

DIA Airport Concession Disadvantaged Business Enterprise Program Performance Audit

May 2015

Office of the Auditor
Audit Services Division
City and County of Denver



Dennis J. Gallagher
Auditor

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City and County of Denver

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Dennis J. Gallagher

Auditor

May 21, 2015

Ms. Kim Day, Chief Executive Officer
Department of Aviation
City and County of Denver

Mr. Paul Washington, Director
Office of Economic Development
City and County of Denver

Dear Ms. Day and Mr. Washington:

Attached is the Auditor's Office Audit Services Division's report of their audit of Denver International Airport's (DIA's) Airport Concession Disadvantaged Business Enterprise (ACDBE) program, administered by the City's Division of Small Business Opportunity (DSBO). The purpose of the audit was to determine whether the City's ACDBE program is meeting its intended purpose, as defined by federal regulation, and effectively mitigating potential abuse of the program through its certification and compliance activities.

The audit team identified weaknesses in DSBO processes that are intended to help ensure the continued eligibility of firms participating in the ACDBE program, as well as verify the work performed by ACDBE-certified firms with current DIA concession contracts. It is imperative that DSBO develop certification and compliance practices that are robust, accurate, and consistent. Absent such practices, the City risks violation of the federal regulations governing the ACDBE program and DSBO's ability to support certification decisions is limited. In addition, the audit team found that DIA and DSBO have adopted several key practices to support and aid disadvantaged businesses in obtaining concession contracts at the airport. However, I encourage both agencies to develop additional practices to address areas of need identified by some ACDBE-certified firms to help further widen the doors of opportunity.

If you have any questions, please call Kip Memmott, Director of Audit Services, at 720-913-5000.

Sincerely,

Dennis J. Gallagher
Auditor

DJG/rl

cc: Honorable Michael Hancock, Mayor
Honorable Members of City Council
Members of Audit Committee
Ms. Cary Kennedy, Deputy Mayor, Chief Financial Officer

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We will monitor and report on recommendations and progress towards their implementation.***

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Auditor

AUDITOR'S REPORT

We have completed an audit of Denver International Airport's (DIA's) Airport Concession Disadvantaged Business Enterprise (ACDBE) program, administered by the City's Division of Small Business Opportunity (DSBO). The purpose of the audit was to determine whether the City's ACDBE program is meeting its intended purpose and effectively mitigating potential abuse of the program through its certification and compliance activities.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, *General Powers and Duties of Auditor*, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit work identified weaknesses in DSBO's process of calculating a program applicant's personal net worth (PNW) that could inhibit DSBO's ability to justify certification decisions. We also found that DSBO could more fully utilize its system for maintaining certification information, and that a recent amendment to the ACDBE program's federal regulation could help DSBO utilize its resources more strategically. Regarding DSBO's compliance activities, we found that joint venture agreements address key features recommended by federal guidelines and that DSBO has made progress in implementing a process for conducting concession site visits. However, DSBO has not finalized the site visit process in procedure and practice in order to ensure continuity or maximize site visit coverage of all ACDBE concessions.

This audit also reviewed and identified some best practices for increasing diverse and small business participation in airport concessions. Our audit work found that DIA and DSBO have adopted some key practices to encourage and aid ACDBE-certified firms in obtaining concession contracts at DIA, but DIA and DSBO could do more to improve ACDBE participation and address needs identified by some currently certified firms. As with the City's Minority/Woman Business Enterprise program, we found that few ACDBE-certified firms have graduated from the program and that a small percentage of ACDBE-certified firms hold significant ownership in the DIA concession locations with ACDBE participation. The high concentration of ownership and low graduation rate suggest that concession opportunities remain elusive for many of the smaller ACDBE-certified firms. Therefore, DIA should complete implementation of its Airport Concessions Million Dollar Loan Program designed to provide financial aid to disadvantaged businesses seeking airport concession opportunities and DSBO should consider creating a business development and/or mentor-protégé program. Finally, DIA should work with DSBO to assess the

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that provide objective and useful information to improve decision making by management and the people.
We will monitor and report on recommendations and progress towards their implementation.*

potential future impact that its Premium Value Concessions program may have on the ability of certified firms to fully participate in and benefit from the ACDBE program.

We extend our appreciation to Denver International Airport, the Office of Economic Development, the Division of Small Business Opportunity, and the personnel who assisted and cooperated with us during the audit.

Audit Services Division

A handwritten signature in black ink, appearing to read "K. Memmott", with a stylized flourish at the end.

Kip Memmott, MA, CGAP, CRMA
Director of Audit Services

REPORT HIGHLIGHTS



DIA Airport Concession Disadvantaged Business Enterprise Program May 2015

The audit assessed the effectiveness of Denver International Airport's Airport Concession Disadvantaged Business Enterprise program.

Background

The federal government established the Airport Concession Disadvantaged Business Enterprise (ACDBE) program to encourage minority business owners to own concessions at airports, such as newsstands, coffee shops, restaurants, and retail shops. In return for participation, Denver International Airport (DIA) receives funding for airport infrastructure improvement projects. The City's Division of Small Business Opportunity (DSBO) manages the ACDBE program by certifying firms for participation and monitoring for compliance with eligibility provisions. Firms are certified based on social and economic disadvantage, business size, ownership and control requirements, and personal net worth.

Purpose

The purpose of the audit was to determine whether the City's ACDBE program is meeting its intended purpose and effectively mitigating potential abuse of the program through its certification and compliance activities.

Highlights

FINDING 1: Audit work identified several issues with calculating owner personal net worth for certification purposes. We found inaccuracies, inconsistencies, and questionable calculations performed by DSBO. Further, DSBO generally does not use third-party resources to verify the accuracy of owners' personal financial information. We also found that DSBO could more fully utilize its system for maintaining certification information, and that a recent amendment to the federal regulations could help DSBO utilize its resources more strategically. These weaknesses increase the risk that firms will remain in the program when they are no longer eligible.

We also reviewed additional activities performed by DSBO to ensure program compliance, including monitoring joint venture agreements and performing concession site visits. We found that the joint venture agreements address key features recommended by federal guidelines. However, DSBO has not finalized its site visit procedure to ensure continuity or maximize coverage of all ACDBE concession locations. Furthermore, DSBO has not revised the DIA ACDBE Concession Program Plan in accordance with federal regulation. Finally, DSBO needs to establish and document ACDBE complaint handling procedures.

FINDING 2: DIA and DSBO have adopted some key practices to encourage contract awards to ACDBE-certified firms but DSBO could do more to improve program participation. First, implementing a business development program or mentor-protégé program could further the development of ACDBE-certified firms by helping them compete more effectively outside of the ACDBE program. Second, DIA could fully implement its Million Dollar Loan Program to provide financial assistance to ACDBE-certified firms for future concession opportunities. Third, DIA should work with DSBO to assess what long-term effect the Premium Value Concessions Program may have on new ACDBE entrants into DIA's concession program.

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INTRODUCTION & BACKGROUND

Federal Disadvantaged Business Enterprise Programs

The United States Department of Transportation (DOT) established the Disadvantaged Business Enterprise Program (DBE program) to encourage increased opportunities for minority business enterprises to participate in state and local procurement. In the context of airports, the DBE program was established for airport contractors and the Airport Concession DBE Program (ACDBE program) for concessionaires. DOT sets rules and regulations for these programs, and the programs are implemented by state and local transportation agencies under the requirements established in Title 49 CFR Part 26 (Part 26) for the DBE program and Title 49 CFR Part 23 (Part 23) for the ACDBE program. Federal Aviation Administration (FAA) regional offices supervise local implementation of these programs to ensure legal and regulatory compliance. The DBE and ACDBE programs are required to be implemented by all organizations that receive DOT and FAA federal program assistance to finance government transportation projects.

Disadvantaged Business Enterprise Programs at Denver International Airport

Denver International Airport (DIA) receives annual federal funding through the federal Airport Improvement Program (AIP); therefore, DIA is required to maintain both a DBE program and an ACDBE program. AIP funds are provided to local and state airport authorities for safety-related development projects, such as the construction, rehabilitation, or extension of runways and taxiways. Table 1 details AIP expenditures reported by the City from 2010 through 2013.¹

Table 1
City and County of Denver Airport Improvement Program (AIP) Expenditures
Federal Fiscal Years 2010 through 2013

Federal Fiscal Year	AIP Expenditures
2010	\$21,321,264
2011	\$34,701,591
2012	\$22,939,978
2013	\$29,854,159

Source: Developed by auditors using data from the City and County of Denver's 2010 through 2013 Single Audit Reports.

¹ City and County of Denver Single Audit Reports, years ended December 31, 2010 through December 31, 2013, <https://www.denvergov.org/finance/DenverDepartmentofFinance/FinancialReports/SingleAuditReport/tabid/442878/Default.aspx>.

The DBE program is exclusive to transportation entities and is required for contracts awarded by recipients who receive certain types of federal transportation funding from DOT.² The ACDBE program is unique to airport concessionaires. This audit focused on the ACDBE program. Although the ACDBE program is regulated through Part 23, portions of regulation—such as those related to compliance, enforcement, and certification—refer to and are also governed by the DBE program provisions outlined in Part 26.

Part 23 requires airports to develop, implement, and enforce a program for concession businesses that allows for equal opportunity in receiving and participating in airport concession opportunities. It also requires that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small businesses owned and controlled by a socially and economically disadvantaged individual.

The objectives of the ACDBE program are as follows.³

1. To ensure non-discrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions
3. To ensure that the ACDBE program is narrowly tailored in accordance with applicable law
4. To ensure that only firms that fully meet Part 23 eligibility standards are permitted to participate as ACDBEs
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance
6. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs

DIA's ACDBE program is administered through the City's Division of Small Business Opportunity (DSBO) within the Office of Economic Development (OED), on behalf of DIA and the City.

Division of Small Business Opportunity Structure and Responsibilities

DSBO strives to create an environment to help small businesses thrive through collaboration between the public, private, and non-profit sectors. DSBO is overseen by a director, who is appointed by the Mayor. In 2014, DSBO was appropriated approximately \$1.4 million in General Fund monies and sixteen full-time employees to carry out its duties. Of this amount, approximately \$570,000 and six full-time employees were dedicated to support certification programs at the airport, including the DBE and ACDBE programs, as

² Recipients is defined in 49 C.F.R. § 23.3 as any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

³ 49 C.F.R. § 23.1.

well as the Minority/Women Business Enterprise (M/WBE) and Small Business Enterprise (SBE) programs.⁴

DSBO administers six disadvantaged business programs, including the ACDBE program. Four of the programs are established in the Denver Revised Municipal Code and two are established in federal law. The four local programs are the M/WBE, SBE, Small Business Enterprise Concessions, and Emerging Business Enterprise programs.⁵ The two federal programs are the DBE and ACDBE programs.

DSBO certifies firms as eligible for the six disadvantaged business programs and monitors participant firms for program compliance through its Certification and Compliance Sections. DSBO's 2014 Annual Report listed 1,231 firms certified as eligible to participate in one or more certification program category.⁶ Many of the firms hold multiple certification types.

- **Certification Section**—DSBO's Certification Section certifies firms for participation in one or more of the City's disadvantaged business programs by ensuring that the businesses have met established eligibility criteria. Once certified, Certification Section personnel place eligible businesses in a directory used by bidders seeking to hire certified firms to meet disadvantaged business enterprise project goals established for City contracts. Although certification affords disadvantaged business enterprises with an opportunity to bid and work on City contracts, certification itself does not guarantee receipt of a contract. Employees within the Certification Section also conduct training programs and certification workshops to help participants learn more about the procurement of construction-related contracting opportunities. Further, Certification Section personnel conduct community outreach activities to promote the disadvantaged business programs and contracting opportunities available through the City.
- **Compliance Section**—DSBO's Compliance Section provides ongoing compliance monitoring and enforcement for certified firms providing construction work, professional services, goods, and work related to DIA concessions. Compliance Section personnel ensure that established project goals are met and enforce adherence to applicable City ordinances, equal employment opportunity regulations, and federal guidelines, and ensure timely payments to certified firms performing work on City contracts.

⁴ City and County of Denver Mayor's 2015 Budget, <http://www.denvergov.org/finance/DenverDepartmentofFinance/OurDivisions/BudgetManagement/tabid/445437/Default.aspx>.

⁵ The Auditor's Office issued a performance audit report of the City's Minority/Women Business Enterprise Program in December 2014. See http://www.denvergov.org/Portals/741/documents/Audits%202014/Minority-Women_Business_Enterprise_Program_Audit_Report_12-18-14.pdf.

⁶ DSBO's 2014 Annual Report is dated March 1, 2015, and reports an increase in 365 certified firms since 2009 when 866 firms were certified. See [http://www.denvergov.org/Portals/690/documents/DSBO/2014%20DSBO%20Annual%20Report%20\(2\).pdf](http://www.denvergov.org/Portals/690/documents/DSBO/2014%20DSBO%20Annual%20Report%20(2).pdf).

DIA Business Opportunities and Concessions Program

DIA generates revenue through rentals, fees, and charges received from the airlines that operate at DIA, as well as non-airline sources. Non-airline businesses, which include concessions, account for a significant percentage of total airport revenue each year. DIA's Lease and Use Agreement with contracted airlines requires that DIA manage the concession program to maximize non-airline revenue to then minimize the rentals, rates, fees, and charges airlines are obligated to pay.

Concessions generate millions of dollars for DIA annually. There are multiple types of concessions including newsstands, coffee shops, quick-serve restaurants, retail shops, bars, and car rentals. Over the course of the most recent year and the next few years, many of the current concession agreements DIA has with concessionaires have and will expire. As such, new opportunities have and will become available for prospective and current concessionaires to help DIA management grow the concessions program and develop new food, beverage, retail, and service experiences for the traveling public.

