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Cover photo by Denver Auditor’s Office staff.
AUDITOR'S LETTER

February 17, 2022

The objective of our audit of concessions management at Denver International Airport was to evaluate the airport's concessionaire contracting practices and assess whether the airport's approach is cost effective and fair. I am pleased to present the results of this audit.

The audit found the airport has not assessed how it approaches concessions contracting, and we discovered some of its practices are unfair and not transparent. The airport allows some concessionaires to bypass the competitive selection process, which violates a city executive order, and the airport does not know whether its Premium Value Concessions program yields any proven benefit. The airport is not retaining some important documents after competitive procurements for concessions contracts, and it has continued many contracts years after they expired.

The airport can improve transparency and fairness and demonstrate fiscal responsibility by evaluating its overall concessions program and discontinuing the Premium Value Concessions program. In addition, by implementing recommendations for stronger records retention and requirements for competitive contract procurement, Denver International Airport may be better equipped to increase revenue and operational efficiency, especially as the regional economy recovers from the COVID-19 pandemic.

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.” We conducted this performance audit 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.

We extend our appreciation to the personnel at Denver International Airport who assisted and cooperated with us during the audit. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor’s Office

Timothy M. O'Brien, CPA
Auditor
Denver International Airport Allows Some Concessionaires to Bypass the Competitive Selection Process

The airport lets some concessionaires in its Premium Value Concessions program directly negotiate new contracts without going through competitive procurement when their contracts expire. This violates a city executive order. Furthermore, the rules of the Premium Value Concessions program are complex and difficult to comprehend, and the program may not provide the best value for the airport.

Denver International Airport Has Not Evaluated Whether It Uses the Optimal Contracting Approach for Its Overall Concessions Program

The airport has not assessed its concessions contracting approach since the airport opened more than 25 years ago. Therefore, airport employees cannot know whether their approach results in the highest possible revenue and helps the airport achieve its other goals.

Some of Denver International Airport’s Concessions Contracting Practices Are Unfair

The airport has allowed at least three dozen concessionaire contracts to remain in effect years after they expired, which also violates the city executive order. Furthermore, the airport is not transparent with how it scores prospective vendors.

**WHY THIS MATTERS**

Competitive selection ensures the airport receives the best value from its vendors, particularly as the airport recovers from significant revenue losses due to the COVID-19 pandemic.

Meanwhile, committing to equity and fairness in how the airport selects concessionaires — including demonstrating transparency in its scoring of prospective vendors — promotes public trust and provides businesses owned by women and people of color with more equitable opportunities to operate at the airport.
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BACKGROUND

Denver International Airport

The City and County of Denver owns Denver International Airport, which opened in February 1995. Before the COVID-19 pandemic, 69 million passengers traveled through the airport in 2019.¹

The airport is an enterprise and operates like a business. It charges fees to airlines and other vendors, including concessionaires. All revenues the airport earns cover its costs to provide services.

The Airport Concessions Program

Airport “concessionaires” include businesses that sell food and beverages, retail shops, duty-free shops, and passenger services. The airport offers more than 272,000 square feet of concessions space across its main terminal and three concourses.

As of August 2021, there were 146 concessions locations. Forty-two were operated by individual concessionaires, and the remaining 104 locations were run by 26 concessionaires that each had more than one location in the airport.

Typically, airport concessions include:

• **FOOD AND BEVERAGES** – This means casual dining, fast-food restaurants, bars, and coffee shops. These occupy the most concessions space and are the most productive in terms of sales and revenue.

• **RETAIL** – This includes both convenience stores — such as newsstands and general merchandise — and specialty retail shops that sell items like jewelry, luggage and travel accessories, and regional arts and crafts.

• **DUTY-FREE SHOPS** – Here, departing international passengers can buy products without paying import duties and other taxes. Duty-free shops primarily offer perfumes and cosmetics, liquor, tobacco, fashion items, and candy.

• **PASSENGER SERVICES** – This includes a variety of services to meet customers’ needs and may include baggage carts, baggage lockers, hair salons, and massage services.

Denver International Airport has all these concessions. The airport’s concessions program does not include rental car companies.

PURPOSE AND GOALS – Overall, the concessions program is intended to enhance travelers’ experiences at the airport. The quality and variety of available concessions affects the airport’s ability to attract new passengers and airline service.

The airport’s concessions policy directs airport staff in soliciting and selecting vendors, awarding contracts, and administering the concessions program. The policy specifies several goals:

- Maximizing non-airline revenue.
- Making the best use of limited concessions space.
- Attracting and retaining airlines.
- Providing a “rich variety of world-class offerings” to the traveling public.
- Promoting core values — such as environmental sustainability, outstanding customer service, and supporting disadvantaged businesses in compliance with federal regulations.
- Maximizing opportunities for certain small businesses and local businesses through direct and competitive leasing.
- Attracting customers using a combination of architecture, design, graphics, and branding for concessions.
- Attracting the best local, regional, and national food-and-beverage operators, retail shops, and other concessionaires, and retaining “best in class” concessions through its Premium Value Concessions program.

Meanwhile, Denver International Airport’s lease and use agreements with the various airlines also require the airport to manage its concessions program in a way that maximizes non-airline revenue. Concessions revenue benefits both the airport and the airlines by reducing how much the airport relies on airline fees for revenue.

Concessionaire Selection and Contracting Process

A critical piece of the airport’s concessions program is the solicitation, selection, awarding, and administration of concessionaire contracts for leased space in the terminal and concourses.

Contracts are “one of the highest administrative priorities” for the City and County of Denver. A city executive order requires all city agencies to ensure contract compliance “throughout the life of the contract.”

The airport selects new concessionaires through a competitive selection

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3 The Premium Value Concessions program we discuss in this report is the one that focuses on goods, merchandise, food, and related concessions. The airport does have one other Premium Value Concessions program for services, which was not part of this audit.

When the airport has space available to lease, it issues a request for proposals describing the space available, the type of concessions desired, requirements for operating at the airport, and required documentation.

A selection panel of five to seven voting members is made up of airport employees or other city staff, consultants to the airport, airline representatives, or community representatives. After receiving the proposals that vendors submitted in response to the request for proposals, the panel members evaluate and score each proposal individually. Their scores are then combined into a master score sheet. The panel's composite scores are reviewed for accuracy and submitted to the airport's chief executive officer.

The chief executive officer authorizes airport staff to offer a concessionaire contract to one of the proposers. When they deem it to be in the airport's best interest, the chief executive officer can select a proposer that was not the highest ranked by the panel.

Once the concessionaire contract is signed, the airport destroys the individual and summary score sheets; it keeps only the ordinal ranking of the prospective vendors.

**PREMIUM VALUE CONCESSIONS PROGRAM** – The airport allows its concessionaires to participate in its Premium Value Concessions program, which means these businesses can negotiate directly with the airport for new concessions contracts rather than undergo the competitive selection process.

The program began in 2012, and it is outlined in the airport's rules and regulations. Concessions program staff said the program was suspended in spring 2020 after the COVID-19 pandemic began and it will remain suspended until at least July 2022.

**OWNERSHIP CONCENTRATION POLICY** – To encourage competition and maintain opportunities for local small businesses, the concessions program limits how much space a single vendor can operate.

According to policy, no concessionaire should operate space that exceeds 24% of the airport's total concessions space or 15% of the space for either the food and beverage category or the retail category.

