires all firms with annual gross revenues in excess of \$5,000,000, to have an affirmative action plan and procurement policies filed and approved by the county's Office of Capital Improvements as a condition of contract award. All A/E firms must also provide information in their proposal as to their furtherance and compliance with their approved affirmative action plan when responding to the county's solicitations for A/E services.

JAA manages and operates the Jacksonville International Airport (JAX) and three general aviation airports. It has adopted a Local Preference Policy applicable to JAA's race- and gender-neutral SBE program. Any business that is located in the Florida counties of Duval, Clay, St. Johns, Nassau, Flagler, Putnam, and Baker, and that has had an office of three or more people for at least 1 year prior to the release of a JAA solicitation for bids qualifies as a local business.

JAA's SBE program provides opportunities for local small businesses to compete for business in the total procurement of JAA-sponsored projects, goods, and services. Among other criteria, a qualifying business must be for-profit as defined by the U.S. Small Business Administration (SBA) Regulations (13 CFR Part 121), be independently owned and operated, and its gross receipts averaged over a 3-year period cannot exceed 25 percent of the size standards set forth in 13 CFR Part 121. For projects that are awarded by a bid process, local firms receive 5 percent preference. For example, if a non-local firm bids a cost of \$96,000 on a project and a qualified local firm bids \$100,000, the local firm would win the business after factoring in the 5 percent

preference on its bid, which makes the local firm's bid equivalent to \$95,000. The local firm would still be paid the full amount of its \$100,000 bid.

The **Nashville Airport Authority** has a small, minority or woman-owned business enterprise (SMWBE) program designed to promote, encourage, and stimulate the participation of local SBEs, MBEs, and WBEs in contracts at Nashville International Airport (BNA). Through the SMWBE program, the Airport Authority is charged with promoting, encouraging, and stimulating participation of local SMWBEs within the organization and the economic community served; providing maximum opportunities to participate in contracts, programs, and all related business activities of the Airport Authority; and implementing goals, policies, and operational procedures to ensure the objectives of the program. An SMWBE firm must be a for-profit business, as defined in Part 26. Firms seeking SMWBE certification also must be located in a designated Tennessee county (i.e., Bedford, Cannon, Cheatham, Davidson, Dickson, Hickman, Mason, Maury, Montgomery, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson or Wilson).

3.2 Small Business Enterprise Programs

Many airport operators implement both a federally required program and their own small business enterprise (SBE) program to increase contracting opportunities for diverse businesses. Eligibility to participate in non-federal SBE programs varies depending on an airport operator's policies. In most instances, business size limits and personal net worth limits are among the eligibility criteria.

In its rulemaking of February 28, 2011, U.S. DOT amended Part 26 to require that airports implement a small business element in their DBE programs to facilitate competition by small businesses (49 CFR § 26.39). U.S. DOT believes that "a program element that pulls together the various ways that a recipient reaches out to small businesses and makes it easier for them to compete for DOT-assisted contracts will foster the objectives of the DBE program." In response to comments on this element, U.S. DOT explained that "DBEs are small businesses. Program provisions that help small businesses can help DBEs. By facilitating participation for small businesses, recipients can make possible more DBE participation and participation by additional DBE firms" (76 Fed. Reg. 5094 (Jan. 28, 2011)).

Practice Tip: Airports must actively promote small business participation as a requirement of good faith implementation of DBE programs (49 CFR § 26.39(c)).

U.S. DOT offers several race-neutral strategies to facilitate small business competition that airport operators are utilizing in their federal and non-federal business diversity programs. These strategies include:

- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
- Requiring bidders on the prime contract for multi-year design-build contracts or other large contracts (e.g., for megaprojects) to specify contract elements or specific subcontracts that are of a size that small businesses, including DBEs, can perform.
- Requiring the prime contractor on prime contracts without DBE contract goals to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

3.3 Minority and Women's Business Enterprise Programs

As a result of disparity studies, some airport operators have implemented MBE/WBE programs applicable to non-federally funded contracts for construction, goods and services, and professional services.

Airport operators that have instituted MBE/WBE programs or MBE/WBE policies include:

- Raleigh-Durham Airport Authority
- GOAA
- City of St. Louis
- MWAA

The **Raleigh-Durham Airport Authority** operates the Minority and Women-Owned Small Business (MWSB) program for Raleigh-Durham International Airport (RDU). As the name implies, minority-owned and woman-owned small businesses compete as contractors, sub-contractors, suppliers, and service providers in the MWSB program. Firms participating in the MWSB program have to be certified, either as DBEs (certified by the North Carolina Department of Transportation), as 8(a) firms (certified by the SBA), or as Small Women Business Enterprises (certified by the Women's Business Enterprise National Council).

GOAA's MBE/WBE participation program applies to any of its non-federal contract agreements at MCO and OEA for construction, for the purchase, lease, or disposal of supplies or other goods; or for maintenance, installation, or other services, including professional services. Certifications for this program are accepted from the City of Orlando and Orange County and, in the case of suppliers, from the National Minority Supplier Development Council. GOAA sets percentage goals for the dollar value of work to be awarded to certain MBEs and WBEs. In addition to its annual overall MBE/WBE participation goals, contract goals may be set for individual projects, for which there are known available MBEs and WBEs with capabilities consistent with the requirements of a specific contract.

The **City of Saint Louis's** MBE/WBE program applies to Lambert-St. Louis International Airport (STL) under the direction of the Mayor of St. Louis's Executive Order #47 to ensure that minority and women businesses have the maximum opportunity to participate in City of St. Louis locally funded contracts. An eligible firm must be a local, for-profit, independent MBE/WBE business located in the St. Louis Metropolitan Statistical Area (MSA), and be pursuing work as a subcontractor or prime contractor. Firms participating in the MBE/WBE program also must meet 51 percent ownership and control requirements, and one or more of the socially and economically disadvantaged individuals who own the firm must manage and control the firm's daily operations.

MWAA has adopted policies to encourage MBE and WBE participation in its federally funded and non-federally funded contracts at DCA and IAD. Firms are eligible even if they do not qualify for DBE or LDBE certification or do not wish to go through the certification process for MWAA's DBE and/or LDBE programs. MWAA may establish voluntary MBE/WBE goals, in addition to LDBE participation requirements, for certain contracts. Achievement of these goals is strictly voluntary.

3.4 Creating LBE or SBE Programs

Local and state governments possess the legal authority and duty to provide for the general welfare of their citizens and residents, and thus have the discretion to enact laws fostering economic development. These government agencies, as well as airport entities that are not part of a municipality or state government organization, also are vested with the proprietary power or ability to enter into contracts for the operation of their facilities or enterprises. An agency's general welfare or proprietary authority is the legal foundation for the creation of local or SBE programs in contracting.

Typically, the LBE or SBE program or policy is initiated by the chief executive of the public agency (e.g., a mayor of a city, a governor of a state, or an airport director of an airport authority), or by a policymaking member of a policy or legislative body (e.g., a city councilmember or state legislative member). The proposed policy or legislation is vetted through a public notice with a hearing and consultation process and/or a stakeholder engagement process. The particular provisions of the LBE or SBE program will be crafted by the policy's initiator, commonly in collaboration with the small, local, and disadvantaged business community, and with the assistance of legal counsel to ensure that the LBE or SBE policy comports with applicable law.



CHAPTER 4

Policy and Implementation Roles and Responsibilities

This chapter discusses the roles and responsibilities of governing bodies (e.g., the airport authority, airport department of a municipality, or airport division of a port authority), chief executives, and other airport personnel engaged in setting policies and implementing business diversity programs. The importance of DBELOs engaging in all aspects of the procurement process also is discussed, as is the role of the airport in disputes between primes and their diverse business partners.

The research for ACRP Project 01-25 found that diversity programs are a shared responsibility best executed when fully supported (by culture, staff, and resources) and implemented as a collaborative effort. Airports that are committed to the ideals of business diversity programs and that have dedicated staff to diversity programs are more successful.

Practice Tip: Airports perceived as doing a good job of increasing diversity in their contracts tend to have diversity ingrained in every aspect of the culture and business practices of the airport.

Four important contributors to these successful programs are:

- **Commitment.** The governing body and top management are committed, provide direction, and monitor success.
- **Shared Responsibility.** Diversity programs are viewed as a shared responsibility among governing bodies and staff, and there are collaborative, cooperative efforts and full engagement of the DBELO.
- **Diverse Team.** A diverse governing body and senior management team is beneficial, especially when combined with overall and executive-level diversity goals. The philosophy that airport staff should mirror the diversity of the community is important.
- **Collaborative Efforts.** Ongoing and routine updates to the governing body (e.g., monthly, quarterly) and frequent collaboration among staff helps measure internal and external performance such as program effectiveness, reasons for changes in participation, program weaknesses, and policy modifications that may be needed.

The research demonstrates that business diversity programs need to be embraced from the top down, be “part of the fiber or DNA of the airport,” have high visibility, and be part of everyday business in order to be most successful. A culture that supports community outreach and engagement, staff accountability, a system in place to track solicitations, and a small business department that is engaged prior to advertising solicitations all contribute to increasing business diversity.

Practice Tip: Everyone in an airport's organization who is involved in policies, practices, and procedures for business diversity programs needs to be trained and held accountable for ensuring inclusion and diversity in the solicitation and execution of contracts.

The research identified several practices that have aided in promoting diverse business participation:

- Diversity initiatives are generated and/or directed by the governing body.
- Federal DBE/ACDBE requirements are viewed as a floor and not as the ceiling for increasing diverse business participation.
- The business diversity program is an integral component of the airport's strategic plan.
- Aggressive policies and practices are adopted to achieve business diversity.
- The governing body is actively involved in oversight of the airport's procurement system.
- There is true commitment from top airport management.
- Relationships with all types of businesses, including small businesses, are promoted to build trust in the community.
- Governing bodies and senior management routinely receive reports on business diversity efforts and achievements.
- Business diversity is discussed and viewed in terms of investments in the airport and the community.
- Staff are held accountable for and evaluated on their execution of business diversity responsibilities.

4.1 Governing Body

Diversity initiatives generated or directed by the governing body of an airport or its local or state airport sponsor can incentivize airport personnel to be attentive to maximizing diverse business participation in airport contracts. The more a city or state legislative body and airport boards or commissions afford visibility to business diversity topics or emphasize their importance in procurement and contracting, the higher is the likelihood that line staff will make strong efforts to outreach to small, minority-owned, and woman-owned firms. When that does not happen, there is not a high regard for business diversity programs and many in management view them as an impediment.

Practice Tip: It is important for the governing body to be actively involved to ensure that business diversity is a priority to airport management.

Illustrations of governing bodies' involvement in business diversity policies and activities programs include:

- **Jackson Municipal Airport Authority (JMAA).** JMAA's business diversity program is an integral component of the airport's strategic plan for Jackson-Evers International Airport (JAN) and Hawkins Field Airport (HKS), its general aviation facility. JMAA's core values are: "Accountability; Continuous Learning & Improvement; Teamwork; Integrity; and Openness & Trust." The JMAA Board of Commissioners undertakes its DBE/ACDBE policymaking and management oversight responsibly, whereas it views federal regulatory requirements as only a starting point for promoting and achieving diverse business participation.

- **Metropolitan Washington Airports Authority (MWAA).** MWAA has policy and oversight jurisdiction of DCA and IAD. The Business Administration Committee of the MWAA Board is actively involved in overseeing the procurement system and has a high interest in ensuring a fair and inclusive contract award process for all airport contracts. As a result of the Business Administration Committee's keen focus on the implementation of diversity initiatives, staff prepares regular briefings to the MWAA Board on these matters.

A DBE firm that provides a variety of consulting services for airports and larger firms doing business with airports commented that diversity is a high priority for the MWAA Board of Directors, and she gave kudos to several airports for their business diversity efforts, including **San Diego International Airport (SAN)**, **Dallas/Fort Worth International Airport (DFW)**, **Richmond International Airport (RIC)**, **Memphis International Airport (MEM)**, and **Birmingham-Shuttlesworth International Airport (BHM)**. **Port of Seattle** commissioners also go out into the community and discuss the importance of minority- and woman-owned business inclusion.

An airport board member explained, "My level of involvement is pretty active primarily because I choose to be active. It's routine. I get briefings before every board meeting on our local and disadvantaged business programs' activity. Beyond that . . . other issues may come up on specific procurements that I'll make a further inquiry about how we're going to procure a particular product or service. . . ." Another airport board member pointed out that in their contract processes staff knows that "if they don't bring [business] diversity to the table, they are going to get asked why. I'm the only minority on our small business committee, and the other seven act in a way that folks know diversity is a business practice." A CEO from a small airport explained that "having significant diversity on the board and on the senior management team is a big benefit . . . if there isn't a board adopting DBE policy and buy-in from the staff, DBEs don't get many opportunities. That's an impediment to DBE success."

Practice Tip: When the governing body has adopted aggressive policies and objectives, and is actively engaged in their implementation, opportunities for diverse business participation increase.

4.2 Chief Executive

Numerous stakeholders cited true commitment from top airport management among best practices that are most beneficial for increasing diverse business participation. Support from the executive level is critical for diversity policies and practices to work. Top-level support is demonstrated through executives' overall involvement, which has a major impact on the buy-in, support, credibility, and accountability for business diversity programs throughout an airport organization. One executive explained, "We don't set diversity as a goal; it's just a part of what we do." Another executive shared the same sentiment, stating that "our efforts are because it's the right thing to do. No law or anything is telling us it's something we have to do." Another executive's philosophy is that "everybody in the organization is responsible for small business development, being inclusive, and ensuring diversity in the execution of our contracts."

Practice Tip: When top management is personally committed to diversity and inclusion, promoting opportunities for diverse business participation in airport contracts is a priority and routine part of doing business.

Business diversity achievements are most successful when the chief executive provides clear direction; monitors performance; dedicates adequate staff, funding, and other resources; and is actively engaged in the community. Organization-wide encouragement from the chief executive and commitment from the senior management team also contribute to the success of business diversity programs. Direct involvement of the CEO in business outreach and community outreach also signals to the organization the importance and visibility of diversity program matters.

At one airport, members of the staff have individual performance goals and must complete specific activities related to business community outreach and engagement. At small and general aviation airports, outreach efforts tend to be more limited. These efforts might include publishing airport contract opportunities in nationwide diversity-oriented publications, using local diversity resources, and posting opportunities on the airport website.

Ongoing efforts to ensure transparency in the contracting process, employing well-qualified, trained individuals who understand and consider the needs of diverse businesses in executing their duties, and requiring good faith efforts from contractors are among key roles of chief executives.

An airport executive from a small airport expressed that “promoting and achieving diversity is about setting priorities.” The airport had been achieving roughly 10 percent in participation, but the airport executive challenged all the departments to look at where and with whom the airport was spending its contracting dollars. Staff were then asked to identify additional small and minority businesses to compete for that work, including day-to-day purchases. One goal was for staff to “get out of their comfort zone” when selecting firms. The airport is now up to 40 percent in some areas of spending. Another factor that made a difference was turnover on the airport’s executive team, which resulted in minority females being selected for two of the three positions on the executive team.

The position of an airport executive at general aviation airports is often described as a “jack-of-all-trades.” These airport executives are responsible for a wide range of activities that include financial management, oversight of contracts and leases, safety and security, noise control, community relations, compliance with federal grant conditions, facility maintenance, and capital improvements. FAA personnel recommend that these executives provide more oversight of prime contractors and/or consultants who assist them with administering diversity programs in order to enforce the airport’s program goals.

4.3 Liaison Officer (DBELO)

Unlike any other airport employee, the position of a DBELO, who must have direct, independent access to the chief executive concerning DBE and ACDBE Program matters, and who must implement all aspects of the airport’s DBE and ACDBE programs, is mandated by 49 CFR Part 26.

Among other essential functions, DBELOs:

- Develop, manage, and implement business diversity programs on a day-to-day basis.
- Work to set diverse business participation goals.
- Explain diversity program requirements internally and externally.
- Disseminate information on available business opportunities.
- Ensure solicitations contain required clauses and participation goals.
- Plan and conduct outreach initiatives.
- Participate in pre-bid meetings.
- Evaluate proposals to assess proposers’ good faith efforts to meet goals.
- Provide recommendations on contract awards.
- Conduct compliance monitoring and enforcement.
- Gather and report statistical data and other information.

- Remain current on ACDBE and DBE Program regulations.
- Analyze progress toward attainment of goals and identify improvements needed.

Some general aviation airports may have only one full-time employee, who is both the airport manager and the DBELO. In addition to diversity program responsibilities, these individuals develop the budget, develop and manage the capital development plan, and deal with airfield maintenance and other day-to-day matters. Attracting businesses to the airport is also among their responsibilities.

U.S. DOT encourages airport operators to include language such as the following in their ACDBE and DBE Program policy statements: “Implementation of the [ACDBE and/or DBE] program is accorded the same priority as compliance with all other legal obligations incurred by the [name of grant recipient] in its financial assistance agreements with the Department of Transportation” (89, 90). Although there are commonalities and differences in the priority of diversity programs in terms of where a DBELO is positioned in the organizational hierarchy, few DBELOs hold senior-level management positions or report directly to the chief executive. Some DBELOs hold additional titles and perform other duties. Other DBELOs may have direct independent access to the mayor and city manager concerning DBE program matters.

A DBELO’s clout, where he or she is positioned in the organization, to whom the DBELO reports, and the DBELO’s level of involvement in the planning, development, and implementation of contracting policies and practices are indicators of the priority an airport places on business diversity programs. The way these programs are executed and how they are viewed internally and externally also indicate a DBELO’s standing. Throughout this research, numerous individuals expressed the need for the diversity program office to have clout, power, and credibility, and for DBELOs to have true, independent access to the chief executive.

Most technical decisions concerning the selection of service providers and during the planning and implementation of concession and construction programs are determined by the airport’s concession managers, construction managers, and procurement managers. DBELOs expressed frustration that they are often an afterthought in the contracting process. They also expressed that their efforts at true capacity building often are not welcomed, and they are not empowered.

Practice Tip: DBELOs must be fully engaged in the procurement process.

Areas of involvement where DBELOs’ input is critical include:

- Reviewing scopes of work for contracts to help determine whether qualifications criteria create any barriers to diverse business participation.
- Offering guidance on whether contracts can be smaller-sized to allow diverse businesses to participate as primes.
- Advising chief executives and management staff on ways to promote and enhance business diversity programs.
- Identifying potential impediments that technical decisions may cause (e.g., a requirement for experience building a parking garage on an airport).
- Offering recommendations on how to alleviate impediments to diverse business participation.

