Dallas/Fort Worth International Airport

Availability & Disparity (A & D) Study Board Presentation

August 2011
Presentation Outline

Background Information  Linda Valdez Thompson & Suzanne Cruz-Sewell
  ▪ DFW’s Business Diversity Programs
  ▪ Availability & Disparity Study
  ▪ Purpose of Studies
  ▪ Process
  ▪ Study Comparisons

Legal Framework  
  Franklin Lee, Attorney, Tydings & Rosenberg, LLP

A & D Base & Supplemental Studies, Assessment & Findings
  Dr. Eleanor Ramsey, Mason Tillman Associates

Legal Review, Policy Implications & Remedial Options
  Franklin Lee, Attorney, Tydings & Rosenberg, LLP

Next Steps  Linda Valdez Thompson
DFW’s Business Diversity Programs

M/WBE Program
- Minority/Woman-Owned Business Enterprise
- Supported by an Availability & Disparity Study

DBE & ACDBE Program
- Disadvantaged Business Enterprise
- Airport Concessions Disadvantaged Business Enterprise
- Federally mandated
- DFW recipient of federal funds
Availability & Disparity Study – What is it?

- **Availability Analysis** – determines number of firms in market area willing and able to provide goods or services
  - Willing – a firm interested in doing business with DFW
  - Able – a firm has the ability or capacity to provide a service or good

- **Utilization & Participation** - evaluates the procurement and contracting practices of an organization, particularly the use of minority and woman-owned businesses

- **Disparity Analysis** – determines levels at which M/WBEs are utilized on DFW contracts and identifies statistically significant underutilization or overutilization

- **Program Recommendations** - offers narrowly tailored remedies based on the findings
Purpose of Studies

- Prepare a legally defensible study for the local M/WBE Program (does not apply to federal DBE and ACDBE Programs)
- Determine if statistical disparity exists
- Ascertian practices affecting any documented disparity
- Assess effectiveness of race and gender neutral programs
- Determine whether DFW’s D/M/WBE participation levels are the product of its D/M/WBE goals, the compliance program, or simply market forces
Process

- North Central Texas Council of Governments (NCTCOG) select Mason Tillman Associates to conduct A & D Study for a consortium of public entities:

A & D Study period: October 1, 2002 through September 30, 2007 (5 years)
- Five industry areas: construction, architecture & engineering, professional services, non-professional services, and goods
- DFW requests an additional supplemental study to examine M/WBE contracting participation among public entities without M/WBE Program goals.
- DFW contribution to base study $200,000, supplemental study $100,000
- DFW contracts with Franklin Lee, Attorney, Tydings & Rosenberg, to conduct legal review.
Study Comparison
Construction – Subcontractor Utilization

*Percentages are expressed as a percentage of total construction dollars.*
Study Comparison
Professional Services – Subcontractor Utilization

*Percentages are expressed as a percentage of total professional services dollars.
Dallas – Ft. Worth International Airport Board Presentation

Availability and Disparity Study Briefing: Legal Framework
August 2, 2011
THE BASICS: A QUICK REFRESHER COURSE

- CROSON
- ADARAND I AND II

- STRICT SCRUTINY STANDARD
  - COMPELLING INTEREST
  - NARROW TAILORING
Lessons of Croson & Adarand

- **Strict Scrutiny**
  - When is it required?
    - To examine government use of a racial preference
    - To examine government use of a racial classification
Two Prongs of Strict Scrutiny

1st Prong: Compelling Interest

- Disparity studies & factual predicates provide a ‘strong basis in evidence’
- The “factual predicate” provides a roadmap to remedies
  1. Identification of where disparities exist
  2. Identification of the nature & form of barriers, and root causes of disparities.
Two Prongs of Strict Scrutiny

2nd Prong: Narrow Tailoring of Remedies

- Consideration of “race-neutral” remedies
- Consideration of appropriate “race-conscious” remedies only when it appears that neutral remedies, in and of themselves, are inadequate
- Limited duration; periodic review; limited by ethnicity/gender, industry, & form of discrimination
- Forms of remedies: Follow the Road Map of the Factual Predicate
THE LEGAL BATTLEGROUND

