

**Memphis Shelby County Airport Authority  
FFY 2015 – 2017 Airport Concessionaires  
Disadvantaged Business Enterprise  
Goal Methodology  
Car Rental Concessions  
Second Revision**

**August 3, 2016**

**I. Introduction**

This submission represents Memphis Shelby County Airport Authority’s (“MSCAA’s”) Second Revised Airport Concession Disadvantaged Business Enterprise (“ACDBE”) participation goals for car rental concessions contracts for Federal Fiscal Years (“FFYs”) 2016 through 2017, in accordance with the procedures specified in 49 C.F.R. Part 23 (“ACDBE Regulations”). It was necessary to revise this submission due to significant fluctuations in the number of enplanements at MSCAA over the past few years and our desire to more fully utilize the information from our most recent disparity study in our goal-setting method. We had just finalized our new disparity study just before our previous goal submission. We did not have sufficient opportunity at that time to fully consider the findings and data from the study. Our first revised submission reflected our more complete review and synthesis of that study. This second revision is submitted in response to additional questions posed by the Federal Aviation Administration (FAA) by e-mail in February 2016.

MSCAA’s 2013 disparity study, “The State of Minority-and Women-Owned Business Enterprise: Evidence from Memphis” (“2013 Disparity Study”), found evidence consistent with the presence of discrimination against minority and women entrepreneurs in our market area. This discrimination broadly has the effect of both depressing the availability of ACDBEs and of making it more difficult for existing ACDBEs to compete for and win contracts. While our study included information about the lack of availability of ACDBE car rental companies and the availability and utilization of minority and women owned firms in non-car rental concessions at the airport, the study did not examine the internal goods and services contracting of the car rental companies themselves. Moreover, repeated attempts to obtain the data necessary to set a constitutional overall

goods and services goal for the car rental companies has, thus far been unavailing. Nevertheless, below we present a plan to redouble our efforts to work with the car rental companies to obtain this information.

Therefore, based on the ACDBE Regulations and official guidance, the evidence in the 2013 Disparity Study, past ACDBE participation in car rental concessions activity and the amount of projected car rental concession opportunities that will occur at MSCAA from October 1, 2015 through September 30, 2017, the interim car rental ACDBE goal is 1% which will be obtained through completely race neutral means while we continue to work with the car rental companies to obtain the data necessary to determine whether a race-conscious goal based on goods and services is warranted and to set such a goal if it is warranted.

**II. Projected Car Rental Concessions Gross Receipts: October 1, 2015–September 30, 2017**

Car rental concessions revenues for federal fiscal years 2016 through 2017, are based upon our past car rental concessions revenue and projected enplanements for FFY 2016 and a 2% projected growth for FFY 2017. As shown in Table 1 below, these calculations result in a projected total car rental concessions amount of \$130,800,000 for FFYs 2016 through 2017. Again, for all the reasons stated above, it is currently difficult to precisely predict future concessions revenues at the airport.

**Table 1- Projected Gross Receipts for Car Rental Concessions For FFYs 2016-2017**

	<b>FFY 2016</b>	<b>FFY 2017</b>	<b>Total</b>
<b>Projected Car Rental Receipts</b>	\$64,800,000	\$66,000,000	\$130,800,000

**III. Method Used to Calculate the Interim Overall Car Rental Goal**

Pursuant to 49 C.F.R. § 23.51(b)(1), “[e]ach overall concessions goal must be based on evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your] ACDBE program.” The following represents the method used to calculate our revised goal. In all instances, our goal is based upon the ACDBE regulations and guidance, our 2013 Disparity Study, past ACDBE participation at MSCAA and projections as to how the business climate at the airport will evolve. The following provides a summary of the process undertaken by NERA in conducting our 2013 Disparity Study. For more information, please see the study itself which has been provided as an appendix.