DIA's concession program consists of more than 177,000 square feet of concession space and more than 140 locations, including food and beverage, retail, and services.⁷ DIA also has approximately forty Retail Merchandising Units (RMUs) and kiosks throughout the airport.⁸ In 2013, the airport's overall concessions program generated more than \$295 million in gross sales and more than \$52 million in revenue to the airport.⁹ In 2014, the program's annual gross sales increased to more than \$320 million.¹⁰ DIA's goals for the concession program include, but are not limited to, maximizing non-airline revenue consistent with DIA's obligation to airline partners based on ongoing customer research and feedback, and maximizing small and local business and ACDBE opportunities through continued use of a direct and competitive leasing approach.¹¹

According to DIA's Diversity/Small Business Services – Business Opportunities webpage, DIA is committed to increasing the involvement of disadvantaged-, minority-, and women-owned firms in all airport business prospects. All airport contracts and concession agreements incorporate policies, procedures, and clauses regarding specific M/WBE, SBE, DBE, and ACDBE requirements.¹²

Concessions at DIA are selected either through a Request for Proposal (RFP) process or through its Premium Value Concessions (PVC) program. An RFP is defined as any solicitation of pricing for supplies where an award is made in consideration of best value and not necessarily lowest price from a responsive, responsible, qualified proposer. A concession RFP describes the space available, concepts desired, City requirements for operating a concession at DIA, and documents that must be submitted, along with any

⁷ DIA March 3, 2015 press release, *DIA Sets Record for Minority and Women-Owned Concession Revenue*, accessed March 25, 2015, http://www.flydenver.com/sites/default/files/downloads/15-016%20ACDBE.docx_.pdf.

⁸ DIA 2014 Press Kit, accessed March 25, 2015, <http://business.flydenver.com/info/news/pressKit.pdf>.

⁹ *Ibid.*

¹⁰ DIA March 3, 2015 press release, *DIA Sets Record for Minority and Women-Owned Concession Revenue*, accessed March 25, 2015, http://www.flydenver.com/sites/default/files/downloads/15-016%20ACDBE.docx_.pdf.

¹¹ DIA's Concession Policy, December 17, 2014.

¹² DIA's Diversity/Small Business Services – Business Opportunities webpage, accessed March 25, 2015, <http://business.flydenver.com/bizops/smallBus.asp>.

other requirements. Concession RFPs issued by DIA include opportunities for providing food/beverage, specialty retail, and consumer services. DIA's Concession Policy provides a policy framework and internal direction to DIA personnel for the solicitation, selection, award, and administration of food and beverage, retail, and consumer service concession privileges within the terminal building and concourses at DIA.¹³

The PVC program, which was put in place in August 2012, is designed to reward top performers by allowing concessions to compete against one another in defined merchandising categories.¹⁴ In this program, the food/beverage and retail concessions in the concourses compete for the Program Benefit, which provides concessionaires the opportunity to enter into direct negotiations for new concession contracts as a substitute for going through the RFP, competitive bidding process. Performance is measured based on operational, financial, and customer service performance. DIA's three concourses have over one hundred food/beverage and retail concessions, seventy of which volunteered to participate in the PVC program. The PVC program is being phased-in over three years and will reach full implementation by August 2015. Participants that do not earn the Program Benefit hold their existing contracts until they expire, at which time their concession spaces will go out for bid under DIA's standard RFP process. Under the RFP process, current concessionaires have the ability to bid on their current space, but must compete with other parties. Finding 2 of this audit report addresses concerns with how the PVC program may adversely affect new ACDBE entrants into DIA's concessions program.

DIA's ACDBE Program Requirements

Part 23 requires airports to develop, implement, and enforce a program for concession businesses that meets the goals of the federal ACDBE program. Implementation of the ACDBE program involves ensuring that various program requirements are fulfilled. These include developing a program plan, performing certification and compliance activities, setting program goals, and submitting an annual report on ACDBE program participation.

- **Program Plan**—In 2006, the City was required to submit, to the FAA for approval, a revised ACDBE program plan outlining the designed implementation to meet program requirements outlined in Part 23. The program plan was mandated as a condition of continued eligibility for FAA financial assistance. The City's revised program plan was developed by DSBO and submitted to the FAA in conjunction with its overall program goals.

The program plan includes a policy statement that expresses commitment to operating the ACDBE program in a non-discriminatory manner and states the program's objectives listed above.¹⁵ Airports implementing the ACDBE program

¹³ DIA's Concession Policy, December 17, 2014.

¹⁴ The Auditor's Office issued a performance audit report of DIA Concessions Management in February 2014. This audit included an assessment of DIA's Premium Value Concessions Program. See http://www.denvergov.org/Portals/741/documents/Audits%202014/DIA_Concessions_Management_Audit_Report_02-20-14.pdf.

¹⁵ 49 C.F.R. § 23.23(a).

must designate an ACDBE Liaison Officer (ACDBELO), who is responsible for implementing all aspects of the ACDBE program. DIA's ACDBELO is the Director of DSBO.

Federal regulations further require that an airport submit an amended program plan to the FAA for approval prior to implementing any significant changes to its ACDBE program. The most recent finalized DIA ACDBE program policy statement is dated 2006. Finding 1 of this audit report addresses concerns identified through the audit regarding meeting this program requirement.

- **Certification Activities**—DIA is responsible for certifying ACDBEs to participate in DIA's concessions program. The certification process includes initial certification of new ACDBE firms. In addition, the certification process includes review of annual certification affidavits submitted by certified firms and the performance of three-year certification renewals to ensure ongoing certification eligibility for firms already certified. DSBO carries out this task for DIA by performing all ACDBE certification reviews.

During the initial ACDBE certification process, DSBO Certification Section personnel review an application form to determine whether the applicant meets the ownership and business requirements. Supplemental documents are also reviewed to substantiate information represented in the application. There are numerous supplemental documents required to be submitted by the applicant such as an affidavit certifying that the owner of the firm is a member of a socially and economically disadvantaged group, three years of personal and business tax returns, financial institution information, work experience resumes, and documentation supporting the creation of the firm, including proof of contributions used to acquire ownership. In addition to reviewing a firm's application and supplemental documentation, Certification Section personnel schedule a site visit to verify the accuracy of the provided information and ascertain whether the business is under the daily control of an ACDBE-eligible owner. DSBO certifies ACDBE firms in one or more Denver local commodity codes.¹⁶ For example, commodity code 991001 is assigned to full service restaurants.

After initial certification, an ACDBE-certified firm is required annually to confirm that it continues to meet the program's eligibility criteria. At this time, a certified firm is required to submit a notarized DBE/ACDBE No Change Affidavit attesting to the accuracy of various statements. These statements include, but are not limited to, that the business will abide by the requirements of the ACDBE program; notify the City of any change in the business's ability to meet size, disadvantaged status, ownership or control criteria, or material change in the information provided with the application for certification; and acknowledge the City's right to conduct reviews of the business to determine continued compliance with certification requirements. In addition, the firm's most recent tax return is also

¹⁶ The City's Office of Economic Development website provides a list of locally developed commodity codes. See <https://denver.mwdbe.com/Common/Codes/CodeLookup.asp?XID=6789&GC=1&FE=true&OrganizationID=30000008&SystemFunction=PublicDirectory>.

required. Prior to October 2014, a notarized Affidavit of Certification, certifying that the owner of the firm is still a member of a socially and economically disadvantaged group, a completed personal financial statement, and most recent personal tax return for each owner on whom certification is based was also required. However, federal regulations were updated in October 2014 and currently only the notarized DBE/ACDBE No Change Affidavit and firm's tax return are required to be submitted annually.

DSBO also performs a review of ACDBE ongoing certification every three years. For this review, certified firms are required to submit all of the documents required annually prior to October 2014, such as a personal financial statement and personal tax returns. Certification Section personnel review this information and complete a renewal worksheet analyzing the firm's ongoing eligibility and a personal net worth analysis of the owner's ongoing eligibility.

Once reviews are complete, Certification Section personnel make recommendations to a Certification Committee, facilitated by the DSBO Director and consisting of DSBO personnel who perform other certification program reviews or supervise the certification function. The Certification Committee meets weekly and considers the recommendations made by DSBO's certification personnel before voting to approve or deny initial certification or ongoing renewal. The Director of DSBO is not deemed a voting member of the committee. Finding 1 of this audit report addresses concerns identified through this audit regarding the ACDBE certification process.

- **Compliance Activities**—DIA is required to develop a monitoring and enforcement mechanism to verify that the work committed to an ACDBE is actually performed by the ACDBE. The mechanism includes reviewing all contracts, leases, joint venture agreements, or other concession-related agreements, and monitoring the work performed by an ACDBE on-site.¹⁷ DSBO carries out this task for DIA by performing all compliance activities related to ACDBE participation. Finding 1 of this audit report addresses concerns identified through this audit regarding the ACDBE compliance process.
- **Setting Program Goals**—DIA must establish two separate overall goals for ACDBE participation—one for car rentals and one for concessions other than car rentals (non-car rentals).¹⁸ The goals cover a three-year period based on the federal fiscal year. Although the federal statute authorizing the ACDBE program set a 10 percent national aspirational ACDBE-participation goal, DIA cannot just simply set its overall ACDBE concession participation goals at the national level. Instead the overall goals must be based on the relative availability of ACDBE firms.

An airport is not penalized for failing to meet its overall goals if it demonstrates good faith, explains its methodology, and establishes specific steps to enable it to

¹⁷ 49 C.F.R. § 23.29.

¹⁸ According to 49 C.F.R. § 23.41(b), if the three-year average of annual car rental concession revenues and non-car rental concession revenues separately do not exceed \$200,000, neither a car rental nor non-car rental goal is required. Both DIA's car rental and non-car rental concession revenues exceeded an average of \$200,000 for the three-years; therefore, DIA is required to establish both overall goals.

meet its goal for the new fiscal year. DSBO is responsible for establishing these goals. The most recent goal submission was for the three-year period covering federal fiscal years 2014 through 2016, with the overall car rental goal set at 2 percent and the overall non-car rental goal set at 33 percent. Because the car rental goal is set very low and affords little participation at DIA, the focus of this audit was on ACDBE firms certified for non-car rental airport concessions.

Annual Non-Car Rental Goal Setting—DSBO uses data from a disparity study and from DIA's current concession operations as the basis for developing the non-car rental ACDBE goal. The annual goal-setting methodology includes a two-step process that, first, determines a base figure and, second, adjusts the base figure if necessary. The overall goal is established by first formulating the base figure by taking into consideration the total gross receipts for non-car rental concession activity and the relative availability of ACDBEs in the market area. The availability of ACDBEs is determined in a disparity study conducted by an independent third-party contractor and paid for by the City.¹⁹ Second, DSBO considers whether the base figure should be adjusted to account for the continuing effects of discrimination or the effects of the current ACDBE program. Considerations made by DSBO include:

- Past ACDBE participation
- Additional evidence of discrimination found in the disparity study
- Available evidence from related fields that affect the opportunities for ACDBEs to form, grow, and compete and obtain financing, bonding, and insurance required to participate in DIA's concession program
- Available evidence from data on employment, self-employment, education, training, and union apprenticeship

The annual goals are further defined by projecting participation through race-conscious and race-neutral goals. A race-conscious goal is a measure that is focused specifically on assisting only ACDBEs, and includes gender-conscious measures. A race-neutral goal is a measure that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender. In estimating the portions of the goal to be met through race-neutral and race-conscious measures, DSBO evaluates past race-neutral ACDBE participation. The 33 percent non-car rental goal submission for the three-year period covering federal fiscal years 2014 through 2016 is projected to be met through 8 percent race-neutral measures and 25 percent race-conscious measures.

Concession-Specific Goal Setting—DSBO also establishes specific goals for each concession contract, whether chosen through the RFP process or through the PVC Program. As a step in these processes, DSBO personnel consider the number of ACDBE-certified firms that provide the specific type work to be performed for the specified concession and assign a concession-specific goal. This goal then

¹⁹ The most recent disparity study was performed by MGT America in 2013.

becomes part of the RFP document or PVC Program negotiation. Any prospective operator of a concession must demonstrate that it meets the minimum ACDBE qualifications. When proposals are received, DSBO reviews the proposals to make a final determination regarding whether the proposers have met, or made a good faith effort to meet, the ACDBE requirement. If DSBO determines that a proposer did not meet, or did not make a good faith effort to meet, the set requirement, the proposer is deemed non-responsive and will not be further considered for the concession opportunity.²⁰

- **Reporting**—ACDBE program recipients are required to submit to the FAA an annual *Uniform Report of ACDBE Participation* (report).²¹ The report describes the program's two overall ACDBE goals and subsequent participation separately—non-car rental and car rental. Participation is determined by dividing total gross revenues earned by ACDBEs by total gross revenues earned by all concessionaires.

DSBO is responsible for ensuring that the annual report is accurate and submitted to the FAA in a timely manner. DSBO developed a spreadsheet to track all DIA concession revenues on a federal fiscal year basis, as reported by individual concessionaires to DIA's Finance Division on a monthly basis. These gross revenues are also entered into DSBO's program management software. The spreadsheet also identifies the concession-specific ACDBE goals, as outlined in the concession agreements and the actual participation by the ACDBE-certified firms. DSBO personnel use this spreadsheet to determine the overall percentage of ACDBE participation for all concessionaires. This overall participation percentage is then compared to the overall annual goal set by DSBO and approved by the FAA.

ACDBE goals can be met in three ways: the concession owner/operator is ACDBE-certified, a non-certified owner obtains goods and/or services from an ACDBE-certified firm, or through agreements entered into by two or more firms. An ACDBE-certified firm acting as a concession owner/operator will be counted at 100 percent participation. An ACDBE-certified supplier may provide goods and/or services to a non-certified concession owner/operator, but participation will be counted at less than 100 percent. An example of an agreement entered into by two or more firms is a joint venture.²² In this type of agreement, the ACDBE-certified firm is responsible for a distinct, clearly defined portion of the work outlined in the concession contract, and the ACDBE participation will be counted equal to the work performed by the ACDBE-certified firm according to the agreement.

²⁰ 49 C.F.R. § 23.25(e)(1)(iii) specifies that, "To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so." A good faith effort is defined in 49 C.F.R. § 26.5 as, "Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement."

²¹ Pursuant to 49 C.F.R. § 23.27(b), this requirement began on March 1, 2006, and is due by March 1 of each subsequent year. The report's format and instructions for completion are described in Part 23, Appendix A.