**TYPICAL CONCESSIONS CONTRACT TERMS** – Among the typical contract terms, Denver International Airport charges concessionaires either a minimum amount — known as a “minimum annual guarantee” — or a percentage of the concessionaire’s sales, whichever is greater.

Denver airport’s minimum annual guarantee is based on a prospective vendor’s bid and an established range. This range is based on the airport’s operating history and the airport’s understanding of market conditions, both locally and at those of other airports it considers comparable.
Each contract has a “holdover provision,” which lets a vendor continue to pay rent and occupy their concessions space even after their lease with the airport has expired.

Contracts typically last five to 15 years, potentially with options to extend depending on the type of contract.

**Approaches to Concessions Management**

Airports manage their concessions programs based on a variety of factors such as staffing levels, passenger volumes, available funds, and potential impacts on concessions revenue. The most common approaches to contracting with concessionaires include direct leasing, a prime concessionaire arrangement, or a mixed approach, as illustrated in Figure 1.

- **DIRECT LEASE** – The airport selects a concessionaire to operate at an individual location or at several locations as part of one contract.

- **PRIME CONCESSIONAIRE** – The airport contracts with a concessionaire to lease multiple concessions spaces. The prime concessionaire might directly operate these locations, or it may sublease some or all locations. An airport can have one or more prime concessionaires.

- **MIXED** – The airport uses more than one contracting approach (e.g., having one or more prime concessionaires in addition to having some contracts directly with concessionaires).

**FIGURE 1. Comparison of Direct, Prime, and Mixed Contracting Approaches for Managing Airport Concessions**

Source: Auditor’s Office analysis based on the federal “Resource Manual for Airport In-Terminal Concessions.”
An airport might use more than one contracting approach because of various considerations, including local laws, policy, or politics. Denver International Airport uses a mixed approach by having some prime concessionaires and some contracts directly with concessionaires.

The Federal Aviation Administration's Airport Concessions Disadvantaged Business Enterprise Program seeks to ensure nondiscrimination in the selection and administration of airport concessions contracts and to create equity so “disadvantaged” firms can compete fairly for these contracts.\(^5\) More specifically, the program is meant to support small businesses owned by people of color, women, and other similarly situated individuals deemed to be “socially and economically disadvantaged.”\(^6\)

Denver International Airport receives federal grant funds to run its own Airport Concessions Disadvantaged Business Enterprise Program. To receive the federal funds, the airport must comply with several federal grant requirements:\(^7\)

- Ensuring no discrimination when awarding and administering concessions contracts.
- Creating a level playing field for disadvantaged businesses to compete fairly for concessions opportunities at the airport.
- Ensuring the airport's disadvantaged business program is narrowly tailored in accordance with applicable laws.
- Ensuring only eligible businesses participate in the program.
- Removing barriers for disadvantaged businesses to bid on concessions contracts.
- Providing appropriate flexibility for disadvantaged businesses to have opportunities.

Airport staff said at Denver International Airport, every concessionaire must meet program goals specific to its contract. If a concessionaire is not certified as a disadvantaged business, it must enter into a joint venture with a disadvantaged business to meet the federal requirement.

A “joint venture” typically means two or more companies team up to operate as a single business enterprise. The businesses combine their property, capital, efforts, skills, and knowledge, and the disadvantaged business is responsible for fulfilling a clearly defined portion of the airport concessions contract.

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\(^5\) 49 C.F.R. 23 § 23.21-23.29.
\(^6\) 49 C.F.R. 23 § 23.3.
\(^7\) 49 C.F.R. 23 § 23.1.
Revenues and Costs of the Concessions Program

The COVID-19 pandemic impacted not only airline operations at Denver International Airport but also non-airline operations — such as concessions. In particular, concessions revenue fell by almost half in 2020, bringing in over $40 million less compared to 2019.8

Figure 2 highlights the airport’s prior growth in both the number of passengers who boarded flights and the airport’s concessions revenue before the subsequent impacts of the pandemic in 2020. The number of boarding passengers, also called “enplaned passengers,” is an industry standard for measuring performance of airport concessionaires, because the majority of airport revenues are generated directly or indirectly from boarding passengers.

**FIGURE 2. Denver International Airport Passenger Levels and Concessions Revenue, 2017-2020**

<table>
<thead>
<tr>
<th>Year</th>
<th>Passengers boarding a plane</th>
<th>Concessions revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>30,714,011</td>
<td>$68.3 million</td>
</tr>
<tr>
<td>2018</td>
<td>32,259,217</td>
<td>$83.3 million</td>
</tr>
<tr>
<td>2019</td>
<td>16,873,843</td>
<td>$85.7 million</td>
</tr>
<tr>
<td>2020*</td>
<td>16,873,843</td>
<td>$45.2 million</td>
</tr>
</tbody>
</table>

*Beginning in March 2020, the COVID-19 pandemic impacted overall passenger traffic and airline activity.

**Source:** Auditor’s Office analysis of data from the 2020 Annual Comprehensive Financial Report.

In response to the COVID-19 pandemic, the airport provided some rent and payment relief to businesses operating at the airport, including the concessionaires.

All contracts expiring during that period could continue operations in “holdover” status. In September 2021, the airport extended all concessions

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contracts in holdover status by three years. All other preexisting contracts active during pandemic will be extended by three years when they naturally expire.

The airport did this to help support these businesses negatively affected by the pandemic and ensure essential goods and services remained available to passengers and employees at the airport. New contracts signed during the pandemic do not get this extension.

This kind of relief is not unprecedented; the airport previously extended concessionaire contracts after the Sept. 11, 2001, terrorist attacks.

For the three years preceding the pandemic, the airport paid, on average, about $1.6 million per year to run its concessions program. Figure 3 shows more detailed costs of managing the program.

### FIGURE 3. Costs of Managing Denver International Airport’s Concessions Program, 2017-2019

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost of Metrix Advisors LLC</th>
<th>Labor Costs</th>
<th>Other Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$1,459,227</td>
<td>$1,012,024</td>
<td>$409,262</td>
</tr>
<tr>
<td>2018</td>
<td>$1,772,513</td>
<td>$969,130</td>
<td>$546,570</td>
</tr>
<tr>
<td>2019</td>
<td>$1,569,076</td>
<td>$1,049,103</td>
<td>$480,195</td>
</tr>
</tbody>
</table>

**Source:** Auditor’s Office analysis of data provided by Denver International Airport staff.

Denver International Airport’s rules and regulations require the airport to hire a “third-party administrator” to help manage its Premium Value Concessions program. The airport hired Denver firm Metrix Advisors LLC. Between 2017 and 2019, the airport paid the company about 30% of the total annual cost of the concessions program.

Meanwhile, annual labor costs for 2017 through 2019 amounted to about $1 million a year. Other costs for 2017 and 2019 amounted to about $40,000 both years. In 2018, though, the airport spent about $257,000 on other costs because of outside legal defense costs related to litigation with a concessionaire that had responded to a request for proposals.

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Airport Divisions
Managing the Concessions Program

The airport's senior vice president of concessions manages the concessions program, oversees 11 staff, and reports to the chief commercial officer.

The concessions team is responsible for:

- Strategic planning.
- Creating and implementing relevant policies and procedures.
- Monitoring concessionaires for compliance with contracts and airport rules and regulations.
- Procuring concessionaires.
- Physically inspecting concessions spaces.