Practice Tip: DBELOs are in the best position to offer guidance concerning the inclusion of diverse businesses in airport contracts.

Major policy decisions by top management and airport board members during the development cycle (e.g., whether making compliance with ACDBE/DBE requirements a part of the evaluation criteria and assigning scoring points) should also include guidance from DBELOs on ways to maximize diverse business participation on airport contracts and leases, while accommodating the airport's other needs and goals.

DBELOs also need a diverse knowledge base in order to understand what businesses do, recognize how their participation fits into the overall project, and give advice throughout the procurement process on the best methods for achieving diversity and eliminating barriers.

At MWA for example, the DBELO's office has the authority to assign goals on all projects/solicitations of \$50,000 or above, and to make the final decision on whether a contract in the LDBE program will be set aside for small businesses.

At **Baltimore/Washington International Thurgood Marshall Airport (BWI)**, the Office of Fair Practices (OFP) is responsible for the airport's business diversity programs, and the chief executive makes sure that OFP is involved in all aspects of airport contracting processes. BWI also has a Procurement Review Group that meets monthly to discuss any and all upcoming procurements that will be advertised the following month. Required participants in these meetings include a representative from OFP and others who have a role in the project (e.g., project manager, design architect).

Long Beach Airport (LGB), a small airport owned and operated by the City of Long Beach, California, coordinates with a city DBE officer who is responsible for goal-setting, reporting, monitoring, and compliance functions. Three members of the LGB airport staff handle ACDBE and DBE contracts, and they report to LGB's executive director.

As airport business diversity programs have begun to shift from compliance-focused to comprehensive business development models, hiring requirements for DBELOs increasingly include degrees or a background in business, finance, supplier diversity, engineering, and/or construction, with employment experience managing business diversity programs. Knowledge of contracting principles, administration, and project management is advantageous, and a master's degree in business administration or law is also desirable.

4.4 Other Offices and Departments

Practice Tip: Bring together different expertise and perspectives to allow for a broader and more comprehensive view of needs and concerns while opening the door to more creative and strategic solutions (16).

Several other airport offices and other departments (e.g., economic development departments) have roles and responsibilities essential to the development and implementation of business diversity programs. Such offices and departments include, but are not limited to:

- Legal offices.
- Concessions development offices.
- Engineering, planning, and construction offices.
- Procurement and purchasing offices.
- Public relations/community relations offices.

This list is not intended to be exhaustive; rather, it illustrates and suggests the kinds of inter-office and interdepartmental roles and relationships that affect the development and implementation of business diversity programs.

4.4.1 Legal Offices

Attorneys representing airports have widely varying roles and responsibilities related to the implementation and enforcement of DBE/ACDBE or small or local programs. Attorneys are tasked with providing legal advice or opinions concerning a broad range of issues, ranging from contract or procurement process compliance to regulatory and constitutional law support for DBE/ACDBE policies and practices. Attorneys also are tasked to weigh in on bid protests, claims, and litigation related to DBE/ACDBE contract award issues.

On the policymaking front, attorneys sometimes are called on to assist airport management and policymakers with creating contract conditions or policy measures in response to community concerns. For example, during the expansion facilities program at **San Francisco International Airport (SFO)** in 1997, San Francisco-based trucking companies, who are predominantly African and Latino American, indicated to the airport director and San Francisco Airport Commission (Airport Commission) that they did not experience a level playing field when competing for trucking subcontracts on major airport construction contracts. The airport director requested assistance from the airport's legal department to address the concerns. The legal department participated in a "town hall" meeting with airport managers and interested firms and, based on issues presented, prepared a "San Francisco Truckers First" policy. The policy was adopted by the Airport Commission and directed staff to include provisions in the airport's major construction contracts requiring the general contractors bidding on airport work to agree to use San Francisco-based trucking companies first over non-local firms when awarding trucking subcontract opportunities on airport contracts. The airport director incorporated the policy and its requirements into bid specifications for large construction projects. As a result of this policy, small, local, and minority firms were able to compete and win trucking subcontracts and perform services to SFO.

Another illustration of how attorneys help airport clients achieve community and social policy aims is the Los Angeles Airport Construction Project Labor Agreement, adopted in November 1999 in connection with the renovation and improvement of the **Los Angeles International Airport (LAX)** Tom Bradley International Terminal. In the agreement's non-discrimination clause, crafted by in-house airport counsel, the following provision safeguards LAX's MBE, WBE, SBE, LBE, and DBE programs and laws:

It is recognized that the City and federal government have certain policies and commitments for the utilization of business enterprises owned and/or controlled by minorities, women, the disadvantaged or others. The parties shall jointly endeavor to assure that these commitments are fully met and that any provisions of this Agreement which may appear to interfere with any minority, women, disadvantaged or other owned business enterprise successfully bidding for work within the scope of this Agreement shall be carefully reviewed, and adjustments made as may be appropriate and agreed upon among the parties, to assure full compliance with the spirit and letter of the governments' policies and commitments in all applicable federal, state and local rules and regulations relating to employment and utilization of said business enterprises (208).

4.4.2 Concessions Development Offices

Generally, concessions managers and their staff will administer day-to-day implementation of an airport's concession program to, among other key duties:

- Prepare lease documents for new leases, amendments, and extensions.
- Evaluate proposals for concession and certain management contracts (e.g., parking, advertising).
- Assure contract compliance for prime concessionaire unit locations, subtenant locations, and independent concession leases.
- Address contractual issues.

- Work to resolve disputes with tenants concerning lease obligations.
- Recommend options for tenants to ensure their continued success by reviewing short and long-term plans.
- Approve and monitor “street pricing” compliance for products and services sold airport-wide.

At **Seattle-Tacoma International Airport (SEA-TAC)**, a concession manager also is responsible for outreach to the small business and minority communities about potential opportunities for short- and long-term tenancy at SEA-TAC, and for development of new concessions opportunities appropriate for small business, which require lower levels of capital investment than typical in-line store opportunities.

Concessions Managers and DBELOs must work together to identify opportunities for ACDBE participation, to determine ACDBE participation goals, to eliminate requirements in solicitations that may cause barriers to ACDBE participation, and to monitor and enforce contract requirements.

4.4.3 Engineering, Planning, and Construction Offices

Engineering, planning, and construction managers and their staff plan, design, and lay out airports and oversee airport construction programs, including construction inspections.

Among other key functions, these offices:

- Plan and oversee design and construction projects.
- Provide administrative and technical support for multi-discipline contracts.
- Manage and administer multiple, major projects concurrently.
- Prepare and review project progress reports.
- Coordinate project scopes, schedules, and budgets with other airport offices (e.g., procurement).
- Monitor and maintain the accuracy and timeliness of a project.

Engineering, planning, and construction managers should work hand-in-hand with DBELOs on matters such as planning for diverse business participation in the early phases of project planning, and helping with monitoring and enforcement responsibilities after a project is underway.

4.4.4 Procurement and Purchasing Offices

Procurement and purchasing managers and their staff help to increase business diversity efforts by working closely with DBELOs and other airport staff. At some small airports, the individual responsible for procurement and purchasing also might serve as the airport manager and be responsible for the business diversity program, facilities management, outreach, and other duties.

Among other key functions, these offices:

- Work alone or with the DBELO to determine diversity goals.
- Develop the scope of services and other requirements for solicitations.
- Prepare RFP, Request for Qualifications (RFQ), and other types of solicitation documents.
- Evaluate proposals to ensure compliance with goals and minimum requirements.
- Enforce policies, laws, and regulations related to procurement processes.
- Plan procurement schedules for advertisement of contracts, pre-proposal conferences, and review and award of contracts.
- Monitor pay requests and pay invoices.
- Participate in outreach activities.
- Assist the DBELO with internal complaints.

Practice Tip: Reaching out to counterparts at other airports for support, advice, and information is beneficial to general aviation airport personnel engaged in business diversity programs.

At general aviation airports, the person(s) responsible for procurement and purchasing also might be the DBELO responsible for the DBE and ACDBE Programs, including contract compliance, outreach, policy development, and goal-setting.

Ideally, procurement and purchasing managers work closely with the DBELO's office to ensure that appropriate policies are in place for all solicitations. These departments make sure that all the proper forms are included in solicitations and also perform a midpoint check to determine how many people have downloaded solicitations and to see if outreach is needed. The procurement department must oversee activities, verification, and execution of contracts and/or bids. An airport procurement manager explained that a centralized procurement department at their airport results in everyone going through the same processes.

Airport procurement and purchasing managers can increase diverse and small business participation through the language used in project contracts, RFQs, RFPs, and by working closely with other airport stakeholders and those responsible for diversity policies and procedures. They also can require DBE or small business participation on prospective contracts.

Practice Tip: Business diversity programs are most effective when community outreach is a core activity of the procurement department.

4.4.5 Public Relations/Community Relations Offices

Public relations/community relations managers and their staff work with DBELOs and other airport staff to help promote business diversity primarily through sharing information, increasing awareness, and educating diverse businesses. Public relations/community relations managers work with DBELOs on matters such as outreach, handling media inquiries, and publicizing business diversity initiatives. They also provide valuable strategic counsel, advice, and guidance on presentations and communications. Their roles and responsibilities may include:

- Media relations.
- Public affairs, public relations, and public information.
- Community relations.
- Government relations.
- Internal and external communications.
- Marketing, customer service, and promotion.
- Message development, including flyers and brochures.
- Electronic communications (in some instances replacing print communications) and online procurement systems to advertise opportunities and solicit proposals.
- Social media, social networking, website, and interactive digital directories.
- Serving as a liaison between interested persons and airport decisionmakers.

4.5 The Role of the Airport in Disputes Between Primes and Diverse Businesses

Federal regulations require airports to be involved in disputes arising from DBE and ACDBE matters and concerns. The role of the airport may differ depending on the type of dispute and whether the diversity program includes race-based goals. For example in a race-based program, if a prime contractor is attempting to terminate or substitute a DBE or ACDBE, the DBE or ACDBE can only be terminated or substituted if there is "good cause" as defined by 49 CFR Part 26. The prime must first give notice to the firm and obtain written consent from the airport. A good cause justification must be provided to the airport by the prime, and the airport needs to hear directly from the DBE or ACDBE proposed to be terminated or substituted to ensure that the firm does not have any objections.

When a DBE or ACDBE is terminated, or fails to complete its work on the contract for any reason, airport operators must also require the prime contractor to make good faith efforts to find another firm to replace the original DBE or ACDBE. These good faith efforts must be directed at finding another DBE or ACDBE to perform at least the same amount of work under the contract as the DBE or ACDBE that was terminated, to the extent needed to meet the airport's ACDBE or DBE participation goal for the procurement.

Sometimes disputes arise between prime contractors and DBEs concerning retainage payments. As part of their DBE programs, airports can establish a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

In other instances, however, the airport's role is less clear, and airports may often express a reluctance to intercede.



CHAPTER 5

Contracting Methods to Obtain Diversity

Although the Part 23 and Part 26 Programs are a big step forward in increasing diverse business participation, airports can “dig deeper” to level the playing field and promote opportunities for diverse businesses, regardless of federal requirements.

Several contracting methods to promote and increase opportunities for diverse business participation include:

- Limiting eligibility to compete for a contract or lease to small business concerns.
- Encouraging small businesses that are also owned and controlled by socially and economically disadvantaged individuals to seek DBE certification.
- Offering smaller-sized, direct leasing opportunities for concessions.
- Breaking the scope of a contract into smaller, lower dollar amounts and lower risk projects.
- Developing good working relationships and communications with the joint venture participants.
- Relaxing bonding and insurance requirements.

5.1 Small Business Set-Asides

A small business set-aside is a procurement solicitation for goods or services (i.e., professional; contractual) or a concession opportunity in which the eligibility to compete for the contract or lease is limited to small business concerns. The philosophical underpinning of a small business set-aside is to assist firms in landing contracts in a narrower competitive field so that these firms may gain additional experience and capacity to perform services to public agencies, increase their business profile, and thrive economically. Small business set-asides are welcomed by small business advocates and policymakers. The general business community tends not to oppose small business set-asides when they are offered as small prime contract opportunities, probably because large firms tend not to be interested in very small business offerings.

On December 6, 2011, FAA’s Civil Rights Office posted question-and-answer guidance relating to the implementation of the “Fostering Small Business Participation” element of the Part 26 regulation. FAA clarified that race- and gender-neutral set-asides are permitted tools for increasing DBE participation through neutral methods.

Small business set-asides also are utilized in local and small business programs. The City and County of San Francisco has a small local business set-aside program for non-federally funded contracts codified in its administrative code. The code requires city departments to set aside a certain percentage of construction and services contracts for award to very small LBEs, including minority- and woman-owned firms. **San Francisco International Airport (SFO)** follows a similar approach for Part 26–governed contracts. SFO’s Small Business Element program, dated

March 2, 2012, states that the airport's contract set-aside strategy is to "[e]stablish race-neutral small business set-asides for contracts under a specified amount (i.e., under \$1 [m]illion). Competition will be limited to small businesses only" (333).

Although the San Francisco Administrative Code does not contain contract set-aside mandates for leases and concessions, SFO has created and implemented a concessions small business set-aside program. A January 2013 RFP advertised and distributed by SFO identified a single concession activity in a specific location: "Boarding Area E Newsstand Lease, a Small Business Enterprise Set-Aside." The minimum requirements were that the "Proposer must be a certified Small Business Enterprise and to be so certified must provide verification of certification in the proposal and be certified by at least one of the [following] agencies . . . Proposer must be certified at the time of the proposal submittal, not after. Joint venture entities are not acceptable for this opportunity" (335). The RFP accepted small business enterprise certifications from the California Unified Certification program, the San Francisco Contract Monitoring Division (which certified local small firms), and the SBA.

5.2 Direct Contracts

Some airports are offering more smaller-sized, direct leasing opportunities for their concessions and dividing larger contracts into smaller packages in their procurement opportunities.

A concessions manager commented that "breaking up the dominance of the prime concessionaires has contributed the most to the success of their [ACDBE] program" and that "it may be easier to use a master concessionaire model but a mix works well and it works well to have some of those direct leasing opportunities with small and ACDBE businesses when possible."

As an illustration, **San Diego International Airport (SAN)** awarded a yogurt business a concession as a prime ACDBE. The RFP stipulated that "no one firm could have more than 30% of the square footage" in a concession. The large primes viewed the yogurt concession as too small for them, but it was the right size for an ACDBE.

Practice Tip: Breaking the scope of a contract into smaller, lower-dollar amounts and lower-risk projects makes it more advantageous for a small or local business to compete with larger companies.

Direct contracts also are proven to be a best-in-industry practice for achieving more participation from diverse businesses in procurements of construction, professional services, goods, and other services. Procurement and purchasing managers recommend that large projects should be unbundled to level the playing field and allow for greater participation among small businesses and more flexibility for airports. Procurement managers recognize that the smaller the projects, the more likely a small business will be able to participate.

5.3 Concessions Joint Ventures

U.S. DOT defines a joint venture as "an association of an ACDBE firm and one or more other firms to carry out a single, for-profit 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” (49 CFR § 23.3).

In July 2008, FAA issued ACDBE Joint Venture Guidance (JV Guidance) to clarify the Part 23 requirements concerning joint ventures and to provide information and direction to airports, ACDBE Program staff, and various stakeholders on the structure, implementation, and counting of joint venture arrangements in the ACDBE Program. The JV Guidance also assists ACDBEs and non-ACDBE partners in developing joint ventures that comply with Part 23.

As noted in the JV Guidance, the preamble to Part 23, revised in 2005, states:

As a policy matter, we believe it is preferable for ACDBE joint venture participants to actually have a defined role in the revenue-generating activities of the business (e.g., the joint venture runs four food-service locations in the airport, and the ACDBE is directly responsible for one of them). There is a greater likelihood of confusion, counting, and other administrative difficulties, as well as of abuse, when ACDBE participation is claimed for joint ventures in which the ACDBE participant has only a vaguely defined role in the entity as a whole (385).

An airport’s ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs, including joint ventures and franchises.

An airport should review joint venture agreements and supporting documents to ensure that the proposed joint venture arrangement meets all requirements of Part 23 and Part 26, and that capital contribution, control, management, risks, profits, ownership, and work to be performed by the ACDBE are clearly addressed. When an ACDBE performs as a participant in a joint venture, only the portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces can be counted toward ACDBE goals (§ 23.55(d)).

In reviewing a joint venture agreement, it is important to ask questions to understand and evaluate the proposed arrangement. Questions to address include:

- Is the ACDBE certified?
- Does the agreement meet the Part 23 definition of a “joint venture”?
- What are the amounts and sources of capital contributions?
- Are capital contributions commensurate with ACDBE ownership?
- How does the ACDBE participate in the overall and day-to-day management of the venture?
- Is management by the ACDBE commensurate with ownership?
- How does the ACDBE participate in risks and profits of the joint venture?
- What portion of the work will the ACDBE perform?
- What is the distinct, clearly defined portion of the work assigned to the ACDBE that can be counted toward ACDBE goals?

It also is essential to involve the DBELO, concessions staff, and property staff throughout the review process. Once the agreement has been approved and executed, additional work is needed to develop good working relationships and communications with the joint venture participants.

5.4 Construction Joint Ventures and Partnerships

Construction companies or suppliers of goods often unite to bid on and/or perform a construction contract or supply agreement. As a result, construction or supplier group members (participants) form a joint venture. A venture between participants can be structured as an

entity (corporation, limited liability company, limited partnership, or partnership) or a non-entity (consortium or a master subcontract relationship). Generally, joint ventures are formed to undertake a specific project for a fixed period of time, whereas formal partnerships' arrangements are permanent and all partners are owners and are involved with all ventures and activities of the partnership and are often referred to as informal partnerships. Whether it is an entity or a non-entity, there should be an agreement that delineates the rights and obligations of the participants. The airport should also review and approve these joint venture and partnership arrangements to ensure that the provisions of these agreements are being implemented as intended.

Practice Tip: Encouraging joint ventures for airport construction projects can increase participation by small and diverse businesses in these contract opportunities.

Joint ventures are complex because of the number of parties involved and the variety of substantive provisions generally required in both the venture agreement and in the contract between the venture and the customer. Consequently, venture agreements should be carefully developed to govern and accommodate two sets of relationships: (1) the "outside" relationship between the venture and the customer; and (2) the "inside" relationships among the participants.