²² 49 C.F.R. § 23.3 defines a joint venture as an association of an ACDBE-certified firm and one or more other firms to carry out a single, for-profit business enterprise in which the parties combine their property, capital, efforts, skills, and knowledge.

Participation will continue to count through the end of the original contract term for each of these types of participation, even if the ACDBE-certified firm graduates from the program during that same contract term. However, participation will not count if the firm's certification is revoked or de-certified for any other reason during the term of the contract.

Table 2 represents DIA's ACDBE program non-car rental goals in comparison to actual participation for federal fiscal years 2011 through 2014.²³

Table 2
ACDBE Program Non-Car Rental Goals and Actual Participation
Federal Fiscal Years 2011 through 2014

Federal Fiscal Year	Overall Program Goal	Overall Participation
2011	36.31%	34.28%
2012	36.31%	34.22%
2013	36.31%	37.74%
2014	33.00%	39.35%

Source: Developed by auditors using data from DSBO's FFY 2011 through 2014 Uniform Reports of ACDBE Participation submitted to the FAA on an annual basis.

DIA's ACDBE Program Eligibility Criteria

As of January 23, 2015, DIA's ACDBE program consisted of 264 businesses certified as ACDBEs. To obtain ACDBE certification, an applicant firm has the burden of demonstrating, by a preponderance of the evidence, that it meets certain eligibility requirements in the areas of social and economic disadvantage, business size, ownership, and control. In addition, owners of ACDBE firms must meet the personal net worth standard.²⁴

- **Social and Economic Disadvantage Status**—Members of various designated groups, defined by federal law, are presumed to be socially and economically disadvantaged.²⁵ Federal law defines a socially and economically disadvantaged individual as a U.S. citizen, or lawfully admitted permanent resident, who is a member of one or more of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or women.²⁶ Individuals of these groups must submit a signed, notarized statement attesting they are a member of one of the defined groups. In addition, applicants must provide information regarding their economic disadvantage.

²³ The required reporting period is on the federal fiscal year basis of October 1 through September 30.

²⁴ The certification and eligibility of ACDBEs fall within 49 C.F.R. § 23.31-39, but the procedures and standards in 49 C.F.R. § 26.61-91 also apply.

²⁵ 49 C.F.R. § 26.61(c).

²⁶ 49 C.F.R. § 23.3.

- **Business Size Standards**—To obtain ACDBE certification, an applicant firm must meet specific eligibility requirements. For example, firms must not exceed established size standards as set forth in federal law. Most businesses will be deemed ACDBE eligible if the most recent three-year average of gross receipts does not exceed \$56.42 million. Size standards differ for banks and financial institutions, car rental companies, pay telephones, and automobile dealers.²⁷
- **Ownership Requirements**—To be eligible for ACDBE certification, at least 51 percent of the business ownership must be held by a socially and economically disadvantaged individual. In addition, any individual may be determined to be socially and economically disadvantaged on a case-by-case basis, and the federal Small Business Association may designate additional groups as socially and economically disadvantaged.²⁸

Business ownership by the socially and economically disadvantaged owner must be real, substantial, and continuing throughout the life of the firm, and can be evidenced by capital contribution or expertise. A disadvantaged owner must share in the risks and be entitled to the profits and losses of the firm equal to his or her ownership interest. Proof of sufficient capital contribution to the firm is required to be submitted at the time of initial application. Examples of insufficient capital contribution would include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or a capital contribution that is not equal with the value of the firm.

Participation in the firm's activities as an employee does not constitute sufficient contribution. If expertise is relied upon as part of a disadvantaged owner's contribution, the expertise must be in a specialized field, of outstanding quality, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs, and documented in the firm's records. In addition, this individual must have a significant financial investment in the firm.

- **Control Requirements**—The eligible owner must also manage and control the daily operations of the firm. Ownership alone is not sufficient to establish management and control. In determining whether socially and economically disadvantaged owners control a firm, several considerations must be evaluated. For example, DSBO must consider whether a potential ACDBE is an independent business in which its viability does not depend on its relationship with any other firm or firms. Also, a firm must not be subject to restrictions that limit the socially and economically disadvantaged owners from making any business decision of the firm. In addition, the socially and economically disadvantaged owners must possess the power to direct the management and policies of the firm and make day-to-day and long-term decisions on matters of management, policy, and operations.

²⁷ 49 C.F.R. § 23.33 provides business size limits for banks and financial institutions at \$1 billion in assets; car rental companies at a \$75.23 million three-year average of gross receipts; pay telephones at 1,500 employees; and automobile dealers at 350 employees.

²⁸ 49 C.F.R. § 26.69.

- **Personal Net Worth Standards**—The personal net worth of the majority owners of a firm applying for ACDBE certification must not exceed \$1.32 million.²⁹ Personal net worth is the net value of an individual's assets after liabilities are considered.³⁰ If personal net worth exceeds this value, the owner's presumption of economic disadvantage is no longer valid. For ACDBE program purposes, an individual's personal net worth excludes various items including an individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification and equity in the primary place of residence.³¹ In addition, if assets are jointly owned by a socially and economically disadvantaged owner and another individual (e.g., a spouse), only the portion attributed to the socially and economically disadvantaged owner is considered.

Even if an individual has a personal net worth of less than \$1.32 million, a person's collective assets may demonstrate that the individual is able to accumulate substantial wealth. For example, the owner of the firm may have a large income, a very expensive house, or extensive real or personal property holdings. Taking into consideration the collective value of the assets may result in a conclusion that the owner is not economically disadvantaged. In making this determination, a certifying agency may consider factors that include, but are not limited to, the following:³²

- Whether the average adjusted gross income of the owner over the most recent three-year period exceeds \$350,000
- Whether the income was unusual and not likely to occur in the future
- Whether the earnings were offset by losses
- Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm
- Other evidence that income is not indicative of lack of economic disadvantage
- Whether the total fair market value of the owner's assets exceeds \$6 million

DSBO's Program Management Software

DSBO utilizes software, B2Gnow (B2G), to manage and track certification and compliance for all the City's disadvantaged business programs. B2G houses information on certified firms and incorporates vendor access to make compliance with the disadvantaged business programs more efficient. Finding 1 of this audit report addresses concerns identified through the audit regarding the utilization of the B2G system.

²⁹ 49 C.F.R. § 23.35.

³⁰ 49 C.F.R. § 23.3.

³¹ Equity in a primary place of residence is determined to be current market value less mortgage balance.

³² 49 C.F.R. § 26.67.

SCOPE

The audit assessed the Division of Small Business Opportunity's (DSBO's) policies and practices to ensure that only qualified firms are allowed to participate in the City's Airport Concession Disadvantaged Business Enterprise (ACDBE) program at Denver International Airport (DIA). In addition, we assessed whether the policies and practices support DIA's and DSBO's objective of building the capacity of ACDBE-certified firms, and DSBO's reporting on ACDBE goals.

OBJECTIVE

The objective of this audit was to determine whether the City's ACDBE program is effectively meeting its intended purpose and effectively mitigating potential abuse of the program. To address this objective, the audit team sought to evaluate the effectiveness of:

- DSBO's annual and three-year renewal processes
- DSBO's compliance activities for ensuring ACDBE partners are fulfilling their duties outlined in the Joint Venture or Concession Management Agreements
- DIA and DSBO's collaborative strategy related to concessions development, contracting, and business development policies and practices
- DSBO's controls to ensure the accuracy of required annual reporting and the progress of individual concessionaire goals

METHODOLOGY

We utilized the following methodologies to achieve the audit objective:

- Reviewed all relevant and applicable:
 - Executive Orders, Code of Federal Regulations, policies and procedures, organization charts, and governance structure documentation related to the ACDBE program, DIA contracting and commercial strategy functions, and DIA outreach functions
 - Certification and compliance documents
 - RFP/bid documents and joint venture agreements
 - Prior audits conducted by the Denver Auditor's Office and prior audits completed by the DIA Internal Audit Division

- Airport Cooperative Research Program reports and other audit reports with relevance to ACDBE programs
- DSBO budget documents
- Federal Aviation Administration reports
- Interviewed applicable DIA and DSBO management and staff
- Researched common fraud schemes related to disadvantaged programs and strategies for mitigating such fraud risks
- Surveyed current ACDBE-certified firms regarding barriers they face in competing for concession opportunities at DIA and general thoughts on the program
- Determined the number of ACDBE-certified firms that participate in DIA concession contracts
- Determined and tested certification processes in place, including a review of DSBO's personal net worth calculations, and whether documentation necessary to make certification decisions was received and reviewed
- Determined and assessed compliance processes by accompanying DSBO personnel on three concession site visits and attending a weekly compliance meeting conducted by DSBO personnel
- Assessed DSBO's complaint process
- Determined how work is counted towards the ACDBE concession-specific and overall goals, and tested specific concessionaires

FINDING 1

Weaknesses in Division of Small Business Opportunity Processes Could Adversely Affect the Integrity of the Airport Concession Disadvantaged Business Enterprise Program

This audit focused on DSBO processes that are intended to help ensure the continued eligibility of firms participating in DIA's Airport Concession Disadvantaged Enterprise (ACDBE) program. Audit work identified weaknesses in DSBO processes for calculating the personal net worth of owners of applicant firms, including inaccuracies, inconsistencies, and questionable practices in performing these calculations. In addition, auditors noted limited evidence that DSBO utilized third-party resources to verify applicant firm owners' personal financial information. We also found that DSBO could more fully utilize its system for maintaining certification information, and that a recent amendment to the federal regulations could help DSBO utilize its resources more strategically.

We also reviewed additional activities performed by DSBO to ensure compliance with the ACDBE regulations, including monitoring joint venture agreements and performing site visits to concession locations. We found that the joint venture agreements address key features recommended by federal guidelines. We also found DSBO has made progress in implementing a process for conducting concession site visits. However, DSBO has not finalized the process in procedure and practice in order to ensure continuity or maximize site visit coverage of all ACDBE concessions. Furthermore, DSBO has not revised the DIA ACDBE Concession Program Plan in accordance with federal regulation.

Finally, we reviewed DSBO's ACDBE complaint handling procedures and found that they need to be established and documented.

Weaknesses in Some Certification Processes Limit DSBO's Ability to Support Certification Decisions

Our review of DSBO's assessment of personal net worth, and documentation and three-year renewal practices found several weaknesses that could call into question DSBO's ability to justify its certification decisions. First, we found several concerns associated with personal net worth analyses performed on ACDBE applicant firms' owners to determine personal eligibility. Second, our review found that DSBO could more fully utilize its system for maintaining certification information. Finally, we found that federal regulations allowing DSBO to conduct a three-year renewal of ACDBE certification were amended in late 2014, providing DSBO an opportunity to more strategically utilize its resources by establishing periodic certification reviews on a risk basis.

Although DSBO certification processes include many components, much of our audit work focused on DSBO's calculation of personal net worth, as there is increased risk related to the information supplied by applicant firms' owners in their personal financial statements. First, this information is self-reported and attested to by the owners, but DSBO

has not developed internal guidelines for when to request supporting documentation or what documentation to request or review. Second, the personal net worth information is significantly relied upon to determine eligibility for ACDBE participation, as it is used to verify that a business owner's personal net worth does not exceed federal standards. Because federal regulations require DSBO to demonstrate compliance in order to maintain DIA's federal transportation funding, DSBO's role in ensuring initial and ongoing eligibility, including conducting appropriate and accurate personal net worth analyses, is of great importance.

Audit Work Found Problems with DSBO's Review and Calculation of Owner Personal Net Worth

We reviewed seven DSBO personal net worth (PNW) analyses associated with owners of two ACDBE-certified firms to determine whether the firms should have been granted continued ACDBE certification. We reviewed PNW calculations of the owners of these firms because the owners have significant assets, including real estate and other investments. This review revealed inaccuracies and inconsistencies, and we questioned DSBO's PNW calculation methodology in certain instances. In addition, we found limited evidence that DSBO utilized third-party resources to verify the owners' self-reported personal financial information.

In performing a PNW analysis, DSBO personnel use a personal financial statement (PFS) submitted by the owner of a firm seeking initial ACDBE certification or renewal.³³ A PFS summarizes the owner's assets, such as real estate owned, cash on hand and in banks, and retirement accounts, and liabilities, such as mortgages on real estate and loans payable to banks. Using the information from the PFS, DSBO Certification Section personnel complete a PNW Analysis Worksheet to adjust the amounts reported according to the federal regulations.³⁴ For example, federal regulations allow certain assets and liabilities to be excluded from the PNW calculation. Exclusions include, but are not limited to, the owner's primary residence, the owner's business property, and the owner's investment in the business. DSBO personnel perform a PNW analysis during initial certification and upon renewal three years after initial certification. In some instances, DSBO personnel will request additional documentation from the owner to support information included in the PFS. The results of the analysis determine new or continued eligibility in the ACDBE program. A firm is eligible for ACDBE certification so long as the owner's PNW is less than \$1.32 million.

Inaccuracies in PNW Calculations—Our review of PNW calculations performed by DSBO Certification Section personnel found inaccuracies in determining PNW for one ACDBE-certified firm in 2010, 2012, and 2014. These errors resulted in a number of individual understatements and overstatements of the owner's PNW when considering the owner's continued program eligibility. The inaccuracies we identified include the following:

- On the 2012 PFS for the firm in question, the owner excluded a real estate property that was included in the owner's 2010 and 2014 real estate property listings. As a result, in 2012, the PFS did not include the current market value of the

³³ See Appendix A for a sample personal financial statement.

³⁴ See Appendix B for a sample Personal Net Worth Analysis Worksheet.

property as an asset and the corresponding mortgage balance of the property as a liability. DSBO Certification Section personnel did not properly identify this missing property in the PNW analysis.

DSBO Certification Section personnel reported that they routinely compare information from year to year when determining continued eligibility. However, this error suggests that DSBO personnel did not compare the owner's 2012 real estate property listing to the owner's 2010 listing.