The concessions team works with various airport divisions to manage the program. These include:

- **THE AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE PROGRAM** – The program's compliance manager oversees two staff, who monitor concessionaires' compliance with the program's requirements. The compliance team certifies vendors, assesses activities completed by vendors to comply with disadvantaged business enterprise goals, monitors compliance with information collection requirements, and completes annual reporting to the federal government.

- **AIRPORT LEGAL** – Two employees from the airport's legal staff counsel the concessions team on contracts, litigation, rules and requirements, and other relevant legal questions.

- **AIRPORT CONTRACTS** – The contracts team in the airport's Business Management Services group oversees all steps in the concessions contracting process from issuing a request for proposals to signing contracts and amendments. The two staff who work on concessions contracts report to the contracts director.

- **AIRPORT INTERNAL AUDIT** – The airport's internal auditors audit airport programs and functions. These auditors evaluated concessions contract administration in 2019 and assessed concessions contract procurement in 2021. The team has also assessed the Premium Value Concessions program and the airport's Joint Marketing Fund. The airport's auditors do not publicly release their findings.
FINDING 1 AND RECOMMENDATION

Denver International Airport Allows Some Concessionaires to Bypass the Competitive Selection Process

Denver International Airport’s Premium Value Concessions program is meant to incentivize concessionaires that airport employees believe provide the “best” value to the airport. But we identified several problems:

- The program violates a city executive order by allowing select concessionaires to bypass the competitive selection process.
- The airport pays an outside firm a significant amount of money to administer the Premium Value Concessions program even though the program offers no proven benefits to the airport.
- The rules and regulations that govern the program are confusing and difficult to follow.

The Airport Allows Some Concessionaires to Directly Negotiate Contracts as a Benefit of the Premium Value Concessions Program, Creating an Unequal Playing Field

The Premium Value Concessions program allows some airport concessionaires to earn a “program benefit” — which gives select concessionaires the opportunity to directly negotiate a new contract at the airport, rather than face other prospective vendors in a competitive selection process when their contract ends.

When participating in the premium concessionaire program, concessionaires are evaluated in three categories: operations, finances, and customer service.

- **OPERATIONS** – Concessionaires receive a pass-or-fail grade based on whether they pay rent on time, follow their contractual requirements, maintain their concessions space as required, and comply with requirements for hours of operation. If a vendor fails the operational criteria, they cannot earn the program benefit.
- **FINANCES** – Concessionaires are scored on their sales metrics and their sales growth.

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10 Denver International Airport, Denver Municipal Airport System Rules and Regulations, “Rule 46: Services Premium Value Concessions Program” (2014), accessed Dec. 4, 2021, https://www.flydenver.com/sites/default/files/rules/46_Services_PVC_Program.pdf. The program we discuss in this report is the Premium Value Concessions program that focuses on goods, merchandise, food, and related concessions. The airport does have one other Premium Value Concessions program for services. While we did not investigate that program in detail, it is similar and would be subject to many of the same observations we made.
CUSTOMER SERVICE – Concessionaires are assessed on how they compare to other vendors at Denver International Airport and other competitor airports as selected by airport management.

According to program rules, concessionaires must score in the top third of all those participating in the program to earn the “program benefit.” However, airport staff told us they have previously sometimes let more than a third of participants earn the program benefit after participants appealed an unfavorable outcome.

We did not investigate that claim — but based on our review of the program rule, we conclude this would have been a violation. If this discretion did occur, it would have created an unequal playing field for the airport’s concessionaires, which may expose the airport to lawsuits.

Meanwhile, Denver’s Executive Order No. 8 says all city contracts are to be competitively bid, absent special requirements or circumstances. No special requirements or circumstances apply to the airport’s concessions contracts.

The airport — including its concessions program — is subject to Executive Order 8 and must comply with its provisions. Executive Order 8 helps ensure good financial stewardship for Denver and helps maintain a “fair, open, and competitive market for the goods and services [the city] purchases.”

But by allowing some “premium value” concessionaires to avoid the competitive selection process, the airport violates Executive Order 8.

While a new contract may include different terms than the original contract, negotiating a new contract outside the competitive selection process is

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A city executive order requires all city contracts — including those at the airport — to be competitively bid, absent special circumstances.

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13 Exec. Order No. 8.
effectively similar to a contract extension.

Federal guidance for operating airport concessions says airports should carefully consider whether to extend terms for concessionaire contracts to ensure they meet legal requirements, serve the airport’s purposes, and are “granted only to deserving concessionaires.”

The guidance also notes that some concessionaires might volunteer to refurbish or improve concessions spaces in return for a contract extension — but “these inducements should be reviewed and, in most cases, avoided” because the airport is likely to benefit more from a competitive selection process.

Denver International Airport may also be missing out on potential revenue by not evaluating other prospective concessionaires that might want to compete for its available concessions space. Employees at other, comparable major airports we spoke to — such as McCarran International Airport in Las Vegas and Minneapolis-St. Paul International Airport — reported earning more revenue when they changed the brands in their concessions spaces.

Denver International Airport’s own concessions policy says that, “as a publicly owned facility, the [airport] has an obligation to build its concession program on a foundation of fairness and transparency.” By shielding certain participants of its Premium Value Concessions program from competitive selection, Denver International Airport prevents other businesses from being able to compete for profitable concessions contracts, which is unfair and inequitable.

Smaller businesses or local businesses may have a difficult time competing against other concessionaires who consistently earn the program benefit by being in the top third of program participants. The Premium Value Concessions program does not result in a level playing field for these businesses to compete fairly for concessions opportunities at the airport, and it increases barriers to these businesses seeking concessions contracts.

**The Airport Has Never Evaluated the Premium Value Concessions Program to Know Whether It Provides Any Proven Benefit**

The airport pays an outside firm about $500,000 a year to oversee the Premium Value Concessions program without knowing whether the program — or the cost of an outside administrator — yields any benefit to the airport.

In various documents we reviewed from the airport, the Premium Value Concessions program is purported to:

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15 National Academy of Sciences.

• Be an objective method of evaluating eligible concessionaires.
• Reward top performers.
• Encourage growth in concessions revenues.
• Promote good customer service.
• Put the airport’s limited concessions space to the best use.
• Attract and retain airlines.
• Promote environmental sustainability.

But airport staff told us they have never evaluated whether the program actually provides any of these benefits. Without such an evaluation, these claims cannot be substantiated.

Employees we spoke with at other, comparable U.S. airports — such as the Houston Airport System and San Francisco International Airport — said they believe incentive programs are unnecessary given that concessions contracts are lucrative. Because these airport contracts are so valuable, being able to operate at the airport should be incentive enough for vendors to perform well without the need for the Premium Value Concessions program.

Denver International Airport is the third-busiest airport in the United States and the eighth-busiest in the world — making concessionaire contracts at the airport quite valuable. With such high amounts of passenger traffic, additional incentives for top-performing concessionaires are likely not necessary nor a good use of airport resources.

Furthermore, because the airport’s program rewards only preexisting top performers, it is not necessarily finding and retaining the “best” or most-qualified concessionaires available in the open market. As a result, the airport may not be contracting with the vendors that are the most advantageous.

Because airport contracts are so valuable, being able to operate at the airport should be incentive enough for vendors to perform well without the need for the Premium Value Concessions program.