A joint venture by construction firms allows firms to combine their property, money, skill, and knowledge to compete (for) and complete projects.

Although a joint venture does not limit liability among the inside participants in the way it does between the joint venture participants and the owner (i.e., if there is a default by any member, the remaining financially responsible members are required to complete the job), the benefits of a joint venture relationship can outweigh any negatives. Benefits of joint ventures include:

- Risk is spread proportionately to each member's interest in the joint venture.
- Specialized abilities can be combined.
- Bid estimates can be made increasingly accurate, because members of the joint venture can compare estimates with each other.
- Bonding capacity can be spread.
- Bids on major projects can be submitted which otherwise one contractor could not do alone.
- Talent, resources, and equipment can be pooled.
- Areas of operation and expertise are increased among the participating members of the joint venture.

Joint ventures can be encouraged in several ways to help increase diverse business participation. The **City of Oakland, California**, for example, has adopted joint venture regulations for construction projects, allowing a business that is bidding or competing for city contracts to associate with a certified small local business enterprise (SLBE) to compete for contracts as a joint venture. Certified joint ventures receive bid discounts depending upon the SLBE percentage of participation.

In 2000, six of the seven DBE architecture firms in the Indianapolis area created an umbrella entity. This partnering of experience and skills allowed them to bid and win the contract for the design of the \$100 million parking garage and ground transportation center at the new midfield terminal at the **Indianapolis Airport**. It also earned them a 10 percent role in a joint venture that was created for the new terminal building and concourse.

5.5 Cart and Kiosk Programs

Airports' cart and kiosks programs allow small businesses to have an increasing presence in concession programs, and to "test the waters," particularly if they are new to the airport concession environment. Many airports supplement their retail offerings through product carts where there is insufficient space or passenger exposure to support a full retail unit. Product carts also are sometimes used to sell individual specialty products (e.g., souvenirs, games, and eyewear). Some airports offer electronic vending kiosks that sell items such as electronics, cosmetics, and over-the-counter medical supplies. Concession agreements for carts and kiosks typically have a shorter contract term and represent a reduced investment (14).

In 2011, for example, 13 percent of the overall concession revenue at **Las Vegas McCarran International Airport (LAS)** was produced by 12 self-service vending units and 46 stand-alone carts and wall-unit kiosks. The Clark County Department of Aviation also hired a firm to develop, lease, and manage a "Business Incubation" program at LAS. This pushcart concession program offers small retailers contract opportunities without the costs associated with developing a traditional inline store. The program is also designed to provide local companies with short-term, flexible leasing agreements to test new business ideas. **Philadelphia International Airport (PHL)** has a similar program.

In September 2012, **Denver International Airport (DIA)** unveiled its new specialty leasing program that included 24 retail merchandising units (RMUs) and 24 kiosks throughout the three airport concourses. One of DIA's goals was outreach to small businesses and minority- and women-owned businesses for these contract opportunities.

5.6 Mentor/Protégé Programs

Airport operators can implement business development programs or mentor/protégé programs in their DBE and ACDBE programs. They must use U.S. DOT's business development program guidelines (Appendix C of 49 CFR Part 26) and/or its mentor/protégé program guidelines (Appendix D of 49 CFR Part 26). These guidelines outline the requirements, objectives, and roles and responsibilities of participants in mentor/protégé programs.

Practice Tip: A mentor/protégé program can further the development of DBEs by assisting them, among other things, to move into non-traditional areas of work and/or compete in the marketplace outside the DBE Program.

A program must be based on written development plans that set forth the objectives of the parties and their respective roles, the duration of the arrangement, and the services and resources to be provided by the mentor to the protégé. In addition, the program must be approved by the U.S. DOT and the recipient agency. Requiring a written plan approved by both agencies helps ensure that the DBEs involved maintain their independence and retain their certification status. Note that only certified DBEs can be involved in a mentor/protégé agreement. Accordingly, a protégé firm must be certified before it begins participation in a mentor/protégé arrangement and must remain certified throughout the relationship.

A mentor/protégé arrangement exists when an experienced company or individual (mentor) provides assistance and training to a DBE (protégé) with business planning/financing, record keeping, bonding, capitalization and/or formation, or other activities. A mentor also can provide

a protégé with working capital as long as the loans are arms-length transactions and memorialized. In no way can the day-to-day control of the firm be relinquished by the DBE as a requirement of a loan. Part ownership in a DBE by a non-disadvantaged entity, including a mentor, is permitted; however, any property, equipment, supplies, or other services which are sold, rented, or donated to the DBE, as well as any investment by non-disadvantaged individuals, must be reported to the certifying agency, and any financial investment by the mentor cannot provide the mentor with control over the protégé.

Illustrative mentor/protégé programs include the following:

- The **Port of Portland (the Port)** initiated one of the first and most successful mentor/protégé programs in 1995 based on the findings of a 1994 assessment of why small MBEs and WBEs were not participating in Port projects. The Port's program is designed to build effective working relationships between leaders of mature, established companies and emerging minority- and women-owned companies. Since the development of the mentor/protégé program, the protégé firms have benefited from the knowledge and experience of the well-established firms, and have improved their financial strength and bidding status. The success of protégé firms in meeting established business objectives has been consistent, and there has been a high rate of graduating firms.
- **DFW** instituted a mentor/protégé program in its marketing department. One of the early mentees was a small, African-American female-owned public relations and advertising firm. The firm participated in the program for 3 years and became a joint venture partner on DFW's business-to-business and business-to-consumer contract with an international, full-service agency specializing in integrated marketing.
- **JMAA's** out-of-the box thinking to level the playing field and enhance small and local business participation in airport concessions is to use already-certified firms as mentors to help other smaller businesses understand the certification process. **Nashville International Airport** also has a mentor/protégé program that provides classroom style training on topics such as bonding, operations, and succession planning to small businesses.
- The **Port Authority of New York and New Jersey (Port Authority)** launched its mentor/protégé program in 2002, and the first class of protégé firms graduated from the inaugural 3-year program in April 2005. Many of the protégé firms reported increases in their businesses as a result of their participation. The objective of this program is to increase the number of Port Authority-certified MBEs and WBEs capable of bidding successfully on larger construction contracts with the Port Authority and other public and private organizations. This mentor/protégé program is a major example of how public and private partnerships help strengthen the regional economy, create new business opportunities, and broaden workforce participation.



CHAPTER 6

Addressing Impediments to the Success of Diverse Businesses

This chapter discusses certification, proposal requirements, sizes of contracts, politics, and other issues that impede the success of diverse businesses. The chapter also illustrates ways to alleviate these impediments. Often, contracts for some services (e.g., legal services; financial services; airport insurance bonding, investment and auditing services; goods under a certain dollar amount) are not handled through a competitive process and, as a result, may have less emphasis on maximizing diverse business participation. These business practices are lawful but may nonetheless pose unintentional impediments to small business success.

Practice Tip: It is everyone's responsibility to work toward alleviating impediments to diverse business success.

6.1 Certification Requirements

The certification process continues to be among the most challenging components of DBE and ACDBE programs for applicants and certifying agencies. Among the greatest challenges are the current personal net worth cap, fully understanding how to apply net worth exclusions, and what constitutes acceptable joint venture arrangements.

DBE and ACDBE certification requirements were the number one impediment to participation in the DBE and ACDBE Programs identified in this research, though ACDBEs and DBEs find certification beneficial because they do not believe they would get airport contracts without it. Numerous airport industry stakeholders view ACDBE and DBE certification requirements and related issues as major barriers preventing otherwise eligible firms from seeking certification. It appears that certification requirements hinder the success of diverse businesses and limit the pool of certified firms. Not only have the businesses participating in airport DBE and ACDBE programs become more complex in their structure, certification eligibility requirements have also become more complex.

The most significant impediments stakeholders cite include:

- The requirement to apply for certification in every state in which a firm wants to do business.
- The length of time it takes to obtain certification.
- Certifying officials' limited understanding of financial and tax documents.
- Inconsistent interpretation and application of certification requirements.
- The volume and type of paperwork required to become certified.
- The cost of applying for certification.

An airport CEO explained that “the DBE Program is somewhat cumbersome in terms of certification,” and “it’s hard convincing small firms that probably qualify for DBE certification to get certified because it takes forever and they don’t want to tell their whole life story to get a certification that may not get them a business opportunity.”

Practice Tip: Requirements for obtaining MBE, SBE, LBE, and WBE certification that differ from the requirements for DBE certification are sometimes confusing to majority-owned firms and diverse businesses.

Airports, trade associations, and businesses can do more through outreach, training sessions, and providing a direct contact for diverse businesses that want to discuss certification requirements. Unified Certification Program (UCP) entities can do more to explain the certification process and what it takes to obtain DBE and ACDBE certification, and to enhance certification reciprocity by streamlining the certification process for firms already certified in their home state that are seeking certification in another state. Certification reciprocity is permissible under the Part 26 regulations, but it is not being used in a manner that reduces the burden and cost to businesses seeking certification under the Programs. The U.S. DOT’s mandatory certification training for UCP personnel and DBELOs, which is now offered to others, will hopefully address these impediments.

6.2 Proposal Requirements

Factors such as the standard term of an airport concession agreement (10 years) can limit the numbers of ACDBE firms participating in concessions, and standard RFP specifications for professional services and construction agreements may include eligibility criteria that limit the pool of DBEs and other diverse businesses.

More often than not, solicitation provisions contain requirements that affect diverse businesses’ eligibility to compete for an airport contract, such as insurance- or fee-related conditions, and numerous years of prior experience at certain size airports. For example, in 2009, one city required a proposer to have a minimum of 3 years of experience (within the past 5 years) in the ownership or management of a sit-down restaurant for an airport restaurant concession opportunity. In 2011, another city required the same minimum years of experience, but added that the proposer must have said experience with not less than five food and beverage locations in a shopping center, airport transportation center, mall, or other prominent setting generating a minimum of \$10,000,000 in gross revenues. These requirements oftentimes exclude a new or recently established firm, as well as seasoned firms.

Practice Tip: Work to ensure that proposal requirements do not serve as an impediment, discouraging participation by diverse businesses in airport contracts.

Questions to consider concerning proposal requirements to determine whether there are impediments to diverse business participation:

- Is the RFP process documented, periodically reviewed, and updated?
- Are the goals and objectives of the RFP process clearly stated?

- Do the provisions of contractual agreements vary by the solicitation, or are there standard provisions?
- Are contract provisions reviewed for relevancy? Who does the review, and how frequently is it done?
- What contracting elements may vary by contract? What determines the ability to be flexible?
- What is the process for contract extensions? Is the process transparent?
- Is there an opportunity for questions/responses?
- Are the proposal requirements relevant to the opportunity?
- Are there bid requirements (e.g., bid bonds, performance bonds, insurance, experience and qualifications) that may adversely impact diverse business participation?

There also appears to be considerable variation in how airports procure professional services such as outside counsel, including bond counsel; underwriters; lobbyists; and aviation management companies. Some airports issue RFPs or RFQs and create a pool consisting of several proposers for use on a multi-year, as-needed basis. Other airports seek professional services on a project-by-project basis with or without an RFP or RFQ process. For the most part, procurement of professional services is governed by the relevant state and local law. Notably, professional services such as legal services are rarely advertised widely. Title 49 (49 CFR § 18.36) specifies the policy, procedures, and regulations applicable to grant recipients that are to be used for procurements of professional services.

Part 18.36 provides, in part, that an airport (a) use the same policies and procedures it uses for procurements from its non-federal funds; (b) maintain a contract administration system; (c) maintain a written code of standards of conduct for employees engaged in award and administration of contracts; and (d) award contracts only to responsible contractors.

Part 18.36 also specifies that an airport utilize the following procurement methods:

1. For small purchases (\$100,000 or less), price and rate quotes must be obtained from an adequate number of qualified sources.
2. Sealed bid procurements must be advertised, publicly opened, and awarded to the responsible bidder whose bid conforms with all material terms and is the lowest price.
3. For competitive procurement, RFPs must be publicized and awarded to the most responsible firm whose proposal is most advantageous to the program and can be used for A/E professional services process alone when price is not used as a selector.
4. Non-competitive proposal solicitation is permitted when an item is available only from a single source or the airport authorizes a non-competitive process or if, after solicitation of a number of sources, competition is determined inadequate (116).

Part 18.36 also requires that airports take all necessary affirmative steps to assure that MBE and WBE firms are used when possible.

Practice Tip: Unbundling contract opportunities (such as dividing a total requirement into smaller tasks), prequalifying small firms, or utilizing SBA and other outreach programs can help to create a level playing field.

The stated objectives of the DBE and ACDBE Programs encourage award of federally funded and concession opportunities by a competitive process. Although neither Part 23 nor Part 26 directly mandate competitive bidding for airport opportunities, most procurement made pursuant

to the AIP and many state, city, county, and/or airport authorities have enacted legislation requiring the award of airport opportunities on a competitive basis. For example, the **City and County of San Francisco** has adopted an ordinance that requires its Airport Commission to conduct a competitive process and award its contracts to the best responsible proposer.

Practice Tip: To ensure non-discriminatory participation and create a level playing field, solicitations, specifications, and other contract requirements can and should be arranged in ways that facilitate participation by diverse businesses, both as primes and as subcontractors.

To achieve participation by diverse businesses, an airport operator needs to ensure that its minimum qualifications in solicitations are not so onerous that participation by these entities, which are primarily smaller firms, is nonexistent from the start. This can be accomplished by unbundling contract opportunities and requiring prime contractors to reach out to DBE and ACDBE subcontractors. Requiring a small business to have the same level of ownership, management, and financial ability and experience as does a prime defeats the goal of diverse business participation.

Likewise, setting minimum gross sales too high for an opportunity also will effectively limit participation by small and diverse businesses. An RFP that requires multi-year experience or \$10,000,000 minimum in revenue eliminates many small businesses from the start. RFP language can level the playing field for small and diverse businesses by (1) allowing the formation of entities wherein only the controlling principal needs to meet any minimum qualifications, or (2) encouraging and allowing participation by sublessees while mandating their participation in all interactions with the airport.

Between 2008 and 2009, **Hartsfield–Jackson Atlanta International Airport (ATL)** issued a series of RFPs for retail concession opportunities encompassing five large packages and six individual stores. An overwhelming 82 proposals were received for the 11 RFPs, with an appreciable number of responses received from smaller businesses. In the end, all five large packages and five of the six individual stores were awarded to joint venture partnerships between large and small businesses or businesses with a smaller U.S. presence. One reason for the higher solo participation by small businesses was that ATL capped the minimum annual guarantee (MAG). By doing so, small, independent concessionaires were able to compete directly against primes.

When it comes to DBE and ACDBE participation, considerable variation exists in how the competitive proposal process is applied and how service providers are determined. Compliance with DBE requirements is generally considered a condition of responsiveness (i.e., a proposal will be rejected for failure to meet the DBE requirements). Increasingly, it is also being used as an evaluation criterion. Thus, a certain percentage of evaluation points may be awarded based on the strength of DBE participation in the proposal and the extent to which it creates new and better opportunities for small businesses to participate and succeed. Airport operators that place a high priority on local participation may use this criterion to reward those proposers that include a strong local component in their proposals (27).

The **Port of Portland** assigns evaluation criteria points on all professional service contracts over \$100,000. The port assigns points to RFPs to evaluate a proposer's efforts to include small business on a particular project (409).

6.3 Size of Contracts

When the Programs first started decades ago, one of the first questions posed to contract administration managers was whether the business opportunity could be “unbundled” or assembled in smaller contract scopes for multiple contract opportunities which could be undertaken by small and disadvantaged firms.

Airport operators recognize that most diverse businesses do not have the comparable capacity or credit as larger, well-established firms to compete for larger contract opportunities. Numerous diverse businesses state that airports can provide more access to contract opportunities by breaking down contract components and identifying specific components that small businesses can perform as primes. Policies and practices to divide airport contracts into smaller work packages have been implemented as a means to increase diverse business participation and to level the playing field for diverse businesses to participate in smaller-sized contracts that are within their financial resources and capacity.

Practice Tip: When a large contract is broken down into smaller sized components, diverse businesses are better able to compete and win opportunities and thus build capacity to perform larger contracts, both as prime contractors and subcontractors.

Determination of whether and which contracting opportunities can be divided into smaller work elements should happen during the planning stages of a contract. Practices that promote diverse business participation include identifying and listing in solicitations as many North American Industry Classification System (NAICS) codes and work elements as prudently possible for diverse business participation, and requiring minimum levels of participation in those work elements. Each airport contract presents a unique opportunity to focus on individual needs of the airport and the businesses that seek and participate in those contracts.

Practice Tip: Look at every type of airport contract to determine what opportunities can be carved out for smaller businesses.

When SFO underwent a \$22 million redevelopment to create its San Francisco Marketplace about 20 minority-owned or women-owned firms participated in the project. When the Marketplace opened, 80 percent of the 45 new concessions were locally owned, and a majority of the DBEs in the Marketplace were under direct leases as owners/operators.

6.4 Bonding and Insurance Requirements

Small business enterprises are significantly challenged by the high cost of doing business in the airport environment. Access to bonding and insurance were among the most frequently mentioned impediments, being mentioned by almost all interviewees for ACRP Project 01-25.

Bonding and insurance are forms of financial credit which are inherently less available to small businesses because of their limited access to capital. The cost of bonds varies greatly depending

on how the bond companies predict the risk that a small business represents. The premium can be anywhere from 1 percent to 15 percent of the bond amount, and a small business, with limited opportunities given its size, generally will be assessed a higher premium.

The vast majority of airport concession and construction opportunities require concessionaires and contractors to obtain surety bonds and insurance. For example, one city currently requires food and beverage concessionaires to provide workers' compensation, employer's liability, commercial general liability, automobile liability, and property insurance at set minimum amounts. Performance bonds must also be obtained in an amount equal to 12 months of the MAG, and before commencement of construction the concessionaires must also obtain a performance and payment bond in an amount equal to the cost of construction. The cost to a small business to comply with these types of minimum insurance and bonding requirements can impede its ability to compete for opportunities.

Practice Tip: Relaxing bonding and insurance requirements can help eliminate barriers to diverse business participation in airport contracts.

