



**Statement of the
Airport Minority Advisory Council (AMAC)
Submitted to the
Subcommittee on Government Management, Organization and Procurement
U.S. House Committee on Oversight and Government Reform
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Madam Chairwoman, Mr. Ranking Member, and Members of the Subcommittee on Government Management, Organization and Procurement, thank you for your invitation to provide testimony today. My name is Don O'Bannon and I am proud to serve as the Chair of the Airport Minority Advisory Council (AMAC). AMAC is the only national, non-profit organization dedicated to creating success for minorities and women in the airport industry. AMAC represents thousands of individuals involved in federally funded and federally assisted contracting, ranging from minority and women business owners to government officials, airports, airport employees, and large majority owned corporations. While AMAC's primary focus is on airport-related business, our minority and women business owner members work in many different industries in many different contexts. Indeed, AMAC members work on contracts supported by many different federal agencies, not just the Department of Transportation. They also work in the private sector. I sincerely thank you for this opportunity to testify and for your consideration of AMAC's views.

I. Introduction

The federal government is a major player in almost every American industry and market and it is imperative that all American businesses have a fair chance at winning contracts funded with public money. Just to give an example of a sector with which I am most familiar, in 2009 the federal government appropriated almost 4.5 billion dollars for aviation through the Airport Improvement Program (AIP) and the American Recovery and Reinvestment Act (ARRA). Less than 10% of these contracting dollars were awarded to minority- and women-owned small and disadvantaged businesses. That is simply unacceptable. AMAC is devoted to the full inclusion and participation of minorities and women in business opportunities in airports and airport-related industries. In particular, AMAC is a strong advocate for federal policies like the airport Disadvantaged Business Enterprise and Airport Concessions Disadvantaged Business Enterprise programs (herein referred to as the “DBE program”) that redress past discrimination and ongoing discrimination in government contracting. In addition, AMAC also seeks to raise awareness regarding the significant economic benefits that DBE firms contribute to airports, to the traveling public, and to the communities in which they do business. For example, an airport with which I am especially familiar is the Dallas/Fort Worth International Airport (DFW). DFW is committed to ensuring that local DBE firms have an equal opportunity to compete for contracts awarded by DFW Airport. Some of the prime concessionaires for DFW's new D terminal began as minority joint venture partners under the DBE program and these firms have subsequently been awarded several concession packages as prime contractors. Given the opportunity to compete because of the airport DBE program, these businesses flourished as a result of

their owners' hard work and business prowess. In the process, they contributed very significantly to the local economy by generating both jobs and tax revenues.

The importance of DBE efforts like the DFW program cannot be overstated. As this Subcommittee is aware, racial and gender discrimination against minority and women business owners continues to be an ongoing and a critical problem throughout the United States. Minority and women business owners experience discrimination in all aspects of contracting—in areas such as contract formation, bonding, insurance, credit, the purchase of supplies, and interactions with their business peers.

As a consequence, AMAC believes that there is a continuing need for robust minority business programs throughout the federal contracting system. Given AMAC's special focus on airports, at the end of my statement I respectfully highlight certain policies that AMAC believes should be adopted either as part of the final FAA Reauthorization or through regulations. In many cases, these are program changes that should be instituted across all federal programs intended to assist minority and women owned businesses.

II. The Powerful Economic Benefits of the DBE Program

The minority- and women-owned firms that participate in the DBE programs provide substantial economic benefits to the communities in which they operate. In the airport context, these firms provide a variety of important products and services to the travelers and businesses that rely on airports. Moreover, the DBE program is a significant source of entrepreneurship, employment, and economic growth that can be

one of the important keys to jump-starting our economy and ensuring that our diverse citizenry benefits from the economic recovery.

The University of North Texas recently conducted a study of the economic impact of DBE concessions businesses at the Dallas/Fort Worth International Airport.¹ Between September 2006 and August 2008, the study found firms that participated in the Airport's Disadvantaged, Minority-, and Women-Owned Business Enterprise (DMWBE) Program produced more than \$350 million in gross concession revenue and \$280 million in contracting revenue. These businesses created over 14,000 job years of employment, increased labor income by more than \$450 million, and generated an astonishing \$1.2 billion in economic activity.² These are very significant and positive economic contributions and they should be recognized and celebrated.

III. Discrimination is Still a Problem for Women and Minority Owned Firms

As the experience in the Dallas/Fort Worth areas demonstrates, minority and women owned firms, *when given a fair chance and a level playing field*, can be important engines of growth in our economy. Unfortunately, discrimination, both current discrimination and the present day effects of past discrimination, make it extremely difficult for most minority and women owned firms to succeed to their full potential. Fortunately, various federal, state and local programs aimed at giving every entrepreneur a full and fair opportunity to succeed have begun to make headway. Nevertheless, discrimination against minority- and women-owned businesses continues to be pervasive.