- EMERGING ISSUES & THEMES FROM RECENT DECISIONS:
  - PASSIVE PARTICIPATION IN PRIVATE SECTOR DISCRIMINATION AS JUSTIFICATION FOR GOVERNMENT REMEDIES
  - APPROPRIATE MEASURES OF AVAILABILITY
  - APPROPRIATE MEASURES OF UTILIZATION
  - HOW “NARROW” IS “NARROW TAILORING”???
  - WHAT CONSTITUTES SUFFICIENT CONSIDERATION OF “NEUTRAL EFFORTS”??
THE LEGAL BATTLEGROUND

KEY RECENT DECISIONS

- CONCRETE WORKS V. CITY AND COUNTY OF DENVER
- WESTERN STATES PAVING V. WASHINGTON DOT
- ROTHE DEVELOPMENT V. DOD
THE LEGAL BATTLEGROUND

CONCRETE WORKS

- Government may act to ensure that its public tax dollars do not serve to finance the evil of private prejudice ("passive participant" justification for use of race-conscious remedies).

- Showing of nexus between expenditure of public dollars with prime contractors and marketplace discrimination by same prime contractors against M/WBE subcontractors on non-government or private sector work.
Western States Paving v. Washington DOT (9th Circuit)

- TEA-21 DBE Program Constitutional
- Congress had compelling interest for DBE program
- State DOT need not establish compelling interest
- **BUT** State DOT cannot narrowly tailor application of DBE Program without determining extent of discrimination locally
Western States Paving v. Washington DOT (9th Circuit)

- Washington DOT application of DBE program not narrowly tailored:
  - No statistical studies showing disparity in local State highway contracting
  - Capacity analysis flawed and tainted by effects of program
  - No anecdotal evidence of discrimination
ROTHE DEVELOPMENT V. DOD
545 F.3d 1023 (Fed. Cir. 2008)

- Underscores “strong basis” in evidence requirement for establishing compelling interest
- Analysis of evidence is limited to that data actually before & considered by Congress before reauthorization of DOD’s SDB program
ROTHE DEVELOPMENT v. DOD
545 F.3d 1023 (Fed. Cir. 2008)

- Staleness of data is also a factor; evidence must be “reasonably up to date”: 10-year-old data is stale and not probative; 5 year-old data *may* be OK – look at best available evidence at time of enactment.

- Six state and local government disparity studies were not sufficiently broad in geographic scope to establish factual predicate for a national remedial program.
DALLAS / FORT WORTH INTERNATIONAL AIRPORT BOARD AVAILABILITY AND DISPARITY STUDY

Briefing

August 2011
AGENDA

• Management Team
• Study Objective
• Industry Group Definitions
• Research Methodology
• Statistical Results
  ➢ Utilization
  ➢ Market Area
  ➢ Prime Contract Analysis and Findings
  ➢ Subcontract Analysis and Findings
  ➢ Effects of DFW M/WBE Program
• Recommendations
MASON TILLMAN ASSOCIATES

Established in 1978
Public Policy Research and Marketing Professionals

Award Winning Company

Service Divisions
Business Affirmative Action
Corporate Communications
DISPARITY STUDIES

One Hundred and Ten On Time & Unchallenged

- States: 15
- Counties: 14
- Schools: 8
- Districts: 48
- Cities: 25

Total: 110
TRANSPORTATION CLIENTS

Alabama State Highway Department
Alameda-Contra Costa Transit, CA
Bay Area Rapid Transit District, CA
Birmingham Area Metro Express, AL
California Department of Transportation
   Central Contra Costa Transit, CA
   Dallas Area Rapid Transit, TX
Hillsborough County Aviation Authority, FL
Illinois Tollway Authority
Kansas City Area Transportation Authority, MO
Los Angeles Airports Commission, CA
Louisville Transit Authority, KY
Metropolitan Transit Agency-Nashville, TN
Minneapolis St. Paul International Airport, MN
Nashville International Airport, TN
New Jersey Transportation Authority
New Orleans Regional Transit Authority, LA
   North Texas Tollway Authority, TX
   Oakland International Airport, CA
Regional Transit Authority – Seattle, WA
Sacramento Regional Transit District, CA
San Francisco International Airport, CA
San Francisco Municipal Railway, CA
Seattle/Tacoma Airport, WA
Tennessee Department of Transportation
   Texas Department of Transportation
Washington Department of Transportation
Washington Metropolitan Area Transit Authority
   Wayne County Airport Authority
United States Department of Transportation