At the Airport Minority Advisory Council (AMAC) 2013 Airport Business Diversity Conference, Merriwether & Williams Insurance Services reported that “[t]he ability and extent to which Local Small Businesses have access to insurance/bonding credit, impacts their ability, to [access] local public business opportunity and participation.” One way of providing access is to move from the conventional risk management philosophy of protecting financial assets from the cost of risk using risk transfer, risk avoidance, risk mitigation, and risk financing methodologies. Moreover, access, opportunity, and inclusion will be enhanced by shifting to an aligned risk management philosophy in which risk management practice is aligned with organizational goals.

Practice Tip: An aligned risk management strategy removes barriers such as insurance and bonding requirements and enables innovation.

Airport operators are using a variety of tools such as “wrap-up” insurance policies and bonding assistance programs to ease the bonding and insurance barriers to small businesses. A bonding assistance program addresses the credit, character, and capacity needs of small businesses that seek to become bond-ready, increase capacity, and compete for projects. Wrap-up insurance policies serve as all-encompassing insurance that protects all contractors and subcontractors working on a project. MWA operates an Owner Controlled Insurance Program (Aviation OCIP) for prime contractors, subcontractors, and sub-subcontractors of any tier. For enrolled participants on qualifying projects, the coverage includes workers' compensation, employer liability, general liability, automobile liability, builders' risk, excess liability, and contractor's pollution legal liability.

Practice Tip: An OCIP levels the playing field for subcontracting opportunities by removing the cost of insurance as a competitive factor, which in turn may give small businesses more opportunities to compete as primes.

Examples of bonding assistance programs include:

- The **U.S. DOT Bonding Education Program (BEP)** partners with The Surety and Fidelity Association of America (SFAA) to help small businesses become bond-ready. The BEP is designed to address what businesses need to do to become bond-ready. Components of this program include stakeholder meetings, educational workshops, a bond-readiness component, and follow-up and assistance. The program also offers one-on-one sessions with surety bonding professionals to help in assembling the materials necessary for a complete bond application. The BEP is tailored to businesses competing for transportation-related contracts.
- **New York State's Surety Bond Assistance Program** provides technical and financial assistance to help contractors secure surety bonding. Contractors may be eligible to receive a guarantee of up to 30 percent to secure a surety bond line, bid bond, or a performance and payment bond on state and city projects.
- **Alameda County, California** operates a contractor bonding assistance program designed to help small local contractors obtain bid, payment, and performance bonds and/or increase their bonding capacity for work on Alameda County contracts. The program is sponsored by the county administrator's Office Risk Management Unit and administered by Merriwether & Williams Insurance Services. Alameda's program assembles a team of professionals to assist small local contractors in preparing for the bonding process, helps them grow their businesses, and guides contractors through the bonding process with one-on-one consultations and contractor-focused group workshops and seminars. It guarantees up to 40 percent of the bond amount or \$750,000, whichever is less, to qualified contractors.
- **San Diego International Airport's (SAN's) Bonding and Contract Financing Assistance Program** has helped some contractors get bonding, sometimes more than once. Some participants in this program are now able to bond on their own, having established a track record.
- The **City of Philadelphia, Pennsylvania**, has launched a multi-billion-dollar, multi-year Capacity Enhancement Program (CEP), a comprehensive construction program to expand and modernize PHL. The CEP will require the expertise of numerous construction firms who will be subject to the city's bonding requirements. To assist small firms in the construction industry, PHL sponsored a free bonding education program in 2013 that consisted of six 3-hour workshops and included one-on-one assistance from bonding professionals. Through the CEP, PHL is committed to ensuring workforce inclusion for minority and women workers and business owners. Key performance measures for the CEP are established federal and local participation goals for minorities and women, particularly in construction and professional services.

Practice Tip: When addressing bonding and insurance barriers, seek answers from the business community and from other airports that have faced similar questions.

Several useful questions were posed in ACI-NA's 2008 DBE/Small/Minority Business Survey (5):

- What insurance coverage is the most difficult to comply with by small business or DBE firms. ([E]xamples: auto insurance, commercial general liability insurance.)
- Have the limits of the insurance required in an airport contract frequently been identified by small business entities as a barrier to bidding on work at the airport?
- Have bonding requirements for contracts been identified as a hurdle for small businesses that are trying to secure a contract for work at your airport?
- Has your organization addressed any bonding requirement concerns with small business entities by implementing creative programs to allow bonding to be less of a hurdle for small businesses when competing for airport work?

- Has your organization's Risk Management Department actively tried to directly engage a small business, etc. to work on its own internal insurance program and insurance related services, in whole or in part?
- Has your Risk Management Department met at least once with the airport's small business representative to discuss opportunities for qualified small businesses in the area of insurance placement, safety, loss prevention, broker services or other related services?
- If allowed in your state, does your organization have general contracting goals to account for small, DBE, and minority business participation, for non-federal dollar contracts?
- If allowed under state contracting statutes, have you asked your main insurance provider or broker to utilize or seek a partnership with qualified small businesses to work on placement and/or servicing your organization's insurance in any capacity?
- What is the number of current active and direct contracts your organization has with small qualified businesses for insurance, broker, third party claims administration, safety, loss prevention, or other related services?

6.5 Financial Resources

Practice Tip: To alleviate financing hurdles, some airports set aside loan money at low interest rates for small businesses.

Examples of airport financial assistance initiatives include:

- **DIA**, in partnership with the Denver Office of Economic Development, developed the Airport Concession Loan Program for first-time concessionaires to enhance their ability to do business by obtaining gap financing. Minority and women small business owners who are looking to bring their shopping or dining concept to DIA can apply for financial assistance through this \$1 million revolving loan fund.
- The **City of Austin's** Small Business Development Program fosters the growth of new and existing businesses by hosting free, stand-alone events targeted at specific needs of diverse businesses. One such event, "Meet the Lender," featured the city's Family Business Loan Program, which is designed to offer low-interest loans to qualified, existing small businesses that are ready to expand and create jobs. This event connected business owners to lenders and bankers to learn about the loan process and what documentation they need, and enabled firms to make personal connections with valuable sources of capital. Representatives from area credit unions and community development organizations also participated.
- The **Raleigh-Durham Airport Authority** was the first airport to adopt a "Small and Emerging Business Assistance (SEB)" program to help small businesses participating in its Terminal 2 concessions program obtain loans. The airport authority partnered with a bank to seed \$1.5 million for this 80 percent loan guarantee program to qualified concessionaires.

6.6 Prompt Payment

Payment delays can and do create cash flow problems for all types of small and diverse businesses. Notwithstanding applicable local, state, and federal laws to the contrary, it is not uncommon for some public agencies to process payments 60-plus days after receipt for professional services contracts and 45-plus days for construction contracts. Delays in payment create hardships for small and diverse businesses and often impact their success. The untimely receipt of payment can limit the ability of a small business to pay its employees and keep current with its

bills. Many small and diverse businesses lack the resources of larger companies to supplement needed cash from savings or lines of credit.

Practice Tip: Include and enforce prompt payment clauses in all prime contracts and subcontracts.

49 CFR §26.29(d) requires airports to take an active role in disputes between contractors regarding payment. Airports also must add a prompt payment clause to all federally funded contracts, requiring payment to subcontractors within 30 days of receipt of payment to primes from the airport (see also Chapters 4, 5, and 6).

DFW's Expedited Payment Program provides incentives to prime contractors that pay their subcontractors within 7 days of the subcontractor's invoice. This voluntary program allows prime contractors that have been awarded a multi-year contract for construction and/or maintenance services of at least \$10,000,000 to participate. When prime contractors adhere to the program requirements, DFW pays interest and provides other incentives.

Many states require timely payments for private contracts as well as public contracts. For example, in New York, parties to a private construction contract cannot change by contract the statutory-proscribed periods to pay an invoice. An owner must tender payment of an invoice, including final payment, within 30 days of the approval of the invoice. A contractor or subcontractor must also tender payment to its subcontractor of the proportionate amount paid by the owner for the subcontractor's work within 7 days of having received payment for it. Further, it is against public policy in New York to utilize "pay when paid" clauses (making a general contractor's obligation to pay its subcontractor contingent on the general contractor's own receipt of payment from the owner), because—in contravention of New York law—such clauses remove a subcontractor's right to enforce a mechanic's lien against an owner. New York also has prompt payment laws governing public improvement contracts. A person performing labor for or furnishing materials to a contractor or its subcontractor for the construction of a public improvement with the state or a public corporation can place a lien for the principal and interest of the value or agreed price of such labor due and unpaid.

Airport managers can support the viability of small disadvantaged firms performing services on airport contracts by monitoring prime contractors to ensure that the contractors are paying subcontractors within contractual timeframes and, if they are not in compliance, immediately initiating enforcement actions, including, if necessary, withholding payment to the prime contractor.

6.7 Politics

Airports are active and significant market participants and purchasers of professional, contractual, and general services and goods. As commercial property owners, airports offer interested tenants and concessionaires multi-year leaseholds that can generate lucrative profit margins. Although most airports are government entities, not all contracts and leases awarded are subject to competitive solicitation processes, even though many businesses may be interested in a given opportunity. This combination of factors may provide an incentive for airport industry businesses, both small and large, to engage a lobbyist or consultant to influence airport policymakers and decisionmakers.

Airport managers, DBELOs, and other personnel need to proceed with caution when approached by lobbyists representing a business with an interest in obtaining airport contracts and concessions. Public officials are bound by ethical rules when conducting official business and are required to avoid conflicts of interest when conducting the public's business. The appropriate time for firms to approach managers is before the request for bids, proposals, or qualifications has been publically noticed and disseminated. Once the solicitation for a contract or lease opportunity "hits the street," the competitive bidding/proposal process has commenced and lobbying and/or attempts to discuss qualifications or related topics are generally barred in the solicitation documents. Firms that do not comply with the "no contact" and "no conflict of interest" rules in competitive contract award processes risk being rejected as eligible proposers or bidders. Such rules, however, do not necessarily deter prohibited conduct.

Practice Tip: The research for ACRP Project 01-25 shows that airports that facilitate fair competition and a level playing field obtain the best business diversity results in their procurement processes

Some consultants explained that politics "play a role" and "influence who is selected." Others commented that some airports require a business to have a local presence in order to participate in their contracts. DBELOs were very candid about difficulty in executing their responsibilities because of politics in the contracting process.

Airport operators can and should ensure that the procurement process is transparent and handled ethically and with integrity, by taking several key actions:

- Before commencement of a solicitation process for a contract or concession opportunity, specify mandatory contact/inquiry protocols in the solicitation documents that competitors and their representatives must observe during the pending competitive process.
- After commencement of a solicitation process for a contract or concession opportunity, communicate with all interested parties and their representatives in writing and in a way that is consistent with the communication protocols identified in the solicitation document.
- Identify evaluation and selection criteria in the solicitation document and observe the established criteria.

Through these measures even the appearance of internal and external conflicts of interest can be avoided, leading to stakeholder trust that a fair process has been implemented.



CHAPTER 7

Strategies and Partnerships to Enhance Diverse Business Participation

7.1 Planning for Diverse Business Participation

The first step in planning for diverse business participation is to look at the big picture and determine (1) what the airport is really trying to achieve and (2) what the airport wants to accomplish by taking specific actions. Begin with a Business Diversity Plan. Assess it. Refine it. Document it. Distribute the plan to everyone at the airport who is engaged in business diversity functions.

Diverse business participation should not be an afterthought. Greater participation can occur when planning starts at the early stage of the contract process.

Practice Tip: Include the Business Diversity Plan in the airport's overall Strategic Plan.

The strategic direction, mission, and goals of the airport, as well as any upcoming projects, should be openly communicated to all stakeholders, internally and externally. Forums and other methods airports are utilizing for this purpose include:

- Community outreach meetings.
- Technology (e.g., website postings and email subscriptions).
- Public meetings of governing bodies.
- Public documents of an airport (e.g., annual reports).
- Staff meetings.

7.2 The Role of Disparity Studies

An economic analysis known as a “disparity” study or an “availability and utilization” study is a powerful tool for airports to ascertain whether minority-owned and women-owned firms in their market area(s) are enjoying equal access to and participation in airport contracts.

Practice Tip: Disparity studies can play an important role in determining an airport's business diversity needs.

In approximately 2012, the Burbank–Glendale–Pasadena Airport Authority (BGPAA) elected to undertake a disparity study to approach the implementation of its DBE program.

Among the many questions to which BGPAA sought answers were some that are evident in most disparity studies:

- How can [the airport] use study results when setting an overall goal for DBE participation?
- How can [the airport] use study results to project the portion of its overall DBE goal to be met through neutral means?
- Can [the airport] consider use of race- and gender-conscious measures as DBE contract goals?

The results of a detailed, independent disparity study also can provide statistically significant evidence needed to constitutionally justify the use of race-conscious program measures in implementing the federally mandated DBE and ACDBE Programs. (For more information, see the discussion of constitutional concerns regarding the federal programs in Chapter 2.)

Disparity studies can—but do not always—require a labor-intensive, lengthy, and expensive process. Airport operators often employ availability and utilization studies to comply with 49 CFR Parts 23 and 26. As its name suggests, an availability and utilization study (1) ascertains the readiness and willingness of contractors or concessionaires, of all ethnicities and genders, to participate in the airport's contract opportunities, and (2) measures the actual, dollar-value utilization of disadvantaged businesses.

Like a disparity study, an availability and utilization study examines whether and to what extent a statistically significant disparity exists between availability and utilization of business firms and, if there are disparities, what are the likely underlying causes.

Neither a disparity study nor an availability and utilization study can be considered complete without the examination of anecdotal evidence and stakeholder engagement. This component of the study is critical to understanding the statistical evidence as well as the underlying reasons for minority- and women-owned business (MBE/WBE) participation (or the lack of it) in an agency's contract opportunities. Several court cases have identified what constitutes compelling anecdotal evidence in the context of disparity and related studies. Some example situations are (440):

- A city employee influences a member of a public contract selection panel to ensure that a MBE/WBE would receive a low score and thus be removed from consideration for the contract award.
- A city employee changes the required scope and rules for subcontracting on project to ensure exclusion of MBEs/WBEs from some projects.
- A city employee places such high minimum requirements on minority contractors—such as requiring \$1,000,000 of insurance to qualify for a contract for delivery of \$2,500 worth of goods—that most MBEs/WBEs are precluded from participation.
- A city employee extends an existing contract to eliminate the need for bidding on a new contract and the concomitant need for MBE/WBE subcontracting.
- A city employee harasses minority contractors with offensive comments.

Relevant anecdotal evidence offered by contractors in the Ninth Circuit's *Coral Construction Co. v. King County* record included:

- "I believe the refusal of prime contractors, developers, and architects to award contracts to my business for private sector work is due to discrimination against minority persons and minority-owned businesses generally."
- "I have tried repeatedly in the past to obtain contracts and subcontracts on private construction contracts and have been unsuccessful. I know from my 11 years of experience in the construction industry that my business's prices are competitive with non-minority business

prices and that my business performs high quality work. . . . Nonetheless . . . I have been refused the right to participate in the projects.”

- An individual declared that he heard comments like: “[t]here is no minority requirement on this project, so we are going to use someone else” (441).

Based on the evidentiary findings of a disparity study or availability and utilization study, the airport operator can fashion appropriate remedies or strategies for the inclusion or diversification of the airport’s contractor pool. For example, the **Metropolitan Nashville Airport Authority** endorsed the recommendations of its 2007 disparity study effort, which was aimed at “broadening opportunities for business partnerships with small minority women’s business enterprises (SMWBE).” By 2011, “[e]xpenditures to SMWBEs increased by 1,508 percent for non-federal construction and professional projects” (229).

Similarly, the **Jackson Municipal Airport Authority (JMAA)** is currently implementing its disparity study and finding that more staff are necessary to implement the study’s findings and recommendations. The study also recommended increasing the threshold amount for a performance bond from \$25,000 to \$50,000. The airport is working with the legislature to effectuate this increase.

7.3 Bilingual Translation

English may be a second language for immigrant small business owners who are a significant and growing part of the U.S. economy. There are more immigrant business owners in professional and business services than in any other sector.

Translating information about airport contracts and business diversity programs for multi-ethnic communities is an outreach tool utilized by **Nashville International Airport (BNA)**. The airport offers a brochure in Spanish concerning certification requirements, technical assistance, and other matters relative to its business diversity programs.

7.4 Utilizing Technology

Avenues for finding businesses and promoting contract opportunities using technology have evolved tremendously. The use of technology can increase the visibility of business opportunities and help identify potential businesses to perform airport contracts. Utilizing technology also can be cost-saving for both airports and businesses, and can enable airports to advertise their contract opportunities to a larger pool of firms.

Examples of available technology include:

- Mobile technology like business opportunity applications (apps) and online procurement advertising, notification, and end-to-end procurement services.
- eVA, the Commonwealth of Virginia’s web-based vendor registration and purchasing system, which allows public agencies, state agencies, local governments, and others to conduct all purchasing and sourcing activities for goods and services (personal interview and 419).
- FAA dbE-Connect, which enables users to search for DBE/ACDBE firms and view bid opportunities, DBE appeal decisions, DBE program training conferences, airport manager contact information, and relevant news articles. DBE/ACDBE directories from nearly all 50 states are currently accessible. Authorized FAA, airport, and consultant users also use dbE-Connect to provide and manage DBE and ACDBE data.

The **Michigan Department of Transportation (Michigan DOT)** Office of Business Development also has focused on technology initiatives such as utilizing iPads during onsite reviews for

efficiency and “e-Contracting” which, among other areas, will allow DBEs to make electronic bid and payroll submissions.

7.5 Measuring Internal Performance

Numerical business diversity goals provide only one measure of internal performance. It is also important to know where there are strengths and weaknesses (e.g., staff, resources, problems) and to track progress against the airport’s policies, goals, and objectives for business diversity programs.

Periodic assessment of an airport’s solicitation requirements enables airport management to determine whether the requirements are relevant and necessary for specific airport contracts. A thoughtful and thorough analysis of business diversity objectives and accomplishments also is a necessary measure of internal performance.

Airport operators should also document and periodically review the solicitation process. Use of a checklist helps ensure that administration of the process is consistent, and changes and improvements can be made when deemed necessary. Debriefing participants after each solicitation process is completed can allow for continuous evaluation by asking questions similar to the following:

- Are we achieving diversity program objectives?
- Are there any impediments?
- What’s working?
- What’s not working?
- What needs to be changed?
- Are we implementing the DBE/ACDBE Programs according to our plan?
- What feedback have we received from businesses on our practices?
- Is outreach effective?
- Are participation goals being met?
- Are smaller firms performing a commercially useful function?
- Can we do more to help diverse businesses be more successful?
- Do we have adequate resources and expertise?
- Does staff understand why diverse business participation is important?
- Is staff implementing responsibilities to ensure achievement of diversity objectives?
- Are we making the most effective use of technology?
- What actions will be taken based on our findings?