¹ Terry L. Clower, Bernard L. Weinstein, Michael Seman, and Mehmet Adalar, Center for Economic Development and Research—University of North Texas, DFW International Airport's Disadvantaged, Minority- and Women-owned Business Enterprise Program: Detailed Findings and Updates (Feb. 2009).

² *Id.*

The evidence is abundant, compelling, and demonstrative of the vital role these programs play in the effort to address current and past discrimination against minority- and women-owned firms.

AMAC has collected testimonials from its members detailing some of the discrimination they have had to endure. These personal stories make clear how difficult it is to start-up and grow a business while also being subjected to race and gender discrimination. Our experience in collecting these accounts has also made another truth clear: business owners are very fearful about reporting the discrimination that they confront. They are concerned that if they come forward and tell their stories, they will be prevented from getting any business in the future. This puts many of them in a catch –22; either they simply put up with the discrimination and continue to get less business because of it, or they report the discrimination and risk getting no business at all when they are labeled as “trouble-makers.” For this reason, we will report a few of their experiences here, but without using their names or other identifying information:

- A female contractor who works in construction in the East reported extremely aggressive sexual harassment and sex discrimination. She has repeatedly been the subject of sexual advances on the job and in one case was the subject of an attempted rape by a general contractor. The attack stopped only when she shot her assailant in the knee with a lawfully-permitted concealed weapon. She has also frequently been the victim of less violent but still harmful gender discrimination in supply-pricing, treatment by government officials, bid-shopping, and access to capital.

- A minority male business expert has observed many different types of discrimination including: efforts to intimidate and retaliate against minority contractors; holding minorities to higher standards than their white male counterparts; disparate treatment by inspectors and other government officials; disproportionate punishment of minority contractors for minor infractions; and racially discriminatory remarks. In addition, he has observed prime contractors refusing to conduct even minimal outreach and refusing to use minority contractors on any project that does not have explicit goals. Finally, he has witnessed outright program fraud including prime contractors reporting that minority contractors have been given work that has not actually been awarded and the fraudulent and unauthorized use of tax IDs belonging to minority companies.
- One Hispanic female business owner detailed the threats to her business caused by gender discrimination. This entrepreneur developed a new airport concessions business, but, just as her business was getting off the ground, she found herself the victim of various types of stereotyping and other efforts to undermine her success and reputation. They included false allegations spread by her leasing company that she was not sufficiently dedicated to running her business because, they alleged, she was planning to focus her efforts on being a “mommy.” The larger, majority businesses used this whisper campaign to prevent her from expanding her business and to try to force her out of a valuable retail location at a “premiere” airport.

- An African American, male business owner in the Midwest recounted to us the many instances race discrimination he has endured, which include being: charged as much as 50% more for certain supplies critical to his business; excluded from informal business networks and clubs in his community where business leaders socialize; subjected to disparate treatment by banks, for instance being forced to use personal assets to secure business loans; and subjected to racial slurs. This owner feels strongly that programs like the DBE program are crucial to help minority business owners deal with the serious disadvantages imposed by racial discrimination.
- An African-American airport executive and member of AMAC, recounted a story that reveals just how resistant majority prime contractors are to opening up even the smallest opportunities to minorities and women. This executive was working with a prime concessionaire to identify diverse business owners to occupy restaurant and retail space at the airport in Memphis. The airport had given the prime lots of leads of minority- and women-owned businesses that were qualified and interested in the opportunities, but the prime was simply not interested in doing its part to contract these businesses and kept claiming that there simply were no qualified businesses to fill the slots. Eventually the situation reached a point of absurdity when the prime claimed that he could not find any qualified minority businesses owners to open a barbeque restaurant at the airport. As our member said: “I kid you not. This man looked me in the face and told me that he could not find minority businesses that cook barbeque! In Memphis! This is what we are dealing with.”

With our testimony today, AMAC is submitting twenty-four disparity-type studies.³ These studies, through detailed statistical and anecdotal evidence, demonstrate insidious discrimination against women and minorities in many different industries all across the nation. The twenty-four studies submitted represent a cross-section of our country—every region of the nation, including rural, urban, and suburban areas. Regardless of location, the studies confirm that discrimination continues to be directed at women and all minority groups, including but not limited to African-Americans, Hispanic Americans, Asian Americans, Subcontinent Asian Americans, and Native Americans. Further, the discrimination takes a variety of forms.