110 Disparity Studies
## CORE TEAM EXPERIENCE

<table>
<thead>
<tr>
<th>Study Staff</th>
<th>Education</th>
<th>Disparity Studies</th>
<th>Legal Expertise</th>
<th>Anecdotal Information Collection</th>
<th>Statistical Analysis</th>
<th>M/WBE Program Design</th>
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<tbody>
<tr>
<td>Eleanor Ramsey, Ph.D.</td>
<td>Hunter College</td>
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<tr>
<td><strong>Project Manager</strong></td>
<td>University of CA Berkeley</td>
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<td>Edward Norton, Esq.</td>
<td>Yale University</td>
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<tr>
<td><strong>Legal Advisor</strong></td>
<td>Columbia University</td>
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<td>Judge Henry Ramsey, Jr.</td>
<td>University of CA Riverside</td>
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<tr>
<td>Lynn Reddrick, M.B.A.</td>
<td>University of CA Berkeley</td>
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<tr>
<td><strong>Assistant Project Manager</strong></td>
<td>Columbia University</td>
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<td><strong>Outreach Manager</strong></td>
<td>University of CA Berkeley</td>
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<tr>
<td>Allura J. Scott, Esq.</td>
<td>California State University</td>
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<td><strong>Anecdotal Manager</strong></td>
<td>Howard University</td>
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<tr>
<td>Tatiana Ioudovina, M.S.</td>
<td>St. Petersburg State University</td>
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<td><strong>Statistician</strong></td>
<td>Northeastern University</td>
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<td>Hendry Joesuf, M.B.A.</td>
<td>University of So. California</td>
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## SUBCONSULTANT TEAM EXPERIENCE

<table>
<thead>
<tr>
<th>Subconsultants</th>
<th>Disparity Study Experience</th>
<th>Legal Analysis</th>
<th>Data Collection/Outreach</th>
<th>Program Design</th>
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<td>The Burrell Group - Black Male</td>
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<td>Consumer Market Insights - Black Female</td>
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<tr>
<td>Adrian Information Strategies - Hispanic Female</td>
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<tr>
<td>Trovada Davis - Asian Male</td>
<td>1</td>
<td></td>
<td></td>
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<tr>
<td>Ms. Sherry Crum-Tupper - Caucasian Female Business</td>
<td>4</td>
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<td></td>
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<tr>
<td>Mr. Scott Emblidge, Esq. - Caucasian Male</td>
<td>1</td>
<td></td>
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</table>
DEFINITIONS OF INDUSTRY GROUPS STUDIED

• Construction
  ➢ New Construction, Remodeling, Renovation, Maintenance, Demolition and Repair of any Public Structure or Building, and Other Public Improvements

• Architecture and Engineering
  ➢ Construction Management, Landscape Architecture, Surveying, Mapping Services, and Architecture and Engineering

• Professional Services
  ➢ Services Provided by Attorneys, Accountants, Medical Professionals, Technical Services, Research Planning, and Consultants

• Non-Professional Services
  ➢ Maintenance and Other Services Which Could be Performed Without a Professional License, Special Education, or Training

• Goods
  ➢ Materials, Supplies, and Equipment
• OBJECTIVES
  - Assess Market Area Business Availability
  - Analyze Non-Federal Prime Contract Awards
  - Determine If M/WBE Statistical Disparity Exists
  - Ascertain Practices Affecting Any Documented Disparity

• CHALLENGES
  - Outreach to Ethnically Diverse Community
  - Identify All Willing Market Area Businesses
  - Compile All Prime and Subcontract Awards and Payments
  - Define Best Management Practices to Eliminate Barriers
UTILIZATION METHODOLOGY

- Identify Prime Contract Records
  - Complete Electronic Records Provided

- Reconstruct Subcontract Records
  - Electronic Records Provided
  - Prime Contracts Surveyed
  - Subcontractors Surveyed
AVAILABILITY METHODOLOGY