OTHER AIRPORTS WE CONSULTED FOR THIS AUDIT

To fulfill our audit objective of comparing Denver International Airport’s concessions management to other, similar U.S. airports, we looked at concessions-related policies and practices at:

• Minneapolis-St. Paul International Airport.
• San Francisco International Airport.
• McCarran International Airport in Las Vegas.
• The Houston Airport System.

We chose these airports because they used various concessions contracting approaches and had passenger traffic volumes comparable to Denver’s airport.

See the appendix for more information.

The airport rule governing the Premium Value Concessions program requires the airport to hire a third-party administrator “to assist with the administrative demands” of the program. The rule assigns the administrator with various tasks, including:

- Implementing and managing the program.
- Gathering information, evaluating data, and reporting on the program.
- Issuing progress reports based on scoring results.
- Overseeing mystery-shopper surveys, either directly or through a subcontractor.
- Publishing findings and making determinations about the scoring and awarding of the program benefit.
- Participating in the appeals process, and, if requested, meeting with the vendor that made the appeal.

Denver firm Metrix Advisors LLC has been the third-party administrator since the program began in 2012. Airport concessions staff assist in administering the program by evaluating concessionaire operations. Airport staff also review the self-reported income from concessionaires’ annual financial statements before providing this information to Metrix Advisors.

The airport paid Metrix Advisors about $546,000 in 2018 and about $480,000 in 2019 for this administrative oversight. This was about 31% of the entire cost to run the airport concessions program in each of those years.

We learned most concessionaires at the airport are participating in the Premium Value Concessions program. Airport employees said most, if not all, concessions contracts required participation after the program was created.

Concessionaires that participate in the premium value program are required to pay 1% of their gross sales into the Joint Marketing Fund each month. The fund pays the fees for the outside administrator as well as marketing services for concessionaires. But because only one-third of concessionaires earn the Premium Value Concessions program benefit, that means two-thirds of the airport’s concessionaires are required to pay for a program that does not ultimately benefit them.

We asked airport staff whether they had considered administering the program in-house. They said they had not, but they thought it would be possible with more employees.

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Because airport staff have not formally evaluated the program, they do not know whether administering it in-house could save the airport money. In the meantime, the money the airport spends for an external program administrator may be wasteful, which the U.S. Government Accountability Office defines as using or spending resources “carelessly, extravagantly, or to no purpose.”

If the airport’s “premium value” businesses truly are top performers, they should be able to win a competitive selection process against other prospective concessionaires — making the program, and all the effort required to support it, a waste of resources that the airport could put to better use.

The Airport Rule Governing the Premium Value Concessions Program Is Incomprehensible, So Staff May Misinterpret It or Inequitably Apply It

Concessionaires, airport staff, and the third-party administrator all follow an airport rule that governs the Premium Value Concessions program. But the rule is itself problematic.

It is 32 pages long, and in many instances, terms are not well defined and the language is unclear. In general, we found the rule to be exceptionally confusing; someone who is unfamiliar with the process would find it even harder to follow.

For example, the rule does not contain formulas or explanations to calculate amounts, and the guidelines for score calculations are cumbersome. This could lead to inaccurate scores, the airport retaining poor-performing concessionaires if scores are calculated incorrectly, and concessionaires becoming disgruntled when they lose out on the program benefit. The airport's own legal team said the rule was incomprehensible — but they were working on revising it, as of August 2021.

Due to the complexity of the rule, it is unlikely two airport employees could perform a prescribed procedure without additional information and arrive at the same conclusion after reading the rule. This risks inefficiencies and inconsistencies in how the airport's concessions team applies the rule. Additionally, confusing and unclear rules may result in costly lawsuits if dissatisfied concessionaires perceive the program as unfair.

The cause of all these issues is that airport employees have never evaluated the effectiveness of the Premium Value Concessions program. The Auditor's Office audited the concessions program in 2014 and recommended that the airport formally assess the effectiveness of the program and its related rule on a regular basis. The Auditor's Office followed up on this recommendation in 2015 and found no evidence the airport implemented that recommendation.

Airport funds are being used to reward concessionaires with non-competitive contracts with no demonstrated benefit to the city.

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During this audit in 2021, we asked airport staff whether they had yet assessed the program; they said they had not.

Because the airport spends significant money on the Premium Value Concessions program without any proven benefit and because the program allows certain vendors to circumvent a competitive selection process in violation of a city executive order, it is not in the airport's best interest to continue the program.

1.1 RECOMMENDATION  
Discontinue the Premium Value Concessions Program

Denver International Airport’s senior vice president of concessions should discontinue the Premium Value Concessions program because it violates Executive Order No. 8’s requirement for competitive selections and has no proven benefit to the airport.

AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – AUG. 31, 2022  
SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.
FINDING 2 AND RECOMMENDATIONS

Denver International Airport Has Not Evaluated Whether It Uses the Optimal Contracting Approach for Its Overall Concessions Program

Denver International Airport’s concessions team has never analyzed how it structures the overall concessions program — particularly to identify the appropriate mix of concessionaire contracts that would most benefit the airport.

The airport developed a concessions master plan in 2019 to forecast passenger demands and future customer needs. The master plan includes important factors such as predictions of passenger counts, current and future construction projects, branding principles and concourse themes, and future development efforts.

However, airport employees developed this plan without determining the optimal mix of prime concessionaire contracts and direct contracts with individual concessionaires. The mix of concessionaires may impact profitability, customer service, and other goals important to the airport.

Federal guidance says airport operators should decide which contracting approach offers the best outcome after they analyze the costs and benefits of each approach. The guidance goes on to say that competition, capital investment, administrative costs, and financial return can all be impacted by which contracting method an airport chooses.

Denver International Airport uses a mixed approach toward concessionaire contracts; it has both prime concessionaires and other concessionaires under direct contract. However, staff said the airport uses direct contracts in most situations.

As of August 2021, there were 146 concessions locations — 42 of

DIRECT CONTRACTING VERSUS PRIME CONTRACTING

Under a direct concessionaire contract, the airport selects the best vendor to operate at an individual location or at several locations as part of one contract.

In contrast, under a prime concessionaire contract, the airport contracts with a concessionaire to lease multiple concessions spaces. The prime concessionaire might directly operate the locations, or it may sublease some or all locations. An airport can have one or more prime concessionaires.

Figure 1 on page 4 illustrates this difference.

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21 National Academy of Sciences.
which were operated by individual concessionaires and 104 of which were run by 26 concessionaires that each had more than one location in the airport. Some of these 26 concessionaires are prime concessionaires, while others are individual concessionaires who signed a contract with the airport for more than one location.

For example, Skyport Development serves as a prime concessionaire on the mezzanine level in one of the concourses. As the prime concessionaire there, it is responsible for attracting customers and the right vendors to that location. Concessions staff said this approach reduces the airport’s risk when passengers are reluctant to go to the mezzanine level because they want to stay close to their departure gates.

In speaking with employees at other, comparable U.S. airports — such as Minneapolis-St. Paul International Airport and McCarran International Airport in Las Vegas — we learned a mixed approach like Denver’s is typical. However, each airport is unique. Therefore, Denver International Airport must assess which mix is best for its facilities.