³ *The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York*, prepared for the New York State Department of Economic Development, NERA, April 29, 2010; *Colorado Department of Transportation Statewide Transportation Disparity Study*, D. Wilson Consulting Group, LLC, November 2009; *Measuring Business Opportunity: A Disparity Study of NCDOT's State and Federal Programs*, EuQuant, August 1, 2009; *Availability Analysis and Disparity Study for the Arizona Department of Transportation, Final Report*, MGT of America, March 16, 2009; *Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee*, Prepared for the Memphis-Shelby County Airport Authority, NERA Economic Consulting, December 18, 2008; *Final Report: Alaska Disadvantaged Business Enterprise Study—Availability and Disparity*, D. Wilson Consulting Group, LLC, June 6, 2008; *Race, Sex, and Business Enterprise: Evidence from the City of Austin: Final Report Prepared for the City of Austin, Texas*, NERA Economic Consulting, May 15, 2008; *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport (BNA)*, Griffin and Strong, PC, September 19, 2007; *Disadvantaged Business Enterprise Availability Study*, prepared for the Maryland Department of Transportation, NERA, separate studies for: Maryland Aviation Administration, Maryland Transit Administration, and State Highway Administration, November 2, 2006; *Race, Sex and Business Enterprise, Evidence from the State of Washington*, NERA Economic Consulting, October 20, 2005; *Anecdotal Evidence of Race and Sex Disparities in the Washington State Department of Transportation's Contracting Market Place*, Colette Holt & Associates, July 2006; *Race, Sex and Business Enterprise: Evidence from Denver, CO*, NERA Economic Consulting, May 5, 2006; *Race, Sex and Business Enterprise: Evidence from the State of Maryland*, NERA Economic Consulting, March 8, 2006; *Race, Sex and Business Enterprise: Evidence from the State of Minnesota*, NERA Economic Consulting and Colette Holt and Associates, September 27, 2005; *State of New Jersey Disparity Study of Procurement of Professional Services, Other Services, Goods and Commodities*, MGT, June 13, 2005; *The City of Phoenix, Minority-Women-Owned and Small Business Enterprise Program Update Study: Final Report*, MGT of America, April 21, 2005; *Disadvantaged Business Enterprise Availability Study*, prepared for the Missouri Department of Transportation, NERA, November 26, 2004; *Disadvantaged Business Enterprise Availability Study*, prepared for the Illinois Department of Transportation, NERA, August 16, 2004; *North Carolina Department of Transportation Second Generation Disparity Study: Final Report*, MGT of America, Inc., March 30, 2004; *Disparity Study for the Commonwealth of Kentucky*, Griffin and Strong, P.C., March 2003; *Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study*, MGT of America, Inc., April 3, 2001; and *The Utilization of Minority Business Enterprises by The State of Maryland*, NERA Economic Consulting, January 8, 2001.

Each of the disparity studies provides significant quantitative evidence of discrimination against minority- and women-owned businesses in diverse industries. I would like to cite just a few of the myriad of examples in order to demonstrate the gravity of this issue:

- Several studies have established widespread revenue differentials between firms owned by non-minority men and firms owned by African Americans, Hispanic Americans, Asian Americans, Native Americans, and women, even when controlling for relevant factors. One study describes the revenue disparities as “large, adverse, and statistically significant.” For example, in one study for the state of New York, the researchers found that while African-Americans owned 6.65% of the firms in the market area, they received barely 1% of sales and receipts revenue. The same study also finds that firms owned by minorities and women are more likely to experience capital and credit discrimination.⁴
- Several studies indicate that there are statistically significant and large business formation disparities for minorities and women. For example, a study conducted in Memphis based on data collected by the Census Bureau, found that business formation rates for African-Americans was 43 percent lower in construction and related professional services than for non-minority males. In commodities and services it was 46 percent lower. And the discrimination is not restricted to African Americans. For instance, the firm formation rates in Memphis in construction and related services for other minority groups showed dramatic

⁴ *The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York*, at 5.

differentials when compared to firm formation rates by non-minority males. For example, for Hispanic Americans it was 51 percent lower.⁵

- Research has indicated that minority and female entrepreneurs earn substantially and significantly less from their efforts than similarly situated non-minority male entrepreneurs. One study concludes that “these disparities are a symptom of discrimination in commercial markets that directly and adversely affects DBEs.” The study further notes that “if minorities and women cannot earn remuneration from their entrepreneurial efforts comparable to that of White males, growth rates will slow, business failure rates will increase, and ... business formation rates will decrease. Combined, these phenomena result in lower DBE availability levels than observed in a race- and sex-neutral marketplace.”⁶
- Several studies established widespread discrimination in the credit market. One study found that 60.5 percent of African Americans report being “always” denied loans, whereas only 7.3 percent of non-minority males report the same. Once loans are approved, minority- and women-business owners pay higher interest rates as well. According to the study, Hispanic Americans pay 20.9 percent interest on approved loans compared to 6.7 percent for non-minority males.⁷
- One study reported that 44 percent of M/WBEs surveyed had experienced at least one instance of disparate treatment in business dealings. It also found that reports of disparate treatment were substantially and statistically significantly higher for minorities and non-minority women than for non-minority males. Reports of

⁵ *Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee*, at 104.

