

**DALLAS FORT WORTH INTERNATIONAL AIRPORT  
PROPOSED AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE  
(ACDBE) GOALS FOR FISCAL YEARS 2021-2023 - METHODOLOGY**

**Overall Goal Calculation for Concessions Other Than Car Rentals**

**Amount of Goal**

The DFW Airport’s overall goal for concessions other than car rental during the period beginning October 1, 2020 and ending September 30, 2023 is 31% of the total gross receipts for concessions. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm’s estimated gross receipts that will not be generated from a concession.

The concession opportunities anticipated during this goal period are projected as outlined below.

Anticipated Release Date	Terminal(s)	Approximate # of Locations	Concession Type	Projected Annual Gross Receipts
Fall 2021	A, B C, D and E	40	F&B/Retail/Passenger Amenities	\$19M
Fall 2021	Service RFP	N/A	N/A (Wi-Fi, Network & ATM)	\$3M
Fall 2021	Vending	15	Automated Vending - F&B/Retail	\$2M
Fall 2022	A, B C, D and E	40	F&B/Retail/Passenger Amenities	\$20M
Fall 2023	A, B C, D and E	28	F&B/Retail/Passenger Amenities	\$14M

The estimated gross receipts revenue projected for new concessions for the three-year period is approximately \$58 Million. The \$58 Million is an aggregate estimate of anticipated concession opportunities over the next three years and not the overall for all airport concessions.

The annual gross receipts for the previous three years are outlined below.

<b>Fiscal Year</b>	<b>Annual Gross Receipts Revenue</b>
2019	\$450M
2018	\$425M
2017	\$392M

## **Methodology used to Calculate Overall Goal**

### Goods and Services

DFW Airport can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. DFW shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

### Management Contract or Subcontract

DFW Airport can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. DFW will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

### **Step 1: 23.51(c)**

#### Methodology

DFW is using an approved FAA goal setting methodology, based on data from a 2019 Disparity Study (Attachment B). DFW commissioned Colette Holt & Associates to examine the past and current status ACDBEs. We used the Disparity Study as the basis to determine the availability of ACDBEs for the goal for Federal Fiscal Years 2020 - 2023.

This FFY 2020 through 2023 ACDBE goal is based on the same Disparity Study, which used data from Census Bureau's American Community Survey ("ACS") and other sources to estimate the availability of ACDBEs in DFW's market area. We also project the amount of ACDBE utilization we expect to achieve through race-neutral measures and through race-conscious contract goals. The proposed ACDBE goal for FFYs 2020

through 2023 is 31% with 21% to be achieved through race-conscious contract goals and 10% through race-neutral measures.

### **Step 1: Calculation of the Base Figure**

DFW used the 2019 Disparity Study, as permitted by 49 C.F.R. § 26.23(c)(3), to determine the availability of ACDBEs in DFW's marketplace.

The Disparity Study provided the Analysis of Economy-Wide Race and Gender Disparities in the Airport's Market which was used to establish the utilization disparities, FAA Funded (ACDBE) and Non-FAA funded availability. The Disparity Study explored the Census Bureau data and literature relevant to how discrimination in the Airport's industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in DFW's prime contract and subcontract opportunities.

It analyzed the following data and literature:

Data from the Census Bureau's Survey of Business Owners indicate very large disparities between ACDBE firms and non-ACDBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms.

Data from the Census Bureau's American Community Survey ("ACS") indicate that Blacks, Hispanics and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men.

The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention. Taken together with anecdotal data, this is the type of proof that addresses whether, in the absence of ACDBE contract goals, DFW will be a passive participant in the discriminatory systems found throughout its industry market. These economy-wide analyses are relevant and probative to whether the agency may continue to employ narrowly tailored race- and gender-conscious measures to ensure equal opportunities to access its contracts and associated subcontracts.

In addition to quantitative data, the courts and the DBE and ACDBE regulations look to anecdotal evidence of firms' marketplace experiences to evaluate whether the effects of

current or past discrimination continue to impede opportunities for MBEs, WBEs, DBEs and ACDBEs such that race-conscious measures are necessary to ensure a level playing field for all firms.

To explore this type of anecdotal evidence, the Study interviewed 154 participants. Many minority and women owners reported that while some progress has been made in integrating their firms into public and private sector transportation contracting activities through race- and gender-conscious contracting programs, significant barriers remain. Race- and gender-neutral approaches alone were described as unlikely to ensure a level playing field for DFW contract and concession opportunities.

The study also conducted an electronic survey of firms in DFW's market area about their experiences in obtaining work, marketplace conditions and the agency's contracting equity programs. The results were similar to those of the interviews. Almost 40% reported they still experience barriers to equal contracting opportunities; almost a quarter said their competency was questioned because of their race or gender; and almost 30% indicated less access to business networks and information.

### **Narrowly Tailoring DFW's Airport Concessions DBE Program**

The Airport Concession Disadvantaged Enterprise ("ACDBE") Program applies to primary/commercial service airports that receive Airport Improvement Program funding and that have concession revenues of \$200,000.00 or more for either car rental or non-car rental concessions. 49 C.F.R. Part 23 incorporates Part 26's revisions by reference. Part 23 differs from Part 26 in the small business size standards to establish the firm as a small business concern.

Under the ACDBE regulations, DFW must establish separate overall ACDBE goals: one for car rentals and another for concessions other than car rentals. Similar to the Part 26 program, an airport sponsor follows the two-step goal setting procedures contained in § 23.51. As with § 26.45, after determining the total gross receipts for the concession activity, the first step is to establish the relative availability of ACDBEs in the market area, that is, the step one "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the step one "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, or evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, and insurance; or data on employment, self-employment, education, training and union apprenticeship). There is little or no case law specifically related to the USDOT ACDBE program. The FAA and its recipients follow the strictures and standards for the DBE program, and the concessions regulations explicitly incorporate Part 26.64 state and local governments as the basis for this adjustment. See 49 C.F.R. § 23.33.

## DFW's Non-Car Rental Concession Contracts

49 C.F.R. Part 23 requires the Airport to set separate triennial goals for car rental concession contracts and non-car rental concession contracts. To provide data to the agency to comply with these regulatory requirements, we separately analyzed these data. Non-car rental analyses are below.

## DFW's Unconstrained Product Market for Non-Car Rental Concession Contracts

**Table 4-23: NAICS Code Distribution of Non-Car Rental Concession Contract Dollars**

*Source: CHA analysis of DFW data*

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
722310	Food Service Contractors	54.3%	54.3%
451212	News Dealers and Newsstands	9.9%	64.2%
523130	Commodity Contracts Dealing	7.5%	71.8%
453220	Gift, Novelty, and Souvenir Stores	7.2%	78.9%
445310	Beer, Wine, and Liquor Stores	4.4%	83.3%
445120	Convenience Stores	2.4%	85.7%
443142	Electronics Stores	2.2%	87.9%
722213	Snack and Nonalcoholic Beverage Bars	1.4%	89.3%
722110	Full-Service Restaurants	1.1%	90.4%
445292	Confectionery and Nut Stores	1.1%	91.5%
<b>TOTAL</b>			<b>100.0%<sup>a</sup></b>

## DFW's Geographic Market for Non-Car Rental Concession Contracts

The State of Texas contained 87.3 percent of all contract dollars for non-car rental concessions. The counties listed in Table 4-24 contained 96.2 percent of the in-state dollars and constitute the geographic market.

**Table 4-24: Distribution of Contracts in DFW's Product Market for Non-Car Rental Concession Contracts by County**

*Three other counties contained just 3.8 percent of the state spending*

Source: CHA analysis of DFW data.

County	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
Dallas	39.6%	39.6%
Tarrant	36.4%	76.0%
Harris	8.6%	84.6%
Midland	5.4%	90.1%
Denton	3.1%	93.2%
Collin	3.0%	96.2%
<b>TOTAL</b>		<b>100.0%<sup>1</sup></b>

### DFW's Utilization of ACDBEs on Non-Car Rental Concessions

Tables 4-25 through 4-27 present the Airport's utilization by contract dollars for non-car rental concessions.