• Identify Available Businesses
  - Utilized Bidders From Contract files
  - Unsuccessful Bidders From Project Files
  - Local Government Certified Lists
  - Trade Association Membership Lists
  - Business Outreach
# Prime & Subcontractor Utilization by Ethnicity

(All Industries)

Study Period: October 1, 2002 – September 30, 2007

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Total Payments</th>
<th>Percent of Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian Males</td>
<td>$656.5M</td>
<td>65.93%</td>
</tr>
<tr>
<td>African Americans</td>
<td>$103.9M</td>
<td>10.44%</td>
</tr>
<tr>
<td>Caucasian Females</td>
<td>$96.8M</td>
<td>9.72%</td>
</tr>
<tr>
<td>Hispanic Americans</td>
<td>$86.9M</td>
<td>8.73%</td>
</tr>
<tr>
<td>Asian Americans</td>
<td>$46.3M</td>
<td>4.65%</td>
</tr>
<tr>
<td>Native Americans</td>
<td>$5.2M</td>
<td>0.52%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$995.8M</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
# Prime Utilization by Ethnicity

## (All Industries)

**Study Period: October 1, 2002 – September 30, 2007**

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Total Payments</th>
<th>Percent of Payments</th>
<th>Total Contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian Males</td>
<td>$786.7M</td>
<td>79.01%</td>
<td>3,362</td>
</tr>
<tr>
<td>Hispanic Americans</td>
<td>$68.2M</td>
<td>6.85%</td>
<td>306</td>
</tr>
<tr>
<td>African Americans</td>
<td>$55.7M</td>
<td>5.59%</td>
<td>271</td>
</tr>
<tr>
<td>Caucasian Females</td>
<td>$49.2M</td>
<td>4.95%</td>
<td>595</td>
</tr>
<tr>
<td>Asian Americans</td>
<td>$33.8M</td>
<td>3.40%</td>
<td>128</td>
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<tr>
<td>Native Americans</td>
<td>$2.0M</td>
<td>0.20%</td>
<td>194</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$995.8M</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>4,856</strong></td>
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</table>
## Prime Contractor Size Profile by Employees

<table>
<thead>
<tr>
<th>Establishments</th>
<th>Dallas County</th>
<th>Tarrant County</th>
<th>State of Texas</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5 Employees</td>
<td>51%</td>
<td>50%</td>
<td>52%</td>
<td>54%</td>
</tr>
<tr>
<td>Fewer than 20 Employees</td>
<td>82%</td>
<td>83%</td>
<td>85%</td>
<td>86%</td>
</tr>
<tr>
<td>Fewer than 100 Employees</td>
<td>96%</td>
<td>97%</td>
<td>97%</td>
<td>98%</td>
</tr>
<tr>
<td>More than 500 Employees</td>
<td>0.42%</td>
<td>0.29%</td>
<td>0.29%</td>
<td>0.25%</td>
</tr>
<tr>
<td>Total Establishments</td>
<td>63,308</td>
<td>36,300</td>
<td>509,080</td>
<td>7,601,160</td>
</tr>
</tbody>
</table>

2006 County Business Patterns
### MARKET AREA BUSINESSES

#### ETHNICITY/GENDER

<table>
<thead>
<tr>
<th>Businesses</th>
<th>Dallas County</th>
<th>Tarrant County</th>
<th>State of Texas</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minority-owned Businesses</td>
<td>29%</td>
<td>20%</td>
<td>29%</td>
<td>18%</td>
</tr>
<tr>
<td>Woman-owned Businesses</td>
<td>27%</td>
<td>28%</td>
<td>27%</td>
<td>28%</td>
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<tr>
<td>Total Businesses</td>
<td>195,101</td>
<td>119,139</td>
<td>1,734,509</td>
<td>22,974,655</td>
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</tbody>
</table>

2002 Survey of Business Owners
Prime Contract Analysis and Findings
## Prime Contracts by Industry Group

### Study Period: October 1, 2002 – September 30, 2007

<table>
<thead>
<tr>
<th>Industries</th>
<th>Total Prime Contracts</th>
<th>Total Prime Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Services</td>
<td>118</td>
<td>$392.4M</td>
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<tr>
<td>Architecture and Engineering Services</td>
<td>41</td>
<td>$69.4M</td>
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<tr>
<td>Professional Services</td>
<td>174</td>
<td>$25.6M</td>
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<tr>
<td>Non-Professional Services</td>
<td>735</td>
<td>$434.4M</td>
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<tr>
<td>Goods</td>
<td>3,788</td>
<td>$73.8M</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>4,856</strong></td>
<td><strong>$995.8M</strong></td>
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### Prime Contract Size Analysis