- The owner in question jointly owns the real estate property listed on the PFS, and therefore only reported the portions of the primary residence and business property attributable to the owner. However, in 2010 and 2014, DSBO Certification Section personnel deducted the full amounts of the current market value and corresponding mortgages of the two properties in the PNW calculation. This practice runs contrary to federal requirements. When calculating PNW, the federal regulation directs DSBO to exclude only the owner's portion of the value of the owner's primary residence and business-owned real estate.³⁵ Further, FAA training materials specify that, "The basic principle in counting assets in the personal net worth calculation is to count the present value of assets attributable to the individual."³⁶
- On the 2010 PFS, the owner reported the current market value of the primary residence as an asset but did not report the corresponding mortgage balance as a liability, both of which should be excluded from the PNW calculation. Because the current market value of the primary residence was included in the PFS, it was appropriately deducted from the owner's assets by DSBO Certification Section personnel. However, DSBO Certification Section personnel failed to identify that the mortgage balance was not included in the PFS and inappropriately deducted the amount from the owner's liabilities.
- Not all of the inaccuracies noted during the audit result in an increase to a firm owner's PNW. For example, in 2012, the owner included the current market value and corresponding mortgage balance of the business property, which is to be excluded from the PNW calculation according to federal regulations. However, DSBO Certification Section personnel did not deduct the business property's current market value or mortgage balance when determining personal net worth for this owner.

Auditors' calculations of the cumulative effect of these errors each year did not result in the owner's PNW exceeding federal PNW standards in any of the years reviewed. However, the individual errors noted above ranged in amount from approximately \$30,000 to almost \$500,000. In addition, DSBO's calculations of this owner's personal net worth in 2010, 2012, and 2014 ranged from

In multiple years, DSBO inaccurately calculated the personal net worth of an ACDBE-certified firm's owner, resulting in errors ranging from an overstatement of \$109,000 to an understatement of \$590,000.

³⁵ 49 C.F.R. § 26.67(a)(2)(iii)(A) and (B).

³⁶ Official FAA frequently asked questions on 49 C.F.R. § 26, page 56.

an overstatement of approximately \$109,000 in 2010 to an understatement of approximately \$590,000 in 2014. Such oversight in the PNW review process, if repeated during another review, could affect another eligibility determination.

Inconsistency in PNW Analysis from Year to Year—Our review of PNW calculations performed by DSBO Certification Section personnel also revealed inconsistency in determining PNW from year to year for one ACDBE-certified firm. In 2010 and 2014, the owner reported the approximate value of the ownership interest in an affiliate firm on the PFS. In 2010, DSBO Certification Section personnel did not deduct this ownership interest but did so in 2014, demonstrating inconsistency from year to year. In order to accurately assess PNW from year to year for individual owners, and to ensure PNW assessments result in proper eligibility determinations, DSBO must ensure that it calculates PNW in a consistent manner.

Questionable Amounts Reported—In reviewing DSBO's PNW analyses, we questioned some amounts reported by ACDBE-certified firms and found limited documentation to support DSBO's assessment and decisions.

Questionable amounts listed on personal net worth statements can impact eligibility determinations.

- Our review of property tax records for the two owners of one ACDBE-certified firm found that both individuals were listed as part-owners on each other's primary residences. According to the federal regulation, an individual's primary residence should be excluded from the PNW calculation. However, when a primary residence is jointly owned by both of the firm's owners, and individual A reports it as the primary residence, we believe the remaining value of the property should be included in individual B's assets. DSBO currently does not add this portion of the value to individual B's assets, resulting in an understatement of PNW.
- When calculating PNW, it appears the value of affiliated businesses should be counted towards total assets. In 2014, one owner included the value of an ACDBE-certified affiliate business in total assets. However, we found that DSBO Certification Section personnel deducted the value of this affiliate business from the owner's personal net worth. DSBO stated to auditors that as affiliates, the two firms are considered separately for the PNW determination. In other words, only the value of the firm applying for certification, if reported by the owner, would be deducted for the PNW calculation. In addition, the federal regulation states that the "individual's ownership interest in the applicant firm" should be deducted.³⁷ Therefore, we question DSBO's PNW calculation methodology in this example because we believe that the value of the second firm should be included as an asset in calculating the PNW.
- Our review of the PFSs submitted by the owners of one ACDBE-certified firm noted that the owners reported the same amounts in both the liabilities and contingent liabilities sections of the form. According to the federal regulation, contingent liabilities should not be included as a liability to reduce PNW. Although DSBO Certification Section personnel included the amount as a liability, which lowered

³⁷ 49 C.F.R. § 26.67(a)(2)(iii)(A).

the owner's PNW, we found no evidence to document the conclusion by Certification Section personnel determining that these amounts were not contingent liabilities.

- The owner of one ACDBE-certified firm jointly owns numerous properties. Our review of the submitted information for seven of these properties revealed that the owner reported no change in current market value for four of the seven properties, and reported a decline in value for the other three over the period January 2010 to December 2013. Given the housing market's steep decline prior to 2010 in many areas of the country and subsequent increase in property values in more recent years, we question whether the current market value of properties could have remained unchanged or declined over this period, and believe DSBO should have requested supporting documentation or researched the current market value of these properties. DSBO personnel stated that the FAA has not provided guidance in this area.
- The owner of one ACDBE-certified firm reported the primary residence on the PFS as one of the listed properties. However, a different home address was used on the owner's federal personal tax returns for the same time periods, suggesting the primary residence reported on the PFS may not serve as the owner's primary residence. DSBO Certification Section personnel stated that there is no federal guidance regarding such a situation, so this difference has not been reviewed further.

Limited Use of Third-party Resources—We found that DSBO does not routinely access information available from third parties, such as publicly available property tax records, to support or verify the accuracy of self-reported personal financial information included in a PFS. The program's Affidavit of Certification, which applicants sign, allows DSBO to verify the accuracy of this self-reported information by contacting entities such as bonding companies, banking institutions, and credit agencies. During our review of the files for the firms in our sample, we found only two instances of third-party information. First, the file for one firm included property tax records from 2010 to support real estate values reported on the PFS. Second, we found supporting documentation for amounts reported by one other firm in our sample, but DSBO reported that this firm voluntarily submits the information, meaning DSBO did not request it.

There is inherent risk in accepting self-reported information without performing additional verification of accuracy; the information could include misstatements, either intentional or unintentional. The accuracy of PFS information is important because it provides the basis for the PNW calculation and thus the eligibility determination. Further, the owners of some ACDBE-certified firms reviewed have significant assets, placing them close to the PNW limit of \$1.32 million.

Issues Identified Have Several Root Causes

We identified several causes that contribute to the weaknesses noted in DSBO's certification processes. First, the federal criteria itself is conflicting, broad, and unclear in some areas, and DSBO has not developed more detailed internal guidance in the form of policies and procedures. In addition, although DSBO has implemented a quality

assurance aspect to the certification process through its Certification Committee, a more in-depth review of the work of DSBO personnel responsible for analyzing PNW is not performed.

Some Provisions within the Federal Criteria Make it Difficult for DSBO To Effectively Serve ACDBE-Certified Firms and Perform Certification Activities—DSBO is constrained by federal criteria and guidance that make program oversight and administration more challenging. Certain provisions of the regulation conflict with one another, while others are either overly broad or unclear.

Some Provisions within the Regulation Are Conflicting—Following are three examples of areas where conflicting guidance within the federal regulation increase the burden on DSBO personnel to determine an appropriate course of action in making eligibility determinations.

- The ACDBE program is intended to benefit individuals who are socially and economically disadvantaged. The regulation provides that Individuals who are members of specified groups are rebuttably presumed to be socially and economically disadvantaged. The regulation states that, “This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a).”³⁸ However, this same regulation and other provisions do require applicants to provide information concerning their economic disadvantage, such as certifying that their PNW does not exceed \$1.32 million.^{39, 40}
- The regulation allows an owner of an ACDBE-certified firm to remain eligible for participation in the program while holding significant assets. Specifically, the federal government increased the eligibility standards in June 2012, raising the PNW ceiling from \$750,000 to \$1.32 million. This increase offsets the natural growth in ACDBE owners' personal net worth. Further, the regulation requires that what are typically an individual's most significant assets—primary residence and ownership interest in the firm—be excluded from the PNW calculation. This allows owners to structure an ACDBE firm such that multiple companies and large assets such as property and vehicles are part of the ACDBE-certified firm. By doing this, these large assets are excluded from the owners' PNW calculations. These regulations enable individual firm owners with significant assets to remain in

In 2012, changes to the federal regulation raised the personal net worth standard used to determine ACDBE economic disadvantage from \$750,000 to \$1.32 million. The new threshold still excludes significant assets such as an owner's primary residence and ownership interest in the firm.

³⁸ 49 C.F.R. § 26.61(c).

³⁹ *Ibid.*

⁴⁰ 49 C.F.R. § 26.67(a)(2)(ii).

the program, which reduces the opportunities available for other disadvantaged firms.

- Subsequent to updates to the federal regulation that took effect in October 2014, ACDBE-certified firms are no longer required to submit a PFS annually. Firms must still submit annually a DBE/ACDBE No Change Affidavit and most recent business tax return. Although federal requirements task DSBO personnel with ensuring ongoing eligibility of certified firms, not having a PFS to review makes it more challenging for DSBO personnel to verify whether there have been any financial changes that would affect the owner's PNW and thus continued program eligibility.⁴¹

Regulation Is Broad—In addition, we found that much of the ACDBE program guidance as specified in the federal regulation is broad and DSBO has not developed more detailed guidance in the form of policies and procedures. The regulation may direct DSBO to carry out a certification activity but terms within the guidance are not defined. For example, the owner of a firm applying for ACDBE certification must certify that his or her personal net worth does not exceed \$1.32 million, supporting the assertion with

ACDBE program federal regulations are broad and DSBO has not developed more detailed guidance in the form of policies and procedures.

“appropriate supporting documentation.”⁴² However, the federal regulation does not define “supporting documentation,” nor does it address what constitutes a concern worthy of requesting supporting documentation, what supporting documentation could be requested to address the concern, and what documentation should be maintained.

The FAA offers, and DSBO personnel have attended, training courses pertaining to ACDBE certification, including how to conduct a PNW analysis. Beyond the training, the FAA typically does not provide detailed guidance when approached with questions. Where federal guidance is lacking, internal policies and procedures could be used to guide DSBO personnel in determining the circumstances when additional supporting information should be obtained, what documentation or correspondence should be maintained, and where. DSBO has developed standard operating procedures (SOPs) for processing initial certification applications, but the SOPs do not provide guidance regarding what self-reported information needs supporting documentation, what should be investigated further, and the resources that personnel could use to help do this. With limited federal guidance, it is important for DSBO to develop its own guidance to support and justify its certification decisions.

Regulation Is Unclear—Also, the regulation is not clear in some areas. For example, in determining an individual's PNW, DSBO must exclude certain assets and liabilities. These exclusions are made based on the owner's PFS and other supporting documentation. However, the regulation directs DSBO to avoid being “unduly burdensome or intrusive” to

⁴¹ The change to the regulation removed the requirement for certified firms to obtain a renewal every three years. However, DSBO elected to continue carrying out three-year renewals for ACDBE-certified firms. This review is discussed later in this Finding.

⁴² 49 C.F.R. § 26.67(a)(2)(i) and (ii).

the owner when obtaining documentation to verify the accuracy of the individual's reported assets and liabilities.⁴³

This conflicting guidance in the federal regulation places DSBO personnel in a challenging situation when performing appropriate due diligence. Thus, DSBO has taken a conservative approach to requesting documentation supporting an owner's PFS. This was noted during our review of the files of four firms for which we saw limited evidence that DSBO requested documentation from the owners to support the information submitted on the PFS.

However, the regulation not only allows DSBO to obtain supporting information—it requires it. Specifically, the regulation states that applicants have the obligation to provide information concerning their economic disadvantage.⁴⁴ Further, DSBO must require each individual owner who certifies that he or she has a PNW that does not exceed \$1.32 million to provide “a signed, notarized statement of personal net worth, *with appropriate supporting documentation*” (emphasis added).⁴⁵

The regulation also allows DSBO to consider alternatives when evaluating whether the owner is economically disadvantaged, but we found no evidence that DSBO utilizes them. Specifically, even if an owner's PNW is less than \$1.32 million, the presumption of economic disadvantage may be rebutted when:

DSBO can use alternative criteria to determine whether an owner is economically disadvantaged, even if the owner's personal net worth is below \$1.32 million.

- The owner's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged⁴⁶
- The owner's submitted documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, DSBO may consider factors such as:
 - Whether the average adjusted gross income of the owner over the most recent three-year period exceeds \$350,000
 - Whether the income was unusual and not likely to occur in the future
 - Whether the total fair market value of the owner's assets exceeds \$6 million
 - Other evidence that income is not indicative of lack of economic disadvantage⁴⁷

Another example of the lack of clarity is that the federal regulation or subsequent guidelines do not clearly define the level of concession experience necessary for a firm

⁴³ 49 C.F.R. § 26.67(a)(2)(ii).

⁴⁴ 49 C.F.R. § 26.61(c).

⁴⁵ 49 C.F.R. § 26.67(a)(2)(ii).

⁴⁶ 49 C.F.R. § 26.67(b)(1)(i).

⁴⁷ 49 C.F.R. § 26.67(b)(1)(ii)(A).

to obtain ACDBE certification. Absent any clear federal guidance in this area, DSBO made the determination to approve certification for a firm whose owners' work resumes provided no proof of food and beverage experience. DSBO instead allowed one of the owners to substitute six months of food and beverage concession training for actual work experience. DSBO has not documented formal guidelines for assessing or evaluating the experience and qualifications required for certification.

To better guide the assessment of owners' PNW and experience necessary to ensure eligibility for the ACDBE program, DSBO should further develop or expand its current certification procedures in areas where federal guidance is broad or unclear. This guidance should, at a minimum:

- Define the minimum documentation needed to support an owner's PFS and require owners to submit the defined documentation with every PFS remittal
- Define a threshold level or risk-based approach that triggers the request of any additional documentation needed to support an owner's PFS
- Define when DSBO should utilize alternatives allowed by federal regulation to help determine whether a firm's owner is economically disadvantaged
- Define the minimum level of directly relevant experience necessary to obtain ACDBE certification

Because additional guidance developed by DSBO may be more restrictive than the federal requirements, DSBO could seek further guidance from the FAA for any internal guidance developed.