**A. Step 1: Determining the Base Figure for the Relative Availability of Car Rental ACDBEs in the Market Area**

The first step undertaken by NERA was to define the relevant geographic and industry market area for MSCAA’s concessions. “Market area” is defined in the ACDBE regulations by the geographical

area from which the substantial majority of firms seeking to do concessions business with MSCAA are located, as well as the area in which firms that receive the substantial majority of concessions-related revenues are located. 49 C.F.R. § 23.51(b)(3).

The 2013 Disparity Study defined MSCAA’s geographic market area as the Memphis MSA market area based upon the location of 75% or more of the airport’s overall business activity. (2013 Disparity Study, p.44.) The product market dimension was estimated using the North American Industrial Classification System (NAICS) code that best describes car rental concessions -- 532111. (2013 Disparity Study, p. 42-44).

To calculate weighted availability in these markets, NERA estimated the total number of firms in the geographic and product markets using Dun & Bradstreet data; identified the “listed M/WBEs” through information on M/WBEs in various databases; estimated the race and sex distribution for listed M/WBEs and unlisted firms; verified ownership status of all firms in the database and developed final detailed M/WBE availability estimates. (2013 Disparity Study pp. 46-92, see, esp.: pp. 55 and 89-90.) Based on this analysis, 0% of the firms available in MSCAA’s car rental concession market are estimated to be owned by M/WBEs. (2013 Disparity Study, p. 89) and this represents the most accurate Step One figure available to MSCAA. The study did not study the goods and services contracting history of the car rental companies themselves as it did not have access to the internal contracting data or processes of the car rental companies.

## **B. Step 2: Adjustments to the Step 1 Base Figure**

After calculating the base figure, Part 23 requires that the recipient examine all relevant evidence reasonably available to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.<sup>1</sup> The pertinent types of evidence that MSCAA must consider when adjusting the base figure include:

- (i) The current capacity of ACDBEs to perform work in MSCAA’s concessions program, as measured by the volume of work ACDBEs have performed in recent years;
- (ii) Evidence from disparity studies conducted anywhere within MSCAA’s jurisdiction, to the extent it is not already accounted for in the base figure. If the base figure is the goal of another recipient, MSCAA must adjust it for differences in its local market and its contracting program; and
- (iii) Evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete.

The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing ACDBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” § 23.51(d)(4).

### **1. Current Capacity of Car Rental Concession Firms at MSCAA**

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<sup>1</sup> 49 C.F.R. § 23.51(d).

MSCAA examined the past participation by ACDBEs in the car rental arena. To date, MSCAA has not succeeded in obtaining any ACDBE participation through an ACDBE owned car rental company franchise. This is likely explained by the fact that, as NERA’s study revealed, there are no M/W/DBE owners of major car rental company franchises in the Memphis area. Still, with encouragement from MSCAA, some rental car concessions at MSCAA have succeeded in obtaining some ACDBE participation through subcontractor and supplier relationships. As recommended by USDOT program guidance,<sup>2</sup> the total ACDBE participation achieved for each year and the median participation for the period reported were calculated using data taken from MSCAA’s annual participation reports.

**Table 2: Car Rental ACDBE Utilization in FFYs 2011 -2013**

<b>FFYs</b>	<b>Total ACDBE Participation %</b>	<b>Total Concessions Revenues</b>	<b>ACDBE Concessions Revenues</b>
<b>2011</b>	0%	\$63,445,329.00	\$0.00
<b>2012</b>	0%	\$63,538,235.00	\$0.00
<b>2013</b>	.16%	\$61,191,379.00	\$94,929.00
<b>2014</b>	.5%	\$65,550,616.00	\$349,654.00
<b>Median</b>	<b>.33</b>		

This data, were it combined with more information provided from the car rental companies themselves about their overall contracting and purchasing policies, might support the application of a more robust car rental goal based upon goods and services contracting by the car rental companies. The problem is that MSCAA has confronted significant barriers in obtaining the data necessary to assess whether such a goal is needed and to calculate such a goal. One of the primary barriers is that the car rental companies do not readily provide their internal budgeting numbers for suppliers and subcontractors due to internal policies dealing with proprietary information. This information is indispensable to any attempt to assess the need for goals and to set constitutionally valid goals based on goods and services. There are also significant barriers posed by the fact that many car rental companies report that they have a practice, set by their corporate offices, of buying most of their supplies at the national level through agreements with large suppliers.