**Table 4-25: NAICS Code Distribution of Non-Car Rental Concession Contract**

Source: CHA analysis of DFW data

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
<b>722110</b>	<b>Full-Service Restaurants</b>	<b>\$1,011,306,368</b>	<b>63.1%</b>
<b>451212</b>	<b>News Dealers and Newsstands</b>	<b>\$204,563,440</b>	<b>12.8%</b>
<b>523130</b>	<b>Commodity Contracts Dealing</b>	<b>\$157,242,000</b>	<b>9.8%</b>
<b>453220</b>	<b>Gift, Novelty, and Souvenir Stores</b>	<b>\$116,549,680</b>	<b>7.3%</b>
<b>445120</b>	<b>Convenience Stores</b>	<b>\$45,562,404</b>	<b>2.8%</b>
<b>445310</b>	<b>Beer, Wine, and Liquor Stores</b>	<b>\$43,155,936</b>	<b>2.7%</b>
<b>445292</b>	<b>Confectionery and Nut Stores</b>	<b>\$23,684,400</b>	<b>1.5%</b>
Total		\$1,602,064,228	100.0%

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<b>TOTAL</b>		100.0% <sup>a</sup>

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451212	News Dealers and Newsstands	\$204,563,440	12.8%
523130	Commodity Contracts Dealing	\$157,242,000	9.8%
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445120	Convenience Stores	\$45,562,404	2.8%
445310	Beer, Wine, and Liquor Stores	\$43,155,936	2.7%
445292	Confectionery and Nut Stores	\$23,684,400	1.5%
Total		\$1,602,064,228	100.0%

**Table 4-26: Distribution of Non-Car Rental Concession Contract Dollars by Race and Gender (total dollars)**

*Source: CHA analysis of DFW data*

	Black	Hispanic	Asian	Native American	White Women	ACDBE	Non-ACDBE	Total
445120	\$19,430,141	\$5,703,435	\$0	\$0	\$0	\$25,133,576	\$20,428,830	\$45,562,406
445292	\$359,351	\$20,589,677	\$0	\$0	\$0	\$20,949,028	\$2,735,372	\$23,684,399
445310	\$1,834,773	\$2,639,631	\$0	\$0	\$0	\$4,474,404	\$38,681,532	\$43,155,936
451212	\$41,037,831	\$62,746,	\$6,490,342	\$0	\$0	\$110,275,079	\$94,288,363	\$204,563,442
453220	\$23,248,683	\$21,639,327	\$1,555,116	\$0	\$0	\$46,443,126	\$70,106,554	\$116,549,680
523130	\$0	\$63,339,715	\$0	\$0	\$0	\$63,339,715	\$93,902,283	\$157,241,998
722110	\$281,060,491	\$379,058,722	\$0	\$0	\$28,299,807	\$688,419,020	\$322,887,341	\$1,011,306,361
<b>Total</b>	<b>\$366,971,270</b>	<b>\$555,717,413</b>	<b>\$8,045,458</b>	<b>\$0</b>	<b>\$28,299,807</b>	<b>\$959,033,948</b>	<b>\$643,030,275</b>	<b>\$1,602,064,222</b>

**Table 4-27: Distribution of Non-Car Rental Concession Contract Dollars by Race and Gender (share of total dollars)**

*Source: CHA analysis of DFW data*

NAICS	Black	Hispanic	Asian	Native America	White Women	ACDBE	Non-ACDBE	Total
445120	42.7%	12.5%	0.0%	0.0%	0.0%	55.2%	44.8%	100.0%
445292	1.5%	86.9%	0.0%	0.0%	0.0%	88.5%	11.6%	100.0%
445310	4.3%	6.1%	0.0%	0.0%	0.0%	10.4%	89.6%	100.0%
451212	20.1%	30.7%	3.2%	0.0%	0.0%	53.9%	46.1%	100.0%
453220	20.0%	18.6%	1.3%	0.0%	0.0%	39.9%	60.2%	100.0%
523130	0.0%	40.3%	0.0%	0.0%	0.0%	40.3%	59.7%	100.0%
722110	27.8%	37.5%	0.0%	0.0%	2.8%	68.1%	31.9%	100.0%
<b>Total</b>	<b>22.9%</b>	<b>34.7%</b>	<b>0.5%</b>	<b>0.0%</b>	<b>1.8%</b>	<b>59.9%</b>	<b>40.1%</b>	<b>100.0%</b>

### Availability of ACDBEs in DFW's Markets for Non-Car Rental Concessions

The Disparity Study built a database of available firms for the constrained product market shaped by the Airport's dollars spent on non-car rental concessions. Tables 4-28 through 4-30 present data on unweighted availability; the weights used to adjust the unweighted numbers; and the weighted availability. Per the Disparity Study, these weighted availability estimates can be used by DFW to set its ACDBE goals for non-car rental concession contracts.



**Table 4-28: Unweighted Availability for Non-Car Rental Concession Contracts**

Source: CHA analysis of DFW data; Hoovers; CHA Master Directory

NAICS	Black	Latino	Asian	Native American	White Women	ACDBE	Non-ACDBE	Total
445120	35.9%	17.4%	17.4%	0.8%	0.0%	71.4%	28.6%	100.0%
445292	1.2%	0.9%	0.6%	0.1%	7.5%	10.3%	89.7%	100.0%
445310	0.5%	0.3%	0.3%	0.0%	4.3%	5.4%	94.6%	100.0%
451212	15.1%	12.1%	5.5%	0.1%	3.9%	36.8%	63.2%	100.0%
453220	1.0%	0.6%	0.4%	0.0%	13.4%	15.5%	84.5%	100.0%
523130	14.3%	42.9%	14.3%	0.0%	0.0%	71.4%	28.6%	100.0%
722310	0.6%	0.3%	0.2%	0.0%	3.3%	4.4%	95.6%	100.0%
Total	0.6%	0.4%	0.2%	0.0%	4.2%	5.5%	94.5%	100.0%

**Table 4-29: Share of DFW pending on Non-Car Rental Concession Contracts by NAICS Code**

Source: CHA analysis of DFW data

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
445120	Convenience Stores	2.8%
445292	Confectionery and Nut Stores	1.5%
445310	Beer, Wine, and Liquor Stores	2.7%
451212	News Dealers and Newsstands	12.8%
453220	Gift, Novelty, and Souvenir Stores	7.3%
523130	Commodity Contracts Dealing	9.8%
722110	Full-Service Restaurants	63.1%
Total		100.0%

**Table 4-30: Aggregated Weighted Availability for Non-Car Rental Concession Contracts (total dollars)**

Source: CHA analysis of DFW data; Hoovers; CHA Master Directory

Black	Hispanic	Asian	Native American	White Women	ACDBE	Non-ACDBE	Total
.8%	6.5%	2.8%	0.1%	3.8%	18.0%	82.0%	100.0%

Based on the above chart, DFW is using 18% as the base goal.

The Disparity Study did not perform disparity testing on concession contracts because it is not required under 49 CFR, Part 23.

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, DFW examined all relevant evidence reasonably available in DFW's jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at DFW's overall goal.

The data used to determine the adjustment to the base figure was:

- (i) The current capacity of ACDBEs to perform work in DFW's concessions program, as measured by the volume of work ACDBEs have performed in recent years; and
- (ii) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;
- (iii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.
- (iv) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

The following supports the disparity of ACDBEs to get the financing, bonding and insurance required to participate in your program.

Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program. The data is based on the 2019 Disparity study:

**Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2012 Survey of Business Owners**

Every five years, the Census Bureau administers the *Survey of Business Owners* ("SBO") to collect data on particular characteristics of businesses that report to the Internal Revenue Service receipts of \$1,000 or more.<sup>2</sup> The 2012 SBO was released on December 15, 2015, so our analysis reflects the most current data available. The SBO

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<sup>2</sup> See <http://www.census.gov/econ/sbo/about.html> for more information on the Survey.

collects demographic data on business owners disaggregated into the following groups:<sup>3,4</sup>

- Non-Hispanic Blacks
- Latinos
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White Women
- Non-Hispanic White Men
- Firms Equally Owned by Non-Whites and Whites
- Firms Equally Owned by Men and Women
- Firms where the ownership could not be classified
- Publicly Owned Firms

For purposes of this analysis, the first four groups were aggregated to form a Non-White category. Since our interest is the treatment of Non-White-owned firms and White Women-owned firms, the last five groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not Non-White/Non-White Women”. While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

To examine those sectors in which the Dallas Fort Worth Airport purchases, we analyzed economy wide SBO data on the following sectors:

- Construction
- Professional, Scientific and Technical Services
- Goods
- Other services

However, the nature of the SBO data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. In particular, we had to define the sectors at the 2-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the Dallas Fort Worth Airport’s contract data in Chapter IV, where we are able to determine sectors at the 6-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data

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<sup>3</sup> Race and gender labels reflect the categories used by the Census Bureau.

<sup>4</sup> For expository purposes, the adjective “Non-Hispanic” will not be used in this chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Latino.

on businesses that can be identified or because the small sample size generates unreliable estimates of the universe.<sup>5</sup> We therefore report 2-digit data.

Table 4.25 presents information on which NAICS codes were used to define each sector.

**Table 4.25 2-Digit NAICS Code Definition of Sector**

SBO Sector Label	2-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services <sup>6</sup>	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

The balance of this Chapter section reports the findings of the SBO analysis. For each sector, we present data describing the sector and report disparities within the sector.

**All Industries**

For a baseline analysis, we examined all industries in the State of Texas. Table 4.26 presents data on the percentage share that each group has of the total of each of the following six business outcomes:

- The number of all firms
- The sales and receipts of all firms
- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms
- The number of paid employees
- The annual payroll of employer firms

Panel A of Table 4.26 presents data for the four basic Non-White racial groups:

- Black
- Latino
- Native American
- Asian

Panel B of Table 4.26 presents data for six types of firm ownership:

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<sup>5</sup> Even with these broad sector definitions, there were many cases when the Census Bureau did not report information. In these cases, the value will be entered into the table as "s"

<sup>6</sup> This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.

- Non-white
- White Women
- White Men
- Equally Non-Whites and Whites
- Equally women and men
- Firms that are publicly owned or not classifiable

Categories in the second panel are mutually exclusive. Hence, firms that are Non-White and equally owned by men and women are classified as Non-White and firms that are equally owned by Non-Whites and Whites and equally owned by men and women are classified as equally owned by Non-Whites and Whites.<sup>7</sup>

**Table 4.26 Percentage Demographic Distribution of Sales and Payroll Data  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	8.89%	0.32%	2.36%	0.22%	0.85%	0.49%
Latino	29.17%	2.51%	12.69%	1.92%	5.25%	3.53%
Native American	0.64%	0.08%	0.54%	0.07%	0.17%	0.13%
Asian	6.46%	1.72%	10.35%	1.60%	3.29%	2.18%
<b>Panel B: Distribution of All Firms</b>						
Non-White	45.42%	4.74%	26.27%	3.90%	9.71%	6.48%
White Women	16.39%	2.56%	12.98%	2.31%	5.00%	4.08%
White Men	29.87%	19.83%	42.92%	19.27%	26.19%	25.64%
Equally Non-White & White	1.07%	0.37%	1.74%	0.33%	0.78%	0.55%
Equally Women & Men	5.71%	1.96%	9.87%	1.80%	3.40%	2.67%
Firms Not Classifiable	1.50%	70.53%	6.11%	72.38%	54.89%	60.53%

<sup>7</sup> Some of the figures in Panel B may not correspond to the related figures in Panel A because of discrepancies in how the SBO reports the data

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
All Firms	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Since the central issue is the possible disparate treatment of Non-White and White Women firms, Table 4.27 re-aggregates the last four groups—White men; equally Non-White and White; equally women and men; and firms not classifiable—into one group: Not Non-White/Not White Women.<sup>8</sup> We then present the shares each group has of the six indicators of firm utilization. These data were then used to calculate three disparity ratios, presented in Table 4.28:

- Ratio of sales and receipts share for all firms over the share of total number of all firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all firms for Black firms is 3.62 percent (as shown in Table 4.28). This is derived by taking the Black share of sales and receipts for all firms (0.3 percent) and dividing it by the Black share of total number of all firms (8.9 percent) that are presented in Table 4.27. If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100 percent. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>9</sup> All disparity ratios for Non-White firms and White Women firms are below this threshold.<sup>10</sup>

<sup>8</sup> Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

<sup>9</sup> 29 C.F.R. § 1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

<sup>10</sup> Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

**Table 4.27 Demographic Distribution of Sales and Payroll Data – Aggregated Groups  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	8.9%	0.3%	2.4%	0.2%	0.8%	0.5%
Latino	29.2%	2.5%	12.7%	1.9%	5.3%	3.5%
Native American	0.6%	0.1%	0.5%	0.1%	0.2%	0.1%
Asian	6.5%	1.7%	10.4%	1.6%	3.3%	2.2%
<b>Panel B: Distribution of All Firms</b>						
Non-White	45.4%	4.7%	26.3%	3.9%	9.7%	6.5%
White Women	16.4%	2.6%	13.0%	2.3%	5.0%	4.1%
Not Non-White/Not White Women	38.2%	92.7%	60.7%	93.8%	85.3%	89.4%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

**Table 4.28 Disparity Ratios of Firm Utilization Measures  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	3.62%	9.17%	57.98%
Latino	8.58%	15.12%	67.30%
Native American	13.14%	13.30%	76.33%
Asian	26.66%	15.40%	66.34%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-Whites	10.43%	14.83%	66.76%
White Women	15.63%	17.76%	81.50%
Not Non-White/Not White Women	242.88%	154.50%	104.87%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

This same approach was used to examine the construction, professional, scientific and technical services, goods, and other services sectors. The following are summaries of the results of the disparity analyses.

Table 4.25 presents information on which NAICS codes were used to define each sector.

**Table 4.25 2-Digit NAICS Code Definition of Sector**

SBO Sector Label	2-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services <sup>11</sup>	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

The balance of this Chapter section reports the findings of the SBO analysis. For each sector, we present data describing the sector and report disparities within the sector.

### All Industries

For a baseline analysis, we examined all industries in the State of Texas. Table 4.26 presents data on the percentage share that each group has of the total of each of the following six business outcomes:

- The number of all firms
- The sales and receipts of all firms
- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms
- The number of paid employees
- The annual payroll of employer firms

Panel A of Table 4.26 presents data for the four basic Non-White racial groups:

- Black
- Latino
- Native American
- Asian

Panel B of Table 4.26 presents data for six types of firm ownership:

- Non-white

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<sup>11</sup> This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.