Limited Quality Assurance of PNW Analysis—DSBO has a quality assurance component in place through its Certification Committee, which reviews and approves initial ACDBE certification and renewal. However, the Committee does not perform in-depth review of PNW analyses performed by DSBO personnel. Based on inaccuracies identified in the PNW calculations reviewed by auditors, additional review is warranted. Therefore, DSBO should develop internal quality assurance procedures to regularly review PNW analyses, including the documentation that supports the calculations performed.

Weaknesses in Personal Net Worth Analyses Increase the Risk that Ineligible Firms Remain in the ACDBE Program

The weaknesses identified with DSBO's PNW certification practices increase the risk that DSBO is not accurately or consistently assessing ACDBE firm owners' PNW. One of the stated objectives of the ACDBE program in the federal regulation is ensuring that only firms that fully meet eligibility standards are permitted to participate in the program. Other objectives include creating a level playing field for ACDBEs to compete fairly for concession opportunities, and ensuring that the ACDBE program is narrowly tailored in accordance with applicable law. To meet these objectives, it is imperative that DSBO ensure that its certification practices are robust, accurate, and consistent. Further, DSBO must maintain documentation to support its certification activities and decisions. Absent such practices, the City risks violation of the federal regulation by allowing ineligible firms to obtain certification or remain in the program when they are no longer eligible. Further,

these weaknesses limit DSBO's ability to support its certification decisions, and can create questions regarding the veracity of certification decisions.

A more subtle risk is that some ACDBE-certified firms may technically be in compliance with the federal guidelines related to PNW standards, but not perceived as economically disadvantaged because they have been successful in holding multiple concession locations yet have not graduated out of the ACDBE program. For instance, only 17 percent of ACDBE-certified firms have ownership in the 119 DIA concession locations with ACDBE participation.⁴⁸ In addition, the four ACDBE-certified firms with the most DIA concession locations account for 24 percent of all 119 locations.⁴⁹ Each of these firms holds eight or more locations, either as an owner/operator or through a joint venture agreement. Also, only five firms have graduated since the program's inception in 2006. The high concentration of ownership and low graduation rate suggests that, despite the success some firms have experienced, concession opportunities remain elusive for many smaller ACDBE firms.

B2G Software System Underutilized

Our review of the files for a sample of certified firms revealed that documentation associated with certification decisions is maintained in various locations. Specifically, some documentation submitted for initial ACDBE certification and for certification renewal, such as tax returns, is maintained in DSBO's B2G software system. However, we also found many supporting and internal documents, such as worksheets completed by DSBO personnel to evaluate initial certification applications and certification renewals, in DSBO's hard-copy files.

Prior to the implementation of B2G, each certified firm's documentation was maintained in a hard-copy file. When B2G was implemented, firms applying for certification could upload required documentation directly into B2G. However, DSBO allowed them to submit hard copies as well, so the documentation for firms that chose to submit hard copies continued to be maintained in the hard-copy file. Since the beginning of 2015, DSBO has required firms to electronically upload their documentation directly into B2G. In addition, the DSBO Director stated that since the beginning of 2015, he has directed DSBO personnel to attach all supporting documentation in B2G. He also reported that DSBO personnel are working to upload documentation of site visits. Moving to a paperless document retention strategy is also a component of the Office of Economic Development's 2015 strategic plan.⁵⁰ These initiatives will help ensure that all ACDBE supporting documentation is retained in one location.

Our review also noted that a number of documents required to be submitted during annual and three-year renewals, such as PFSSs, tax returns, and DBE/ACDBE No Change Affidavits, were missing from both B2G and hard-copy files. However, the majority of

⁴⁸ This percentage was determined using data provided by DIA and DSBO on concession locations, excluding individual kiosks maintained at DIA, as of February 2015, and a kiosk listing provided by DSBO as of October 2014.

⁴⁹ DIA has over 140 concession spaces and over 40 individual kiosks. Of these locations, 119 have some level of ACDBE-participation.

⁵⁰ One of the strategic initiatives within the Strategic Lending section is to "Establish paperless application, processing and filing systems in at least one division of the OED as a pilot for subsequent rollout for other divisions." See Jumpstart 2015, page 17, at <https://www.denvergov.org/Portals/690/documents/New/JumpStart2015.pdf>.

these missing documents were from 2010 through 2012; fewer documents were missing from 2013 and 2014. This indicates that prioritizing the use of B2G is helping to ensure that DSBO retains all documentation required to be submitted by certified firms and that it is stored in one place.

Even if hard-copy files are well organized, it is better if supporting documentation is maintained in a single repository. DSBO invested in the B2G system to provide “one-stop shopping” for information related to its certification programs. This approach will help should questions or concerns arise regarding certification decisions and will also help DSBO support their decisions with documents contained in the applicant file.⁵¹

Therefore, we recommend that DSBO adopt a policy to ensure that all documentation associated with certification is maintained in B2G. In addition to the documentation uploaded by the applicant firm, this should include pertinent correspondence between DSBO and the firm, any additional supporting documentation submitted by the firm in response to a request from DSBO, and DSBO’s certification worksheets.

Three-Year Renewal Policy Should Be Reassessed

In October 2014, the federal regulations governing ACDBE certification were amended. Under the previous rule, program administrators were allowed to conduct a certification review of a firm three years after the date of the most recent certification or sooner if appropriate. Accordingly, DSBO policy was to conduct a three-year renewal for all ACDBE-certified firms. The amended regulation no longer references three years and instead allows for a certification review to occur whenever a certified firm files a notice of change in its circumstances, if a complaint is filed, or when the program administrator becomes aware of information that raises a genuine question about the continued eligibility of a firm.⁵² Despite this change, DSBO decided to continue conducting three-year renewals of ACDBE-certified firms.

Maintaining the three-year renewal policy that the FAA recently amended inhibits DSBO’s ability to more strategically utilize its resources. We believe that the recent change to the federal regulation enables DSBO to consider adopting a risk-based approach to selectively review certified firms for continued eligibility. In addition to reviewing firms that report changes, conducting reviews based on risk would allow DSBO to focus its resources on firms that may need more scrutiny, such as those that are close to becoming ineligible for the ACDBE program.

Therefore, we recommend that DSBO consult the FAA to determine whether a risk-based approach to renewal reviews can be adopted and develop policies and procedures accordingly.

Some DSBO Compliance Activities Could Be Improved

Important roles performed by DSBO Compliance Section personnel to ensure ACDBE concessionaires comply with program requirements include monitoring joint venture

⁵¹ Disadvantaged Business Enterprise Certification Training materials, Colorado Unified Certification Program, conducted in Denver, Colorado, on October 7-8, 2014.

⁵² 49 C.F.R. § 26.83(h)(2).

agreements and performing site concession visits. We found that although the joint venture agreements address key features recommended by federal guidelines, improvement is needed in the area of site visits of current ACDBE concessionaires. DSBO has made progress in implementing a process for conducting concession site visits. However, it has not finalized the process in procedure and practice in order to ensure continuity or maximize site visit coverage of all ACDBE concessions. In addition, DIA's ACDBE policy statement and program plan are out of date, as major changes to the program since its inception in 2006 have not been reflected in the plan.

Federal Guidance and Program Reviews Emphasize the Importance of ACDBE Compliance Activities

The FAA conducted a compliance review of the DIA ACDBE program, issued in July 2013. This review resulted in the FAA recommending that DSBO implement ACDBE concession site visits to help verify that the ACDBE or its general managers are actively managing concessions.

In addition, the FAA provides information and direction to program personnel in its ACDBE Joint Venture Guidance.⁵³ The guidance emphasizes the importance of a formal monitoring program that includes the following elements:

1. Annual verification of the status of the ACDBE certification eligibility
2. Review of any documentation, including financial reports and agreements, necessary to ensure compliance
3. Site visits to ACDBE concessions
4. Periodic interviews with joint venture participants, managers, and employees
5. Periodic, but not less than annual, review of the managing entity's meeting minutes and reports

These requirements were developed as a result of the difficulties airports encountered when determining how to credit the participation of ACDBE joint venture participants and their related risks. Joint venture arrangements allow non-certified firms to partner with smaller ACDBE-certified firms that might not have ready access to concession opportunities as well as to provide another mechanism for airports to achieve their ACDBE goals. However, if the ACDBE-certified firm is not held accountable for performing its portion of the joint venture's work, it becomes very easy for a non-certified concessionaire to circumvent ACDBE requirements by having an ACDBE silent partner on its payroll. Conducting site visits may identify potential problems regarding active participation by the ACDBE-certified joint venture partner, act as a deterrent to

⁵³ United States Department of Transportation, Federal Aviation Administration ACDBE Joint Venture Guidance, July 17, 2008, accessed March 26, 2015, http://www.dot.gov/sites/dot.dev/files/docs/Airport_Concession_Disadvantaged_Business_Enterprise_Joint_Venture_Guidance.pdf.

partnerships hoping to circumvent ACDBE requirements, and foster better concession management practices.

Joint Venture Agreements and Annual Affidavits Maintained by DSBO Are in Compliance with FAA Guidance

FAA guidance on joint ventures specifies that a joint venture agreement must contain provisions to ensure that the arrangement meets all the requirements of ACDBE regulations and that the portion of concession revenues, if any, is eligible to be counted towards ACDBE participation. We reviewed ten joint venture agreements and found that they contain federal requirements including ACDBE ownership share. We also used this sample to confirm the receipt of annual DBE/ACDBE No Change Affidavits and to verify that revenues were recorded in B2G in accordance with the ACDBE share in the agreement.

- **Joint Venture Agreements**—As of February 2015, DIA had forty-three concession locations with joint venture agreements in place.⁵⁴ In order to determine whether the agreements were in compliance with FAA joint venture guidance, we identified key features that should be included in joint venture agreements, including capital contribution, management and control responsibilities, administrative fees, and loans. Our review confirmed appropriate ACDBE participation levels and that provisions or mechanisms are in place to help ensure that obligations are fulfilled in accordance with agreements.
- **DBE/ACDBE No Change Affidavit**—Although we previously discussed practices related to financial review and follow-up, we did confirm that current affidavits were received by DSBO for all concessionaires in our sample.
- **Revenue Reporting**—For the ten joint venture agreements reviewed, we compared the revenue reported monthly by the concessionaires to the DIA Finance and Administration division's monthly report of Gross Revenue Earned by Concessionaires.⁵⁵ We then confirmed that DSBO accurately recorded the concessionaires' reported revenue in B2G and that these amounts were counted correctly towards the concession-specific ACDBE goal.

Concession Site Visit Approach Could Be Enhanced

Although DSBO has made progress in conducting and documenting concession site visits to help ensure that ACDBE-certified firms are actively managing and in control of concessions owned and operated under current joint venture agreements, additional improvements can and should be made.

As mentioned previously, in July 2013, the FAA issued a Compliance Review of the DIA ACDBE program. In this review, the FAA recommended that DSBO begin to regularly conduct concession site visits; verify who performs general manager functions and reporting relationships; and verify, sometimes randomly, that the ACDBE owner actively

⁵⁴ This includes DIA concession spaces but excludes kiosk locations.

⁵⁵ Monthly reports can be located at http://www.flydenver.com/about/financials/concessionaire_reports.

manages concession location(s) to ensure compliance with federal program requirements. In response to this compliance review, DSBO developed a process to conduct site visits of ACDBE concessionaires currently operating under a joint venture agreement. These visits include interviews with employees and managers, as appropriate, using a list of standardized questions. Employees are asked about store operations and the role and involvement of the ACDBE manager. Managers are asked about business organization and ownership.

Although progress has been made, we believe DSBO could improve the process to increase the number of site visits it conducts and optimize coverage of concessions that include all ACDBE-certified firms. Through February 17, 2015, DSBO had conducted thirteen site visits, the majority of which were of the forty-three joint venture concession sites. During the audit, auditors accompanied DSBO Compliance Section personnel on three of these site visits.

Our review and observation of DSBO-conducted site visits noted that DSBO personnel have made progress in effectively soliciting information from concession personnel to make an overall assessment of compliance. In addition to implementing an approach for site visits, DSBO personnel have also followed up when they found reason to, based on observations made during the site visit. In one case, DSBO identified a concession where two employees reported that they did not know the ACDBE-certified owner's name. DSBO personnel followed up with the ACDBE owner to encourage spending more time with personnel at the concession. While DSBO has made progress in implementing a site visit component to ensure compliance with federal regulations, we believe additional improvements can be made, including establishing a planned approach to conducting site visits, conducting several back-to-back rather than only one on any given day, and recording all visits conducted.

- **Establish a Planned Approach to Conducting Site Visits**—DSBO's site visit process has focused primarily on ACDBE-certified firms involved in a joint venture. Through February 17, 2015, only one non-joint venture site visit had been conducted. Although we recognize that joint ventures present greater potential risk of non-compliance, we believe that DSBO's process should include site visits to all concessions that are included in the ACDBE goal count. As of February 2015, DIA had more than forty locations with an ACDBE-certified firm operating under a joint venture agreement and over seventy additional ACDBE concessions that count towards the DIA ACDBE goal as either an owner/operator or a supplier. Therefore, DSBO should ensure its site visit approach provides for random visits as well as coverage of all concessions that count towards the ACDBE goal at least once during the three-year goal-setting cycle.

In addition to random site visits, DSBO may consider planned site visits to ensure that the ACDBE-certified firm's owner(s) or general manager(s) are present. For example, no general managers were present at two of the three site visits observed by the auditors. Finally, concessions in which problems or concerns are identified should be visited more frequently.

- **Plan Multiple Site Visits**—Based on discussion with DSBO Compliance Section personnel and our participation in three site visits, a visit typically takes approximately ten to fifteen minutes. However, the time required for travel to and from the DSBO offices and the concession will usually be longer than the site visit itself. Until mid-February, DSBO Compliance Section personnel conducted one site visit at a time. During the course of the audit, personnel began conducting multiple site visits on the same day. To ensure efficiency in the site visit process, DSBO should continue to plan two or more visits to optimize time spent dedicated to this activity.
- **Establish a Log**—DSBO does not keep a record of which concessions have been subject to site visits and which have not. As more are conducted, a record will help identify concessions that have not been visited or should be seen more frequently based on concerns or other risks identified during previous visits. Therefore, DSBO should establish a log to document and track all site visits to help schedule visits, monitor progress, and follow-up on concerns at concessions, as appropriate.