⁶ *Evidence from the State of Washington*, at 30.

⁷ *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport (BNA)*, at 9-10.

disparate treatment were highest among African American and Native Americans with overall rates of 70 percent or more.⁸

Many of the studies also present extensive anecdotal evidence that provides direct insight into the sources and forms of discrimination. More importantly, this evidence humanizes the impact of discrimination on DBE owners—these are the actual accounts of individuals and families struggling to build their businesses and contribute to their communities. The accounts make clear that minority and women entrepreneurs are subject to a broad range of discriminatory actions including: discrimination in business lending and access to real bid opportunities; intentional actions to circumvent and disregard remedial disadvantaged business programs; “old boy networks” that work to exclude minority- and woman-owned companies from opportunities; use of racial slurs and other tactics aimed at humiliating and intimidating minority and women business owners. All of these accounts provide a window on just how much steeper the path to success is for minority- and women-owned businesses.

Overall, these studies provide strong evidence of serious discrimination against minorities and women. They also demonstrate that there is a compelling and continuing need for the airport contracting and concessions DBE programs and similar programs which apply in other industries to the expenditure of public funds. We urge Congress to continue to investigate and document the continuing impact of discrimination against businesses owned by minorities and women.

IV. The Airport Disadvantaged Business Enterprise Program

⁸ *The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York*, at 359.

The airport DBE program is codified as part of the Airport Improvement Program (AIP). Specifically the airport DBE program consists of two sub-components—one pertaining to airport contracting (e.g., construction or professional services contracts), codified in Part 26 of Title 49 of the Code of Federal Regulations (CFR) and referred to as the DBE program, and one pertaining to airport concessions, codified in Part 23 of Title 49 of the CFR and referred to as the airport concessions DBE program (ACDBE). Again, both components are designed to remedy past and ongoing discrimination based on the race or gender of the business owner.

As part of the DBE program, all primary airports must develop and administer in good faith a narrowly-tailored DBE program with annual aspirational contracting and concession DBE goals. These goals must be based on the levels of participation that would be expected in the absence of discrimination and the airport must consider what portion of their goals they can meet through race-neutral means. In order to be certified as a DBE and participate in the program, a firm and its minority and women owners must meet requirements related to: (1) ownership and control; (2) personal net worth; and (3) firm size.

Except for certain Department of Transportation (DOT) rules that uniquely apply to airport concessions, the airport DBE program regulations also govern federal surface transportation programs such as those providing assistance to state and local transit authorities and state highway departments. DOT and the various modal administrations jointly implement the DBE program.⁹ It is important to note that, the DBE program and its implementing regulations have been found by the courts to meet the strict scrutiny

⁹ For instance in the case of the airport DBE program, DOT has primary responsibility for developing rules and guidelines for the national DBE program and for considering certification appeals. The FAA Office of Civil Rights has primary oversight responsibility for the program and for airport compliance.

constitutional standard applied to “race-conscious” programs. The facial constitutionality of the program has been upheld by every federal circuit court that has considered it.

V. Improvements to the Airport DBE Programs

I would like to take this opportunity to bring to your attention a few issues related to the DBE program. First, AMAC strongly supports final enactment of the FAA Reauthorization bill. We understand that there are still some remaining disagreements between the House and Senate. We respectfully request that these disagreements be worked out as quickly as possible in order to facilitate enactment of the bill this year. Both the House and Senate bills contain very important provisions related to the DBE program and in most cases the two bodies are in agreement on these provisions. AMAC is especially supportive of the provisions included in the House-passed FAA Reauthorization and we strongly urge you to pass a final FAA Reauthorization as soon as possible and to include the improvements to the DBE program as well as the proposed provision in the House bill to increase the ceiling on Passenger Facility Charges from \$4.50 to \$7.00. These changes are precisely the federal policy changes needed to ensure that the American aviation system remains the best in the world *and* to get our economy back on its feet creating jobs and opportunities for all of our citizens.

VII. Conclusion

Mr. Chairman, thank you for the opportunity to submit this statement to this esteemed panel and for your consideration of our views. AMAC greatly appreciates the Subcommittee’s leadership against discrimination and in support of minority and women

owned companies. We look forward to working with the Subcommittee on these important issues.