- White Women
- White Men
- Equally Non-Whites and Whites
- Equally women and men
- Firms that are publicly owned or not classifiable

Categories in the second panel are mutually exclusive. Hence, firms that are Non-White and equally owned by men and women are classified as Non-White and firms that are equally owned by Non-Whites and Whites and equally owned by men and women are classified as equally owned by Non-Whites and Whites.<sup>12</sup>

**Table 4.26 Percentage Demographic Distribution of Sales and Payroll Data  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	8.89%	0.32%	2.36%	0.22%	0.85%	0.49%
Latino	29.17%	2.51%	12.69%	1.92%	5.25%	3.53%
Native American	0.64%	0.08%	0.54%	0.07%	0.17%	0.13%
Asian	6.46%	1.72%	10.35%	1.60%	3.29%	2.18%
<b>Panel B: Distribution of All Firms</b>						
Non-White	45.42%	4.74%	26.27%	3.90%	9.71%	6.48%
White Women	16.39%	2.56%	12.98%	2.31%	5.00%	4.08%
White Men	29.87%	19.83%	42.92%	19.27%	26.19%	25.64%
Equally Non-White & White	1.07%	0.37%	1.74%	0.33%	0.78%	0.55%
Equally Women & Men	5.71%	1.96%	9.87%	1.80%	3.40%	2.67%
Firms Not Classifiable	1.50%	70.53%	6.11%	72.38%	54.89%	60.53%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

<sup>12</sup> Some of the figures in Panel B may not correspond to the related figures in Panel A because of discrepancies in how the SBO reports the data

Since the central issue is the possible disparate treatment of Non-White and White Women firms, Table 4.27 re-aggregates the last four groups—White men; equally Non-White and White; equally women and men; and firms not classifiable—into one group: Not Non-White/Not White Women.<sup>13</sup> We then present the shares each group has of the six indicators of firm utilization. These data were then used to calculate three disparity ratios, presented in Table 4.28:

- Ratio of sales and receipts share for all firms over the share of total number of all firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all firms for Black firms is 3.62 percent (as shown in Table 4.28). This is derived by taking the Black share of sales and receipts for all firms (0.3 percent) and dividing it by the Black share of total number of all firms (8.9 percent) that are presented in Table 4.27. If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100 percent. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80 percent" rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>14</sup> All disparity ratios for Non-White firms and White Women firms are below this threshold.<sup>15</sup>

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<sup>13</sup> Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

<sup>14</sup> 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

<sup>15</sup> Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

**Table 4.27 Demographic Distribution of Sales and Payroll Data –  
Aggregated Groups  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	8.9%	0.3%	2.4%	0.2%	0.8%	0.5%
Latino	29.2%	2.5%	12.7%	1.9%	5.3%	3.5%
Native American	0.6%	0.1%	0.5%	0.1%	0.2%	0.1%
Asian	6.5%	1.7%	10.4%	1.6%	3.3%	2.2%
<b>Panel B: Distribution of All Firms</b>						
Non-White	45.4%	4.7%	26.3%	3.9%	9.7%	6.5%
White Women	16.4%	2.6%	13.0%	2.3%	5.0%	4.1%
Not Non-White/Not White Women	38.2%	92.7%	60.7%	93.8%	85.3%	89.4%

**Table 4.28 Disparity Ratios of Firm Utilization Measures  
All Industries, 2012**

Source: CHA calculations from Survey of Business Owners

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	3.62%	9.17%	57.98%
Latino	8.58%	15.12%	67.30%
Native American	13.14%	13.30%	76.33%
Asian	26.66%	15.40%	66.34%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-Whites	10.43%	14.83%	66.76%
White Women	15.63%	17.76%	81.50%
Not Non-White/Not White Women	242.88%	154.50%	104.87%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
All Firms	100.0%	100.0%	100.0%

This same approach was used to examine the construction, professional, scientific and technical services, goods, and other services sectors. The following are summaries of the results of the disparity analyses.

### Goods

Of the 18 disparity ratios for Non-White firms and White Women firms presented in Table 4.31, 15 fall under the 80 percent threshold.

**Table 5.31 Disparity Ratios – Aggregated Groups  
Goods, 2012**

Source: CHA calculations from Survey of Business Owners

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	1.83%	7.55%	82.29%
Latino	5.77%	11.74%	78.42%
Native American	9.02%	12.08%	102.45%
Asian	18.44%	9.97%	67.37%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	7.96%	10.77%	73.97%
White Women	9.11%	14.51%	93.05%
Not Non-White/Not White Women	246.36%	160.74%	102.43%
All Firms	100.00%	100.00%	100.00%

## Services

Of the 16 disparity ratios for Non-White firms and White Women firms presented in Table 4.32, 16 fall under the 80 percent threshold.

**Table 4.32 Disparity Ratios – Aggregated Groups  
Services, 2012**

Source: CHA calculations from Survey of Business Owners

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	8.2%	18.1%	s
Latino	16.7%	25.8%	64.3%
Native American	22.8%	22.6%	s
Asian	40.8%	23.6%	63.1%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	18.6%	24.2%	63.6%
White Women	24.7%	26.2%	72.9%
Not Non-White/Not White Women	261.6%	157.1%	108.9%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

## Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and women-owned firms, had difficulties obtaining needed working capital to perform on the Airport's contracts and subcontracts, as well as expand the capacities of their firms. As discussed above, discrimination may even prevent firms from forming in the first place.

There is an extensive body of scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a general consensus that disparities in personal wealth translate into disparities in business creation and ownership.<sup>16</sup>

<sup>16</sup> See, e.g., Evans, David S. and Jovanovic, Boyan, "An Estimated Model of Entrepreneurial Choice under Liquidity Constraints," *Journal of Political Economy*, (1989); Evans, David S. and Leighton, Linda "Some empirical aspects of entrepreneurship," *American Economic Review*, (1989).

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for 1993, 1998 and 2003. These Surveys of Small Business Finances (“SSBF”) are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than white-owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive. <sup>17</sup>

A recent report to the U.S. Department of Commerce summarizes these Surveys, results from the Kauffman Firm Survey,<sup>18</sup> data from the U.S. Small Business Administration’s Certified Development Company/504 Guaranteed Loan Program<sup>19</sup> and additional extensive research on the effects of discrimination on opportunities for MBEs.

The most comprehensive report of its kind, “Disparities in Capital Access Between Minority and Non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs”, found that

- Low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner’s wealth can be invested directly in the business, used as collateral to obtain business loans or use to acquire other businesses.... [T]he largest single actor explaining racial disparities in business creation rates are differences in asset levels.”<sup>20</sup>

Some of the key findings of the Report include:

- Minority-owned firms are less likely to receive loans than non-minority owned firms regardless of firm size. According to an analysis of data from the *Survey of Small Business Finances*, for firms with gross receipts over \$500,000, 52 percent of non-minority owned firms received loans compared to 41 percent of minority-owned firms.

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<sup>17</sup> See Blanchflower, D. G., Levine. P. and Zimmerman, D., “Discrimination In The Small Business Credit Market,” *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C. (“Market structure and discrimination, the case of small businesses,” *Journal of Money, Credit, and Banking*, (1998),

<sup>18</sup>[http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2013/06/kauffmanfirmurvey2013.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2013/06/kauffmanfirmurvey2013.pdf).

<sup>19</sup> <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/sba-loan-programs/real-estate-and-eq>.

<sup>20</sup> Fairlie, R. W. and Robb, A., “Disparities in Capital Access Between Minority and Non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs,” U.S. Department of Commerce, Minority Business Development Agency, 2010, pp. 22-23.

- When minority-owned firms do receive financing, it is for less money and at a higher interest rate than non-minority owned firms regardless of the size of the firm. Minority-owned firms paid an average of 7.8 percent in interest rates for loans compared to 6.4 percent for non-minority owned firms. Among firms with gross receipts under \$500,000, minority-owned firms paid an average of 9.1 percent in interest rates compared to 6.9 percent for non-minority owned firms.
- Minority owned firms are more likely to be denied loans. Among firms with gross receipts under \$500,000, loan denial rates for minority firms were about three times higher, at 42 percent, compared to those of non-minority owned firm, at 16 percent. For high sales firms, the rates of loan denial were almost twice as high for MBEs as for non-MBEs.
- MBEs pay higher interest rates for business loans. For all firms, MBEs paid 7.8 percent on average for loans compared with 6.4 percent for non-MBEs. The difference was smaller, but still high, between MBEs and non-MBEs with high sales.
- Minority-owned firms receive smaller equity investments than non-minority owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43 percent of the average of new equity investments in non-minority owned firms. The differences were even larger for loans received by high sales firms. Yet, venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.<sup>21</sup>
- Disparities in total investments in minority-owned firms compared to those in non-minority owned firms grew after the first year of business operations. According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their firms were about 18 percent lower in the first year of operations compared to those of non-minority owned firms. This disparity grew in the subsequent three years of operations, where minorities' investments into their firms were about 36 percent lower compared to those of non-minority owned firms.

Minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.<sup>22</sup>

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<sup>21</sup> See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

<sup>22</sup> Fairlie, R.W. and Robb, A., *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

These findings are consistent with those of the 2012 study. Examining the *Survey of Small Business Finances* (“SSBF”), conducted by the Federal Reserve Board and the U.S. Small Business Administration from 1999-2003, the study found that MBEs experience significant barriers compared to similar non-MWBEs. When minority-owned firms did apply for a loan, their loan requests were substantially more likely to be denied than non-minorities, even after accounting for differences like firm size and credit history. Loan denial rate ranged from 8 to 24 percentage points higher than for non-minority male-owned small businesses. When minority-owned firms did receive a loan, they were obligated to pay higher interest rates on the loans than comparable non-minority owned firms. These results strongly suggest that MBEs do not enjoy full and fair access to the credit necessary to perform on Dallas Fort Worth Airport’s prime contracts and associated subcontractors.

### **Evidence of Disparities in Access to Human Capital**

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. This was evident in the large number of non-M/WBEs in our interview groups who were second or even higher generation firms doing business for the market area. This disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.<sup>23</sup> Black men have been found to face a “triple disadvantage”: they are less likely than White men to:

1. Have self-employed fathers;
2. Become self-employed if their fathers were not self-employed; and
3. To follow their fathers into self-employment.<sup>24</sup>

Intergenerational links are also critical to the success of the businesses that do form.<sup>25</sup>

Working in a family business leads to more successful firms by new owners. One study found that only 12.6 percent of Black business owners had prior work experiences in a family business as compared to 23.3 percent of White business owners.<sup>26</sup> This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

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<sup>23</sup> Fairlie, R W., “The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment,” *Journal of Labor Economics*, (1999).

<sup>24</sup> Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources* 35, no.4 (2000).

<sup>25</sup> Fairlie, R.W. and Robb, A., “Why are black-owned businesses less successful than White-owned businesses? The role of families, inheritances, and business human capital,” *Journal of Labor Economics*, (2007).

<sup>26</sup> *Id.*



Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.<sup>27</sup>

The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.<sup>28</sup> M/WBEs in our interviews reported that they felt excluded from the networks that help to create success in the highway construction industry.

### **Qualitative Evidence of Race and Gender Barriers in the Dallas Fort Worth International Airport's Market**

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities and Dallas Fort Worth International Airport's ("DFW" or "Airport") business opportunity programs. This evidence is relevant to the question of whether observed statistical disparities in its locally-funded contracts are due to discrimination and not to some other non-discriminatory cause or causes, as well as the likely efficacy of any race- and gender-neutral remedies employed by DFW for all its contracting opportunities. As discussed in Chapter II, this type of anecdotal data has been held by the courts to be relevant and probative of whether the Airport continues to have a need to use narrowly tailored DBE, ACDBE and M/WBE contract goals to remedy the effects of past and current discrimination, and create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."<sup>29</sup> Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.<sup>30</sup> While anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."<sup>31</sup> "[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough."<sup>32</sup>

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<sup>27</sup> Allen, W. D., "Social Networks and Self-Employment," *Journal of Socio-Economics* 29, no.5 (2000).

<sup>28</sup> Increasing MBE Competitiveness through strategic Alliances (Minority Business Development Agency, 2008).

<sup>29</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

<sup>30</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10<sup>th</sup> Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

<sup>31</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10<sup>th</sup> Cir. 1994).

<sup>32</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11<sup>th</sup> Cir. 1997).

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>33</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>34</sup>

To explore this type of anecdotal evidence of possible discrimination against minorities and women in the Airport’s geographic and industry markets and the effectiveness of its current race-conscious and race-neutral measures, we conducted public business owner and stakeholder interviews, totaling 154 participants. We met with a broad cross section of business owners from the Airport’s geographic and industry markets. Firms ranged in size from large national businesses to established family-owned firms to new start-ups. We sought to explore their experiences in seeking and performing public and private sector prime contracts and subcontracts and concession contracts with DFW, other government agencies, and in the private sector. We also elicited recommendations for improvements to the DFW’s Disadvantaged Enterprise (“DBE”) Program, the Airport Concessions Disadvantaged Business Enterprise (“ACDBE”) Program, the Minority/Women Business Enterprise (“M/WBE”) Program, and the Small Business Enterprise “SBE” Program, as discussed in Chapter III.

Many minority and women owners reported that while some progress has been made in integrating their firms into public and private sector transportation contracting activities through race- and gender-conscious contracting programs, significant barriers remain.

Race- and gender-neutral approaches alone were described as unlikely to ensure a level playing field for DFW contract and concession opportunities.

We also conducted an electronic survey of firms in DFW’s market area about their experiences in obtaining work, marketplace conditions and the agency’s contracting equity programs. The results were similar to those of the interviews. Almost 40 percent reported they still experience barriers to equal contracting opportunities; almost a quarter said their competency was questioned because of their race or gender; and almost 30 percent indicated less access to business networks and information.

## **Anecdotal Survey**

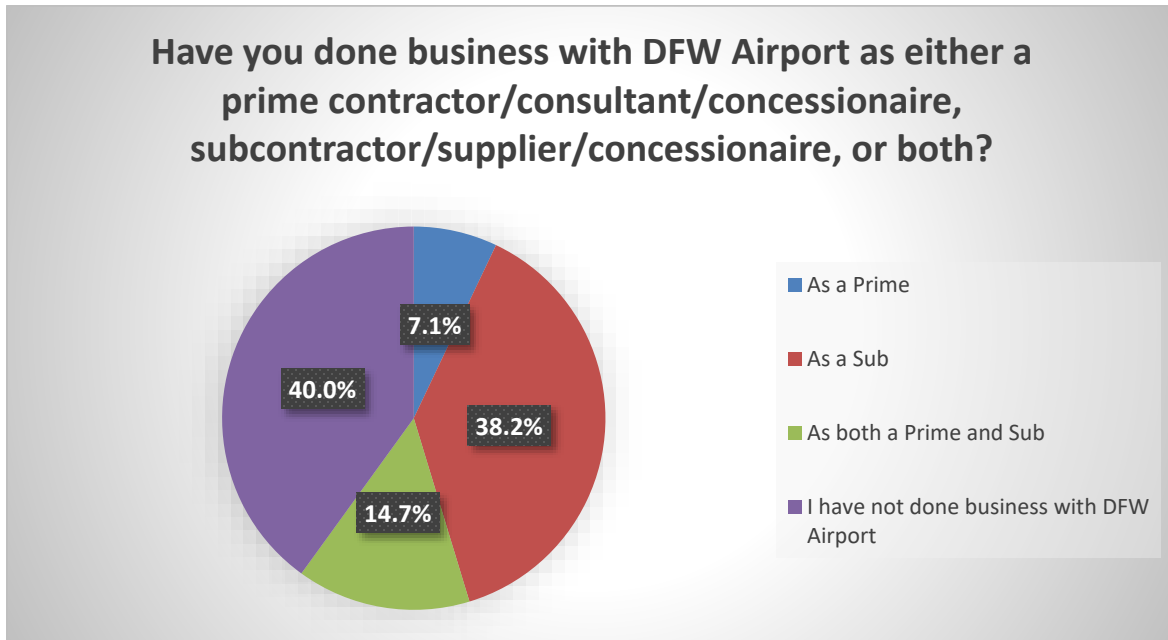
To supplement the in-person interviews, we also conducted an electronic survey of firms on our availability list. One-hundred and seventy (170) minority- and women-

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<sup>33</sup> *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 249 (4<sup>th</sup> Circ. 2010).