<table>
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<tr>
<th>INDUSTRY</th>
<th>Under $25,000</th>
<th>Under $100,000</th>
<th>Under $500,000</th>
<th>$500,000 and Over</th>
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<tbody>
<tr>
<td>Construction Services</td>
<td>14.41%</td>
<td>25.42%</td>
<td>44.92%</td>
<td>55.08%</td>
</tr>
<tr>
<td>Architecture &amp; Engineering</td>
<td>29.27%</td>
<td>43.90%</td>
<td>65.85%</td>
<td>34.15%</td>
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<tr>
<td>Professional Services</td>
<td>59.77%</td>
<td>76.44%</td>
<td>93.10%</td>
<td>6.90%</td>
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<tr>
<td>Non-Professional Services</td>
<td>58.78%</td>
<td>77.55%</td>
<td>89.12%</td>
<td>10.88%</td>
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<tr>
<td>Goods</td>
<td>96.70%</td>
<td>97.94%</td>
<td>99.31%</td>
<td>0.69%</td>
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</table>
# DISTRIBUTION OF PRIME CONTRACT DOLLARS

**Study Period: October 1, 2002 – September 30, 2007**

<table>
<thead>
<tr>
<th>Vendors Received</th>
<th>Dollars</th>
<th>Percent Dollars</th>
<th>Number Contracts</th>
<th>Percent Contracts</th>
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<tbody>
<tr>
<td>3 Vendors Received</td>
<td>$271.2M</td>
<td>27%</td>
<td>6</td>
<td>0.12%</td>
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<td>13 Vendors Received</td>
<td>$497.2M</td>
<td>50%</td>
<td>36</td>
<td>0.74%</td>
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<tr>
<td>21 Vendors Received</td>
<td>$600.1M</td>
<td>60%</td>
<td>67</td>
<td>1.38%</td>
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<tr>
<td>1,116 Vendors Received</td>
<td>$395.6M</td>
<td>40%</td>
<td>4,789</td>
<td>98.62%</td>
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<tr>
<td>1,137 Vendors Received</td>
<td>$995.8M</td>
<td>100%</td>
<td>4,856</td>
<td>100%</td>
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<table>
<thead>
<tr>
<th>Total Contracts</th>
<th>4,856</th>
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<td>Number Utilized Vendors</td>
<td>1,137</td>
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<tr>
<td>Total Expenditures</td>
<td>$995.8M</td>
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**Study Period:**
- October 1, 2002
- September 30, 2007
PRIME CONTRACTS
BY MARKET AREA
Study Period: October 1, 2002 – September 30, 2007
Market Area: Dallas / Tarrant Counties

$995.8M

Within Market Area
$585.1M
58.76%

Dallas County
48.78%

Tarrant County
9.98%

Outside Market Area
$410.7M
41.24%

Other Texas Counties
15.94%

Outside Texas
25.30%
## Prime Contract Disparity Findings

### Under $500,000

<table>
<thead>
<tr>
<th>Ethnicity / Gender</th>
<th>Construction Services</th>
<th>Architecture and Engineering</th>
<th>Professional Services</th>
<th>Non-Professional Services</th>
<th>Goods</th>
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<tbody>
<tr>
<td>African Americans</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Asian Americans</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Hispanic Americans</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Native Americans</td>
<td>No</td>
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<td>No</td>
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<tr>
<td>Minority Business Enterprises</td>
<td>No</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Women Business Enterprises</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Minority and Women Business Enterprises</td>
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<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
</tr>
</tbody>
</table>

*Yes = Statistically significant disparity  
No = Statistically insignificant disparity*
Subcontract Analysis and Findings
### Subcontractor Utilization by Ethnicity

