



**Testimony of Richard White,
Vice President of Properties and Business Development,
Memphis-Shelby County Airport Authority
Chairman of the Business Diversity Committee, Airports
Council International-North America**

before the

House Transportation and Infrastructure Committee

**“The Department of Transportation’s Disadvantaged Business
Enterprise Programs”**

March 26, 2009

Airports Council International-North America
1175 K Street, NW, Suite 500
Washington, DC 20006
202-293-8500

Chairman Oberstar, Ranking Member Mica, and members of the House Transportation and Infrastructure Committee, thank you for allowing me to participate in this important hearing. My name is Richard White, and I am Vice President of Properties and Business Development at the Memphis-Shelby County Airport Authority (MSCAA). Today I am testifying in my capacity as the Chairman of Airports Council International-North America's (ACI-NA's) Committee on Business Diversity. ACI-NA's 366 member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America. Nearly 400 aviation-related businesses who provide goods and services to airports are also members of ACI-NA.

DBE Overview

Nearly thirty years ago, in order to remedy past discrimination, the Department of Transportation established a minority-and women-owned business enterprise program for highway, airport, and transit programs. In 1987, Congress and the Reagan Administration explicitly applied the Disadvantaged Business Enterprise (DBE) program to airport contractors (Part 26) and concessionaries (Part 23).

Under the statutory requirements, any airport that receives federal funding is required to maintain a DBE program. As noted above, the contractors' program covers projects funded through the Airport Improvement Program (AIP). The Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) covers businesses located at the airport that sell consumer goods and services, and those businesses associated with airport concessions, including advertising and management contractors.

There are also regulations governing rental-car concessions. Each airport must establish DBE goals for the rental-car concessions operating on that airport property. There has been some discussion of a national goal program for rental care companies. If national goals are established, the rental-car companies would be responsible to the FAA, and not the airports, for establishing and meeting the DBE concession goals. Furthermore, these goals would be monitored by the FAA, not the airports.

Last year, the FAA held informal discussions to examine the viability of establishing “national” goals for DBE participation in airport rental-care concessions. They have not, to date, issued a notice of proposed rulemaking on this proposal.

In addition, as part of the DBE oversight process, the FAA Civil Rights Office reviews the Part 26 DBE goal-setting methodology submitted by approximately 850 airports each year to ensure compliance with DOT’s DBE regulations. They also review the Part 23 goal-setting methodology submitted by approximately 350 primary airports every 3 years on a staggered basis.

Just as Congressional and regulatory reviews, along with court decisions, bring about changes in the system, airports find themselves constantly reviewing, revising and seeking new ways to improve the program. DBE programs are not static - they can’t afford to be. As our airports and communities grow and change, so too must the DBE program in order to address the needs of the community.

Airports are an integral part of their community – they not only provide an economic gateway for business and goods to move in and out of the community but remember, we live, work and raise our families in these same communities. As such, ensuring inclusion is an ongoing concern, not only in our long term project planning, but in the day-to-day work of the airport. We strive to not only meet the letter of the law, but to embrace the ‘spirit’ of the law, as well. We learn from experience what works and what does not; as we welcome and educate new employers to the area; and as times and circumstances change, the program and the steps we take to make it work do as well.

Role of ACI-NA Business Diversity Committee

This is where ACI-NA’s Business Diversity Committee plays a vital role. The Committee provides us with a forum to develop proactive outreach and educational programs, and to share information on best practices that allow maximum participation of MWDBE Businesses. It also provides us with access to technical experts from the FAA, the legal community and the financial community who help educate us on the program and the impact of regulatory, legislative and legal changes, as well as what we, as airports, need to do to address these changes.

The Business Diversity Committee also works regularly with ACI-NA's Legal, Commercial, Insurance and Finance Committees on a range of issues, including diversity studies and how to find the best consultants; how to respond to changes brought about by court decisions; and insurance and bonding issues that impact both airports and DBEs. Next month, we are scheduled to meet to discuss joint ventures and the best ways to foster them.

We also produced a comprehensive white paper providing an orientation on Airport DBE programs for our members outlining the program, its origins, and examples of successful implementation strategies.