The U.S. Government Accountability Office says an economic analysis helps inform decision-makers about potential economic effects of an action. An organization should examine the effects of various alternatives — using one as a baseline for comparison — and then quantify the important economic impacts.\(^2\) The analysis should describe and justify the analytical choices, assumptions, and data used.\(^3\) The U.S. Government Accountability Office also says organizations should periodically perform a cost-benefit analysis to help meet their goals.\(^4\)

Federal guidelines specific to airport concessions say the airport should consider the benefits and drawbacks each contracting approach might have on various aspects of a concessions program such as competitiveness, the capital investment required, the airport’s administrative costs, and potential financial returns to the airport. For example, direct leasing typically increases competition among vendors, requires higher capital investment, and results in higher administrative costs and financial returns. In contrast, in a prime concessionaire situation, competition, administrative costs, and financial returns may be lower.\(^5\)

Costs, revenues, and prices are not the only factors that should be considered as the airport develops its approach to concessionaire contracting. Federal guidelines specific to airport concessions say airport concessionaire programs should prioritize a variety of goals.\(^6\) Other factors include:

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\(^6\) National Academy of Sciences, 38.
We learned airport employees never revisited their concessionaire contracting approach — or assessed the costs and benefits — since the airport opened in 1995, over 25 years ago.

- Customer service.
- Design and aesthetics.
- Goals for supporting small businesses and businesses owned by women and people of color.
- Local business participation.
- Social responsibility.
- Potential administrative burdens.

We learned Denver International Airport staff never revisited their concessionaire contracting approach — or assessed the costs and benefits — since the airport opened in 1995, over 25 years ago.

Airport staff told us they have not considered changing concessionaire contracting because the current approach allows the airport to have more control in choosing concessionaires and prioritizing local businesses. But the concessions policy does not define what a “local business” is, nor does it have specific contract procurement procedures aimed at increasing local businesses’ participation.

As a result, unless it performs a cost-benefit analysis, the airport cannot know whether it uses the most effective approach to meet its goals in contracting with concessionaires — such as maximizing revenue, making the best use of concessions space, or maximizing opportunities for certain small businesses.

2.1 RECOMMENDATION Perform a Cost-Benefit Analysis

Denver International Airport’s senior vice president of concessions should periodically assess the costs and benefits of the airport’s approach to concessionaire contracting to ensure it achieves the airport’s objectives. The assessment should evaluate potential approaches (e.g., direct contracts versus prime concessionaire contracts) in line with the specific factors for policies described in the federal “Resource Manual for Airport In-Terminal Concessions.”

AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – JULY 31, 2022
SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.

27 National Academy of Sciences, 38.
2.2 RECOMMENDATION Update the Concessions Master Plan

After implementing Recommendation 2.1, Denver International Airport’s senior vice president of concessions should update the airport’s concessions master plan to reflect the airport’s chosen approach to concessionaire contracting, including the reason for the chosen approach.

AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – AUG. 15, 2022
SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.
FINDING 3 AND RECOMMENDATIONS

Some of Denver International Airport’s Concessions Contracting Practices Are Unfair

We identified practices in the airport’s concessions contracting processes that are unfair. For instance, we found the airport allows certain concessionaires to “hold over” when their contract ends and it allows them to stay in their leased concessions space indefinitely without going through the competitive selection process that other vendors must go through. This results in inequitable treatment of concessionaires at the airport.

We also found the airport destroys scoring information after a concessionaire is selected. As a result, the airport is not transparent in how it selects vendors to receive airport concessions contracts.

The Airport Allows Some Concessionaires to Remain Years after Their Contracts Expire

Airport staff let some vendors continue operating at the airport long after their concessionaire contracts expire — on average by more than five and a half years, among concessionaires operating as of early August 2021.

Staff told us all concessionaire contracts have a “holdover provision” that lets a vendor continue to pay rent and occupy their space even after their lease expires. Concessions staff said that, due to the COVID-19 pandemic, any expiring contract could continue under this holdover provision. They also said all contracts in holdover status were extended by three years beginning Sept. 1, 2021.

But we found the holdover practice was in place long before the pandemic began in spring 2020.

In analyzing the airport’s concessionaire contracts, we found 40% of contracts active as of Aug. 3, 2021 — or 37 of 92 contracts at that time — were already holding over since before Dec. 31, 2019. As of that August date and as shown in Figure 4 on the next page, these holdovers had been lasting from well over a year to more than 12 years. Some dated back to 2008.

Airport staff said they do not set a time limit on how long a concessionaire can hold over. The holdover process varies from contract to contract, but the airport must agree to a holdover.

Airport staff said, typically, they document this through letters explaining the need for the holdover. And typically, they allow holdovers to maintain services for the traveling public while the airport pursues major initiatives such as master planning or to continue operations, as the airport did during the pandemic.
We reviewed the contract list for concessions space at Denver International Airport as of Aug. 3, 2021, and found the airport allowed many contracts to hold over for years after their contracts ended.*

*We did not analyze contracts that entered holdover status after Dec. 31, 2019, because shortly after, the airport began allowing concessionaires to automatically hold over as a result of the COVID-19 pandemic.

Source: Auditor’s Office analysis based on the contract list provided by Denver International Airport.

When the airport identifies a need to hold over a contract, a contract administrator works with the airport’s legal team to review the contract language and draft a holdover notification. Airport staff said that when they determined which concessionaires were allowed to hold over, any concessionaire was eligible as long as it was not prohibited by their contract — and the airport would determine whether it was in the public’s best interest to continue providing the goods and services.

We judgmentally selected and reviewed five held-over contracts. We selected contracts with longer holdover periods and those that were in holdover status before the pandemic because all concessionaires were allowed to hold over as a result of the pandemic. We found the airport may
have had legitimate business reasons for holding over some contracts, such as airport construction having unforeseen delays. Others — such as one of the contracts from 2008 — have no justification.

The city’s Executive Order No. 8 requires all city agencies to justify contracts with terms longer than three to five years.\(^{28}\) We found the airport does this on new contracts, but the airport violates the executive order by allowing preexisting contracts to exceed their terms. Although the time frame of an original contract might be justified, the holdover extension is not.

Additionally, as we discussed in Finding 1, Executive Order No. 8 requires contracts to be competitively bid, absent special circumstances.\(^{29}\) Allowing vendors to remain on expired contracts without reasonable emergencies or other appropriate extenuating circumstances violates the executive order.

Meanwhile, federal guidance says airports should carefully consider whether to extend terms for concessionaire contracts to ensure they meet legal requirements, serve the airport’s purposes, and are “granted only to deserving concessionaires.”\(^{30}\) It also notes that some concessionaires might volunteer to refurbish or improve concessions spaces in return for a contract extension — but “these inducements should be reviewed and, in most cases, avoided” because the airport is likely to benefit more from a competitive selection process.\(^{31}\)

When we were investigating the cause of this issue, airport staff told us the airport did not include some businesses in its planning because airport staff did not decide how those businesses would fit into the concessions master plan. As a result, the airport did not prioritize these businesses; the airport allowed them to hold over while the airport focused on other businesses.

We conclude that airport employees did not prioritize competitive procurement with some vendors and chose to use the holdover status. The lengthy master planning process also contributed to the more recent holdovers.

As a result, though, the airport treats its concessionaires inequitably. Some concessionaires are subject to the city’s competitive selection process, while others can maintain their initial contract terms for years past their expiration under the special holdover status. Because all contracts in holdover received a three-year extension beginning September 2021, the airport will have to work on many contract procurements at the same time when all these contracts expire.