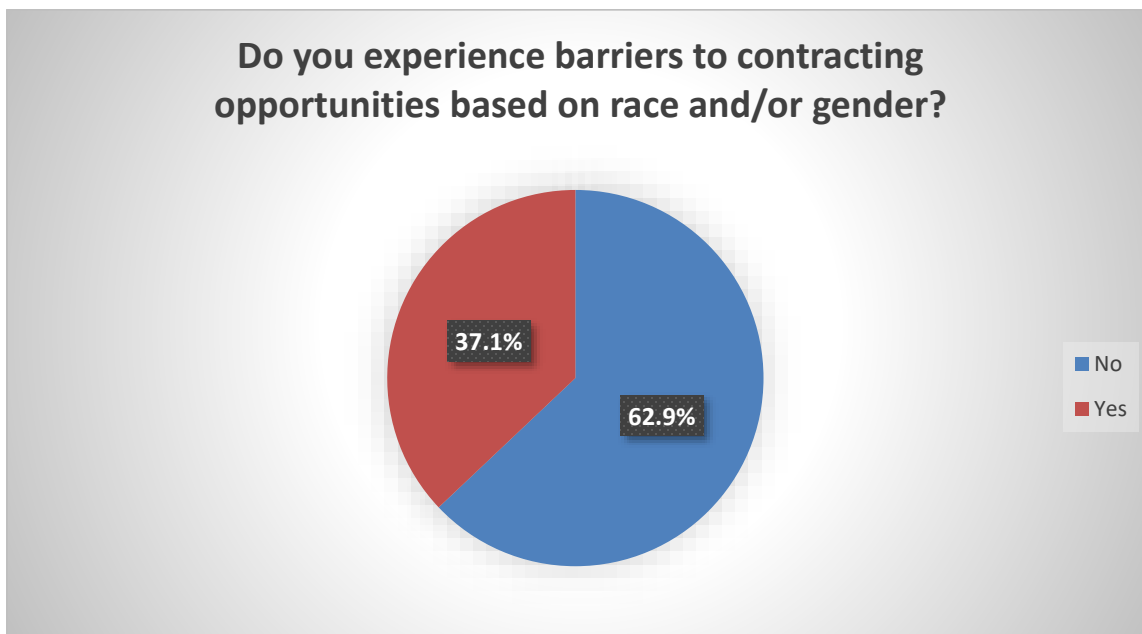
<sup>34</sup> *Concrete Works*, 321 F.3d at 989.

owned firms completed the survey. Only 7.1 percent of the firms had worked on DFW projects just as a prime contractor/consultant or concessionaire; 38.2 percent had worked only as a subcontractor; 14.7 percent had worked as both a prime contractor, consultant or concessionaire, and as a subcontractor, subconsultant or supplier; and 40 percent had not done business on any DFW contracts.

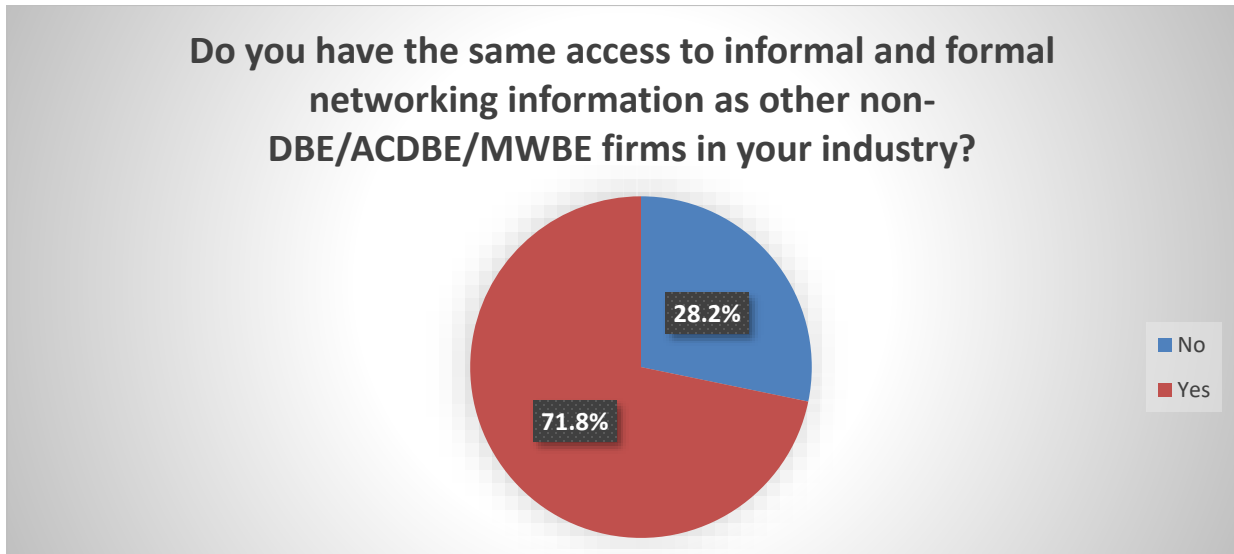


These respondents reported the following experiences.

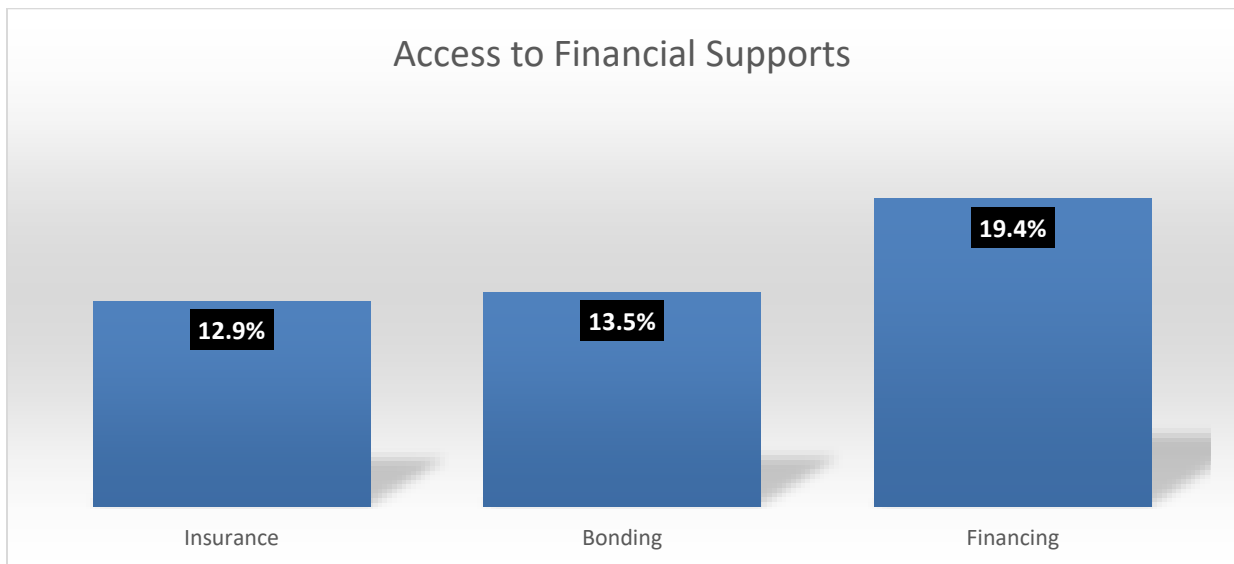
Almost 40 percent answered yes to the question “Do you experience barriers to contracting opportunities based on race and/or gender?”



Over a quarter (28.2 percent) answered no to the question “Do you have access to informal and formal networking information and have the same access to the same information as other non-DBE firms in your industry?”