#### Four Industries*

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Total Payments</th>
<th>Percent of Payments</th>
<th>Total Subcontracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian Male</td>
<td>$193.9M</td>
<td>49.99%</td>
<td>492</td>
</tr>
<tr>
<td>Caucasian Female</td>
<td>$62.7M</td>
<td>16.17%</td>
<td>359</td>
</tr>
<tr>
<td>African American</td>
<td>$62.6M</td>
<td>16.15%</td>
<td>264</td>
</tr>
<tr>
<td>Hispanic American</td>
<td>$39.5M</td>
<td>10.19%</td>
<td>237</td>
</tr>
<tr>
<td>Asian American</td>
<td>$25.7M</td>
<td>6.64%</td>
<td>72</td>
</tr>
<tr>
<td>Native American</td>
<td>$3.3M</td>
<td>0.86%</td>
<td>25</td>
</tr>
</tbody>
</table>

**Total**

$387.9M 100.00% 1,449

* Asterisk = Construction, Architecture and Engineering, Professional Services, and Non-Professional Services

50.01%
# DFW Subcontract Disparity Findings

**OCTOBER 1, 2002 TO SEPTEMBER 30, 2007**

<table>
<thead>
<tr>
<th>Ethnicity / Gender</th>
<th>Construction Services</th>
<th>Architecture and Engineering</th>
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*Yes = Statistically significant disparity\nNo = Statistically insignificant disparity*
SUPPLEMENTAL STUDY

• Assess Whether DFW M/WBE Subcontracting Levels Are Due To:
  ➢ DFW M/WBE Goals and M/WBE Program or
  ➢ Expression of Market Forces

• Compare DFW M/WBE Subcontractor Participation to Other Consortium Agencies Without Goals
  ➢ Compare DFW and Consortium Agencies Common Primes
  ➢ Determine M/WBE Subcontractor Utilization – With and Without M/WBE Program
  ➢ Perform Contract Size Analysis To Measure Needed Capacity

• Case Law Supports Use of Disparity Findings From Another Agency With Nexus
  ➢ Nexus Between DFW and Its Primes in Consortium Agencies and Market-Driven Prime Decisions
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Yes = Statistically significant disparity  
No = Statistically insignificant disparity  
--- : Underutilization, but too few contracts to test disparity
Effects of DFW M/WBE Program
**DFW M/WBE PROGRAM**

- M/WBE Subcontractor Participation Significantly Higher Than Consortium Agencies Without M/WBE Programs
- Similar Size M/WBE Subcontract

<table>
<thead>
<tr>
<th>Agency</th>
<th>M/WBE Subcontractor Participation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Construction</td>
<td>Architecture and Engineering</td>
</tr>
<tr>
<td>DFW Airport Board</td>
<td>29.52%</td>
<td>41.98%</td>
</tr>
<tr>
<td>Agencies Without M/WBE Program</td>
<td>14.13%</td>
<td>17.29%</td>
</tr>
</tbody>
</table>
DFW M/WBE SUBCONTRACT PROGRAM

• Evidence to Continue M/WBE Program
  ➢ Adequate M/WBE Capacity
  ➢ DFW Subcontract Discrimination Documented
  ➢ DFW Primes Documented Market Area Discrimination
  ➢ Statistical Underutilization of M/WBEs
  ➢ Private Sector Economic Barriers for M/WBEs

• Evidence M/WBE Participation Declines Without Program
  ➢ Documented Lower M/WBE Subcontractor Participation for Agencies Without Goals
Recommendations
I. M/WBE Program

- Apply Overall M/WBE Goal to Groups with Disparity
- Set Weighted Construction Subcontracting Goals
- Set Weighted Architecture and Engineering Subcontracting Goals
RACE AND GENDER NEUTRAL REMEDIES

II. DFW Program Modifications

- Establish SBE Program to Support M/WBE Capacity Building
- Expand Industry Classifications

<table>
<thead>
<tr>
<th>Present</th>
<th>Proposed</th>
</tr>
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<tbody>
<tr>
<td>Construction</td>
<td>Unchanged</td>
</tr>
<tr>
<td>Professional Services</td>
<td>Architecture &amp; Engineering Professional Services</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>Non-Professional Services</td>
</tr>
<tr>
<td>Three Industries</td>
<td>Five Industries</td>
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</tbody>
</table>
RACE AND GENDER NEUTRAL REMEDIES