Despite all of this, during the last contract renewal process with the car rental companies, MSCAA developed new and innovative contract provisions that required the car rental companies to set their own annual ACDBE goals based on their specific contracting needs and history. Our plan is to then use the car rental companies’ individual goals to set an overall car rental goal. Unfortunately, to date, we have had difficulty obtaining compliance with these new goal setting provisions. To address this, we plan to pursue the following activities:

<sup>2</sup> Tips for Goal-Setting in the Disadvantaged Business Enterprise Program, <http://osdbuweb.dot.gov/DBEProgram/tips.cfm>.

## **Car Rental ACDBE Compliance Timeline**

Throughout the Summer of 2016: MSCAA will investigate additional methods of increasing ACDBE participation in the car rental process. We will assess the feasibility of expanding the number of car rental companies at the airport, and if it is feasible we will cast a broad net in recruiting companies owned by socially disadvantaged individuals to become certified to provide car rental concessions at MSCAA. We will also, with input from the car rental companies themselves, increase outreach to identify and certify firms in industries likely to provide goods and services to car rental concessionaires.

July 15, 2016: Letter sent from MSCAA General Counsel to Car Rental Companies reminding them of their ACDBE obligations under their contracts and providing helpful worksheets for them to use in setting the annual ACDBE goals. (Please see the letter, the worksheet and the worksheet instructions, attached.)

Week of August 1, 2016: MSCAA Regina Armstrong, DBE Accountant, will make follow up calls to the contact people for each car rental company at the airport to find out if they received the letter and if they require any additional assistance.

Week of August 22, 2016: MSCAA will evaluate what data has been received by each car rental company. If the data received is not sufficient to permit compliance, letters will be sent to the national corporate contacts for each car rental company (key contact information has been provided by FAA Civil Rights) requesting the needed information.

September, 2016 (exact date TBD): MSCAA will host training meeting with the Business Diversity Development (BDD) Staff, General Counsel's Office, outside counsel and the local contacts for each car rental company to discuss all the data provided, obtain any missing data, and discuss best practices going forward.

September, 2016: After the training meeting, MSCAA will assess whether any noncompliance by the car rental companies continues. If it does, MSCAA will consider further compliance steps.

Finally, even while we are taking the above steps to bring the car rental companies into compliance, we seek to increase participation through our race neutral 1% goal. The fact that some of MSCAA's car rental concessionaires have begun using local ACDBEs and DBEs for some of their supply and service needs is encouraging and we will continue to work to increase ACDBE participation in the car rental context through purchases of goods and services.

## **2. Evidence from Other Disparity Studies**

MSCAA's own disparity study constitutes the primary foundation for the airport's goal by supplying our Step One base figure. Still, the ACDBE rules encourage us to consider whether other studies in the airports market area have additional information that may bear on goal-setting. The City of Memphis completed its most recent disparity study in 2010. Unfortunately the work procured by a city government differs significantly from the work involved in airport concessions (and especially in the car rental context) and so it would be ill-advised to attempt to use the City of

Memphis study to directly adjust MSCAA's goals. Still, it is useful to note that while the study for the City of Memphis was performed by a different company, with a different principal investigator, during a different time period, it too found extensive evidence consistent with discrimination against minority and women owned businesses.<sup>3</sup>

### **3. Additional Evidence**

The regulations next require consideration of available evidence from related fields that affect ACDBEs. Some of the most significant barriers to the ability of all concessionaires to succeed at the airport today include the lack of new concessions opportunities, the ongoing fluctuations in enplanements due to changes in carrier service to the airport and concern about the predictability of revenues based on the new configuration of the terminal. All of these considerations weigh more heavily for most ACDBEs because of the discrimination that impacts their ability to form, earn and access capital (see Chapters IV and V of the 2013 Disparity Study).

While these impacts are very real, and could lead to disproportionate reticence by ACDBEs to take on new concessions opportunities at the airport, they are difficult to quantify precisely in the context of car rentals for many of the reasons outlined above.