In 2007, we conducted a Disadvantaged Business Enterprise Program Survey, where we asked our members to rank the top five practices that help make their DBE programs successful, as well as the five biggest obstacles that challenged their program's success. This is yet another example of the work of the ACI-NA Business Diversity Committee to provide ACI-NA airports with information and guidance on ways to improve their programs.

I would like to share the results of that survey with you. It found the best practices to be, in order of importance:

- 1) having contract goals;
- 2) airport management or governing board support;
- 3) using direct contracts, joint ventures or subleases;
- 4) aggressive outreach and marketing, and
- 5) working with prime contractors to identify DBEs.

The five greatest obstacles identified in the survey, again ranked in order of importance, were

- 1) finding certified DBEs;
- 2) potential DBEs do not apply for certification;
- 3) prime contractors unwillingness to go beyond contract requirements;
- 4) indentifying DBEs who have airport experience, and
- 5) hesitancy of airport prime contractors to look at new ways to increase participation.

The Importance of Developing a Unified Certification Program

Finding certified DBEs has been, and continues to be, a major barrier. Airports across the country worked with their states to create strong, state Unified Certification Programs (UCPs). The UCPs provide 'one-stop shopping' for certification as a DBE, and that certification is then recognized

and accepted throughout the state. It is a good program and helpful in identifying potential DBEs.

Despite the availability of this 'one stop' certification process, however, we have found it necessary to continue vigorous outreach efforts in our communities to inform and educate companies and to urge them to apply. In February of this year, ACI-NA joined the Airport Minority Council (AMAC) and the American Association of Airport Executives (AAAE) in sending a letter to DOT and FAA asking them to partner with us in order to take the next step forward on the UCP program - the development of uniform certification forms and uniform training. We strongly believe this needs to happen if we are to ensure that DBE/ACDBEs with limited resources have opportunities for contracts in more than one state, as well as to ensure that they receive consistent answers to their questions regarding the program regulations.

The letter is based on our collective experience as we have found that states are modifying the USDOT prescribed certification application as well as the Small Business Administration's (SBA's) Personal Net Worth (PNW) forms. We have encountered issues with the information gathered during on-site visits which can differ from state to state, as well as finding that DBEs/ACDBEs are receiving different answers to the same questions concerning certification. The DOT and the FAA have reached out to us, and we are in the process of scheduling a meeting to discuss the issue.

You can imagine how frustrating it is for a small firm, new to the DBE process, based near the border of the neighboring state (or two) having to fill out separate certification applications, answer different questions or receive different and possibly conflicting answers to the same questions, depending on which state program they consult for guidance. It doesn't make sense, and it is a deterrent to companies seeking and obtaining certification.

The creation and publication of appropriate protocols for ensuring compliance, including information about what DBE/ACDBEs can do if they believe that a certifying entity is not following the national forms or standards during the certification process, is a necessary step to ensure the program continues to work as it was designed. We also recommended that a training program be developed to ensure consistency. And we commend this Committee for including a provision in HR 915 that establishes a mandatory certification training program.

Airports and DBEs

MSCAA and our sister airports across the country have taken many steps to ensure DBE participation in contracting. I would like to provide some practical examples of the steps the airport community has taken and continues to take to make the program work. I think it will give this committee a better understanding of how the program can work, as well as restating our commitment to running successful programs.

In order to ensure a strong pool of DBE companies, many airports hold outreach events in their communities to provide information about the program as well as to explain the UCP process. The Wayne County Airport Authority, which governs the Detroit Airport, took extra steps to ensure good turnouts at their outreach sessions by providing a special incentive. They offered free membership to their vendor's list for all those who attended. Membership in the Michigan Intergovernmental Trade Network (MITN) ensures notification of specific bidding opportunities via facsimile or electronic mail. This is one of the reasons why the Authority, in 2006, was able to surpass its DBE goal of 20% - in fact they ended up at 32% - and this translated to revenues of over \$65.9 million for DBE firms.

At Dallas-Fort Worth (DFW), for the four-month period covering April to July of 2004, the Airport held twelve outreach events or meetings explaining the potential opportunities for retail and food and beverage concessionaires in their new Terminal D. Because of this aggressive outreach effort, the Airport was able to far exceed its participation goals.

DFW also has a Small Contractors Development Training Workshop, an eight week course, designed to provide technical training for minority and women owned businesses. The curriculum includes workshops on a variety of topics including business development, financial management, insurance and bonding.