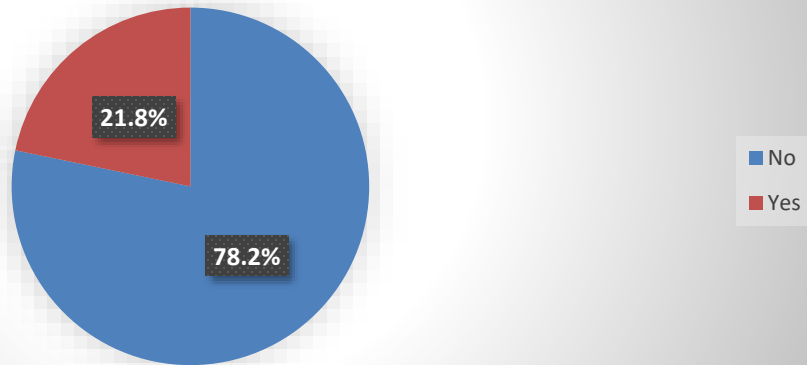


12.9 percent reported they have unequal access to insurance; 13.5 percent reported they have unequal access to surety bonding services; and almost 20 percent reported they have unequal access to financing and business capital.



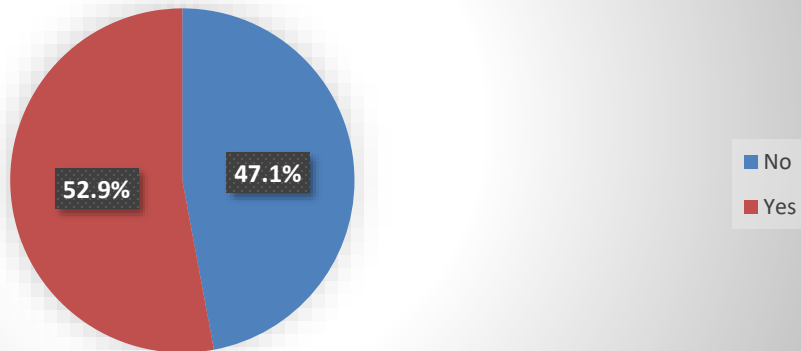
A little more than one fifth (21.8 percent) answered yes to the question “Is your competency questioned based on your race and/or gender?”

**Is your competency questioned based on your race and/or gender?**



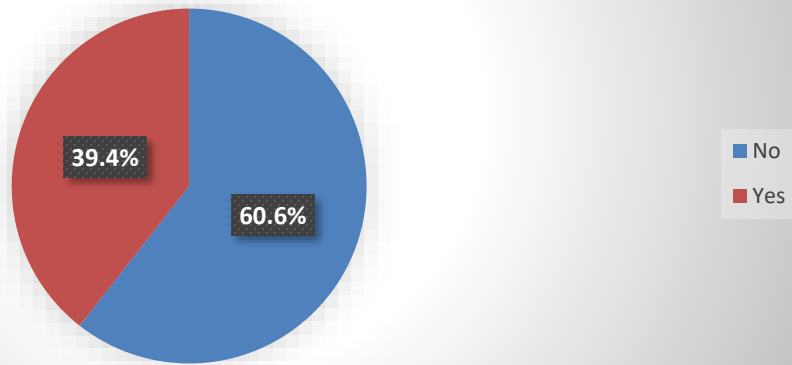
Over 50 percent reported they are solicited for DFW or government projects with DBE goals.

**Do you get solicited for DFW Airport projects with DBE/ACDBE/MWBE goals?**



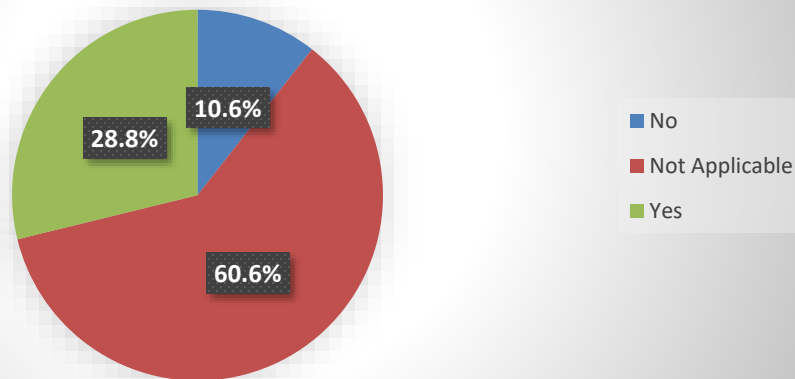
However, less than 40 percent reported they are solicited for private projects and projects without DBE goals.

### Do you get solicited for private projects and projects with no goals?



28.8 percent of those with DFW work stated that DFW pays them promptly.

### Does DFW Airport pay promptly?



### Other Survey Results:

Respondents reported participating in DBE/ACDBE/MWBE business support or development activities: 55.3 percent indicated they had not participated in any of these programs.

- 10.6 percent had participated in financing or loan programs.
- 7.1 percent had accessed bonding support programs.
- 18.8 percent had participated in a mentor-protégé program or relationship.
- 10 percent had received support services such as assistance with marketing, estimating, information technology.
- 24.7 percent had joint ventured with another firm.

- 9.4 percent reported they experience job-related sexual or racial harassment or stereotyping.
- 11.2 percent stated they experience discrimination from suppliers or subcontractors because of their race and/or gender.

## Conclusion

Consistent with other evidence reported in this Study, the anecdotal interviews and the survey results strongly suggest that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in DFW’s market area. While not definitive proof that DFW needs to continue to implement race- and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that, especially when considered in conjunction with the numerous pieces of statistical evidence assembled, the courts have found to be highly probative of whether DFW would be a passive participant in a discriminatory market area without affirmative interventions and whether race-conscious remedies are necessary to address that discrimination.

a. **Past participation** – DFW Airport evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed over the previous three years.

Past history of ACDBE participation for non-car rental concessions is noted below and ranked in order of ACDBE percentage participation from low to high with 43.34% being the median.

Year	ACDBE Goal	Total \$	ACDBE \$	ACDBE %	RC %	RN %
2018	33%	\$425,476,613	\$172,560,516	40.56%	31.73%	8.82%
2017	33.90%	\$392,182,993	\$169,965,740	43.34%	32.92%	10.42%
2019	33%	\$450,042,160	\$205,466,250	45.65%	32.20%	13.45%

\*Source – DFW International Airport Uniform Report of ACDBE Participation, Fiscal Years 2017, 2018, 2019.

The total past participation was used to adjust the base goal as follows:

$$\text{Base Goal} - 18.0\% + \text{Three-Year Past Participation (median)} 43.34\% = 61.34\%$$

$$61.34\% \div 2 = \underline{30.67\%}$$

**DFW Airport, therefore, propose 31% as our overall goal for the 2021-2023 goal period.**

### **Consultation with Stakeholders (23.43)**

Stakeholders were consulted for comment during the months of July and August 2020. Consultations included the dissemination of a written notice to all vendors registered with the Concessions Department eNewsletter, area minority chambers and advocacy organizations as well as a formal briefing held on July 30, 2020 public notice was advertised on July 15, 2020 in the local newspaper to ensure any individual or organization, potentially having information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and DFW Airport's efforts to increase participation of ACDBEs, received the opportunity to provide comments.

## **Breakout of Estimated Race-Neutral & Race Conscious Participation**

### **Section 23.51**

DFW Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. DFW Airport uses the following race-neutral measures to increase ACDBE participation. DFW Airport understands that we will be expected to actually take these steps.

### **Capacity Building, Training and Outreach Activities**

A major objective of DFW's programs is to build the capacity of certified firms. DFW offers a robust litany of programs that provide training and outreach for M/WBEs. Topics include joint venture agreements, the procurement process, DFW audits, succession planning and business valuation solutions. The Airport also conducts networking sessions, luncheons, informational meetings, and pre-bid conferences. Race- and gender-neutral measures include:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs.
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how DFW Airport's ACDBE program will affect the procurement process.
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.