III. DFW Program Enhancements

- Expand Owner Controlled Insurance Program
- Enhance Bonding Assistance Requirements
- Revise Expedited Payment Program
- Expand Unbundling Policy
- Expand Mentor/Protégé Program
- Establish Construction Direct Purchasing Program
Dallas – Ft. Worth International Airport Board Presentation

Availability and Disparity Study Briefing: Policy Implications
August 2, 2011
Implications for Policy Options

- Policy Option Matrix represents “road map” for legally defensible, narrowly tailored race- and gender-neutral, and race- and gender conscious remedies to address barriers to M/WBE participation identified in DFW Disparity Study.

- Strong basis in evidence for remedial relief determined by industry, by race, by gender group based upon totality of factual predicate (i.e., disparity study and supplemental study).
Policy Option Matrix Summary

- **Race-Neutral Remedies**
  - Direct purchasing program (construction)
  - Website Posting of Plan Holders List
  - Bonding Assistance
  - Expanded mentor-protégé program
  - Low Cost Wrap-Up Insurance (OCIP)
  - Expedited Payment Program for Subcontractors
  - Mobilization Payments to Subcontractors
  - SBE Vendor Rotation
  - Evaluation Preference for SBE Prime Bidders
  - SBE Reserve (for contracts up to $50,000)
Policy Option Matrix Summary

- Race-Conscious Remedies
  - Annual M/WBE Aspirational Subcontracting Goals
  - M/WBE Joint Venture Incentives (< $1 million contracts)
  - M/WBE Weighted Contract-Specific Subcontracting Goals
  - Quantified Good Faith Efforts Criteria (objective scoring)
  - Contract Compliance Monitoring
  - M/WBE Mentor-Protégé Program
  - M/WBE Vendor Rotation
  - Evaluation Preference for M/WBE Prime Bidders
Policy Option Matrix Summary

- Non-Industry Specific Remedies
  - Bid De-briefings
  - Bid Specification Review
  - Expanded Debundling Policy
  - Commercial Nondiscrimination Policy Enhancements
  - Business Development Assistance
  - M/WBE – DBE Program Data Management
  - Periodic Program Performance Review
  - Prompt Payment Notification (e-mail alerts)
  - Linked Deposit Policy
  - DFW Staff Performance Reviews / Incentives
  - Public / Private “Bridging the Gap” Initiative
Policy Recommendations

Decision Point: A&E Services – Three Options

1. Continue M/WBE Program with two-year sunset and close monitoring to mitigate risk (moderate to high legal risk due to underutilization not being statistically significant for three of five minority sub-groups).

2. Modify M/WBE Program to only apply to African American and WBE firms on A&E contracts (lowers legal risk due to further narrow tailoring of remedy as indicated by supplemental study results).

3. Replace M/WBE Program with SBE Program (virtually eliminates legal risk) -- ** Recommended Option
Policy Recommendations

- Small Business Enterprise Programs: Typical Elements
  1. Definition of “small” business based upon some measure of U.S. SBA size standards by industry (3-year average of firm’s number of employees or gross annual revenues).
  2. Significant local business presence (headquarters or location of employees domiciled in relevant marketplace).
  3. Certification based upon submission of tax returns and payroll records and analysis by third party.
Policy Recommendations

- **Small Business Enterprise Programs: Typical Elements**

  4. Set-asides or “SBE Reserves” limiting competition of smaller contracts to certified SBEs; SBE evaluation preferences; SBE bid equalization credits or price evaluation adjustments; SBE subcontracting goals on larger contracts; SBE joint venture incentives.

- **Airports Currently Using SBE Program Models:**
  - Wayne County Airport Authority
  - Orlando International Airport
  - Phoenix Sky Harbor Airport
### DFW Subcontract and Supplemental Disparity Findings

**October 1, 2002 to September 30, 2007**

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Next Steps

- Continue current M/WBE Program until program recommendations are adopted
- Conduct Chamber and Advocacy Organization Briefings
- Recommend adoption of A&D Study findings at September 2011 Board
- Develop program recommendations and present by January 2012
- Implement adopted program recommendations following Board approval
Dallas/Fort Worth International Airport

Availability & Disparity (A & D) Study Board Presentation

August 2011