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\(^{29}\) Exec. Order No. 8.


\(^{31}\) National Academy of Sciences.
3.1 RECOMMENDATION  Review Held-Over Contracts

Denver International Airport’s senior vice president of concessions should work with the airport’s contracts director to review all contracts in holdover status — and those extended following the holdover — and assess opportunities for new procurements or new contracts, in accordance with Executive Order No. 8.

AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – MAY 30, 2022
SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.

3.2 RECOMMENDATION  Establish and Enforce Policy

Denver International Airport’s senior vice president of concessions should work with the airport’s contracts director and legal staff to establish and enforce a policy and procedure for held-over contracts — including setting a reasonable time frame that limits the length of time contracts can remain in this status and requiring a reasonable justification for holding over a contract. Documentation of this justification should also be reviewed and approved.

AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – APRIL 15, 2022
SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.

The Airport Is Not Transparent with Its Scoring Process When Selecting Concessionaires

When prospective vendors respond to a request for proposals for airport concessions space, a selection panel evaluates and scores the vendors that meet the minimum criteria.

But how exactly a particular vendor scores in that process is secret. Airport staff said the selection panel’s individual and summary score sheets are not kept once a concessionaire’s contract is signed.

Furthermore, procedures maintained by the airport’s Business Management Services group say the score sheets must be destroyed; only the final ranking and comments are kept.

FOR MORE INFORMATION

We looked at concessions-related policies and practices between Denver International Airport and four other similar U.S. airports. Other than the score sheet issue described in this finding, we found that Denver airport’s concessions practices related to fairness and equity were generally in line with the other airports we assessed.

For further details, see the appendix.
Airport employees told us two reasons for not keeping the score sheets:

- The airport wants to protect panel members from disclosing their score and to allow panel members to objectively score the proposals.
- Destroying score sheets might deter unsuccessful proposers from suing the airport.

But by destroying the score sheets, the airport is not being transparent with the residents, community members, and business partners it serves. It is also not consistent with the Colorado Open Records Act and not compliant with the city’s records retention policy or other leading practices.

The Colorado Open Records Act says “all public records shall be open for inspection by any person at reasonable times,” except for some exceptions specifically provided by law.\(^{32}\)

Score sheets for competitive solicitations are not among the exceptions — which otherwise include certain criminal justice records, work product prepared for elected officials, and other records for specific situations such as healthcare foundations. State guidance says that “as a general rule,” government entities should consider most documents to be subject to the open records law.\(^{33}\)

Meanwhile, the National Association of State Procurement Officials says a contract’s file should include documentation throughout the project’s life cycle — including pre-award solicitation documents.\(^{34}\) And the city’s records retention schedule says all purchasing documents must be kept for seven years. Although the term “purchasing documents” is vague, it is reasonable to infer a selection panel’s scores are part of the purchasing (i.e., procurement) process.

Nonetheless, having a vague records retention policy can cause confusion and result in records not being maintained as intended. The Government Finance Officers Association says policies should be “a practical, step-by-step explanation of how procedures should be performed” and they should not be vague or idealized.\(^{35}\)

This is not the first time our office has identified a lack of transparency at the airport. A 2014 audit of concessions management previously found the airport was destroying selection panel members’ score sheets — showing this remains a problem for the concessions program eight years later.\(^{36}\)


another example, a 2018 examination commissioned by our office found the airport was destroying similar procurement records.\textsuperscript{37}

As the airport's own concessions policy says: Because Denver International Airport is a publicly owned facility, it is “obligat[ed] to build its concessions program on a foundation of fairness and transparency.”\textsuperscript{38}

The airport risks its reputation by destroying score sheets, and because it is not being transparent, it risks both the appearance of corruption and potential lawsuits from concessionaires. When key documents are not available for public inspection, it may give the appearance that the airport did not follow the rules or that favoritism or other improprieties influenced the selection process.

<table>
<thead>
<tr>
<th>3.3</th>
<th>RECOMMENDATION</th>
<th>Revise Airport Procedures for Records Retention</th>
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<tr>
<td></td>
<td>Denver International Airport’s senior vice president of business operations should revise the airport’s procedures related to selection panel score sheets and ensure airport staff retain the score sheets for seven years, in accordance with the city’s records retention schedule. This records retention should begin as soon as possible for all contract selection panel score sheets.</td>
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\textbf{AGENCY RESPONSE: AGREE, IMPLEMENTATION DATE – DEC. 1, 2021}

SEE PAGE 26 FOR THE AGENCY’S FULL RESPONSE TO OUR RECOMMENDATIONS.


\textsuperscript{38} Denver International Airport, “DEN Concession Policy” (2019).
AGENCY RESPONSE TO AUDIT RECOMMENDATIONS

February 1, 2022

Auditor Timothy M. O’Brien, CPA
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O’Brien,

The Office of the Auditor has conducted a performance audit of Denver International Airport Concessions Management.

This memorandum provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on January 7, 2021. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1

Denver International Airport Allows Some Concessionaires to Bypass the Competitive Selection Process

RECOMMENDATION 1.1

Discontinue the Premium Value Concessions Program

Denver International Airport’s senior vice president of concessions should discontinue the Premium Value Concessions program because it violates Executive Order No. 8’s requirement for competitive selections and has no proven benefit to the airport.

<table>
<thead>
<tr>
<th>Agree or Disagree with Recommendation</th>
<th>Target date to complete implementation activities (Generally expected within 60 to 90 days)</th>
<th>Name and phone number of specific point of contact for implementation</th>
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<tbody>
<tr>
<td>Agree</td>
<td>08/31/22</td>
<td>Pamela Dechant (303) 342-2557</td>
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</table>

Narrative for Recommendation 1.1

DEN agrees with discontinuing the Premium Value Concessions program as it is currently designed, but believes the program is in line with Executive Order No. 8. DEN believes the PVC program falls within the special circumstances listed in Executive Order No. 8 and that the applicable manager (here, the former CEO) had the...
responsibility to authorize and justify any deviation from the policy. The PVC program, as authorized by DEN’s CEO, was further approved by the Mayor and City Council.

DEN does support incentivizing performance and will create an internal program designed to support the concession program while providing a positive customer experience for the traveling public.

AUDIT FINDING 2
Denver International Airport Has Not Evaluated Whether It Uses the Optimal Contracting Approach for its Overall Concessions Program

RECOMMENDATION 2.1
Perform a Cost-Benefit Analysis

Denver International Airport’s senior vice president of concessions should periodically assess the costs and benefits of the airport’s approach to concessionaire contracting to ensure it achieves the airport’s objectives. The assessment should evaluate potential approaches (e.g., direct contracts versus prime concessionaire contracts) in line with the specific factors for policies described in the federal “Resource Manual for Airport In-Terminal Concessions.”

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<td>07/31/2022</td>
<td>Pamela Dechant (303) 342-2557</td>
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</table>

Narrative for Recommendation 2.1
Agreed. SVP of Concessions will develop an assessment plan and scope and will identify an appropriate party to conduct the assessment for review by executive leadership.

RECOMMENDATION 2.2
Update the Concessions Master Plan

After implementing Recommendation 2.1, Denver International Airport’s senior vice president of concessions should update the airport’s concessions master plan to reflect the airport’s chosen approach to concessionaire contracting, including the reason for the chosen approach.

