

# **DBE Goal and Methodology**



Austin-Bergstrom  
International Airport

## **Austin Bergstrom International Airport Austin, Texas**

**For the period:  
October 1, 2008 to September 30, 2009**

**October 2008**

**Overall DBE Goal and Methodology  
Austin Bergstrom International Airport  
Federal Aviation Administration  
Federal Fiscal Year 2009**

Austin Bergstrom International Airport (ABIA) has prepared this submission to the Federal Aviation Administration (FAA) to describe the methodology used to establish its overall Disadvantaged Business Enterprise (DBE) goal mandated by 49 CFR Part 26 for its federally-assisted aviation contracts. ABIA relied on and followed the regulations and guidance provided concerning the implementation of the regulations. 49 CFR § 26.45 requires a two-step process for setting the overall DBE goal that reflects the level of DBE participation on ABIA's contracts expected in the absence of discrimination. The first step is the calculation of a base figure for the relative availability of DBEs. The second step requires consideration of a possible adjustment of the base figure to reflect the effects of the DBE Program and the level of participation that would be expected "but for" the effects of past and current discrimination against DBEs. As further required by § 26.51(c), ABIA submits a projection of the portion of the overall goal that it expects to meet through race-neutral means and the basis for the projection

ABIA submits an overall goal for Federal Fiscal Year 2009 (October 1, 2008 to September 30, 2009) to expend 28.56% of the Federal financial assistance it will receive on USDOT-assisted contracts with DBEs.

**I. Methodology and Evidence**

To meet the requirements of § 26.45, ABIA commissioned a Disadvantaged Business Enterprise Availability Study from NERA Economic Consulting (NERA) and Colette Holt & Associates. The Study provides a statistical analysis of baseline DBE availability, and examines econometric evidence of disparities between DBEs and non-DBEs in factors impacting entrepreneurial success on department contracts and subcontracts. In particular, for Step 1 the Study estimated DBE availability in ABIA's marketplace using data on ABIA's expenditures for airport construction and engineering consulting contracts and subcontracts, and carefully constructed databases of firms in those industries. To address Step 2, the Study reviewed existing qualitative and quantitative evidence of discrimination and assessed the likelihood that marketplace DBE availability would be different if the relevant markets in which ABIA operates were race-neutral; it then estimates the magnitude of this difference. The Study's results are summarized below.

Favorable developments in the courts as well as USDOT's approval of other recipients' goals based upon NERA studies give ABIA confidence in the Study's methodology, constitutional validity and narrowly tailored results. This approach has been upheld by the Seventh Circuit Court of Appeals in the challenge to the Illinois Department of Transportation's DBE Program; the Eighth Circuit Court of Appeals in the challenge to the Minnesota Department of Transportation's DBE Program; and the Tenth Circuit Court of Appeals in holding that the City and County of Denver's local Minority and Women Business Enterprise Program meets strict constitutional scrutiny.<sup>1</sup> ABIA's

<sup>1</sup> *Northern Contracting, Inc. v. State of Illinois*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007); *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8<sup>th</sup> Cir. 2003), *cert. denied*, 124 S.Ct. 2158

methodology provides a statistically sound and detailed basis to meet the requirements of Part 26, and fully addresses the remedial purpose of the DBE Program and Congressional intent. The Study's data will also assist ABIA in setting contract goals to reach its overall, aspirational DBE goal for federally-assisted contracts.

## **A. Step 1 Estimate of Relative Availability of DBEs**

### **1. Definition of ABIA's contracting market**

The first element in estimating DBE availability was to determine empirically the relevant product and geographic markets for the Airport's federally-assisted contracts. Based upon five years of ABIA's contract and subcontract expenditure data, a total of **39** six-digit North American Industrial Classification System (NAICS) codes were identified as ABIA's product market, and the Austin-Round Rock Metropolitan Statistical Area<sup>2</sup> was identified as the geographic market. This approach incorporates the guidance of USDOT to use 6 digit NAICS codes and to weight that data by ABIA's expenditures. See <http://osdbuweb.dot.gov>. It also separates firms by detailed function, delineating, for example, general contractors from specialty trade firms that primarily act as subcontractors on ABIA projects.