DIA's ACDBE Concession Program Policy Is Outdated

DSBO has not revised the DIA ACDBE Concession Program Plan (program plan) in accordance with federal regulation. In 2006, DIA was required to submit to its FAA regional office for approval a revised program plan.⁵⁶ The program plan was mandated as a condition of continued eligibility for FAA financial assistance.⁵⁷ This plan outlined the steps DIA would take to implement the federal program's requirements. The program plan includes two parts. The first part is a policy statement detailing the objectives of the program, identifying the program's ACDBE Liaison Officer (ACDBELO), and confirming that the policy statement was disseminated to City personnel and the local concessionaire community. The second part details the general federal requirements of the program and how DIA will implement those requirements.

Federal regulations further require that an airport submit an amended program plan to the FAA for approval prior to implementing any significant changes to its ACDBE program. Since the original 2006 plan, DSBO has made several significant changes to its ACDBE program, such as a new ACDBELO, the methodology for and establishment of multiple three-year program goals, and an increase to applicant firm and owner eligibility size standards. Although some information included in the program plan, such as the three-year goal setting process and establishment of the goals, has been provided to and approved by the FAA, the entire program plan itself has not been revised and submitted for FAA approval. In addition, as of April 6, 2015, the out-of-date 2006 program plan is still provided to stakeholders interested in gaining information on the ACDBE program through DIA's Diversity/Small Business Services—Business Opportunities webpage. DSBO personnel provided auditors a revised draft version of the program plan, dated December 2014. DSBO should expedite its review of the draft

⁵⁶ 2006 ACDBE Concession Program Plan, accessed April 6, 2015, <http://business.flydenver.com/bizops/documents/diaACDBEplan2006.pdf>.

⁵⁷ 49 C.F.R. § 23.21(d).

program plan and submit it to the FAA for review and approval. In addition, all significant future program changes should be updated and submitted to the FAA in a timely manner.

Complaint Handling Procedures Need To Be Established and Documented

In a 2013 compliance review conducted by the FAA of Denver's ACDBE program, the FAA recommended that DSBO clearly post its ACDBE complaint process on its website and send the information to ACDBE firms that operate at DIA. In addition, audit work revealed that a complaint was filed with a federal agency related to a certification determination made by DSBO regarding an ACDBE applicant. Therefore, we discussed with DSBO personnel the prevalence of complaints related to the ACDBE program and DSBO's approach for handling complaints received. We also obtained a list of Colorado Open Records Act (CORA) requests made requesting information from DIA as a potential source for complaint-related information. Although DSBO personnel reported never having received any formal ACDBE-related complaints and DIA Airport Legal Services personnel also reported no CORA requests specifically related to ACDBE firms, we believe that there are ways that DSBO can enhance the effectiveness of its ACDBE complaint-handling process.

In February 2015, DSBO personnel informed the audit team that it had recently established a web link on the DIA Business Center website to direct users to the Office of Economic Development's (OED) web page, which provides instruction on how to file a complaint regarding ownership and eligibility of firms certified under the M/WBE, SBE, EBE, DBE, ACDBE, and SBEC programs. These instructions state that only written and signed complaints are investigated. DSBO personnel reported that in the event an ACDBE complaint is received, they would handle the complaint using the current DSBO policy on complaints.⁵⁸ However, this policy applies specifically to construction and professional service projects and does not adequately address how complaints related to concessionaires should be handled.

In addition, the DSBO Director is involved in all certification decisions. Consequently, it may be beneficial to complainants to remove from the complaint review and determination process any DSBO employee who is directly involved in making certification decisions. Complaints could then be handled by a group of DSBO employees not directly involved in the certification process.

Therefore, to encourage open communication, DSBO should develop guidelines that will allow DSBO personnel to appropriately respond to ACDBE complaints received. In addition, DSBO should consider including a mechanism that provides for review of complaints independent of the DSBO Director. Further, the DSBO Director should document the rationale in the event the determination made by the independent reviewers is overridden.

⁵⁸ DSBO Complaint Process (Comp-SOP-170).

RECOMMENDATIONS

The following recommendations are designed to enhance and demonstrate the integrity of Denver International Airport's (DIA's) Airport Concession Disadvantaged Business Enterprise (ACDBE) program, as administered by the Division of Small Business Opportunity (DSBO) on DIA's behalf. To enhance the program, the DSBO Director should:

- 1.1 **Personal Financial Statement Supporting Documentation**—Develop more detailed guidance regarding certification processes in the form of policies and procedures, especially where the federal regulations are broad or lack clarity. DSBO should require that owners of certified firms submit documentation to support the information reported on the Personal Financial Statement and determine what supporting information is required. These requirements can be defined using a risk-based approach, to reduce the burden on both owners with a lower personal net worth and DSBO personnel.
- 1.2 **Additional Supporting Documentation**—Establish a threshold defining material assets and liabilities that will trigger additional documentation requests and subsequent personal net worth analysis and develop more detailed guidance in the form of policies and procedures to address when and what additional supporting documentation should be obtained to enhance the assessment of the personal net worth of ACDBE-certified firms' owners. DSBO should work with the Federal Aviation Administration to ensure that the guidance developed is in full compliance with federal regulations.
- 1.3 **External Resources**—Develop guidance in the form of policies and procedures addressing external resources that DSBO personnel could use to assist in its personal net worth analysis.
- 1.4 **Documentation Maintenance**—Determine what certification supporting documentation should be maintained in B2G.
- 1.5 **Threshold for Alternative Approach to Personal Net Worth Analysis**—Define a threshold for implementation and utilize the alternative approaches allowed by federal regulations to evaluate whether a firm's owner is economically disadvantaged on an as-needed basis.
- 1.6 **Define Experience Requirements**—Develop guidelines for evaluating the experience and qualifications required for ACDBE certification.
- 1.7 **Risk-based Approach to Frequency of Renewals**—Work with the Federal Aviation Administration to determine whether DSBO could adopt a risk-based approach to the frequency of renewal reviews rather than continuing with standard three-year certification renewals.
- 1.8 **Planned Site Visit Approach**—Establish a planned approach to conduct concession site visits for all ACDBEs that is random yet risk-based, occurs within a set time period not to exceed three years, and plans site visits of two or more concessions at a time.

- 1.9 **Site Visit Tracking**—Establish a log to document and track all site visits to help schedule visits, monitor progress, and follow-up on concerns at concessions, as appropriate.
- 1.10 **ACDBE Concession Program Plan**—Expedite the review of the December 2014 draft ACDBE Concession Program Plan and submit it to the FAA for review and approval. In addition, all significant future program changes should be updated and submitted to the FAA in a timely manner.
- 1.11 **ACDBE Complaint Process**—Establish ACDBE complaint handling procedures that include independent review and recommendation subject to final approval by the DSBO Director and documentation requirements of all final decisions.

FINDING 2

Denver International Airport and the Division of Small Business Opportunity Could Better Serve the Airport Concession Disadvantaged Business Enterprise Population by Removing Additional Barriers to Obtaining Concessions

Denver International Airport (DIA) and the City's Division of Small Business Opportunity (DSBO) have adopted some key practices to encourage the award of concession contracts to firms certified through the Airport Concession Disadvantaged Business Enterprise (ACDBE) program. Among these practices include the implementation of outreach and training events, the inclusion of DSBO in contracting practices, the development of a kiosk program, and the use of joint venture agreements. However, DSBO could do more to improve ACDBE program participation. First, implementing a business development program or mentor-protégé program could further the development of ACDBE-certified firms by assisting them to move into non-traditional areas of work and/or compete in the marketplace outside of the ACDBE program. Second, DIA could fully implement its Million Dollar Loan Program, launched in October 2013, to provide financial assistance to ACDBE-certified firms that plan to submit proposals on future concession opportunities. Third, DIA and DSBO could assess what potential long-term effect DIA's Premium Value Concessions (PVC) program may have on new ACDBE entrants into DIA's concession program.

ACDBE-Certified Firms Face Barriers to Obtaining Work at Nation's Largest Airports

Many ACDBE-certified firms struggle to take advantage of concession opportunities at major airports across the country. Nationally, there is infrequent turnover of firms that have received ACDBE contracts, access to capital is challenging, entry costs are high, and many firms are unfamiliar with the airport bidding process.⁵⁹ During this audit, we conducted a survey of the 264 firms that were ACDBE-certified by DSBO as of January 23, 2015, to determine, in part, what barriers they face in competing for concession opportunities at DIA. We obtained forty-six responses to this question. Respondents identified three main categories of barriers: difficulty partnering with other firms to bid on concession opportunities, limited access to capital, and high entry costs.

In January 2015, the Airport Cooperative Research Program (ACRP) issued a report entitled, "A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities."⁶⁰ This guidebook provides a compilation of industry best practices that airports can use to attract and enhance participation by disadvantaged

⁵⁹ Office of Inspector General Audit Report, *New Disadvantaged Business Enterprise Firms Face Barriers To Obtaining Work at the Nation's Largest Airports*, June 12, 2014, <https://www.oig.dot.gov/audits>.

⁶⁰ Transportation Research Board of the National Academies website, issued January 24, 2015, accessed February 2, 2015, <http://www.trb.org/Publications/PubsACRPPProjectReports.aspx>.

businesses, including ACDBEs, in their contract opportunities. We used this guidebook to identify various best practices that DIA and DSBO have adopted to help increase participation. In addition, we used this guidebook, in conjunction with the ACDBE-certified firms' survey results, to identify practices that DIA and DSBO can consider implementing to better serve its ACDBE population.

DIA and DSBO Have Adopted Some Key Practices to Help Increase ACDBE Participation in DIA's Concessions Program

Diversity programs are a shared responsibility and best serve their clients when they are fully supported by an organization's culture, personnel, and resources, and implemented as a collaborative effort. DIA and DSBO have adopted several mechanisms that provide for effective collaboration to implement the ACDBE program in the best interests of their ACDBE clients. Examples of collaborative efforts include outreach and training programs, as well as DSBO's involvement in setting individual participation goals and determining Request For Proposal (RFP) ACDBE involvement responsiveness. In addition, DIA has developed a kiosk program and provides for the usage of joint ventures in its concession contracts.

DIA and DSBO Work Collaboratively To Provide Outreach and Training Events to Small Businesses

In order to provide enhanced customer service to Denver's contracting community, DSBO facilitates monthly certification training sessions that are free and open to the public. The intent of these trainings is to provide enhanced information for businesses that wish to be certified or want to learn more about DSBO programs and opportunities. In 2014, DSBO certification analysts trained and met with more than ninety individuals representing companies or firms throughout the Denver local market.⁶¹

In addition, in cooperation with the U.S. Department of Transportation (USDOT), DSBO has assisted numerous firms prepare for bonding and other technical aspects of doing business. This training program provides one-on-one sessions with local surety bonding professionals to help firms understand what is necessary to complete a bond application. DSBO plans to expand this effort further in 2015. In 2014, the bonding class graduated eleven participants.⁶²

Examples of other recent outreach events include an October 2014 presentation by DIA and DSBO on concession program business opportunities.⁶³ This presentation provided general information on DIA's concession program including financial data, the leasing approach, upcoming concession opportunities, and minimum requirements for the program, including an ACDBE goal. The presentation also included a segment about

DIA and DSBO have provided many outreach and training events for small businesses interested in DIA concession opportunities.

⁶¹ DSBO 2014 Annual Report, accessed March 26, 2015, [http://www.denvergov.org/Portals/690/documents/DSBO/2014%20DSBO%20Annual%20Report%20\(2\).pdf](http://www.denvergov.org/Portals/690/documents/DSBO/2014%20DSBO%20Annual%20Report%20(2).pdf).

⁶² *Ibid.*

⁶³ "Concession Program Business Opportunities", presented during DIA Day 2014 on October 7, 2014, accessed March 26, 2015, <http://business.flydenver.com/bizops/documents/commerceHub/DIADay2014ConcessionTenantFinishCert.pdf>

ACDBE participation at DIA that included topics such as explaining what an ACDBE is, ACDBE eligibility requirements, program goals, and information on joint ventures. In addition, in April 2014, DIA's Airport Legal Services personnel provided an overview of navigating the legal issues that a potential concessionaire might encounter doing business at DIA. This presentation included a discussion of project goals related to the ACDBE program, as well as other DSBO certification programs.⁶⁴ In March 2014, DSBO and DIA personnel presented an ACDBE outreach session on the ACDBE program.⁶⁵

Such outreach activities provide firms with valuable knowledge about DIA's concession program and opportunities, as well as about the ACDBE program itself.

ACDBE Participation Is Considered in the Concession RFP Process and DSBO Determines Concession-Specific Goals and Proposer Responsiveness

DIA's Concession Policy states that ACDBE-certified firms will have maximum opportunity to participate in the concession program, and that DIA encourages ACDBE participation in the submission of bids or proposals for all concession opportunities. When DIA determines that a competitive solicitation process will be issued through a Request for Proposals (RFP) for a concession concept, DIA consults with DSBO to establish an ACDBE-specific goal for the concession opportunity. As a step in this process, DSBO personnel consider the number of ACDBE-certified firms that can provide the specific type of work required and assign a concession-specific goal. For example, in December 2014, DIA posted a notice of RFP for a food and beverage concession opportunity consisting of a brewery-themed restaurant to be located in the upcoming Westin Hotel. DSBO established an ACDBE goal of 33 percent for this concession opportunity. The stated goal was then included in the competitive solicitation process as part of the RFP document. In addition, a review of several RFP notices issued between December 2012 and December 2014 found ACDBE goals ranging from 10 percent to 40 percent.

In response, each proposer must submit a form attesting that the proposer will commit to meeting the ACDBE participation goal included in the RFP, or provide evidence that it made a good faith effort to do so. It also identifies the firm(s) the proposer will use to meet the ACDBE goal. A DSBO employee is then responsible for reviewing the proposal and making a final determination of responsiveness on whether the proposal has met, or made a good faith effort to meet, the ACDBE concession-specific requirement. This includes ensuring that the ACDBE firms identified in the proposal are truly certified in applicable commodity codes for the specific concession opportunity. If DSBO determines a proposer non-responsive, the proposer is not further considered for the concession opportunity.