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</table>
DENVER INTERNATIONAL AIRPORT
8500 Peoria Blvd | Denver, Colorado 80249-6340 | (303) 342-2000

| (Generally expected within 60 to 90 days) | | Pamela Dechant (303) 342-2557 |
|---|---|
| Agree | 08/15/22 |

Narrative for Recommendation 2.2

DEN’s Senior Vice President of Concessions will update the airport’s concessions master plan to reflect the airport’s chosen approach to concessionaire contracting, including the reason for the chosen approach.

AUDIT FINDING 3

Some of Denver International Airport’s Concessions Contracting Practices Are Unfair

RECOMMENDATION 3.1

Review Hold-Over Contracts

Denver International Airport’s senior vice president of concessions should work with the airport’s contracts director to review all contracts in holdover status — and those extended following the holdover — and assess opportunities for new procurements or new contracts, in accordance with Executive Order No. 8.

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<tr>
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<td>05/30/22</td>
<td>Pamela Dechant (303) 342-2557</td>
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Narrative for Recommendation 3.1

Agree, and this effort is in progress. DEN’s Senior Vice President of Concessions will continue to review all contracts in holdover status as part of the commercial phasing plan.

A phasing plan for holdover contracts commenced in Q4 2021. All concession agreements were issued a 3-year extension to support business recovery and survival while meeting the basic needs of the traveling public through the pandemic. Priority for the phasing plan is being given to holdover agreements. This phasing plan will include timelines of RFP launch based on location and capacity to serve the traveling public during development. For example, the plan needs to thoughtfully time closures in each concourse based on keeping options open in each sub core location throughout development, especially based on the projection of passengers traveling through DEN.
RECOMMENDATION 3.2

Establish and Enforce Policy

Denver International Airport’s senior vice president of concessions should work with the airport’s contracts director and legal staff to establish and enforce a policy and procedure for held-over contracts — including setting a reasonable time frame that limits the length of time contracts can remain in this status and requiring a reasonable justification for holding over a contract. Documentation of this justification should also be reviewed and approved.

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<td>04/15/22</td>
<td>Pamela Dechant (303) 342-2557</td>
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</table>

Narrative for Recommendation 3.2

DEN agrees with the recommendation to work with contracts director and legal staff to establish a policy and procedure for held-over contracts to be added to the Concessions Standard Operating Procedures. Justification for entering holdover phase is already captured in each agreement and holdover notification, and DEN will continue this practice.

DEN believes holdovers do not violate Executive Order No. 8. Language in Executive Order No. 8 does not reference holdover provisions or provide any guidance on when holdover provisions in appropriately executed contracts may or may not be utilized. DEN interprets Executive Order 8 language to detail the standards applicable to the selection, parameters, and execution of new contracts and contract documents. DEN provides language about holdover provisions in every concession agreement. Instead, DEN believes Executive Order No. 8 contains language suitable for having the flexibility to maintain, operate and develop the 3rd busiest airport in the world.

As 24/7 public transportation facilities, airports must maintain flexibility to ensure continued provision of services and goods to the traveling public. DEN understands Executive Order No. 8 to allow this flexibility in the special circumstances language.

Guidance for developing new concession programs or agreements should be surveyed differently during the stage of drafting a new agreement than when considering an agreement already in place (holdovers). Too many factors can impact the need to maintain service for the traveling public, some of which cannot possibly be predicted years in advance. It should not be overlooked that it is standard practice for an airport to position itself for years to be able to activate a major master plan. In DEN’s case, the largest commercial development in the United States. In most cases, placing contracts on holdover is the only logical solution. Airports must have a
method of being able to serve the traveling public while activating said plan(s). Because commercial development in a public transportation facility which never closes requires careful preparation, it would be difficult, if not impossible, to close each concession location upon exact expiration. If this technique were used, there would never be a time in which an airport can trigger development since there would be multiple expiration dates across multiple locations.

In summary, we believe implementing Recommendation 3.1 and the continuation of the master plan development will naturally solve for outstanding holdovers in addition to adding a policy and procedure to the standard operating procedures.

**RECOMMENDATION 3.3**

Revise Airport Procedures for Records Retention

Denver International Airport’s senior vice president of business operations should revise the airport’s procedures related to selection panel score sheets and ensure airport staff retain the score sheets for seven years, in accordance with the city’s records retention schedule. This records retention should begin as soon as possible for all contract selection panel score sheets.

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<tr>
<td>Agree</td>
<td>12/01/21</td>
<td>Greg Hegarty 303-342-2182</td>
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**Narrative for Recommendation 3.3**

Denver International Airport’s Senior Vice President of Business Operations has revised the airport’s procedures related to selection panel score sheets and has ensured airport staff retain the score sheets for seven years, in accordance with the city’s records retention schedule. This new records retention procedure for all contract selection panel score sheets went into effect December 1, 2021.

Please contact Pamela Dechant at (303) 342-2557 with any questions.

Sincerely,

Phillip A. Washington
Chief Executive Officer
cc: Valerie Walling, CPA, Deputy Auditor
    Dawn Wiseman, CRMA, Audit Director
    Vilma Balnyte, CPA, MBA, Audit Manager
    Penny May, Chief Commercial Officer
    Pamela Dechant, Senior Vice President, Concessions
    Greg Hegarty, Senior Vice President, Business Operations
OBJECTIVE

To assess how Denver International Airport’s concessionaire contracting practices compare to concessions contracting practices at selected comparable airports and to evaluate whether Denver International Airport’s approach is cost effective and fair.

SCOPE

We assessed costs for the airport’s concessions program for the period of Jan. 1, 2017, through Dec. 31, 2020. We evaluated the airport’s concessions contracting approach, as well as the fairness and equity of its approach — including its Premium Value Concessions program.

During our work, we also discovered that some contracts had longer terms, so we evaluated contracts from Jan. 1, 1995, through Aug. 3, 2021, for their length and holdover status.

METHODOLOGY

We used several methodologies to gather and analyze information related to the audit objectives. The methodologies included but were not limited to:

- Obtaining and reviewing data on concessions costs and revenues from Denver International Airport and the four other airports we looked at: Minneapolis-St. Paul International Airport, San Francisco International Airport, McCarran International Airport in Las Vegas, and the Houston Airport System.
- Comparing the costs and benefits of Denver International Airport’s concessionaire contracting practices to the four other airports.
- Reviewing the airport concessions program’s policy and master plan as well as the airport’s contract procurement policy.
- Researching leading practices including those from the U.S. Government Accountability Office, the Government Finance Officers Association, the National Association of State Procurement Officials, and the federal Airport Cooperative Research Program.
- Reviewing federal, state, and local regulations to determine the airport’s compliance.
- Describing the Premium Value Concessions program and its costs.
• Evaluating contract lengths and how long concessionaires operated in their concessions space after their contracts ended.
• Interviewing Denver International Airport concessions, contracts, and legal staff.
• Reviewing concessions-related internal audit reports at Denver International Airport and audit reports from other U.S. airports.
• Interviewing concessions staff at Minneapolis-St. Paul International Airport, San Francisco International Airport, McCarran International Airport in Las Vegas, and the Houston Airport System.
• Documenting Denver International Airport’s efforts to ensure fairness in managing its concessions program.
• Comparing Denver International Airport’s efforts regarding fairness and equity in concessions management with the efforts of Minneapolis-St. Paul International Airport, San Francisco International Airport, McCarran International Airport in Las Vegas, and Houston Airport System, as well as leading practices.
APPENDIX

Comparison of Fairness and Equity Policies for Denver International Airport’s Concessions Program with Selected Other Major U.S. Airports

As part of assessing what efforts Denver International Airport makes to ensure fairness and equity in concessions, we compared aspects of Denver’s concessions program — such as the presence of certain policies and practices — with those of four other major U.S. airports. While we did not evaluate how these policies were implemented or their effectiveness, we found Denver’s policies and procedures generally aligned with these peer airports.