### **2. Counting establishments in ABIA's relevant markets**

The Study next examined the availability of DBEs in the relevant markets. It used Dun & Bradstreet's *Marketplace* database, an independent and established data source routinely relied upon by courts, to identify the total number of marketplace businesses in each six-digit NAICS code, weighted by each code's share of ABIA's product market. It next identified the number of firms owned by minorities and women, based upon the information in *Marketplace*, the Texas Unified Certification Program DBE Directory and numerous other regional listings. As noted by USDOT's guidance, supplementing the DBE Directory with other information on minority- and women-owned firms provides a more complete picture of the availability of firms to work on the Airport's contracts than reliance solely upon the number of certified DBEs. Because of the possible misclassification and non-classification of the ethnicity and gender of firm ownership from these sources, additional scientifically accepted safeguards were taken to correct for the possible sources of error.

### **3. Estimating baseline DBE availability**

Using empirical market definitions, business establishment data and statistical verification surveys, the Study estimated 28.56% as the base availability figure for Step 1.

## **B. Step 2 Consideration of Adjustment to the Base Figure**

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(2004); *Concrete Works of Colorado Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), cert. denied, 124 S.Ct. 556 (2003); see also *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N. D. Ill. 2003).

<sup>2</sup> The Austin-Round Rock Metropolitan Statistical Area is comprised of the counties of Travis, Williamson, Hayes, Bastrop and Caldwell.

Step 2 requires that ABIA examine all evidence of discrimination in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal and whether such discrimination renders ABIA likely to meet its goal without the use of race-conscious subcontracting goals on appropriate projects. Included among the types of evidence that must be considered pursuant to §26.45 are the current capacity of DBEs to perform work on ABIA's federally-assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies conducted anywhere within ABIA's jurisdiction, to the extent not already accounted for in the base figure. ABIA must also consider any available evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to, statistical disparities in the ability of DBEs to obtain the financing, bonding and insurance required to participate in the DBE Program, and data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought." §26.45(d)(3).

**1. Past DBE Utilization**

ABIA considered the current capacity of DBEs to perform on its federally-assisted contracts, measured by the volume of work DBEs have received in recent years. For FFYs 2004-2007, DBEs received 17.32% of the contract awards (\$6,380,278 million of \$36,830,236 million of total awards). The median DBE utilization for ABIA from FFY 2003 through 2007 was 17.60%.

**ABIA DBE Utilization on USDOT-Assisted Contracts  
FFYs 2003 to 2006**

<b>Federal Fiscal Year</b>	<b>Total DBE Utilization</b>
2003-2004	18.0%
2004-2005	22.1%
2005-2006	11.95%
2006-2007	17.19%
Median	17.60%

**2. Evidence from local disparity studies**

The next type of evidence that must be considered is disparity studies in the jurisdiction. The City of Austin considered its 2006 "Second Generation Study of Minority- and Women- Owned Business Enterprises." This Study found that the availability of MBEs and WBEs in the construction and related professional services industries in the Austin Metropolitan Statistical Area is substantially and statistically significantly lower than would be observed if commercial markets operated in a race- and gender-neutral manner. Further, the evidence suggests that minorities and women are substantially and significantly less likely to own their own businesses than would be expected based

upon their observable characteristics including age, education, geographic location, and industry. In addition, these groups also suffer substantial and significant earnings disadvantages relative to comparable White males whether they work as employees or as entrepreneurs. The Study further presented anecdotal evidence of discrimination pursuant to personal interviews of minority and women business owners in the Austin area..

### **3. Statistical evidence of disparities**

To provide a quantitative analysis of the effects of discrimination in ABIA's marketplace, the Study examined disparities in the Airport's marketplace in earnings and business formation rates between DBEs and non-DBEs based upon the 2000 Public Use Microdata Samples (PUMS) and Census Bureau's Current Population Survey (CPS).

#### **a. Disparities in earnings**

The Study analyzed whether minority and female entrepreneurs earn less from their businesses than do their White male counterparts. Other things equal, if minority business owners as a group have lower earnings from their businesses than comparable non-minorities, economic theory suggests that minority business failure rates will be higher and minority business formation rates will be lower than those that would be observed in a race-neutral marketplace. Applying linear regression to assess whether minorities earn less than Whites with similar characteristics, the Study concluded that similarly situated minorities and women, especially Blacks, earn less than their comparable White male counterparts.

#### **b. Disparities in business formation**

Likewise, the Study examined whether more minority businesses would have been formed if minorities were as likely to own their own businesses as were similarly situated White males, and if so, how many more such businesses would have been expected to be formed but for discrimination. Using Probit regression to control for age, industry and education, the Study found large and statistically significant disparities in the business formation rate for DBEs.

#### **c. DBE availability "but for" discrimination**

Using the statistical data on disparities, the Study estimated that DBE availability in Austin in a race-neutral market would be approximately 74.83% higher than the Step 1 estimate, for an estimated availability of DBEs "but for" discrimination of 49.92% in a fully race-neutral market. The base figure is depressed because discrimination has impacted the likelihood that minorities and women will become entrepreneurs, and that when they do, those firms are likely to be less profitable and to fail more frequently.