8. Minority Chamber/Advocacy Organization Partnerships to increase the success of DFW's community outreach program.
9. The Champions of Diversity Award that honor companies that partner with DFW and go above and beyond in advancing diversity and inclusion.
10. Dissemination of information through DFW's Concessions Forum

The history of the race-neutral/race-conscious split for the most recent three years is as follows:

Year	ACDBE %	RC %	RN %	RC % to Total (RC/Total)	RN % to Total (RN/Total)
2018	40.56%	31.73%	8.82%	78.23%	21.77%
2017	43.34%	32.92%	10.42%	75.96%	24.04%
2019	45.65%	32.20%	13.45%	70.54%	29.46%

\*Source – DFW International Airport Uniform Report of ACDBE Participation and ACDBE/Part 23 Achievement Report, Fiscal Years 2017 – 2019.

Given the race-neutral percentages each year for the past three years, DFW Airport proposes meeting the median percentage for the upcoming three years which is **10.42%**. Therefore, we estimated that, in meeting our overall goal of **31%**, we will obtain **10.42%** of the participation through race-neutral means.

For reporting purposes, race neutral ACDBE participation includes, but is not necessarily limited to, the following:

- ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures
- ACDBE participation through a prime contract that does not carry an ACDBE goal
- ACDBE participation through a subcontract on a prime contract that does not carry an ACDBE goal
- ACDBE participation on a prime contract exceeding a concession specific goal
- ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

**Therefore, on an ACDBE goal of 31%, DFW estimates that 10% ACDBE participation for the goal period will be met through race-neutral means and the balance of the overall goal 21% will be met using race-conscious means.**

If we project that the race-conscious portion of our overall goal will not be met, we may use the following race-neutral measures to meet the overall goal:

1. *Concession-specific goals for particular concession opportunities.*
2. *Negotiation with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.*
3. *With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.*

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately.

For reporting purposes, race neutral ACDBE participation includes, but is not necessarily limited to, the following:

- ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures
- ACDBE participation through a prime contract that does not carry an ACDBE goal
- ACDBE participation through a subcontract on a prime contract that does not carry an ACDBE goal
- ACDBE participation on a prime contract exceeding a concession specific goal
- ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

## DFW's Car Rental Concession Contracts

### DFW's Unconstrained Product Market for Car Rental Concession Contracts

Two NAICS codes—New Car Dealers 441110 and Passenger Car Rental 532111—captured 99.4 percent of all of the Airport's spend on car rental concessions. These two NAICS codes represent the unconstrained product market and Table 4-31 presents this data.

**Table 4-31: NAICS Code Distribution of Car Rental Concession Contract Dollars**

*Source: CHA analysis of DFW data*

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
532111	Passenger Car Rental	86.5%	86.5%
441110	New Car Dealers	12.9%	99.4%
<b>TOTAL</b>			<b>100.0%</b>

### DFW's Geographic Market for Car Rental Concession Contracts

Tarrant County (TX) and Los Angeles County (CA) capture 96.5 percent of unconstrained product market and will define the geographic market for this study. Table 4-32 presents this data.

**Table 4-32: Distribution of Contracts in DFW's Product Market for Car Rental Concession Contracts in Tarrant and Los Angeles Counties**

*Source: CHA analysis of DFW data*

County	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
Tarrant	85.8%	85.8%
Los Angeles	10.7%	96.5%

### DFW's Utilization of ACDBEs on Car Rental Concessions

Tables 4-33 through 4-35 present the Airport's utilization by contract dollars for car rental concessions.

**Table 4-33: NAICS Code Distribution of Car Rental Concession Contract Dollars**

Source: CHA analysis of DFW data

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
532111	Passenger Car Rental	\$1,295,494,228.06	88.9%
441110	New Car Dealers	\$161,089,526.88	11.1%
<b>TOTAL</b>		<b>\$1,456,583,754.94</b>	<b>100.0%</b>

**Table 4-34: Distribution of Car Rental Concession Contract Dollars by Race and Gender (total dollars)**

Source: CHA analysis of DFW data

NAICS	Black	Hispanic	Asian	Native American	White Women	ACDBE	Non-ACDBE	Total
441110	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
532111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>Total</b>	<b>0.0%</b>	<b>11.1%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>11.1%</b>	<b>88.9%</b>	<b>100.0%</b>

**Table 4-35: Distribution of Car Rental Concession Contract Dollars by Race and Gender (share of total dollars)**

Source: CHA analysis of DFW data

NAICS	Black	Hispanic	Asian	Native American	White Women	ACDBE	Non-ACDBE	Total
441110	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
532111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>Total</b>	<b>0.0%</b>	<b>11.1%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>11.1%</b>	<b>88.9%</b>	<b>100.0%</b>

### Availability of ACDBEs in DFW's Markets for Car Rental Concession Contracts

Similar to the analysis of ACFBE availability in the constrained product market shaped by the spending of FAA and non-FAA funded dollars, the Disparity Study built a database of available firms in the car rental concessions market. Tables 4-36 through 4-38 present data on the weighted availability; the weights used to adjust the unweighted numbers; and the weighted availability.

Per the Disparity Study, these weighted availability estimates can be used by the Airport to set its ACDBE goals for car rental concession contracts.

**Table 4-36: Unweighted Availability for Car Rental Concession Contracts**

Source: CHA analysis of DFW data; Hoovers; CHA Master Directory

NAICS	Black	Latino	Asian	Native America	White Women	ACDBE	Non-ACDBE	Total
441110	0.5%	0.4%	0.2%	0.0%	2.0%	3.1%	96.9%	100.0%
532111	0.5%	0.3%	0.2%	0.0%	2.2%	3.1%	96.9%	100.0%
<b>TOTAL</b>	<b>0.5%</b>	<b>0.4%</b>	<b>0.2%</b>	<b>0.0%</b>	<b>2.0%</b>	<b>3.1%</b>	<b>96.9%</b>	<b>100.0%</b>

**Table 4-37: Share of DFW Spending on Car Rental Concession Contracts by NAICS Code**

Source: CHA analysis of DFW data

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector)
532111	Passenger Car Rental	88.9%
441110	New Car Dealers	11.1%
<b>Total</b>		<b>100.0%</b>

**Table 4-38: Aggregated Weighted Availability for Car Rental Concession Contracts (total dollars)**

Source: CHA analysis of DFW data; Hoovers; CHA Master Directory

Black	Hispanic	Asian	Native America	White Women	ACDBE	Non-ACDBE	Total
0.5%	0.3%	0.2%	0.0%	2.2%	3.1%	96.9%	100.0%

Based on the above chart, DFW is using **3.1%** as the base goal.

**Step 2: Consideration of an Adjustment to the Base Figure**

Step 2. Once DFW calculated a base figure, DFW examined all relevant evidence reasonably available in DFW’s jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at DFW’s overall goal.

- (1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:
  - (i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

- (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.
- (2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.
- (3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:
  - (i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;
  - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.
- (4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- (5) Among the information you submit with your overall goal (see 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §§26.51(c)).

Therefore, having considered the evidence required by § 26.45(d), DFW has determined not to adjust its step 1 base figure estimate of the availability of ACDBEs. Therefore, DFW proposes to set an overall, annual ACDBE goal for car rental FFYs 2020-2023 of 3.1%.

The justification not to adjust the base goal was due to historical data which reflected an abnormally high percentage of achievement for ACDBE participation due to an ACDBE car dealer out of Los Angeles, Santa Monica Ford, that accounted for 87% of ACDBE achievement. Without the Car dealer, DFW would have only achieved 1% ACDBE participation. Santa Monica has graduated from the program and therefore DFW achieving the below historical achievements are unrealistic.

<b>Fiscal Year</b>	<b>Annual ACDBE Percentage Participation</b>
2019	8.06%
2017	11.31%
2018	12.45%

DFW proposes to set an overall, annual ACDBE goal for car rental FFYs 2020-2023 of 3.1%.