### **C. Conclusion**

For all of the reasons outlined above, the MSCAA will set a goal of 1% for car rentals for FFY 2016 and FFY 2017.

**Overall goal for FFY 2016 and 2017 = 1%**

### **IV. Projection of ACDBE Participation Through Race-Neutral and Race-Conscious Measures**

The regulations require that the MSCAA meet the maximum feasible portion of its goal by using race-neutral means to accomplish ACDBE participation. Table 3 summarizes MSCAA's utilization of ACDBEs in the car rental concessions industry through race-conscious and race-neutral measures using data taken from our annual participation reports.

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<sup>3</sup><http://www.cityofmemphis.org/Government/ExecutiveDivision/MinorityandWomensBusinessEnterprises/DisparityStudy2010.aspx>.

**Table 3: ACDBE Utilization Obtained Through Race-Conscious and Race-Neutral Measures**

<b>FFYs</b>	<b>ACDBE Goal (race neutral)<sup>4</sup></b>	<b>ACDBE Race-Conscious Participation</b>	<b>ACDBE Race-Neutral Participation</b>
<b>2011</b>	0.0%	0.0%	0.0%
<b>2012</b>	0.0%	0.0%	0.0%
<b>2013</b>	2.9%	0.0%	0.16%
<b>2014</b>	2.9%	0.0%	0.53%
<b>Median</b>	<b>1.45</b>	<b>n/a</b>	<b>0.0%</b>

MSCAA’s disparity study does not provide sufficient data to set race conscious goals for car rental concessionaires either in the gross receipts context or in the goods and services context. Utilizing our contract provisions, we will redouble our efforts to evaluate whether race-conscious goods and services goals are appropriate and, if they are, to set those goals. In the meantime, MSCAA believes that the data in Table 3, suggests that ACDBE participation in the car rental supplier and subcontractor context may continue to be obtained in the car rental goods and services context.

**V. Public Participation**

The ACDBE Regulations also require consultation with stakeholders regarding proposed ACDBE goals. Those stakeholders include the following:

Minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient’s efforts to increase participation of ACDBEs. 49 C.F.R. § 23.43.

MSCAA works hard to consult with and learn from its DBE and ACDBE stakeholders all year long, not just during the triennial goal-setting process. The Office of Business Diversity Development (now headed up by Joe Claiborne, Sr. who is also our new DBELO), and other airport staff and senior officials (including Board Members) interact constantly with the various airport business advocacy groups and stakeholders including, but not limited to the following: Associated General Contractors, ACI, AAAE, AMAC, Mid-South Minority Business Council and Continuum, MMBC Corporate Resource Committee, Memphis and Shelby County Intergovernmental Consortium, Tennessee Minority Supplier Development Committee, Memphis Area Minority Contractors Association (MAMCA) and the Black Business Association of Memphis (BBA). Airport staff attend conferences and meetings with representatives of these groups and are often contacted informally to provide assistance and input. In the course of these interactions, the staff learns about the varied views of DBEs, ACDBEs and majority male business owners and seeks to incorporate

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<sup>4</sup> In a previous ACDBE submission, the 2.9% goal may have been characterized as race conscious. This was incorrect. Because no car rental company has provided the needed data to set contract goals, no such contract goals applied in 2013 or 2014.

this input not only into the goal-setting process but into the way in which they operate the program every single day. Discussions topics with program advocates and stakeholders include: ongoing barriers to success (including ongoing barriers based on racial and gender discrimination), facilitating access to capital and bonding, options to improve the program and questions about eligibility and the certification process.

During the time that we were obtaining stakeholder consultation on this revised goal, the DBELO met monthly with all airport concessionaires to discuss the challenges they face and their views about the program. In addition, Business Diversity Development staff is available for more informal one-on-one consultations with all of those involved in the program as well as with those seeking to learn about opportunities at the airport. All of these consultations help the airport learn more about ways in which the airport's programs can be most effective in their task of leveling the playing field.