⁶⁴ "Doing Business at DIA: Navigating the Legal Issues", presented Friday, April 25, 2014, accessed March 26, 2015, <http://business.flydenver.com/bizops/documents/commerceHub/legalIssues4-25-2014.pdf>.

⁶⁵ "The ABC's of the Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification", presented March 14, 2014, accessed March 26, 2015, http://business.flydenver.com/bizops/documents/commerceHub/acdbe_ABCs_Presentation31414.pdf.

Prioritizing ACDBE participation in DIA's concession policy and RFP process, as well as DSBO's involvement in determining the concession-specific goal and responsiveness to RFP requests, allows for an increased focus on ACDBE participation.

DIA Developed a Kiosk Program to Increase Concession Opportunities for Small, Minority and Women-Owned Businesses

Airport cart and kiosk programs provide small businesses additional opportunities to increase their presence in concession programs. Cart and kiosk programs also typically provide shorter contract terms and require reduced start-up costs for a firm.⁶⁶ Carts and kiosks sell very specific or specialized goods and services.

In January 2010, DIA issued an RFP for an asset manager to develop and administer a new Retail Merchandising Unit (RMU) program. The goals of the RMU program included providing additional retail offerings to DIA customers and providing new and small businesses additional opportunities to be part of the DIA concessions program and gain experience in the airport's operating environment. DIA planned to place twenty-five to thirty-five units throughout the airport's terminal and three concourses. The winning proposer of the RMU program would be responsible for designing and building the units and sub-contracting with individual operators to run the units. DIA further stipulated a 25 percent overall ACDBE participation goal for the RMU program as a whole.

In September 2011, DIA announced the opening of the RMU program, consisting of thirty-eight locations under the management of Provenzano Resources, LLC (Provenzano). At the time, DIA projected that the program's retail offering would add \$13 million in concession revenue in the program's first year. As part of the original concession agreement dated December 7, 2010, Provenzano was required to pay DIA a minimum annual guarantee of approximately \$1.1 million. However, a hardship review was requested by Provenzano, resulting in the determination that the revenue generating potential for the RMU program's first two years as identified by Provenzano in the RFP was overstated. Therefore, the fee structure was restructured to approximately \$856,000 effective March 1, 2012, through December 31, 2013. The minimum annual guarantee was then increased to approximately \$896,000 effective January 1, 2014. Between September 2011 and October 2014, the Provenzano contract has brought in over \$38 million in gross receipts.

As of October 2014, there were forty-one merchandising unit locations at DIA, with over half of these locations providing ACDBE participation through eight certified firms. According to B2G, since inception, this program has provided sub-tenant opportunities on over 180 agreements, of which approximately half have included ACDBE participation. According to a listing of current concession contracts by location as of February 2015 provided by DIA and DSBO personnel, the Provenzano contract was at 33.4 percent ACDBE participation.

⁶⁶ ACRP Report 126, Transportation Research Board of the National Academies website, issued January 24, 2015, accessed February 2, 2015, <http://www.trb.org/Publications/PubsACRPPProjectReports.aspx>.

The RMU program has provided an additional avenue for ACDBE-certified firms to participate in DIA's concession program and for DIA to obtain its overall ACDBE program goal.

DIA Uses Joint Venture Agreements To Provide Additional Concession Opportunities for Small Businesses

Joint venture agreements provide ACDBE-certified firms the opportunity to partner with one or more other firms to own and operate a concession. Joint venture agreements allow firms to combine their property, capital, efforts, skills, and knowledge for concession proposal purposes. A joint venture agreement outlines the ACDBE-certified firm's responsibility for a clearly defined portion of the work to be conducted as a concessionaire. The ACDBE-certified firm is also responsible for providing capital

DIA's use of joint ventures in the ACDBE program provides increased opportunities for participation by small businesses.

contribution, control, management, risks, and profits equal to its ownership interest.⁶⁷ DSBO considers any entity that includes an ACDBE and one or more other firms to be a joint venture even if the participants do not identify elsewhere as a joint venture.

When an RFP is issued, a proposer who plans to participate in a joint venture with an ACDBE firm must submit a signed, fully-executed agreement between all parties. All firms upon which ACDBE certification is being relied must be certified in

a category appropriate to the concession opportunity at the time the proposal is submitted. Additionally, the agreement must include a detailed list of the roles and responsibilities of each party. Finally, the proposer must submit a Joint Venture Eligibility Form and notarized Joint Venture Affidavit. The eligibility form provides general information on the formation of the joint venture and roles and responsibilities of each party with respect to management and operation of the joint venture. The affidavit swears that the information provided regarding the terms and operation and intended participation by each firm participating in the joint venture agreement is true and accurate. In addition, the affidavit requires joint venture firms to provide current, complete, and accurate information regarding actual joint venture work and payments, as well as allow the audit of the joint venture's books, records, and files by authorized representatives of the City or federal funding agency. The agreement, eligibility form, and affidavit are required to be submitted to DSBO by the RFP proposal deadline.

Although the joint venture agreements are due at the time of the RFP proposal, DSBO works with the firms prior to the proposal deadline to help ensure that the agreement can be approved for ACDBE participation counting in compliance with federal rules and regulations, and be considered responsive. When an ACDBE-certified firm performs work as a participant in a joint venture, only the portion of the gross receipts equal to the distinct, clearly defined portion of the concession work performed by the ACDBE-certified firm can be counted toward the ACDBE goal.⁶⁸

⁶⁷ 49 C.F.R. § 23.3.

⁶⁸ 49 C.F.R. § 23.55(d).

According to a listing of all current concession contracts by location as of February 2015 provided by DIA and DSBO personnel, there were thirty-four individual concession contracts where ACDBE participation was determined through a joint venture agreement. These thirty-four contracts represent more than forty locations throughout the airport.

Although concerns regarding joint venture agreement compliance activities were identified in Finding 1, utilizing the joint venture practice provides opportunities to some ACDBE-certified firms that may not have the opportunity to independently run a DIA concession.

Additional Key Practices to Increase Participation by ACDBE-Certified Firms Should Be Considered

As previously identified, results from our survey of ACDBE-certified firms noted three main categories of barriers to participating in DIA concessions: difficulty partnering with other firms to bid on concession opportunities; limited access to capital; and high entry costs. Also, when asked what additional types of assistance the City could provide to help ACDBE-certified firms be more effective in competing for concessions contracts, many responses centered on the development of relationships with prime contractors and more access to capital. To address some of the respondents' concerns and provide for other avenues for increased ACDBE participation, we identified two practices that DIA and DSBO can consider implementing: creating a business development and/or mentor-protégé program and fully implementing DIA's Million Dollar Concession Loan Program.

DSBO Should Consider Creating a Business Development and/or Mentor-Protégé Program

Federal regulations allow for the creation of a formal business development program (BDP) to assist ACDBE-certified firms, but DSBO has not implemented such a program. A BDP could include, as part or separately, a mentor-protégé program.⁶⁹ New and small firms have benefitted from such programs at other U.S. airports. These programs usually go beyond simply providing outreach and training, which DSBO already provides. Although DSBO's experience may be limited with such programs, federal regulations provide considerable guidance.

The purpose of a BDP, including a mentor-protégé program, is to develop ACDBEs to work and compete in both the ACDBE concessions program or in the marketplace outside the ACDBE program. These programs can be complex and require staff resources to implement. Therefore, they need to be planned and thoughtfully developed.

A BDP should develop business plans that include an estimate of a program participant's prospects for profitable operation during the term of program participation and after graduation from the program. In addition, DSBO should conduct an analysis of a firm's

⁶⁹ 49 C.F.R. § 23.25(d)(7).

strengths and weaknesses combined with specific targets, objectives, and goals for the business development of the participant during a specified period of time.

Implementing a mentor-protégé program can be complex because the process involves identifying and obtaining an experienced firm to act as a “mentor” as well as the “protégé” firm seeking to benefit and learn from the relationship. A mentor-protégé arrangement exists when an experienced company or individual (mentor) provides assistance and training to a certified firm (protégé) with business planning/financing, record-keeping, or other activities. Any mentor-protégé relationship is based on a written development plan, approved by all parties, that clearly sets forth the objectives and roles of the parties, the duration of the arrangement, and the services and resources to be provided by the mentor to the protégé.

We recommend that DSBO initiate action to create and implement a BDP including a potential mentor-protégé component. Since these programs can be complex, we recommend that DSBO adopt a staged approach or a pilot program in order for DSBO to develop the skills and experience to effectively operate the program. In addition, such an approach can demonstrate how a program is intended to work, which may ultimately motivate or encourage more program participants. Further, having a BDP would benefit the ACDBE program by expanding the pool of qualified and capable ACDBE participants.

DIA's Million Dollar Airport Concession Loan Program Has Yet to Be Fully Implemented

As of March 2015, DIA had not yet fully implemented a concession loan program launched almost a year and a half prior, resulting in no ACDBE-certified firms yet benefitting from the program.

In October 2013, DIA launched its Million Dollar Airport Concession Loan Program (loan program). The loan program was developed in partnership between DIA and the City's Office of Economic Development (OED) to help small businesses secure capital necessary to finance entry into concession operations at DIA. The primary goals of the program were to enhance airport concession opportunities to small businesses, stimulate competition in the concession program, and increase the number and diversity of new airport concessionaires.

The loan program was originally set up as a \$1 million revolving loan fund to serve as gap financing for concessionaires at DIA, lending up to \$250,000 or 25 percent of the capital startup costs to successful loan applicants. Loan applicants were required to be first-time concessionaires. However, the loan program was also open to participants in DIA's RMU program. In addition, applicants were required to be ACDBE eligible, able to demonstrate financial capacity, and legally registered and in good standing with the Colorado Secretary of State and the City, if applicable. Any loan funds provided were to be used for design and capital investment of the concession location, and were limited to one concession concept at any time. The interest rate on the loan would be fixed over a term matching the concession lease agreement, typically seven to ten years.

When launched, the intent was for OED to administer and service the loan program on DIA's behalf, as part of OED's JumpStart economic development strategic plan. However, according to both DIA and OED personnel familiar with the program, the loan program was launched before proper mechanics had been put into place for implementation. For instance, OED is paid through Community Development Block Grant (CDBG) funds, which cannot be used for DIA projects. Therefore, DIA would be required to repay OED for work performed to administer the loan program. DIA has since taken over the implementation of the loan program but is continuing to work with OED to ensure proper establishment and operation.

In 2013, DIA established a \$1 million revolving loan fund to enhance the ACDBE program but has yet to make any loans.

Although DIA personnel indicated that policies and procedures for the program had recently been drafted and submitted to DIA Concession's management for review and approval, DIA did not provide those draft policies and procedures for our review. However, according to DIA personnel familiar with the loan program, eligibility criteria are being reconsidered to expand to applicants who are not first-time DIA concessionaires. In addition, DIA and OED personnel provided an overview of the current loan application and review process, which includes the following steps:

- The loan application will be processed simultaneously with the RFP proposal submission to DIA, as the copy of the RFP proposal and specific financial information, such as business and personal tax returns and a personal financial statement, will be submitted at that time.
- General underwriting by DIA personnel will be conducted on the application, including a review of the amount requested and purpose of the loan, borrower's profitability, and borrower's ability to meet debt service obligations.
- Once general underwriting is completed by DIA personnel, a recommendation of loan approval or denial will be completed.
- DIA personnel will then forward the loan documents, underwriting analysis, and recommendation to OED personnel for a second review.
- Once a consensus on loan approval or denial is achieved, DIA personnel will create a loan credit memo to be presented to a loan committee for final determination of approval or denial.⁷⁰

As of March 2015, DIA had not issued any loans through this program. However, according to DIA personnel, there are currently five written requests to borrow funds under review. Access to capital necessary for start-up costs was cited by ACDBE-certified firms as an impediment to participating in DIA's concessions program. By not completing the implementation of this sought-after program, DIA is not fully addressing the current needs of its ACDBE community. DIA should continue to work with OED and DIA personnel to fully develop and implement the loan program. This should include the development

⁷⁰ As of March 11, 2015, this committee had not yet been created. However, according to DIA personnel, the loan committee will consist of five current DIA and City personnel, of which three members will be required for a voting quorum.

of policies and procedures specific to loan application review and approval. In addition, although DIA personnel stated that ACDBE-certified firms have been made aware of the loan program through DIA's various outreach activities, neither DIA nor OED's websites provide information on eligibility requirements or the process to apply for the loan program. Therefore, once fully developed, to provide increased transparency, DIA should offer interested parties an avenue to learn about the loan program on-line.

DIA's Premium Value Concessions Program May Inhibit New ACDBE Concession Entrants

The elimination of the competitive bidding process associated with DIA's Premium Value Concessions (PVC) program may limit the future availability of concession opportunities for ACDBE-certified firms. The PVC program is designed to reward top concession performers through competition with existing concessionaires in defined merchandising categories. Food and beverage and retail concessionaires in the airport concourses compete for the program benefit. Successful concessionaires are awarded the opportunity to directly negotiate new concession contracts on existing locations in lieu of competing competitively with other firms through the RFP process.

DIA's Concession Policy states that ACDBE-certified firms will have maximum opportunity to participate in the concession program, and that DIA encourages ACDBE participation in the submission of bids or proposals for all concession opportunities. When PVC program participants have already established ACDBE-certified partners and the competitive bidding process is waived, the number of eligible concession locations available to new ACDBE entrants declines. Therefore, we recommend that DIA and DSBO perform an assessment of the potential long-term impact its PVC program may have on its goal of providing disadvantaged businesses the maximum opportunity to participate in its concession program.

RECOMMENDATIONS

The following recommendations are designed to address barriers to participation in Denver International Airport's (DIA's) Airport Concession Disadvantaged Business Enterprise (ACDBE) program, as administered by the Division of Small Business Opportunity (DSBO) on behalf of DIA.