At MSCAA, like many other airports, we hold pre-bid conferences to provide information and guidance on upcoming contracts. It's an opportunity to ask questions and meet potential business partners for both prime and subcontractors.

Mentor Protégé programs also work well for helping DBEs. As the name implies, the purpose is to link up companies with limited or no experience

with those with more experience. The joint effort not only further develops DBEs, but can also assist them in moving into non-traditional areas of work and/or compete in the marketplace outside the DBE program.

DFW Airport instituted a mentor protégé program in its marketing department. Alpha Business, one of the early members, is a small African-American female-owned public relations and advertising firm. They participated in the program for three years and are now a joint venture partner on DFW's business-to-business and business-to-consumer contract with Moroch, an international, full-service agency specializing in integrated marketing.

In 2000, six of the seven DBE architecture firms in the Indianapolis area created an umbrella entity called ARCHonsortium. This pooling 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% role in a joint venture that was created for the new terminal building and concourse. By joining together firms increase their capacity and capabilities as well as becoming more cost competitive.

San Francisco International Airport underwent a \$22 million redevelopment of its concession program, known as the San Francisco Marketplace, earlier this decade. At an informational meeting on the project, about three hundred people were present – half of whom represented minority or women-owned firms, and close to 20 ended up participating in the project. When the Marketplace opened it featured 45 new concessions of which 80% were locally-owned. A majority of the DBEs in the Marketplace when it opened were under direct leases as owners/operators. SFO has reported that there are several features that make its DBE program unique and effective. These include:

- Principal Concession Concept – whereby Prime concessionaires subleased to small DBE's and provided training and management assistance to help DBE's get started in Airport operations. As a result – many DBE's were awarded concessions without the help of a prime contractor;
- Airport Concession Loan Program – Financial assistance was provided to DBEs for capital improvements to their airport locations in the new redevelopment;

- Airport Surety Bond Program – The Airport assisted DBE’s with obtaining performance bonds on concession operations; and
- DBE guidelines were established to ensure the DBE’s are owners/operators for their shops.

At Las Vegas’ McCarran International Airport, they point to the success of Ayala’s Inc. This DBE started with one shop at the airport and now has eight operations there and at Denver International Airport. At MSCAA, I like to point to Lenny’s Sub Shop, which started with one single store, and now has the highest grossing shop on a per square foot basis at the Airport.

Many airports also have DBE programs for projects that are not funded with federal money, including those funded with the receipts of the Passenger Facility Charge (PFC) user fee. One example is right here in Congress’ own backyard. The Metropolitan Washington Airport Authority (MWAA) runs an extensive Local Disadvantaged Business Enterprise (LDBE) program. The program, which is focused on small businesses located within a 100 mile range of the District of Columbia’s zero mile marker, has a clearly defined Business Diversity Policy. That policy is to “aggressively seek the participation of small, disadvantaged, minority and women-owned businesses in its contracting opportunities through all lawful means.”

To ensure that the program is vibrant and busy, MWAA uses a number of tools, including undertaking extensive outreach. They host Annual Business Opportunity Seminars; participate in regional procurement fairs and small business conferences; provide advanced notifications/forecasts of upcoming opportunities to small minority and women-owned business enterprise firms; newsletters, and email alerts.

Another important step they have taken to ensure participation is to relax bonding and insurance requirements for contracts valued at \$100,000 or below, thereby clearing a financial hurdle many DBEs face.

At MSCAA, we also have a Business Diversity Development Program for projects done with nonfederal money. The program is being revised, based on the results of the diversity study completed at the end of last year. The study found that work remains to be done in our region in order to achieve our goal of a truly level playing field, and it provides a number of recommendations for

change that we are putting into place. My colleague Sara Hart, Vice President and General Counsel for MSCAA is here with me today, and will be happy to provide a brief overview of the study and answer any questions you may have. I mentioned earlier.

The examples I have provided are only a small sample of what airports are doing to ensure a level playing field, help erase the artificial barriers to participation DBEs face, and to encourage and promote the program. I am sure members of this Committee, in talking with their own airports, will learn of additional, innovative ideas being used to enhance and encourage the participation of DBEs at airports.

One of my colleagues likes to say that having a good DBE program is a always a work in progress. ACI-NA stands committed to work with this Committee and this Congress to continue this important work.

Thank you.