### **4. Step 2 adjustment evaluations**

ABIA determined that the past participation of DBEs should not be used to adjust the Step 1 base figure. First, there is no evidence that DBEs are being over utilized relative to their availability and capacity. Therefore, relying upon past participation to define

current capacity in determining the goal for a non-discriminatory market is inapposite for ABIA.

All of the evidence described supports the qualitative judgment that, but for the continuing effects of discrimination, the availability of minorities and women to participate on ABIA's contracts would be considerably higher than 28.56% in a race-neutral market. The Study provides a quantitative estimate of the degree to which discriminatory factors artificially depress DBE participation in the marketplace. While the statistical disparities established by the Study could serve as the basis for an upward adjustment of the base figure, for an overall goal of 49.92%, the Airport believes that the step 1 estimate is currently sufficient to meet the objective of further remedying discrimination against DBEs.

## II. Projection of Race-Neutral vs. Race-Conscious Goal Attainment

ABIA will meet the maximum feasible portion of its overall goal through race-neutral means. While the Department's current vigorous race-neutral efforts will continue and new initiatives are being implemented, contract goals are needed to ensure non-discrimination and to level the playing field for DBEs.

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, ABIA evaluated past race-neutral DBE participation as defined in §26.51(a). The median of ABIA's achievement of its goal through race-neutral means for FFY 2003 through FFY 2007 is 1.04%. Therefore, following the guidance of USDOT, ABIA projects that it will meet its overall goal of 28.56% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation.

### ABIA Race-Neutral and Race-Conscious Utilization FFYs 2003-2007

Federal Fiscal Year	Race-neutral DBE Utilization
2003	4.57%
2004	1.00%
2005	1.07%
2006	0.00%
2007	1.04%
Race-Neutral Median	1.04%

Therefore, ABIA projects that it will meet 1.04% of its overall goal of 28.56% through race-neutral measures and 27.52% of its overall goal through race-conscious contract goals.

ABIA will monitor DBE participation throughout the year to adjust its use of contract goals to ensure that their use does not exceed the overall goal. We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect

actual DBE participation and will track and report race-neutral and race-conscious participation separately.

ABIA remains committed to the race-neutral measures identified in our DBE Program, including the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities.
- Funding technical assistance and training programs to assist DBEs and small firms.
- Providing bonding and technical support programs to DBEs and small firms.
- Providing potential prime contractors with bid documents and DBE directories through the use of our On-Line Plans Room and at [www.ci.austin.tx.us](http://www.ci.austin.tx.us), respectively.

### **III. Public Participation**

The City of Austin is committed to the inclusion of the public in the goal setting process. Public notices, press releases, newspaper articles, and public meetings were methods used to facilitate public participation.

#### Public Notices

- 08/20/2008 – Published study on City Website.
- 08/21/2008 – Memorandum was sent to all certified firms regarding study and locations to view information.
- 08/25/2008 – Public Meeting flyers were sent to the following trade associations and minority-women chambers:
  - Austin Black Contractors
  - Associated General Contractors (Texas & Austin Chapters)
  - Business Invest In Growth (BIG)
  - US Hispanic Contractors
  - Asian Construction Trade Association
  - Capital City African American Chamber of Commerce
  - Hispanic Chamber of Commerce
  - Vietnamese American Commerce of Austin
  - Texas Women's Chamber of Commerce

#### Media

- 08/25/2008 – Press Release was issued to the following media outlets:
  - Austin American Statesman
  - The Daily Texan Study
  - Villager Newspaper (Published Article)
  - Austin Chronicle
  - KUT News (Radio Interview)
  - Local News Stations – KXAN, KVUE, KEYE, KAKW, KTBC, News 8, and Univision

### Public Meetings

- 09/02/2008, 10/07/2008, and 10/28/2008 – Public meetings were held to discuss the study and allow for public input.

No comments have been received on the proposed DBE Goal submission for 2008-2009.

### **IV. Contract Goals**

The City of Austin will use contract goals to meet any portion of the overall goal the City does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Under the regulations of 49 CFR Part 26, the City need not establish a contract goal on every contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The City will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

The City anticipates awarding the following projects for FY 2008-2009:

<b>Project Description</b>	<b>Category</b>	<b>FAA</b>	<b>Sponsor</b>	<b>Total Cost</b>
Remain Overnight Parking, Part A Construction	Construction	\$9,500,000	\$6,700,000	\$16,200,000