Measuring performance is not only a mechanism for responsiveness to stakeholders; it also helps the airport execute successful and compliant diversity programs. As discussed in Chapter 4, responsibility for the business diversity program is shared by the CEO, board, senior management, city and airport staffs and is best executed when fully supported and implemented as a collaborative effort. Airports dutifully craft and implement DBE and ACDBE Plans, generally following the regulatory requirements of 49 CFR Parts 23 and 26. DBE and ACDBE Plans, therefore, set forth an airport’s business diversity goals and serve as a baseline “report card” against which to assess staff performance in satisfying numerical business diversity objectives.

At **Long Beach Airport (LGB)**, for instance, the airport director evaluates the entire project team, inclusive of in-house staff and contractors (DBE and non-DBE alike). However, achievement of numerical business diversity goals is only one measure of internal performance and of a program’s success. It is also important to know programmatic strengths and weaknesses (e.g., allocation of or lack of available resources) and to track progress towards airports’ public policies, goals, and objectives for their business diversity programs.

7.6 Sharing Accomplishments

Share business diversity accomplishments internally and externally. An airport's annual report or economic impact reports are excellent mechanisms to share diversity accomplishments. Recognition increases interest and inclusion in airport contracts, and demonstrates the value of the airport to the community.

Each year, SFO's airport director provides an extensive report to the San Francisco Airport Commission (Airport Commission) on the results of "Airport Contract Awards to Local and Disadvantaged Business Enterprises" for the preceding fiscal year. This report provides the Commission with information on (1) total contract awards to prime contractors and subcontractors, identifying contract awards, contract dollars awarded, and the percentages of contract dollars performed by LBEs and DBEs; (2) a status update on local ordinance and federal regulatory LBE/DBE participation mandates; and (3) upcoming staff activities. Through this organized and interactive process, the Airport Commission's public policy and small business agenda maintains a high profile among its staff. Not surprisingly, SFO's LBE, DBE and ACDBE achievements are consistently noteworthy.

Airports also can share information about the benefits of business diversity programs in a broader perspective, going beyond achievement of numerical goals. Firms performing contracts at the airport can be showcased in newsletters and press releases, on websites, at public meetings, and in other forums. Providing this kind of recognition gives encouragement to others.

7.7 Industry Associations

Among other organizations, AAAE, ACI-NA, AMAC, and the Council of Minority Transportation Officials (COMTO) play vital roles and offer valuable forums for learning what others are doing to promote business diversity.

These organizations offer educational programs; provide access to technical experts from U.S. DOT and FAA, the legal community, and the financial community; and provide outstanding opportunities to network with airport officials and all sizes and types of businesses. They are engaged in regulatory, legislative, and legal advocacy, and work on a range of issues concerning businesses diversity matters.

7.7.1 AAAE

The world's largest professional organization for airport executives, AAAE represents airport management personnel at both public-use commercial and general aviation airports. AAAE has an active business diversity committee. AAAE members include both airports and companies and organizations that support airports. AAAE services to members include professional development opportunities, training, meetings, and conferences. AAAE also has an active business diversity committee.

7.7.2 ACI-NA

ACI-NA represents local, regional, and state governing bodies that own and operate commercial airports in the United States and Canada, one of the five regions of Airports Council International (ACI). Nearly 400 aviation-related businesses that provide goods and services to airports also are members of ACI-NA. ACI-NA members enplane nearly all of the domestic and international—airline passenger and cargo traffic in North America.

ACI-NA advocates policies and provides services that strengthen commercial airports' ability to serve their passengers, customers, and communities. As part of its mission, ACI-NA:

- “Promotes cooperation with all elements of the commercial civil aviation industry;
- Exchanges ideas, information and experiences on common airport issues;
- Identifies, interprets and disseminates information to its members on current industry trends and practices; and
- Creates forums of common interest, builds professional relationships and interprets key airport policy and business issues to the ACI-NA membership” (420).

ACI-NA Business Diversity Committee, composed of airport personnel and representatives of businesses, is dedicated to developing proactive outreach and educational programs to assure a vital industry forum on diversity issues and in promoting best practices.

7.7.3 AMAC

A national, non-profit trade association dedicated to promoting participation by MBEs, WBEs and DBEs in airport contracting and to the inclusion of minorities and women in employment, AMAC works with Congress, the federal government, aviation trade associations, and others to provide information, education, and guidance on business diversity. AMAC's Bylaws state the organization's purposes:

- “To promote diversity and economic opportunity in the airport industry by participating in the development of laws, rules, policies and procedures to support and promote the refinement and continuation of Federal Disadvantaged Business Enterprise Programs and other business diversity programs at airports.
- To promote business diversity in the airport industry and to stimulate local economic development, particularly through the identification, inclusion and participation of qualified minority, women and Disadvantaged Business Enterprises (“DBEs”) that have the capacity to compete for and perform airport procurement, professional services, construction and concession contracts” (421).

7.7.4 COMTO

COMTO's mission is “to ensure a level playing field and maximum participation in the transportation industry for minority individuals, businesses, and communities of color through advocacy, information sharing, training, education, and professional development” (75). Founded in 1971 the organization has 39 chapters, with a membership that includes “individuals, transportation agencies, academic institutions, industry non-profits and Historically Underutilized Businesses (HUBs).” COMTO's website describes its members as representing “every sector of the transportation industry” and “every level of the transportation industry, from presidents and chief executive officers, through midlevel officials, to engineers and mechanics and operators” (75).

7.8 Other Partnerships

Beyond traditional methods, airport operators can also utilize other tools and external resources to enhance their efforts to promote diverse business participation.

For example, the **Port of Seattle/Seattle-Tacoma International Airport (SEA-TAC)** has moved away from using RFPs as the only tool to engage the business community in concession opportunities. SEA-TAC uses a leasing agent/broker to assist in conducting outreach to specifically targeted diverse businesses for particular opportunities. The private leasing agent/broker also evaluates the proposals and prepares a short list of the firms. The customary RFP process is streamlined, and minimum annual guarantees are not required. This helps SEA-TAC achieve a fair amount of local participation, and this abbreviated process has drawn interest from non-local ACDBEs.

Because business markets have become more national and international in scale, airports are increasingly viewed as catalysts for local economic development. Every state and many local governments have community and economic development agencies dedicated to helping new businesses start and helping established businesses to grow and succeed. Working closely with these agencies to help identify diverse businesses, to promote and offer educational services, and to offer networking opportunities is another way airports can promote their desire to increase opportunities for diverse businesses. These agencies also can help (1) broaden outreach to businesses that may not know about or think of opportunities to do business at an airport and (2) provide information on how to obtain certification.

7.9 Training Programs

According to the Inspector General's April 23, 2013, audit report to the U.S. DOT Office of the Secretary, the "Department has not issued comprehensive, standardized DBE guidance or provided sufficient training to recipients responsible for implementing the nationwide DBE program" (91). According to DBELOs, airport executives and other airport personnel, some airports do not offer training programs to businesses or formal training to their staff. Many DBELOs and other airport personnel participate in AMAC and FAA training seminars, and numerous airports conduct "How-to" training workshops. At other airports, consultants provide training and presentations to the staff and board members on DBE, ACDBE, and related diversity program matters. Consultants and DBELOs also meet with concessionaires and contractors when necessary to help them understand an airport's diversity program requirements.

Larger businesses offer training on operations and budgeting, inventory control, human resources, risk management, and compliance with airport and regulatory requirements. These training opportunities can be invaluable when learning business skills, such as understanding how to run projects, decision-making processes, and quality control and quality assurance measures.

Some airports might require consultants or their prime contractors (e.g., a construction company or maintenance company) to provide support services to small businesses, such as skill training, how to work within the airport's financial systems, how to network and make connections, and how to fill out required forms. As one airport board member explained, "technical training on airport pavement, for example, is best accomplished by primes or by departments of transportation. On airport and off airport paving is very different, and primes companies can do that type of training better than airports."

Birmingham-Shuttlesworth International Airport (BHM) offers training to businesses on how to operate on airport versus streetside so firms can understand the distinction in operating in these different environments.

Dallas/Fort Worth International Airport (DFW) offers training and technical assistance through a variety of programs such as "How to Do Business at DFW Airport," its Capital Assistance and Bonding Program, and its Capacity Building Alliance Program (a volunteer mentor-protégé program). DFW's Small Contractors Development Training Workshop, an 8-week course, is designed to provide technical training for minority- and women-owned businesses. The curriculum includes workshops on a variety of topics that include business development, financial management, insurance and bonding.

The Business Outreach Unit (BOW) of the **Los Angeles World Airports (LAWA)** conducts a monthly workshop titled "How to Do Business with Los Angeles World Airports" in collaboration with its Procurement Services Division. This free workshop provides business owners an

opportunity to learn about the procurement processes and services available to them. LAWA presenters are drawn from

- Purchasing.
- Public works/certification.
- Bond assistance program/Merriwether & Williams Insurance services.
- Contract services/administrative requirements.
- Business and job resources/business assistance.

Business owners attending the workshop are given the opportunity to introduce their companies so that the presenters know who is in the audience and can direct information regarding particular products or services.



CHAPTER 8

Thinking Beyond Compliance

8.1 Community Benefits

With a growing global economy, the nation's commercial airports continuously strive to modernize and expand their facilities to retain existing passengers and attract new customers. Airport capital improvement projects not only present varied business opportunities, they also pique the interest of the community, which understandably expects its airport neighbor to contribute to the greater good when conducting operations and offering economic opportunity. Economic growth also inspires public officials to "spread the wealth" to segments of the community in other, less-direct, but fruitful ways. These efforts are sometimes referred to as "social responsibility" programs or community benefits.

A clear connection exists between a healthy business and the well-being of the community in which it operates. By contributing to the surrounding community, an airport can:

- Recruit, motivate, and retain employees.
- Use community programs as part of staff training and development.
- Improve its reputation and profile.
- Realize new opportunities by being in touch with the local community.
- Boost networking opportunities with suppliers and customers.

Many airports adopt their own or their governing public agency's social responsibility policies and incorporate the policies and their requirements into airport contracts and concessions. Some airport operators, such as **Los Angeles World Airports (LAWA)**, also negotiate social responsibility, economic development, and environmental mitigation efforts into a Community Benefits Agreement (CBA) and adopt the CBA in connection with approvals related to a major infrastructure program. In the parlance of airport managers, social responsibility or community benefits certainly include business diversity participation programs, but they do not stop there. Airport managers responsible for social responsibility policies and programs are active brokers of community engagement and collaboration in a variety of policies, initiatives, and objectives that serve the airport's interests.

The community benefits derived from airport social responsibility policies often relate to labor (e.g., living and prevailing wage contract requirements; provisions favoring health care benefits to airport contractor employees; affirmative action in employment protections for airport contractor employees; workforce development by airport employers for disadvantaged individuals; and union labor mandates in project labor agreements for major infrastructure development projects). Additionally, airport staffs develop, implement, and participate in job training and education, mentoring, and other support programs that target potential airport employees or business partners. Some agencies, such as the Port of Portland, go the extra mile in the social responsibility arena.

The **Port of Portland**, **City of Portland**, and **City of Vancouver** created the PDX Community Advisory Committee (PDX CAC) in 2011 in response to a recommendation of the Airport Futures Plan District and PDX Master Plan adopted in April 2011. The PDX CAC comprises 20 voting members and 10 ex officio members, meets quarterly, and is guided by an annual Work Plan.

The mission of the committee is to:

- “Support meaningful and collaborative public dialogue and engagement on airport related planning and development;
- Provide an opportunity for the community to inform the decision-making related to the airport of the Port, the City of Portland and other jurisdictions/organizations in the region; and
- Raise public knowledge about the airport and impacted communities” (423).

The PDX CAC’s work is to assure that PDX and the Airport Plan District become the most sustainable in the world in recognition of the long-term, critical interconnection between economic development, environmental stewardship, and social responsibility.

The state of Maryland established the Community Enhancement Grant Program to help fund transportation-related projects that improve the quality of life for communities near the **Baltimore/Washington International Thurgood Marshall Airport (BWI)**. This program is part of a major program that provides community benefits to the airport’s neighbors. In 2001, the “Department of Transportation Citizens Committee for the Enhancement of Communities Surrounding BWI” bill was signed into law (see MD Transp Code § 5-414 (2013)). Under this state law, communities located within the most recently certified airport noise zone or within 2 miles of the outermost noise contour are able to apply for grants for transportation-related projects. This grant program has funded projects such as sidewalk renovations, asphalt repairs, and installation of speed bumps. Funding comes for the Maryland Department of Transportation Trust Fund (424).

8.2 Economic Benefits

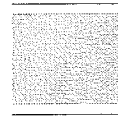
The research for *ACRP Report 126* identified few analyses of the economic contribution of minority-owned, woman-owned and other small businesses at our nation’s airports. These small businesses often are described as “job creators” and as “the engine of our economy.” Like large businesses, they pay taxes, contribute to the local economy, and employ friends, neighbors, and family. Politicians often say that small companies create two of every three jobs in a given year.

According to SBA, small businesses (defined by SBA as an independent business having fewer than 500 employees) represent 99.7 percent of all employer firms. Since 1995, they have generated 64 percent of new jobs and paid 44 percent of the total United States private payroll. In 2012, 36 percent of business owners were women, nearly 15 percent of all U.S. business owners were non-white, and more than 10 percent of business owners were Hispanic.

An illustration of the economic impact of disadvantaged, minority, and women-owned businesses can be founded in the **Dallas/Fort Worth International Airport (DFW)** January 2009 economic impact and fiscal impact study. Between September 29, 2006, and August 30, 2008, DBEs, MBEs and WBEs performed construction services, professional services, concessions, and other goods and services contracts at DFW that collectively generated more than \$280 million and created more than 14,000 job years of employment. In 2013, DFW’s diversity programs set new records for diversity spending and revenues, topping \$785 million in total economic impact, with more than 7,000 jobs supported (424). In addition, spending for small, disadvantaged, minority-owned, and women-owned businesses through the DFW Airport Terminal Renewal and Improvement Program created more than \$643 million in economic activity for the region in 2013 (425).

The largest project in the history of **San Diego International Airport (SAN)**, known as “The Green Build,” created approximately 1,000 jobs at peak construction and provided a number of contract opportunities for small businesses. The Green Build was a \$1 billion project completed on time and under budget. It adds to the airport’s economic impact; provided work for local, small, disadvantaged, and minority-owned businesses; and created approximately 1,000 jobs at peak construction.

During fiscal year 2010, small businesses participating in the concessions and rental car programs operated by the Greater Orlando Aviation Authority (**GOAA**) generated approximately \$77 million dollars. During this same time frame, small businesses in the construction and engineering fields received payments of approximately \$23 million dollars, and small businesses providing goods and non-professional services were awarded approximately \$13 million dollars (426).



CHAPTER 9

Case Studies

9.1 Columbia Metropolitan Airport (Small Hub)

9.1.1 Background

Columbia Metropolitan Airport (CAE) is the main commercial airport for Columbia and the Midlands region of South Carolina. The airport is 5 miles southwest of Columbia, in Lexington County. Since 1996, the airport has been a southeastern regional cargo hub for UPS Airlines.

The airport covers 2,600 acres and has two runways (8,601 ft. × 150 ft. and 8,001 ft. × 150 ft.) and a helipad (50 ft. × 50 ft.). The terminal opened May 30, 1965. Capital improvements undertaken since the late 1980s include a renovated and expanded terminal in 1997, a new parking garage completed in 2003, the lengthening of the runways, and better interstate access. The terminal has several services, including a gift shop, chapel, restaurants, and bars.

Annually, CAE serves more than 1.2 million passengers and processes more than 168,000 tons of air cargo. CAE is serviced by American Eagle, Delta, United, and US Airways. In 2012, CAE ranked 118th among the busiest airports in the United States by total passenger enplanements (487,435) (132).

9.1.2 Ownership/Governance

Since 1962, the Richland-Lexington Airport District (Airport District), acting as a political sub-division of the state of South Carolina, has operated the Columbia Metropolitan Airport. The governing body of the Airport District is the 12-member Richland-Lexington Airport Commission.

9.1.3 Characteristics of Diversity Programs

Pursuant to direction from the Richland-Lexington Airport District, CAE has currently set a DBE overall participation goal of 12 percent for programs utilizing FAA funds for the years 2012 through 2014, with a proposed 2.78 percent being met with race-neutral methods and 9.22 percent being met through race-conscious contract goals.

The airport's DBE mission statement and pledge note that commitment to diversity goals starts at the top of the organization, stating that the airport seeks to "go beyond simple requirements and become a true community partner to all aspects of the surrounding communities and cultures" (70). CAE has an ultimate goal of not only effectively implementing the DBE Program, but also of developing a Daily Operating Business Plan to ensure inclusion of diversity goals throughout operations, including "how we include people and communities in our business needs and . . . increase opportunities for small businesses, social enterprises, and businesses

owned by minorities and women in all aspects of the operations of the Columbia Metropolitan Airport” (70).

CAE tracks and reports on small and diverse business participation and achievements on a quarterly basis and tracks this participation to its overall, executive, and department goals.

Beyond the federally mandated Programs, CAE also implements a local small and diverse business program. Unlike the federal programs, CAE’s local program does not require certification for participation. Executives highlighted this relaxation of restraints and regulations as a major factor in the success of the local program, which has grown to 150 participants since its adoption.

9.1.4 Staffing Model

CAE has only three executive staff members. As such, CAE personnel at all levels participate directly in diversity policies by necessity. Top-down commitment to diversity initiatives at the executive level allows for greater accountability by departments as well. For example, CAE executives stated that in seeking diverse business participation opportunities, they directly asked department heads to specifically identify two to three small and diverse businesses that could compete for dollars spent by their departments, and set overall participation goals as well as goals at the executive and department levels. This direct involvement and communication resulted in an increase in small and diverse business participation from roughly 10 percent to 40 percent in some areas of spending between 2010 and 2013.