- 2.1 **Business Develop/Mentor-Protégé Program Implementation**—The DSBO Director should initiate action to create and implement a business development program including a potential mentor-protégé component with a limited approach or pilot program.
- 2.2 **Concession Loan Program Implementation**—The DIA Chief Revenue Officer should continue to work with OED and DIA personnel to fully develop and implement the Million Dollar Airport Concession Loan Program, including the creation of policies and procedures specific to loan application review and approval.
- 2.3 **Concession Loan Program Transparency**—Once fully developed, the DIA Chief Revenue Officer should offer interested parties an avenue to learn about the Million Dollar Airport Concession Loan Program on-line.
- 2.4 **PVC Program Assessment**—The DIA Chief Revenue Officer should work with the DSBO Director to perform an assessment of the potential long-term impact the Premium Value Concessions program may have on DIA's goal of providing disadvantaged businesses the maximum opportunity to participate in its concession program.

APPENDIX A

Personal Financial Statement

Clear Personal Financial Statement

CONFIDENTIAL

PERSONAL FINANCIAL STATEMENT

As of _____, _____

(BOTH PAGES MUST BE COMPLETED BY EACH DISADVANTAGED OWNER-THIS FORM MAY BE COPIED)

Complete this form for: (1) each socially disadvantaged proprietor, (2) each socially disadvantaged limited and general partner whose combined interest totals 51% or more, or (3) each socially disadvantaged stockholder making up 51% or more of voting stock.						
Name			Business Phone ()			
Residence Address			Residence Phone ()			
City, State & Zip Code						
Business Name of Applicant						
ASSETS			LIABILITIES			
(Omit Cents)			(Omit Cents)			
Cash on hand and in Banks\$			Accounts Payable.....\$			
Savings Accounts.....\$			Notes Payable to Banks and Others\$			
IRA or Other Retirement Account\$			(Describe in Section 1)			
Accounts and Notes Receivable\$			Installment Account (Auto)\$			
Life Insurance - Cash Surrender Value Only\$			Installment Account (Other).....\$			
(Complete Section 7)			Loan on Life Insurance.....\$			
Stocks and Bonds\$			Mortgages on Real Estate.....\$			
(Describe in Section 2)			(Describe in Section 3)			
Real Estate.....\$			Unpaid Taxes.....\$			
(Describe in Section 3)			(Describe in Section 5)			
Automobile(s) - Present Value\$			Other Liabilities.....\$			
(Describe in Section 4)			(Describe in Section 6)			
Other Personal Property\$			Total Liabilities\$			
(Describe in Section 4)						
Other Assets\$			Net Worth (Total Assets minus Total Liabilities) ...\$			
(Describe in Section 4)						
Total Assets\$						
Source of Income			Contingent Liabilities			
Salary\$			As Endorser or Co-Maker.....\$			
Net Investment Income\$			Legal Claims & Judgments.....\$			
Real Estate Income.....\$			Provision for Federal Income Tax.....\$			
Other Income\$			Other Special Debt.....\$			
Section 1. Notes Payable to Bank and Others (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)						
Name and Address of Noteholder(s)		Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral
Section 2. Stocks and Bonds (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)						
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value	

Appendix A (cont.) – Personal Financial Statement, page 2

CONFIDENTIAL

Section 3. Real Estate Owned (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)			
	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name and Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			
Section 4. Other Personal Property and Other Assets (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.)			
Section 5. Unpaid Taxes (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)			
Section 6. Other Liabilities (Describe in detail.)			
Section 7. Life Insurance Held (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)			
I authorize the Office of Certification at the Colorado Department of Transportation to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE Programs of the partners of Colorado's Uniform Certification Program (UCP). These statements are true and correct to the best of my belief.			
Printed/typed name:		Signature and date:	
County of _____ State of _____			
Subscribed and sworn before me this _____ day of _____, _____			
Signed _____ (Notary Public)			
_____ (Address of Notary)			

APPENDIX B

DSBO Personal Net Worth Analysis Worksheet

Contract Compliance Analyst's Review of PNW Statements			
First Analysis is to determine if there are any problems in Addition and Subtraction.			
Enter in numbers as they appear on the applicants PNW Statement in column B for Assets and E for Liabilities. The spreadsheet will calculate Total Assets, Total Liabilities, and Net Worth. Note differences in totals from analyst's calculation vs. applicants.			
Assets		Liabilities	
Cash on hand and in Banks	0	Accounts Payable	0
Savings Accounts	0	Notes Payable to Banks and Others (Describe in	0
IRA or Other Retirement Account	0	Installment Account (Auto)	0
Accounts and Notes Receivable	0	Installment Account (Other)	0
Life Insurance - Cash Surrender Value Only (Complete Section 7)	0	Loan on Life Insurance	0
Stocks and Bonds (Describe in Section 2)	0	Mortgages on Real Estate (Describe in Section 3)	0
Real Estate (Describe in Section 3)	0	Unpaid Taxes (Describe in Section 5)	0
Automobile(s) - Present Value	0	Other Liabilities (Describe in Section 6)	0
Other Personal Property (Describe in Section 4)	0	Total Liabilities	\$ -
Other Assets (Describe in Section 4)	0		
Total Assets	\$ -	Net Worth (Total Assets minus Total Liabilities)	\$ -
Analyst's number matches applicant's presentation? Yes			
If, as shown in Sec. 3, primary residence is included, subtract, from Assets, Present Market Value. Subtract the mortgage balance from the Liabilities.	0	Primary Residence Mortgage Balance	0
If, as shown in Sec. 3 and Schedule L of the 1120 tax form, an applicant business-owned property was included in the PNW, subtract, from Assets, its Present Market Value. Subtract the mortgage balance from the liabilities.	0	Business-owned Property Mortgage Balance	0
Is any real estate remaining jointly owned? If yes, request deed. Subtract portion not belonging to applicant.	0	Balance of Real Estate Not Owned by Applicant	0
Are stocks and bonds jointly owned? If yes, request account statements just before notary date of the PNW statement. Subtract portion not belonging to applicant.	0	Portion of Stock & Bonds Not Owned by Applicant	0
Study Section 4. Subtract investment in applicant business.	0		0
Study Section 4. Are any of these other assets jointly owned. If yes, request proof and subtract portion not owned by applicant. (Is the personal tax a joint return? If yes you will likely see some jointly owned assets on it.)	0		0
Updated Total Assets	0	Updated Total Liabilities	0
		Updated Net Worth (Total Assets minus Total Liabilities)	0

AGENCY RESPONSE



May 5, 2015

Mr. Kip R. Memmott, MA, CGAP, CRMA
Director of Audit Services
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. Memmott:

The Office of the Auditor has conducted a performance audit of Denver International Airport's Airport Concession Disadvantaged Business Enterprise Program.

This memorandum provides a written response for each reportable condition noted in the Auditor's Report final draft that was sent to us on April 24, 2015. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1

Weaknesses in Division of Small Business Opportunity Processes Could Adversely Affect the Integrity of the Airport Concession Disadvantaged Business Enterprise Program

RECOMMENDATION 1.1

Personal Financial Statement Supporting Documentation—Develop more detailed guidance regarding certification processes in the form of policies and procedures, especially where the federal regulations are broad or lack clarity. DSBO should require that owners of certified firms submit documentation to support the information reported on the Personal Financial Statement and determine what supporting information is required. These requirements can be defined using a risk-based approach, to reduce the burden on both owners with a lower personal net worth and DSBO personnel.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	NA	Chris Martinez 720-913-1701

Narrative for Recommendation 1.1

DSBO agrees in principle that areas of the program may be written broadly. When such areas come into question DSBO consults the FAA and documents all actions taken. DSBO will continue to follow the Rules and Regulations that govern the program.

FOR CITY SERVICES VISIT DenverGov.org | CALL 311

Office of Economic Development
Division of Small Business Opportunity

201 W Colfax Ave, Dept 907
Denver, CO 80202
p: 720.913.1999
f: 720.913.1809
www.denvergov.org/dsbo

Denver International Airport
Airport Office Building, Suite 7810
8500 Pena Blvd
Denver, CO 80249
p: 303.342-2180
f: 303.342.2190
www.flydenver.com

RECOMMENDATION 1.2

Additional Supporting Documentation—Establish a threshold defining material assets and liabilities that will trigger additional documentation requests and subsequent personal net worth analysis and develop more detailed guidance in the form of policies and procedures to address when and what additional supporting documentation should be obtained to enhance the assessment of the personal net worth of ACDBE-certified firms' owners. DSBO should work with the Federal Aviation Administration to ensure that the guidance developed is in full compliance with federal regulations.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	August 2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.2

DSBO will establish a threshold that triggers a request for additional documentation. DSBO will continue to follow the Rules and Regulations that govern the program.

RECOMMENDATION 1.3

External Resources—Develop guidance in the form of policies and procedures addressing external resources that DSBO personnel could use to assist in its personal net worth analysis.

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	July 2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.3

DSBO will develop a policy regarding when to utilize external resources in the administration of the program, and will emphasize PNW training scheduled for the first half of 2015.

RECOMMENDATION 1.4 Documentation Maintenance —Determine what certification supporting documentation should be maintained in B2G.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Completed and On-going	Chris Martinez 720-913-1701

Narrative for Recommendation 1.4

As a part of weekly Certification and Compliance meetings, DSBO has established and will continue refining a policy for the supporting documentation that should reside in B2G.

RECOMMENDATION 1.5 Threshold for Alternative Approach to Personal Net Worth Analysis —Define a threshold for implementation and utilize the alternative approaches allowed by federal regulations to evaluate whether a firm's owner is economically disadvantaged on an as-needed basis.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Current Practice	Chris Martinez 720-913-1701

Narrative for Recommendation 1.5

DSBO does everything within federal Rules and Regulation to utilize alternative approaches for gathering needed documentation.

RECOMMENDATION 1.6 Define Experience Requirements —Develop guidelines for evaluating the experience and qualifications required for ACDBE certification.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Disagree	NA	Chris Martinez 720-913-1701

Narrative for Recommendation 1.6

DSBO follows federal guidelines in evaluating the experience and qualifications required for ACDBE certification.

RECOMMENDATION 1.7		
Risk-based Approach to Frequency of Renewals —Work with the Federal Aviation Administration to determine whether DSBO could adopt a risk-based approach to the frequency of renewal reviews rather than continuing with standard three-year certification renewals.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Disagree	NA	Chris Martinez 720-913-1701

Narrative for Recommendation 1.7

DSBO continues to follow FAA rules, regulations and guidelines in the administration of the ACDBE program.

RECOMMENDATION 1.8		
Planned Site Visit Approach —Establish a planned approach to conduct concession site visits for all ACDBEs that is random yet risk-based, occurs within a set time period not to exceed three years, and plans site visits of two or more concessions at a time.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	5/2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.8

ACDBE site visits are scheduled randomly and when possible, are when two or more concessionaires can be visited in succession, we do it.

RECOMMENDATION 1.9 Site Visit Tracking —Establish a log to document and track all site visits to help schedule visits, monitor progress, and follow-up on concerns at concessions, as appropriate.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Site Visit log established 2/3/2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.9

The ACDBE Site Visit log was established on 2/3/2015.

RECOMMENDATION 1.10 ACDBE Concession Program Plan —Expedite the review of the December 2014 draft ACDBE Concession Program Plan and submit it to the FAA for review and approval. In addition, all significant future program changes should be updated and submitted to the FAA in a timely manner.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	5/2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.10

ACDBE Plan being updated. Expected release of June, 2015.

RECOMMENDATION 1.11 ACDBE Complaint Process —Establish ACDBE complaint handling procedures that include independent review and recommendation subject to final approval by the DSBO Director and documentation requirements of all final decisions.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	5/2015	Chris Martinez 720-913-1701

Narrative for Recommendation 1.11

A more ACDBE-tailored way to report complaints is being put onto the DIA website by May, 2015.

AUDIT FINDING 2

Denver International Airport and the Division of Small Business Opportunity Could Better Serve the Airport Concession Disadvantaged Business Enterprise Population by Removing Additional Barriers to Obtaining Concessions.

RECOMMENDATION 2.1		
Business Develop/Mentor-Protégé Program Implementation —The DSBO Director should initiate action to create and implement a business development program including a potential mentor-protégé component with a limited approach or pilot program.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Recommendations by July 2015	Chris Martinez 720-913-1701

Narrative for Recommendation 2.1

Business Development and Mentor-Protégé programs are being implemented in 2015 for the Construction and Purchasing elements of the program. DSBO continues to gauge the support for such efforts and will provide a formal recommendation to the DSBO Director by July, 2015.

RECOMMENDATION 2.2		
Concession Loan Program Implementation —The DIA Chief Revenue Officer should continue to work with OED and DIA personnel to fully develop and implement the Million Dollar Airport Concession Loan Program, including the creation of policies and procedures specific to loan application review and approval.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	September 2015	Bhavesh Patel (303) 342-2497

Narrative for Recommendation 2.2

Representatives from the DIA Revenue Management Division and the DIA Commerce Hub are currently working on the structure and guidelines for the Million Dollar Airport Concession Loan Program, this may require City Council approval. The loan application policies and procedures will be part of the program guidelines.

RECOMMENDATION 2.3 Concession Loan Program Transparency —Once fully developed, the DIA Chief Revenue Officer should offer interested parties an avenue to learn about the Million Dollar Airport Concession Loan Program on-line.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	September 2015	(303) 342-2497 DEN Chief Revenue Officer

Narrative for Recommendation 2.3

Once the Million Dollar Airport Concession Loan Program is fully developed, the role out of this program will be promoted in various ways including an on-line information page.

RECOMMENDATION 2.4 PVC Program Assessment —The DIA Chief Revenue Officer should work with the DSBO Director to perform an assessment of the potential long-term impact the Premium Value Concessions program may have on DIA's goal of providing disadvantaged businesses the maximum opportunity to participate in its concession program.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	September 2015	(303) 342-2497 DEN Chief Revenue Officer

Narrative for Recommendation 2.4

Representatives from the DIA Revenue Management Division will meet with the DSBO Director to analyze if there is a potential for the Premium Value Concession program to impact the DSBO-managed ACDBE program at DIA.

Please contact DSBO Director Chris Martinez at 720-913-1701 with any questions.

Sincerely,

Chris Martinez, Director
Division of Small Business Opportunity

Cc Paul Washington, Executive Director, OED
Amy Edinger, Chief Operating Officer, OED