The other U.S. airports we spoke with were:

• Minneapolis-St. Paul International Airport.
• San Francisco International Airport.
• McCarran International Airport in Las Vegas.
• The Houston Airport System.

We chose these airports’ concessions programs because they have a variety of contracting approaches and a comparable passenger volume. We found Denver International Airport’s concessions program was generally consistent with them when it came to:

• Having goals to support disadvantaged businesses.
• Using a selection panel to score prospective vendors seeking concessionaire contracts.
• Using defined criteria to score prospective vendors.
• Encouraging local businesses to seek concessionaire contracts.

Denver International Airport’s practices deviated in two areas of our analysis. First, unlike most of the others, it has a policy to prevent any one concessionaire from leasing too much space and potentially diminishing competition.

Second, as noted in Finding 3, which begins on page 20, Denver International Airport does not retain its selection panel’s score sheets — which does not align with the Colorado Open Records Act or the city’s records retention policy.

Figure 5 on the next page summarizes our comparative analysis, which we will now discuss in detail.
FIGURE 5. Comparison of Certain Concessions Contracting Processes at Denver International Airport with Selected Other U.S. Airports

<table>
<thead>
<tr>
<th>Has an Airport Disadvantaged Business Enterprise Program</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
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<tr>
<td>Process in place</td>
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<td>●</td>
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<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
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<tr>
<td>Process in place</td>
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<tr>
<th>Uses a contract selection panel</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process not in place</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Uses selection criteria</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process in place</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Retains selection panel members’ individual score sheets</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response provided</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Retains the summary selection panel score sheet</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process in place</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Encourages local businesses’ participation</th>
<th>San Francisco International Airport</th>
<th>Houston Airport System</th>
<th>Minneapolis-St. Paul International Airport</th>
<th>McCarran International Airport in Las Vegas</th>
<th>Denver International Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process in place</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

Source: Auditor’s Office analysis.

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE PROGRAM – Like Denver’s airport, the four other airports we spoke with all have goals for their participating concessionaires related to supporting disadvantaged businesses (i.e., those owned by women, people of color, and other similarly situated individuals deemed to be “socially and economically disadvantaged”).

There are certain requirements for the Airport Concessions Disadvantaged Business Enterprise Program. For example, federal rules say that to determine whether a participating concessionaire meets its goal, the airport should calculate a percentage of gross receipts a disadvantaged business earns compared to the total dollar value of the concessions contract. For 2017 through 2020, the disadvantaged business enterprise goals at Denver International Airport were 33% for food and beverage businesses and 25% for retail businesses.

We learned the airport is reassessing related data and hired a consultant to determine new goals to help disadvantaged businesses that reflect the airport and the Denver community. The airport’s disadvantaged business team is responsible for setting the goals, certifying eligible firms, monitoring performance, and inspecting physical locations and records to ensure compliance with federal requirements for the Airport Concessions Disadvantaged Business Enterprise Program.

CONCENTRATION-OF-OWNERSHIP POLICY – Of the four airports we spoke to, only San Francisco International Airport has a concentration-of-ownership policy, as Denver International Airport does.

The policy at Denver’s airport was established to “encourage competition and maintain opportunities for small local businesses.” According to the policy, a single airport concessionaire may not lease more than 24% of the airport’s total concessions space or 15% of space for either food and beverage or retail. San Francisco’s policy prevents one vendor from having more than eight leases in the airport,

39 49 C.F.R. 23 § 23.3.
regardless of their ownership percentage.

**CONTRACT SELECTION PANEL** – Like Denver’s airport, the four other airports we spoke with all use a request-for-proposals process and a contract selection panel to score and evaluate prospective vendors’ proposals. The composition of a selection panel at each airport is different because each airport sets the requirements for panel membership based on its needs.

For example, the selection panel at Minneapolis-St. Paul International Airport includes staff from the airport’s finance, legal, commercial management, facilities, airport development, and building teams. San Francisco International Airport’s selection panel has between three and five members who can be an employee from another airport department, a representative from an airline, or an employee from a local shopping mall or another airport.

Only Denver allows its airport’s chief executive officer to approve selection panel members, and it is also the only airport that we spoke with that allows community members to serve on the panel.

In 2021, Denver International Airport's internal auditors recommended the airport track how it chooses selection panel members based on their areas of expertise and background for each specific procurement. The airport made this internal recommendation to increase transparency as well as reduce confusion and misinformation to the public and prospective concessionaires.

The airport’s concessions policy requires panel members to be selected who do not have a conflict of interest with prospective vendors and who can reasonably assess prospective concessionaires’ ability to meet minimum qualifications, maximize sales, and provide high levels of customer satisfaction.

**SELECTION CRITERIA** – All four airports we spoke with use and disclose in the request for proposals their criteria to select concessionaires, as Denver does. For each concessions opportunity, Denver International Airport sets criteria to evaluate and weigh the proposals it receives.

The airport’s concessions policy says these criteria should include the “depth of management, demonstrated experience, reputation, proposed improvements, level of capital investment, financial return to the airport, and any other specific criteria set forth in the request for proposals.”

**SELECTION PANEL SCORE SHEETS** – As we noted in Finding 3, which begins on page 20, Denver International Airport destroys its selection panel’s score sheets. By comparison, we learned at least three comparable airports retain the summary score sheets from their selection panels. We were unable to obtain an answer to this question from the Houston Airport System.

San Francisco International Airport keeps individual score sheets; Minneapolis-St. Paul International Airport and McCarran International Airport in Las Vegas do not. The Houston Airport System did not provide an answer.

**LOCAL BUSINESS PARTICIPATION** – Lastly, each airport we spoke with emphasizes local businesses’ participation in airport concessions. Denver International Airport’s 2019 concessions master plan has strategies to encourage local business participation — including helping to connect disadvantaged businesses with prime concessionaires and helping support equitable working relationships for disadvantaged businesses.

However, as we said in Finding 2 on page 18, the airport does not define what a “local business” is. Therefore, it is unclear whether Denver International Airport’s strategies are effective.

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Office of the Auditor

The Auditor of the City and County of Denver is independently elected by the residents of Denver. He is responsible for examining and evaluating the operations of city agencies and contractors for the purpose of ensuring the proper and efficient use of city resources. He also provides other audit services and information to City Council, the mayor, and the public to improve all aspects of Denver’s government.

The Audit Committee is chaired by the Auditor and consists of seven members. The Audit Committee assists the Auditor in his oversight responsibilities regarding the integrity of the city’s finances and operations, including the reliability of the city’s financial statements. The Audit Committee is structured in a manner that ensures the independent oversight of city operations, thereby enhancing residents’ confidence and avoiding any appearance of a conflict of interest.

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