The smaller size of CAE requires increased personnel responsibility, but also allows CAE staff to gain knowledge in and collaborate on various areas of operations that might normally be reserved to separate departments in larger airports. To encourage this increased responsibility and involvement, CAE offers tuition reimbursement for staff that seek out educational opportunities to increase their skill sets, as well as sending diversity professionals to national training programs offered by AMAC and FAA.

9.1.5 Contracting Methods

CAE employs a direct contracting model for its airport contracts, and exclusively allows long-term contracts for concessions.

9.1.6 Outreach Techniques

CAE organizes two outreach events per year for its local program to inform small and diverse businesses of contract opportunities.

9.1.7 Honors and Recognition

Despite the relatively small size of its operations as compared to medium- and large-hub airports, CAE has demonstrated that it takes seriously its responsibility to increase small and diverse business participation. CAE’s active involvement in diversity initiatives from the executive level down and its concentration of personnel efforts resulted in major positive changes in small and diverse business participation in a short period of time. Historically CAE achieved an average of 10 percent small and diverse business participation, but since 2010 the airport has managed to achieve a participation rate of around 40 percent in some areas of spending. Additionally, thanks to these efforts, CAE’s food concessionaires have been 100 percent minority-owned as well as locally owned since 2012. Some consultants noted these recent positive trends, stating

their opinion that South Carolina airports have done a good job being more proactive in getting diverse businesses involved with the airport.

CAE's diversity efforts were recognized in 2012 at the 8th Annual Excellence in Workplace Diversity Awards Ceremony, where the airport received the Excellence in Workplace Diversity Award for Small Employers (under 500 employees). CAE's Diversity Policy saw a greater than 300 percent increase in the total dollars spent on small, minority, and women-owned businesses from July 2011 to July 2012. Several key components of CAE's Diversity Policy that were highlighted included:

- “Developing a DBE group comprised of staff that attends regular training on rules and changes, and seeks to serve as ‘airport ambassadors’ of diversity initiatives.
- Efficiently creating a comprehensive Diversity Master Plan to cover all of CAE's DBE, Title VI, and Affirmative Action Programs.
- Establishing a Master List of potential DBE/minority/women/small business owners for every purchase made by CAE, accessible to all airport employees and required to be referenced by staff before selecting vendors.
- Holding departments individually accountable for demonstrating efforts to work with DBEs on each purchase order.
- Promoting DBE initiatives through public outreach events and advertisements to keep DBE/minority/women/small businesses and potential employees aware of opportunities at CAE” (65).

9.2 Richmond International Airport (Small Hub)

9.2.1 Background

Richmond International Airport (RIC) is one of the most modern, well-equipped airports in the eastern United States. It is located 6 miles east of Richmond, in Henrico County, Virginia. RIC offers about 180 daily flights to major domestic and international destinations on AirTran Airways, American Airlines, Delta Air Lines, JetBlue Airways, Southwest Airlines, United Airlines, US Airways, and their respective regional affiliates. The airport serves more than 3 million passengers annually, and more than 90 million pounds of cargo travel through RIC each year.

In 1995, RIC's terminal underwent a \$5 million concourse expansion at Concourse A, increasing the number of gates to 14 and adding 8,700 square feet to the existing baggage claim area. In 2002, an expansion of Concourse B was completed, representing a 50 percent gate increase. The airport completed several more projects in 2002, including the addition of 1,300 public parking spaces in Economy Lot A, the relocation of security checkpoints, and an extension of airport taxiways. In 2007, RIC completed construction of a multimillion-dollar renovation that expanded the terminal building by 155,000 square feet, quadrupling the amount of usable floor space in the ticketing hall and baggage claim areas, doubling the space for security checkpoints, and doubling the outdoor curbside loading/unloading zones to help ease vehicle congestion for arrivals and departures.

In August 2013, RIC ranked second in North America for operational and management efficiency among small- and mid-sized airports, according to an Air Transport Research Society study (426).

9.2.2 Ownership and Governance

The Capital Region Airport Commission (the Commission) owns and operates RIC. Established in 1975 by act of the Virginia General Assembly, the Commission is governed by 14 commissioners appointed by the City of Richmond, the County of Chesterfield, the County of Hanover, and the County of Henrico. The Commission directs the growth, operation, and business activities of RIC, which has served central Virginia's air travel needs since 1927 (426).

9.2.3 Characteristics of Diversity Programs

RIC's business diversity program is a shared responsibility, with the CEO driving the diversity efforts and the board fully supporting them. The CEO's direction and hands-on involvement sets the tone and achieves buy-in from the staff. Nine directors who report to the CEO and purchasing managers are involved in administering the DBE and ACDBE programs. Notably, RIC does not have a local or small business program. It advertises bidding opportunities for contracts over \$1,000 through the Commonwealth of Virginia *eVA* system (a statewide procurement broadcast system) in order to reach thousands of vendors and ensure that the procurement process is transparent. The CEO directs the staff to purchase from small businesses at every opportunity.

Diversity purchasing is always part of RIC's weekly staff meeting agenda. The board receives a monthly report that covers goods, services, concessions, and procurements. The CEO uses the board report to determine if and why there are decreases in participation, and has his staff report back. Active involvement in the community and hosting outreach events or participating in others' outreach events all contribute to the airport's business diversity success. RIC has an open-door policy. If there are issues or concerns, small companies working at the airport can talk directly with the CEO and/or the CEO's staff without having to go through a prime contractor.

RIC maintains statistical information on a daily basis. It also tracks diverse business utilization through monthly participation reports and pay applications from the prime contractors. The DBELO also calls diverse businesses randomly to make sure they are being paid in a timely manner. RIC bid documents have DBE clauses, and the airport's race-neutral DBE goal is stated in bid documents.

The Commission established an overall race-neutral DBE participation goal for federal fiscal years (FFY) 2012–2014 for the first time in the history of RIC's implementation of the DBE Program. The airport achieved 5.02 percent of its 5.06 percent race-neutral goal in the FY 2012 period, and only fell short by 0.04 percent due to one project anticipated in that year not being committed or awarded. This race-neutral participation occurred in the following areas:

- Airfield Consulting: 7.9 percent DBE participation.
- Airfield Construction Upgrade: 7.9 percent DBE participation.
- Airfield Electrical Upgrade: 25.4 percent DBE participation.
- Apron Expansion Design: 9.7 percent DBE participation.
- Taxiway Rehab General Engineering: 7.8 percent DBE participation.
- Taxiway Rehab Construction Administration: 3.7 percent DBE participation.
- East Side Aviation Expansion: 13.9 percent DBE participation.

For its ACDBE program for FFY 2013–2015, the Commission established an overall goal of 17.19 percent for its non-car rental concessions, of which 14.80 percent is race-conscious and 2.39 percent is race-neutral. In FFY 2013, the Commission achieved 23.18 percent ACDBE participation in those concessions.

Examples of RIC's ACDBE program accomplishments include:

- Under the current CEO, ACDBE participation increased in food and beverage (F/B) concessions from being almost non-existent to consistent participation of 15 percent, in spite of the fact that major F/B concessionaires did not anticipate that they could achieve a level of participation beyond 10 percent at an airport the size of RIC.
- ACDBE participation in retail concessions also increased from being almost non-existent to a consistent participation of 20 percent.
- Until 2007, management of RIC's advertising concession was handled in-house by RIC staff. Its first-ever advertising contract was awarded to an ACDBE that is one of the top airport

advertising management firms in the country. The goal for that opportunity was 11 percent, and RIC continues to achieve 100 percent ACDBE participation in this contract.

9.2.4 Staffing Model

RIC's 173 employees are led by the Commission's president and CEO, who has ultimate responsibility for executing the airport's DBE and ACDBE programs. The designated DBELO, who has direct independent access to the CEO concerning diversity program matters, is also the director of real estate and facilities, with responsibility for managing all airport facilities, including the terminal building, concessions, and airfield and cargo facilities. Other personnel assigned DBE and ACDBE program responsibilities include the Commission's outside legal counsel and consultants.

9.2.5 Contracting Methods

Line managers can purchase up to \$1,000 in supplies they need for a job with the approval of the director to whom they report. These managers seek vendors from the state's SWaM (small, women, and minority) directory, enabling RIC to advertise smaller opportunities to well over a thousand companies. Procurements over \$1,000 are advertised.

RIC's DBE program provides for contracting requirements that are structured to facilitate competition by small businesses and their participation in procurements as prime contractors or subcontractors. For example, in multi-year design-build contracts or other large contracts, bidders on the prime contract are asked to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform. On a case-by-case basis, the Commission makes reasonable efforts to divide contracts into smaller-sized packages based on the type, size, and dollar value of a contract, the availability of small businesses, and the financial resources and capacity of small businesses. On contracts without DBE goals, prime contractors are asked to identify business opportunities for small business participation in the contract of a size that small businesses, including DBEs can reasonably perform or provide, rather than self-performing all the work involved or supplying all the goods and services in support of the contract.

Although many of the DBEs that participate in airport construction projects for RIC are located in Virginia, the Commission's outreach efforts have produced DBE participation from firms located as far away as Texas and Michigan. This is a great achievement for a small hub airport and one that is in the spirit of the national scope of the DBE Program. Moreover, a minority-owned firm that was formerly a DBE is now a prime contractor providing design consulting services to RIC. The firm has contracted with DBEs to perform some of the components of its more recent work, thus enabling RIC to exceed DBE participation goals.

The Commission's diversity policies and outreach efforts do not just extend to the Part 23 and Part 26 Programs: virtually all of RIC's contract opportunities include participation from disadvantaged and other small, minority- and woman-owned businesses. Contractors are well aware of the Commission's business diversity expectations, and they have to make good faith efforts or they are disqualified.

9.2.6 Outreach Techniques

Involvement in the community by the CEO and by RIC staff gives smaller companies an opportunity to see and talk to Commission staff directly. The Commission's CEO states that "Community outreach is a key to making DBEs and small women- and minority-owned businesses aware of contracting opportunities at the airport. We work to get the word out by encouraging all of our current and potential suppliers to register with *eVA*, the state of Virginia's online procurement service that posts business opportunities at the airport."

In addition to community events, RIC holds a public Business Opportunity Forum (Forum) each year to help current and potential suppliers better understand and participate in the bidding process at RIC. The Forum offers an opportunity for current and potential suppliers to meet airport managers and learn about capital projects as well as goods and services contracts. It includes interactive and informative sessions designed to help companies identify and bid on projects. Commission staff routinely consults directly with business owners, participates in other local and national outreach meetings, and publishes information about contract opportunities on RIC's website.

The Commission's commitment to supplier diversity is a priority for the CEO, who takes a hands-on approach in diversity awareness training for management staff and in ensuring that the airport honors its diversity program policies.

9.2.7 Performance Measures

The CEO and RIC staff meet weekly, and diversity purchasing is always part of the agenda. The CEO's direction to staff is to purchase from small businesses at every opportunity. As noted above, RIC advertises contract opportunities through the *eVA* system, which helps the airport from a transparency standpoint.

9.2.8 Honors and Recognition

RIC's long-term commitment to DBE/ACDBE participation goals is underscored by the airport's ongoing efforts to educate and maintain support of Commission members and staff, demanding good faith efforts from vendors, aggressive community outreach, and adoption of procurement policies that support the inclusion of diverse businesses.

These efforts earned the Commission the 2012 Vision of Excellence Award from the Metropolitan Business League. The award was given in recognition of RIC's conscious efforts to make small, disadvantaged, minority-owned, and women-owned businesses aware of contract opportunities at RIC, and its demonstration and promotion of economic diversity and small business development.

In June 2013, the Commission was a recipient of the AMAC Award of the Organization, which recognized the airport's outreach and business diversity accomplishments. The award cited the airport's efforts to enable DBE and other small enterprises to participate in highly competitive business opportunities. Those opportunities ranged from runway lighting and paving to major concessions, ground transportation, and master planning, as well as a wide range of goods and services that support the airport's daily activities.

9.3 Oakland International Airport, California (Medium Hub)

9.3.1 Background

Oakland International Airport (OAK) is a public airport 5 miles south of downtown Oakland, in Alameda County, California. It is one of three international airports in the San Francisco Bay Area.

The airport began operations in 1927, but OAK's first modern terminal opened in 1962. Since then, the airport has undergone numerous large-scale capital improvements, including the addition of a \$16.3 million second terminal in 1985, a \$120 million roadway improvement project completed in 2004, and a \$300 million expansion and renovation project beginning that same year (including the addition of a new concourse, security and baggage facilities, improved

terminal access, and renovated curbsides, roadways, and parking lots). The airport is currently undergoing a \$200 million upgrade to its first terminal, and in 2013 it completed construction on a \$51 million, environmentally friendly “green” air traffic control tower funded by a \$33.2 million FAA grant, the single largest FAA grant under the American Recovery and Reinvestment Act of 2009.

OAK currently serves more than 9 million passengers and processes more than 480,000 tons of air cargo annually. OAK is serviced by 11 passenger airlines, and in 2013 it ranked 39th among the busiest airports in the United States by total passengers served and 13th in total freight and mail processed (9).

9.3.2 Ownership and Governance

OAK is owned by the Port of Oakland (the Port). The charter of the City of Oakland vests the Board of Port Commissioners with exclusive control and management of the Port. The board consists of seven members nominated by the mayor and appointed by the City Council for 4-year terms. Members must live in Oakland during their terms and for at least 30 days prior to their appointments.

9.3.3 Characteristics of Diversity Programs

OAK’s small and diverse business participation programs are administered through the Port’s Social Responsibility Division (SRD), which manages and monitors contractor compliance with federal, state, local, and Port policies and regulatory requirements related to economic and equal employment opportunity. Pursuant to the federal regulations, the Port has also appointed the director of the SRD as its DBELO, with independent and direct access to the executive director of the Port. The social responsibility director works closely with the Port’s divisions to administer the federal DBE program. OAK employs a direct contracting model with prime contractors and concessionaires as well as an indirect contracting model through those prime contractors.

Over the years, OAK has implemented its small and diverse business participation programs with notable flexibility and effectiveness. For example, in FY 2003–04, OAK’s 21 percent ACDBE participation goal was met. However, having been unable to reach its overall ACDBE participation goals (between 21 percent and 32 percent) from 2001–03, the Port adopted an ACDBE program implementation for 2006–08 that included both race-neutral and race-conscious measures to attempt to achieve overall ACDBE participation goals of 8.5 percent (car rental) and 18.7 percent (non-car rental). (The OAK ACDBE program was also the subject of a civil suit challenging the race-conscious measures under the California Constitution, subsequently dismissed.) The shift to a race-conscious program was remarkably successful, as subsequent to this change the Port consistently exceeded its overall ACDBE participation goal by an average of almost 5 percent over the stated 3-year period (2006–08). Advancing from this progress, the Port made another program shift for 2009–11, this time proposing to meet its overall ACDBE participation goals entirely through race-neutral means. These policies also proved effective: Despite doing away with race-conscious measures, the Port consistently met and exceeded its ACDBE car rental (8.5 percent) and non-car rental (19.8 percent) participation goals by an average of 3 percent over this period using entirely race-neutral measures.

Today, the Port administers 100 percent race-neutral DBE and ACDBE program measures and continues pushing for increased participation with each triennial goal submission, proposing high aspirational participation goals for both DBEs (10.28 percent for 2014–16) and ACDBEs (a notable 25.28 percent for car rental concessions and 16.89 percent for non-car rental

concessions for 2012–14). This history of consistent change to grow participation exemplifies the flexibility mandated by the federal programs, described in Chapter 2. (See also 49 CFR §26.51(f).)

As discussed in Chapter 2, in 2011 the U.S. DOT added a DBE Program requirement to foster small business participation, stating that these small business plans could also constitute race-neutral program measures (49 CFR §26.39). OAK has leveraged this recent small business requirement to supplement its entirely race-neutral program, adding innovative elements to its DBE program designed to increase small business participation. For example, the Port has employed a small business pilot program that includes small business contract set asides for prime contracts.

This policy promotes small business participation by both prime contractors and subcontractors, and adds another race-neutral element to OAK's DBE program to continue the airport's trend of consistently increasing DBE participation through program changes.

Additionally, OAK adopted small business enterprise (SBE) pilot projects as part of its Part 26 DBE Program. OAK's creativity in devising contracting methods which are aimed at attracting and retaining DBE business partners in construction contract opportunities is well illustrated by a recent staff request of the Board of Port Commissioners. In June 2014, the aviation director sought the board's approval of actions associated with continued implementation of the Runway Safety Area (RSA) project at OAK, approximately 80 percent of which is expected to be funded by existing and future FAA Airport Improvement Program (AIP) grants. Congress has mandated that all Part 139-certificated airports (which includes OAK) improve RSAs to meet FAA standards by December 31, 2015. The ongoing RSA project at OAK is one of the implementing actions in the Port Strategic Plan.

The RSA project includes both the South and North airfields at OAK. The South Field Runway Safety Area Project (SF RSA) portion of the work is currently under construction and is scheduled to be completed in September 2014. Ongoing work on the SF RSA includes major modifications to the main air carrier runway, replacement of the existing airfield lighting control system, addition of two new taxiways, relocation of instrument landing system equipment, shifting the threshold of Runway 12 by 512 feet, repaving approximately 2,500 linear feet of runway, and enhanced signage and markings. The total expected budget for the SF RSA improvements is approximately \$60 million.

Under the DBE Program, the Port—with FAA approval—was permitted to establish and implement a SBE pilot program for the SF RSA project. The pilot program was designed to provide a list of pre-qualified SBE subcontractors that the prime contractor would be required to utilize on specific bid items. The overall small business response did not produce an adequate pool of qualified firms to proceed as originally envisioned for the SF RSA project. The small businesses faced two major challenges:

1. Some firms did not possess the requisite experience or license or provide all the services requested in a single subcontractor package.
2. Firms were not able to provide audited or reviewed financial documentation that met the Port's minimum standards.

Independently of the Port's pilot program, the prime contractor/subcontractors on the SF RSA project did include a number of SBE subcontractors in the bid. The dollar value of this SBE work is expected to total approximately 7.2 percent of the bid by the end of construction.

Based on lessons learned from SF RSA, Port staff developed a new pilot program specifically for the North Field (NF RSA). This program addresses the small business utilization for NF RSA using independent carve-out packages of work to be bid and awarded to SBE contractors directly by the Port. The FAA approved this approach for NF RSA.

The small business utilization strategy for NF RSA incorporates the lessons learned from the SF RSA pilot effort by initiating a two-pronged approach that promotes small business participation on the main NF RSA project, as well as utilizing carve-outs on the project (268):

1. In the main NF RSA project, the contract will require the successful low bidder to seek bids for certain components of work to SBE-certified firms. In addition, Port staff will strongly encourage the prime general contractor to seek out SBEs to subcontract services (i.e., subcontracting and provision of supplies and materials) for the main NF RSA project prior to bid award. Staff will facilitate a meet and greet between the potential general contractors, SBEs and DBEs to help facilitate the maximum amount of SBE/DBE participation.
2. For this pilot, Port staff has identified specific independent project packages that will be bid separately from the main NF RSA project solely for SBE contractors.

Parameters for these projects included:

- SBE carve-out projects were tailored to be successfully managed and completed by small business enterprises (project sizes allow for a greater number of SBEs)
- SBE carve-out projects were chosen where licenses are held by a large pool of certified SBE contractors to ensure a viable pool of potential applicants (268).

From this strategy, Port staff evaluated components from the NF RSA project scope and selected those components that would not have a direct effect on the schedule of the main NF RSA project. These components were developed into three individual bid packages for participation solely by SBE contractors as described below:

1. Runway 10R-28L Shoulder Rehabilitation Project. Work scope for this project includes crack sealing; installing a seal coat over the entire runway shoulder pavement; and pavement striping.
2. Demolition of Pump House No. 3 and Drainage Improvement Project. The scope of this project includes the demolition of existing obsolete Pump House No. 3 structure; removal of demolition debris; grading; and installation of new drainage pipe.
3. North Field VSR Paving project. The scope of this project consists of base material installation; fine grading; asphalt concrete paving; and pavement striping and marking (268).

9.3.4 Staffing Model

SRD aims to facilitate inclusion, fairness, equity, and access to economic opportunities, programs, and services of the Port for the people and businesses in the Port community. SRD's supporting core areas include:

- Administering and managing federal, state, local and Port policies and regulatory requirements as they relate to economic and equal employment opportunity.
- Ensuring that the Port and its contractors, vendors and tenants fulfill their regulatory compliance requirements (i.e., federal, state, local, and Port mandates).
- Strengthening the Port's commitment to strategic collaboration and outreach with key stakeholders and engagement with its community (Port staff, contractors, tenants, vendors, and community partners and residents) to maximize community economic opportunity and development (269).

9.3.5 Contracting Methods

Some of the race-neutral program measures implemented at OAK include:

- Structuring contracting and concession activities to encourage and facilitate DBE and ACDBE participation when practical, including working with individual airport departments to carve out work specifically fit for small, local, and/or disadvantaged businesses.
- Ensuring that competitors for opportunities are informed during pre-solicitation meetings about how the Port's DBE and ACDBE programs are administered.
- Encouraging the use of the maximum number of subcontractors on projects and encouraging the use of joint venture and partnering opportunities on all projects.

- Assisting in overcoming limitations in bonding and financing through referral to and collaboration with the surety bond and financing programs of various agencies.
- Ensuring compliance with prompt payment specifications.
- Tracking and monitoring compliance with federal programs, including monitoring commercially useful functions performed by listed DBE and ACDBE firms.
- Providing technical assistance in orienting small businesses to contracting opportunities at OAK through the Internet and via periodic website updates that provide information and practical advice to interested individuals on business marketing and opportunities at the Port and other agencies.
- Facilitating introductions to the Port's and other U.S. DOT recipients' contracting activities through small business conferences and local Chamber- and trade association (i.e., Hispanic Chamber, Black Caucus, Black Board of Trade and Commerce, and Asian Business Chamber)-sponsored events, as well as monthly breakfasts, quarterly Port procurement fairs, and other outreach activities.
- Providing outreach and communications programs on contract procedures and opportunities to ensure DBE and ACDBE inclusion, including a "How to Do Business with the Port" booklet providing information on DBE/ACDBE certification and procurement and contracting procedures.
- Working with organizations such as the Associated General Contractors (AGC), Engineering and Utility Contractors Association (EUCA), and other industry groups to identify ways to assist small businesses to increase participation as prime contractors or subcontractors on Port projects.
- Partnering with the SBA and other government agencies to increase opportunities and resources for small businesses.
- Ensuring the distribution and marketing of the California Unified Certification Program Database of certified DBEs and ACDBEs to potential contractors by listing its website address in RFPs and RFQs and emphasizing its user-friendly format.
- Providing business development assistance through the Port's Owner Controlled Insurance Program and referrals to the East Bay Small Business Development Center and other assistance agencies.

9.3.6 Outreach Techniques

OAK's innovative efforts with diverse business participation in its construction industry contracts are part of a robust social responsibility agenda. The Port continuously strives to ensure equal opportunity to construction jobs as well and has developed an impressive number of strategic partnerships to stimulate local workforce utilization.

9.4 Raleigh-Durham International Airport (Medium Hub)

9.4.1 Background

Raleigh-Durham International Airport (RDU) is a public international airport located approximately 15 miles west of Raleigh, North Carolina. The airport covers 4,929 acres and has three runways. In 2011, more than 9 million passengers traveled through RDU. The airport has two terminals. Terminal 1 is a hub to AirTran and Southwest. A brand new Terminal 2 opened in 2011 and handles the majority of airlines and passengers. The airport serves the area known as Research Triangle Park, home to more than 170 global companies such as IBM, Syngenta, Cisco and Credit Suisse. The surrounding area includes Cary, Durham and Chapel Hill, home to the University of North Carolina.

9.4.2 Ownership and Governance

Raleigh-Durham International Airport (RDU) is governed by the Raleigh-Durham Airport Authority (Airport Authority), an eight-member board. The cities of Durham and Raleigh and the counties of Durham and Wake each appoint two members to the board. The Airport Authority is a local government responsible for the development, operation, and maintenance of RDU (428).

9.4.3 Diversity Programs and Characteristics

RDU has three business diversity programs: (1) a minority- and women-owned small business (MWSB) program, (2) a DBE program, and (3) an ACDBE program, together designed to provide contracting and procurement opportunities for socially and economically disadvantaged persons.

The airport's MWSB program applies to all of RDU's state- and airport-funded contracts and procurement activities, and encourages equal opportunity for minority- and women-owned small businesses to compete as contractors, subcontractors, suppliers, and service providers. This program encourages and fosters the inclusion of MWSB firms in RDU's business activities, including the procurement of goods and services as well as leasing and development. The Airport Authority requires that each business partner make good faith efforts to promote this policy throughout its engagement with the Airport Authority. Authority staff has implemented the MWSB program to eliminate any present and ongoing effects of past and present discrimination against minority- and woman-owned small businesses.

The MWSB program is implemented to achieve a level of utilization commensurate with the current availability of interested and qualified minority- and women-owned small businesses; to encourage the development of new minority- and women-owned small businesses; to facilitate the participation of minority- and women-owned small businesses in the selection of Authority and third-party contracts for construction, professional services, and procurements; to facilitate the participation of minority- and women-owned small businesses in the selection of Authority and third-party contracts for construction, professional services, and procurements; to facilitate diversity in the entities with which the Authority does business in order to benefit from the economic value of diverse providers and shield against the economic volatility of single providers in the marketplace, where appropriate; to ensure that minority- and women-owned small businesses are afforded an equal opportunity to compete on all Authority contracts; and to support the growth and development of minority- and women-owned small businesses that can successfully compete, outside of the MWSB Program, for Authority contracting opportunities.

To further the objectives of the airport's MWSB program, the Authority engages in a combination of initiatives such as Strategic Sourcing and Coordination, through which RDU staff responsible for procuring goods and services identify upcoming opportunities and work with the small business program officer to build professional relationships with potential MWSBs and educate firms on Authority procurement practices.

RDU's ACDBE program is designed to increase opportunities for minority- and woman-owned small businesses to operate as concessionaires in the airport or provide goods and services related to the airport concessions program.

9.4.4 Staffing Model

In coordination and cooperation with other Airport Authority staff and board members, RDU's small business program officer, who is the DBELO, is responsible for implementing all aspects of the ACDBE and DBE Programs and ensuring that the Airport Authority complies with

all provisions of Part 23 and Part 26. The DBELO has direct, independent access to the airport director concerning DBE and ACDBE Program matters.

The DBELO also is responsible for providing information to DBE firms about the Authority, its functions, and the full range of its contractual needs; providing DBE firms with information on future procurement and contracting schedules; sending bid notices to DBE trade associations, technical assistance agencies, DBE economic development groups, and DBEs with capabilities relevant to the bid notice; offering instructions and clarification on bid specifications, the Authority's procurement policy, procedures and general bidding requirements; providing instructions about contract performance requirements; and notifying, whenever possible, certified DBEs of informal bid solicitations for contracts within their areas of qualification to ensure a full and fair opportunity to participate in such contracts. RDU's DBELO also chairs the ACDBE Advisory Committee and provides ACDBEs with information and assistance in preparing proposals, obtaining bonding, financing, and insurance.

RDU has one concessions manager who involves the DBELO from the very beginning of the procurement process, especially in some of the planning and determining what type of opportunities can generate the most ACDBE participation. The early involvement of the DBELO in the procurement process allows time for the properties/concessions staff to work through issues concerning business requirements and maximizing ACDBE participation. It is a win-win and not a situation of simply developing a goal.

9.4.5 Outreach Techniques

RDU sponsors and participates in outreach and training opportunities for small businesses through various partnerships. The Airport Authority also provides scholarships to the North Carolina Department of Transportation Business Opportunities Workforce Development Executive Management Program for Design and Construction (BOWD Executive Management Program). Small businesses that could benefit from the BOWD Executive Management Program are identified and provided scholarships to attend the 5-day program. RDU staff also participate in business outreach sessions conducted by local municipalities and non-profit agencies (e.g., the North Carolina Institute of Minority Economic Development; the Carolinas Minority Supplier Development Council), which are designed to introduce small and minority-owned businesses to the RDU's procurement processes and practices.

MWSB program outreach efforts are designed to document initiatives and establish procedures which best inform, present, and achieve results for maximum consideration and participation by MWSBs. RDU engages in activities that promote MWSB growth and development, including offering technical assistance. The Airport Authority engages in various processes to facilitate the development of qualified new entrants into Authority business activities.

RDU actively supports the participation of bona fide mentor-protégé programs and joint venture arrangements in the areas of construction, professional services and other services. The Airport Authority evaluates the merits of each mentor protégé relationship and joint venture individually and encourages such relationships where possible.

9.4.6 Honors and Recognition

In June 2009, AMAC awarded its Airport Innovation Award to the Raleigh-Durham Airport Authority. The airport received the award for its Small and Emerging Business (SEB) Assistance Program, which offers small businesses in the airport's concession program additional access to financial resources. The program is designed to help small businesses compete and succeed in an airport environment.

9.5 San Diego International Airport (Large Hub)

9.5.1 Background

San Diego International Airport (SAN), also known as Lindbergh Field, is a public airport 3 miles northwest of downtown San Diego in San Diego County, California. The airport covers 661 acres and has one runway (9,401 ft. × 200 ft.). San Diego is the largest metropolitan area in the United States that is not an airline hub for passenger or freight airlines; however, it is a focus city for Southwest Airlines, which began service at SAN in 1982 (308).

SAN opened in 1928, and its first modern terminal opened in 1967. Since then, SAN has added two additional terminals and undergone various capital improvements, including a \$232 million expansion of the second terminal completed in 1998, and “The Green Build,” a massive, \$1 billion expansion and sustainability renovation project completed in 2013 to meet SAN’s high travel demands, one of the largest public works projects in San Diego County history (308, 310, 313).

Despite its relatively small size, SAN is considered a large hub airport. It is the busiest single-runway commercial service airport in the United States and the second-busiest single-use runway in the world after London’s Gatwick Airport, with an average of 515 departures and 50,000 passengers arriving or departing from SAN on any given day. In 2013, SAN ranked 29th among the busiest airports in the United States by total passengers served and 30th in total freight and mail processed. SAN is serviced by 22 passenger airlines and five cargo airlines which fly nonstop to 54 destinations in the United States, Canada, Mexico, Great Britain, and Japan (312, 313).

9.5.2 Ownership and Governance

SAN is operated by the San Diego County Regional Airport Authority, whose governing body is an appointed board of nine members who represent all areas of San Diego County and three ex-officio members. Three members serve as the Executive Committee.

The president/CEO is responsible for management oversight of the Airport Authority, the Authority’s annual budget, and a staff of approximately 370 aviation professionals.

9.5.3 Diversity Programs Characteristics

SAN’s local, small, and diverse business participation programs are administered through the Airport Authority’s Small Business Development Department (SBD), established to ensure that local, small, historically underutilized, disabled veteran-owned, and other emerging businesses have increased business opportunities at SAN. The SBD is the primary resource for all airport departments in fostering small and diverse business opportunities, and it manages and implements the Airport Authority’s federal, state, and airport-specific policies related to economic opportunity.

SAN has managed to implement its diversity programs and initiatives effectively at both the federal and local levels despite a changing and uncertain legal landscape, using inventive program measures to overcome obstacles to increasing diverse and small business participation. In the early 2000s, SAN’s DBE and ACDBE program implementations utilized race- and gender-conscious contracting goals. However, in 2005, the Ninth Circuit Court of Appeals ruled that a Washington State race-conscious DBE program implementation was unconstitutional as applied in *Western States Paving v. Washington State Department of Transportation*. The case was decided in San Diego’s own judicial circuit. Faced with uncertainty as to the continuing constitutionality of race-conscious federal Program measures, SAN began a major program shift, proposing to achieve subsequent participation goals using only race- and gender-neutral measures wherever possible. (For a more current discussion of constitutional concerns in federal diversity programs, see Chapter 2).

In 2009, SAN commissioned a disparity study to provide statistical evidence of any difference between SAN's utilization of minority- and women-owned firms in airport contracts and those firms' availability to perform work. Before the study's completion, SAN adopted an overall DBE participation goal of 17 percent for 2010, and an additional single-contract DBE participation goal for its Terminal Development Program (part of The Green Build) of 19 percent. Both goals focused solely on race- and gender-neutral measures. SAN also adopted an overall ACDBE participation goal of 25 percent for 2009–11, affecting non-car rental concessions. (All of SAN's car rental companies operate via an agreement not providing property rights, so there are no on-airport car rental operators and a car rental-specific ACDBE goal is inapplicable). In 1994, when SAN solicited its then-existing concessions contracts, the airport had race- and gender-conscious contracting goals in place through which it had achieved ACDBE participation of around 24 percent in previous years. Given that the race-conscious contracting goals were still in effect at the time of the disparity study, the study did not make conclusive findings as to SAN's concessions contracts, and focused primarily on DBE rather than ACDBE Program measures and utilization.

The Airport Authority published the disparity study on March 10, 2010. The study recommended a future base figure for overall DBE participation on federally funded contracts of 17.2 percent. The study also found that SAN achieved fairly low levels of participation by minority- and women-owned firms in both federal and local contracts—even under SAN's previous race-conscious program implementations—and recommended that SAN expand its efforts to assist these firms. Notably, however, the disparity study found little difference between the participation of these firms under SAN's prior race-conscious measures and under its entirely race- and gender-neutral program. In fact, the study revealed that participation by minority- and women-owned firms was slightly higher after SAN shifted to a neutral program, suggesting that expanded neutral measures might effectively achieve higher diverse business participation.

Following the recommendations of the disparity study, and committing to its post-*Western States* program shift, SAN set an overall DBE participation goal of 17 percent for 2011–13, again utilizing entirely race- and gender-neutral program measures. In 2011 and 2012, SAN achieved DBE participation between 10.5 percent and 12.7 percent. At the time of this writing, the Airport Authority has proposed an overall DBE participation goal for 2014–16 of 14 percent (also entirely race- and gender-neutral). SAN also adopted an overall ACDBE participation goal for 2012–14 of 24 percent. Because SAN's race-conscious ACDBE contracting goals remained in effect through November 2012, the airport projected that 8 percent of the 24 percent overall goal would be met through race- and gender-conscious measures, while the remaining 16 percent would be met through neutral means upon expiration of the existing contract goals. At the time of this writing, both SAN's DBE and ACDBE programs are fully race- and gender-neutral.

In sum, SAN's diversity programming was greatly influenced by the *Western States* decision, which was the primary reason SAN adapted its federal and local programs to utilize entirely race- and gender-neutral measures. Although the uncertainty and scrutiny brought by *Western States* and the ensuing policy shift initially presented a tremendous challenge to SAN's diverse and small business policies, particularly in light of the disparity study's recommendation that SAN increase diverse business participation, SAN executives stated that those obstacles forced policy leaders and personnel to innovate, and over the years the airport has developed creative and effective ways to “cast a broad net” and increase the participation of diverse, small, and underutilized firms in airport contracts while avoiding the potential legal entanglements of race-conscious programming. Some notable examples of SAN's creative race- and gender-neutral initiatives include:

- The Bonding and Contract Financing Assistance Program (a partnership between the Airport Authority and Merriwether & Williams Insurance Services), which provides assistance to small businesses in obtaining bonds or lines of credit for airport contract work. This program offers bid, performance, and payment bond guarantees and loan guarantees for airport

projects; sponsors seminars in funds administration; helps small firms network with fund administrators; offers one-on-one financial counseling with small firms; and hosts technical assistance workshops on finance and management topics. Several participants in the program have subsequently been able to obtain bonding on their own.

- The Turner School of Construction Management (a partnership between the Airport Authority and Turner Construction), which offers free nightly courses to improve the technical, administrative, and managerial skills of small construction management firms. Topics include how to work with SAN's financial systems and how to network and make internal connections, among others. The Turner School has graduated over 15,000 students.
- SAN's Online Education Program, which offers online courses and tutorials on how to do business at SAN, such as how to successfully bid airport work, understanding required forms, and developing safety and security procedures, among other topics.
- SAN's SBD, which engages in outreach to provide small firms with information on contracting opportunities at SAN. Small firms also can register with the SBD online to receive bidding notifications, advertisements, and information on networking and outreach events.
- The Airport Authority's support of the San Diego Contracting Opportunity Center, which assists small firms in doing business with other federal, state, and local government agencies at no cost to the participants.
- The Airport Authority's membership in the San Diego County Public Agency Consortium, a group of local public agencies that pool resources to host quarterly outreach and networking events for small businesses with the goal of pairing prime contractors with subcontractors across procurement areas.
- SAN's membership with a number of local trade organizations that host regular outreach and networking events to encourage small businesses to participate in work at SAN.
- SAN maintains a participant-accessible file of successful bid documents from past procurements for potential participant review and evaluation, and shares its DBE and ACDBE certification databases with prime contractors to allow them to use it in their own diverse contracting activities.
- SAN conducts regular debriefing sessions on each awarded contract to explain why certain bids were unsuccessful.
- Where feasible, SAN establishes a minimum percentage goal of the total value of certain contracts to be performed or subcontracted by small businesses, and requires prime contractors to meet or exceed this goal or make good faith efforts to do so.

In addition to these effective neutral federal program measures, SAN has also demonstrated a local commitment to increasing the participation of small and diverse businesses via neutral means. SAN's Policy 5.12, Preference to Small Businesses, is a preference program developed to give small businesses preference in non-federal contract procurement. Policy 5.12 provides a bidding preference of up to 5 percent to small businesses in the award of selected authority contracts. For example, up to 5 percent of the bid of the lowest responsive non-small bidder can be subtracted from the bid of the lowest responsive small bidder in price-based selections. Similarly, SAN's Policy 5.14, Small Business, Local Business, and Service Disabled Veteran Owned Small Business Goal and Preference Program, establishes a series of goals for small, local, and service disabled veteran owned small business participation, which—if met or exceeded by prime bids—will trigger price preferences in the non-federal contract award process to incentivize bidders to include these firms in bids.

SAN personnel also engage in regular practices that have contributed to diverse business participation at SAN, such as continuous unbundling of contracts, an average turnaround of payments to small businesses of 12–15 days, regular compliance monitoring, and ongoing review of contracting requirements to minimize obstacles for small businesses. Local policies such as these achieve several important objectives, including increasing small and diverse business

participation in both federal and non-federal projects, enhancing the race- and gender-neutral measures of the federally mandated programs, and signaling airport-wide commitment to and visibility of program policies.

9.5.4 Staffing Model

The director of the SBD serves as the Airport Authority's DBELO and has independent access to the Airport Authority's president and CEO pursuant to federal regulations. Aside from the director, the SBD has three staff-level positions and an administrative assistant, and has occasionally added temporary positions for specific projects such as The Green Build.

9.5.5 Contracting Methods

SAN's stated inclusion philosophy is that the people involved in every part of the contracting process—executives, staff, and even contractors themselves—are responsible for diversity. A prime example of this philosophy was SAN's approach to The Green Build, which followed a design-build contracting structure. Within this structure, prime contractors were responsible for maintaining fully staffed diversity outreach programs and ensuring diverse participation in contract execution in cooperation with SAN staff. This decentralized and collaborative structure brought prime contractors in direct contact with small and diverse firms. SAN also integrates diversity goals throughout its concessions opportunities, following a multiple-prime contracting structure that provides 16 prime concessions packages with the restriction that no single contractor can have more than 30 percent of the total square footage. This effectively unbundles SAN's concessions opportunities, creating accessibly sized concessions packages for ACDBE firms to bid on directly.

9.5.6 Honors and Recognition

SAN's creative development of its program measures has been largely successful according to numerous observers, both within and outside of SAN. Although a shift from a race-conscious to an entirely race- and gender-neutral program might initially seem counter-intuitive in increasing diverse business participation, SAN executives noted that diversity has actually increased over this period, confirming the indications of the 2010 disparity study. Executives attribute this success to SAN's continuous efforts to get all levels of airport contracting involved in inclusion and specific and personal outreach to diverse DBE groups. SAN personnel also highlighted The Green Build's design-build contracting structure as a case study in effective inclusionary practices because of its decentralized approach, which gave prime contractors a personal stake in diversity efforts.

SAN also was recognized as having excellent diverse and small business inclusion practices by several outside observers, including business executives, consultants, and FAA personnel. Observers indicated SAN's focus on community outreach, technological education resources, organization-wide commitment to the inclusion process, and innovative race-neutral program measures as best practices that have brought tremendous visibility and credibility to the airport's diversity programs and goals.

In 2013, the Airport Authority received ACI-NA's first-ever Inclusion Champion Award, which recognized the Airport Authority's "exceptional achievement in promoting and sustaining diversity throughout the airport industry's workforce." Among the diversity and inclusion practices highlighted by ACI-NA in making this award were:

- The Airport Authority's active recruiting of a diverse workforce, including 43 percent of employees identifying as non-Caucasian, with 20 percent identifying as Hispanic, 12 percent as African American, 8 percent as Asian, and 3 percent as Native Hawaiian/Pacific Islander.

- Project LIFT, a partnership between the Airport Authority, San Diego City College, and the Airport Minority Advisory Council, which introduces students to aviation careers.
- SAN's innovative contracting structure for The Green Build, which focused on improving small and diverse business participation (7).

9.6 Phoenix Sky Harbor International Airport (Large Hub)

9.6.1 Background

Phoenix Sky Harbor International Airport (PHX) is located 3 miles southeast of downtown Phoenix in Maricopa County, Arizona. The airport serves more than 100,000 passengers daily, with more than 1,200 aircraft operations per day and a daily economic impact that surpasses \$79 million for the Phoenix metro area. Nearly 40 million passengers are served at PHX every year. In 2012, PHX served 40,448,932 passengers, making it one of the top 10 busiest airports in the United States by passenger count. The airport also handles more than 800 tons of cargo per day. FAA records show the airport had 20,169,926 enplanements in calendar year 2012 and 20,211,799 in 2011. US Airways is the airport's largest carrier. PHX is Arizona's largest and busiest airport.

9.6.2 Ownership and Governance

The City of Phoenix (City) owns the Phoenix Airport System which consists of three airports: PHX, Deer Valley Airport (which serves to relieve air traffic from PHX), and Goodyear Airport (a general aviation reliever airport for PHX). The City of Phoenix Aviation Department (Aviation Department) operates the three airports. The City has owned and operated PHX since 1935.

The nine-member Phoenix Aviation Advisory Board, appointed by the Mayor and City Council to four year terms, meets monthly to review airport policies and makes recommendations to the City Council on major airport projects, concession contracts and leases.

9.6.3 Diversity Program Characteristics

The goal of the city is to achieve the maximum participation possible of ACDBE, DBE, and small businesses through the use of race- and gender-neutral measures carried out by the City and proposers for airport contracts. The goal of the Aviation Department is to increase small business competitiveness and capacity at PHX, Goodyear, and Deer Valley Airports. The Aviation Department is a committed and proactive partner to the small business community through the development and implementation of programs and services designed to increase contracting, professional services, and procurement opportunities.

Small business outreach requirements for proposers on PHX contracts include:

- Identifying small business participation opportunities.
- Conducting outreach for small business participation.
- Evaluating small business proposals.
- Notifying each small business contacted of the proposer's selection decision, whether or not the small business was selected.
- If a small business is a proposer, completing outreach requirements to other small businesses (429).

9.6.4 Staffing Models

The Aviation Department has established a Small Business Development team to ensure that local, small, and historically underutilized businesses have every opportunity to do business with

the airport, and to serve as a resource for all the divisions within the Aviation Department. The team's mission is:

To lead a cooperative effort to enhance the Aviation Department's small business participation through strategic outreach, innovative processes, education and training, strong community involvement and interdepartmental partnerships (429).

The city's Equal Opportunity Department (EOD) reviews scope-of-work specifications that the Aviation Department prepares for concession solicitations; conducts availability analysis to identify interested businesses and appropriate race-neutral or race-conscious participation goals; reviews third-party contracts (e.g., joint venture agreements) for Part 23 compliance; reports statistical data and other information to U.S. DOT and/or FAA; and provides technical assistance and support services to disadvantaged businesses. The EOD also makes determinations regarding the responsiveness of proposals to the city's affirmative action policies and diverse business participation requirements, and provides guidance to the Aviation Department on ways to avoid barriers to ACDBE participation.

9.6.5 Contracting Methods

PHX has three business diversity programs administered by the EOD. The airport's SBE program offers small local businesses opportunities for doing business with the city. It is applicable to procurement and contracting that use city funds and is only available to firms with a primary or principal location in Maricopa County. Certified SBE firms can participate in the city's Reserve Contract Program, which includes opportunities for goods and general services providers to participate in city procurement opportunities. Selected contracts are reserved by the Finance Department for competition only among certified SBE firms. The city reserves the right to award to bidders other than the low bidder if quality and qualifications are not equitable among bidders.

PHX's DBE program is available to socially and economically disadvantaged business owners who are interested in the airport's federal contracting opportunities. The airport's ACDBE program is available to socially and economically disadvantaged businesses whose activity is relevant to the PHX concessions program. The city is a member of the Arizona Unified Certification Program (UCP), and its EOD certifies firms to participate in the SBE, DBE, and ACDBE programs.

9.6.6 Outreach Techniques

The city holds numerous workshops, training sessions, and technical assistance programs throughout the year. In addition to the EOD, the city has an individual dedicated solely to outreach. The city is among the very few airport operators that have such an individual. The small business outreach manager advocates on behalf of diverse businesses, provides contracting opportunity information and education to small businesses about how to access contracting opportunities, and assists prime contractors with identifying diverse businesses. This individual also hosts small business networking forums and assists with monitoring small business participation on contracts with participation goals. In addition, the small business outreach manager brings the interests, ideas, and concerns of community and business leaders regarding the airport concessions and contracting programs to the city's attention.

9.6.7 Honors and Recognition

According to a June 2014 audit report by the U.S. DOT's Office of the Inspector General, PHX is the number-one airport in the country for new small businesses. The goal of the report was to identify which of the nation's 64 largest airports have been able to successfully incorporate new DBE operators. In fiscal year 2012, Phoenix Sky Harbor International Airport added 14 new small businesses—the most of any airport in the nation. In addition, the City of Phoenix helped secure \$4 million in financing for small and disadvantaged businesses at PHX (276).



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APPENDIX A

Glossary

AAAE	American Association of Airport Executives.
ACDBE	Airport Concession Disadvantaged Business Enterprise (as defined in 49 CFR Part 23).
Airport Improvement Program (AIP)	The U.S. DOT/FAA federal grant program that provides funds to airports to help improve safety and efficiency.
AMAC	Airport Minority Advisory Council.
ARN	<i>Airport Revenue News.</i>
COMTO	Council of Minority Transportation Officials.
Construction at Risk	A delivery method that entails a commitment by the construction manager to deliver the project within a guaranteed maximum price.
DBE	Disadvantaged Business Enterprise (as defined in 49 CFR Part 26).
DBELO	Disadvantaged Business Enterprise Liaison Officer.
Direct Leasing	A concession management approach in which an airport leases concession space to multiple concessionaires.
Federal Fiscal Year (FFY)	The accounting period for the federal government, which begins October 1 and ends September 30.
Focus Group	A small number of people brought together with a moderator to discuss a specific issue or topic.
Gap Financing	The difference between the amount of money a lender will lend and the amount needed to complete a business project.
Good Faith Efforts	Efforts to achieve an ACDBE or DBE goal or other requirement of 49 CFR Parts 23 and 26 that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.
Kiosk	A small, self-contained retail merchandise unit, such as a cart.
LBE	Local Business Enterprise.
Minimum Annual Guarantee (MAG)	Minimum amount of rent to be paid annually to an airport by a concessionaire or sometimes by a developer.
MBE	Minority-owned Business Enterprise.

Personal Net Worth (PNW)	Total assets minus total liabilities of an individual.
Request for Proposals (RFP)	Competitive solicitation approach whereby criteria are established and proposals are requested and evaluated against the criteria, with the proposal receiving the highest score declared the winner.
Request for Qualifications (RFQ)	Competitive solicitation approach that asks vendors to provide their credentials to perform a particular service.
SBA	The U.S. Small Business Administration, an independent agency of the federal government.
SBE	Small Business Enterprise.
St. Louis Metropolitan Statistical Area	St. Louis County; the City of St. Louis; the Missouri counties of St. Charles, Jefferson, Franklin, Lincoln, and Warren; and the Illinois counties of Madison, St. Clair, Clinton, Monroe and Jersey.
Unified Certification Program (UCP)	A program in a state that provides "one-stop shopping" certification services to small minority- and woman-owned businesses seeking to participate in the U.S. DOT DBE or ACDBE Program.
WBE	Woman-owned Business Enterprise.
WBENC	Women's Business Enterprise National Council.



APPENDIX B

Industry Resources

Airport Operators

City of Austin, Texas Small Business Development Program:

<http://www.austintexas.gov/department/small-business-development-program>

City of Austin, Texas Family Business Loan Program:

http://www.austinsmallbiz.com/downloads/FBLP_flyer.pdf

City of St. Louis MBE/WBE Certification and Compliance Rules (includes business forms):

<http://www.mwdbbe.org/certification/pdf/MWBE-rules%20.pdf>

DFW Capital Assistance and Bonding Program:

http://www.dfwairport.com/bdd/P1_047908.php

Greater Orlando Aviation Authority Operational Procedure: Local Developing Business Program:

http://www.orlandoairports.net/small_business/docs/1200-01.pdf

Greater Orlando Aviation Authority Operational Procedure: Minority and Women Business Enterprise:

http://www.orlandoairports.net/small_business/docs/1200-02.pdf

Metropolitan Washington Airports Authority (MWAA) Contracting Manual:

<http://www.metwashairports.com/file/ContractingManual-4thEdition-Rev1.pdf>

MWAA LDBE Program:

<http://www.mwaa.com/4592.htm>

Miami-Dade County Community Business Enterprise Program (includes business forms):

<http://www.miamidade.gov/business/business-certification-programs-CBE.asp>

Philadelphia International Airport Capacity Enhancement Program:

<http://www.phl.org/news/Pages/runwaycapacityvid.aspx>

Raleigh-Durham Airport Authority Minority and Women-Owned Small Business Program:

<http://www.rdu.com/business/downloads/smallbusiness/MWSBProgram.pdf>

San Diego County Regional Airport Authority's Bonding and Contract Financing Assistance Program:

<http://www.san.org/sdcraa/business/sbd/resources/bonding.aspx>

San Diego International Airport Free Online Business Tutorials:

http://www.san.org/sdcraa/business/sbd/business_tutorials.aspx

Federal Government

ACDBE and DBE Mandatory Certification Training Program:

http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/dbeacdbe_cert_training/

Airport Grant Assurances:

http://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf

Airport Improvement Program:

<http://www.faa.gov/airports/aip/>

Appendix C to Part 26—DBE Business Development Program Guidelines:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/appendix-c-to-part-26-dbe-business-development-program-guidelines>

Appendix D to Part 26—Mentor-Protégé Program Guidelines:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/appendix-d-to-part-26-mentor-protege-program-guidelines>

FAA dbE-Connect System:

<https://faa.dbesystem.com/>

How to Contact FAA DBE Staff:

http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Regional_Assignments_FY2013.pdf

North American Industry Classification System (NAICS codes):

<http://www.census.gov/eos/www/naics/>

Small Business Administration:

<http://www.sba.gov/>

Tips for Goal Setting in the DBE Program:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

United States Census Bureau County Business Patterns Database:

www.census.gov/econ/cbp

U.S. DOT Office of Civil Rights

<https://www.civilrights.dot.gov/>

U.S. DOT Office of Small and Disadvantaged Business Utilization:

www.osdbu.gov

U.S. DOT Bonding Education Program:

<http://www.dot.gov/osdbu/financial-assistance/bonding-education/bonding-education-program>

U.S. DOT/FAA Joint Venture Guidance:

http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/JVGuideFinal508.pdf

U.S. DOT State-by-State Listing of DOTs and ACDBE/DBE Directories:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/state-dot-and-dbe-program-websites>

U.S. DOT Official Questions and Answers on 49 CFR Part 23:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-23>

U.S. DOT Official Questions and Answers on 49 CFR Part 26:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-questions-and-answers-26>

49 CFR Part 23

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl

49 CFR Part 26

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Forms**Jackson Municipal Airport Authority Project/Contract Reporting Form:**

<http://www.jmaa.com/wp-content/uploads/2013/01/ContractReportingForm122010.pdf>

MWAA Voluntary Efforts to Obtain MBE/WBE Participation Form:

http://www.metwashairports.com/file/Exhibit_A.pdf

MWAA Joint Venture Eligibility Form:

http://www.metwashairports.com/file/Exhibit_G.pdf

MWAA Architect-Engineer Qualifications Form:

<http://www.metwashairports.com/file/sf330.pdf>

U.S. DOT Sample ACDE and DBE Programs:

http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/dbe_program_adm/

Trade Associations**Airport Minority Advisory Council:**

<http://www.amac-org.com/>

ACI-NA:

<http://www.aci-na.org/>

AAAE:

<http://www.aaae.org/>

Council of Minority Transportation Officials:

<http://www.comto.org/>

National Minority Supplier Development Council:

www.nmsdc.org/

Women's Business Enterprise National Council:

<http://www.wbenc.org/>

Other Resources

Alameda County, California Contractor Bonding Assistance Program:

<http://www.acgov.org/cao/rmu/programs/bonding.htm>

New York State Surety Bond Assistance Program:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/SpecialNotices.asp?strId=20>

Airport Revenue News:

<https://www.airportrevenuenews.com/>

American DBE Magazine:

<http://americandbe.com/>

DiversityBusiness.com:

<http://www.diversitybusiness.com/DefaultNetscape.asp>

Minority Business Entrepreneur:

<http://www.mbemag.com/>

Abbreviations and acronyms used without definitions in TRB publications:

A4A	Airlines for America
AAAЕ	American Association of Airport Executives
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
ACI-NA	Airports Council International-North America
ACRP	Airport Cooperative Research Program
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	American Trucking Associations
CTAA	Community Transportation Association of America
CTBSSP	Commercial Truck and Bus Safety Synthesis Program
DHS	Department of Homeland Security
DOE	Department of Energy
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HMCRP	Hazardous Materials Cooperative Research Program
IEEE	Institute of Electrical and Electronics Engineers
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITE	Institute of Transportation Engineers
MAP-21	Moving Ahead for Progress in the 21st Century Act (2012)
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NCFRP	National Cooperative Freight Research Program
NCHRP	National Cooperative Highway Research Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PHMSA	Pipeline and Hazardous Materials Safety Administration
RITA	Research and Innovative Technology Administration
SAE	Society of Automotive Engineers
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (2005)
TCRP	Transit Cooperative Research Program
TEA-21	Transportation Equity Act for the 21st Century (1998)
TRB	Transportation Research Board
TSA	Transportation Security Administration
U.S.DOT	United States Department of Transportation