

FAA Civil Rights - National Airport Civil Rights Training Conference

DBE Update: Reauthorization, Fraud and Litigation

Presented to: 2011 National Civil Rights
Training Participants San Diego

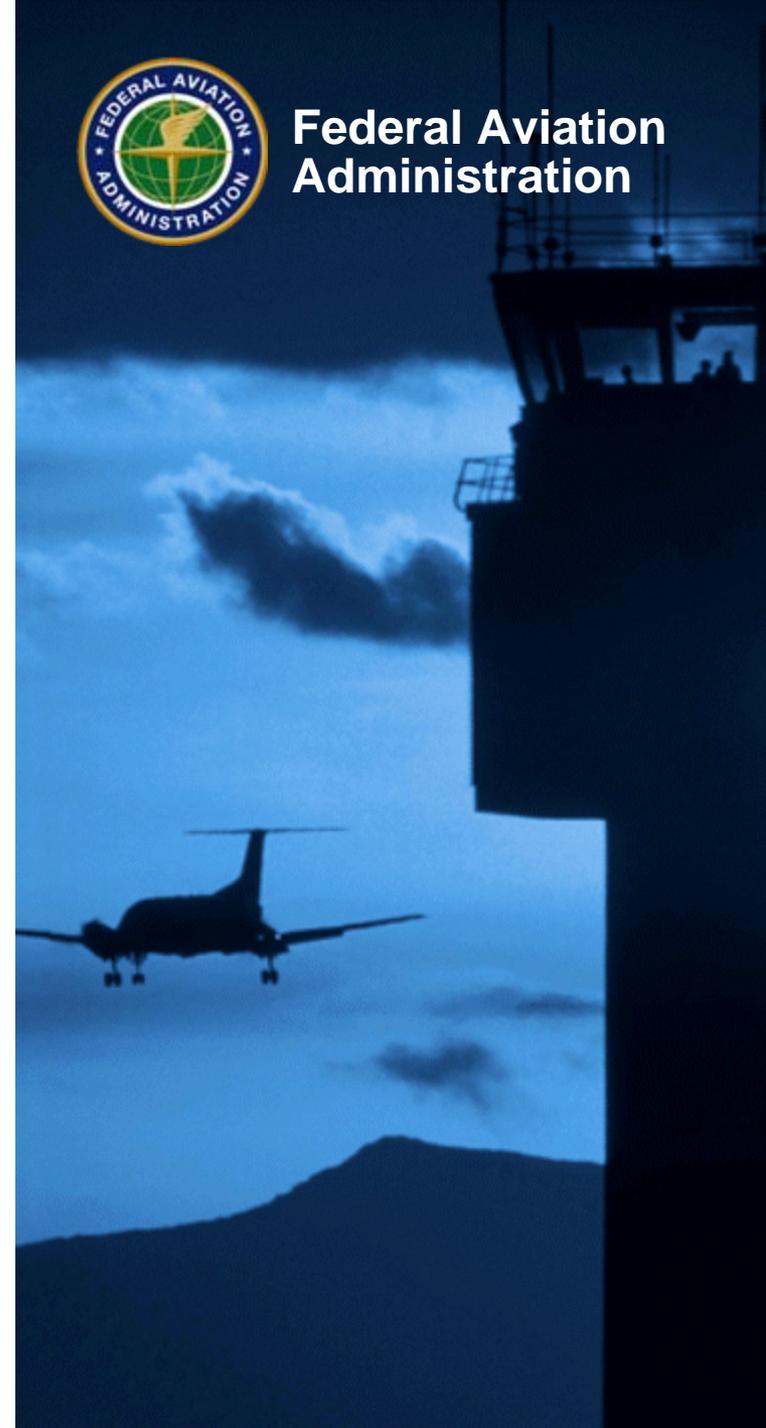
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Federal Aviation
Administration



FAA Reauthorization

House HR 658

- <http://www.gpo.gov/fdsys/pkg/BILLS-112hr658ih/pdf/BILLS-112hr658ih.pdf>
- Mandatory Training Program to Standardize DBE Certification

Senate S223

- <http://www.gpo.gov/fdsys/pkg/BILLS-112s223es/pdf/BILLS-112s223es.pdf>
- Formal, structured certification training program for the ACDBE Program
- Authority for FAA to hire 3 additional staff to implement the ACDBE program

Administration's 2012 Proposal

- Eliminate AIP — entitlements and discretionary funding - to large and medium hubs
- Increase in the PFC cap to \$7 for all airports

DBE Fraud

Red Flags for Potential Fraud Schemes

- Minority owner lacking background, expertise, or equipment to perform subcontract work
- Employees shuttling back and forth between prime contractor and minority-owned business payrolls
- Business names on equipment and vehicles covered with paint or magnetic signs
- Orders and payment for necessary supplies made by individuals not employed by minority-owned business
- Prime contractor facilitated purchase of minority-owned business
- Minority-owned business owner never present at job site
- Prime contractor always uses the same minority-owned business

DBE Fraud Cont.

Identify DBE Fraud

- Sponsors required to monitor contract to verify named DBE performing commercial useful function and properly compensated
- Sponsors must be diligent in monitoring contracts to detect fraud indicators
 - Look for Red Flags
- Sponsor whose project incurs DBE fraud risks costs being ruled ineligible under AIP

DBE Fraud Cont.

Consequences of DBE fraud

- Loss of AIP eligibility or repayment of AIP
- Immediate suspension of work
- Cessation or withholding of project payments
- Investigation by the U.S. DOT Office of the Inspector General and/or the U.S. Attorney
- Revocation of DBE firm's certification
- Debarment of the DBE firm, prime contractor and/or subcontractor
- Prosecution of the DBE firm, prime contractor and other parties with knowledge of the fraud and deceit

DBE Fraud Cont.

Report Concerns About Fraud, Waste, Abuse, or Mismanagement to OIG Hotline

- OIG Hotline - available 24 hours a day, 7 days a week
 - online complaint form: <http://www.oig.dot.gov/hotline>
 - telephone: 800-424-9071
 - fax: 540-373-2090
 - e-mail: hotline@oig.dot.gov
 - mail: USDOT Inspector General, P.O. Box 708, Fredericksburg, VA 22404-0708

DBE Fraud Case

US alleged DBE fraud against John Carlo Inc. and Angelo Iafrate Construction Company

- falsely claimed DBE BN &M Trucking performed substantial work on AIP project at Detroit Wayne County Metropolitan Airport
 - merely a pass-through used to obtain the appearance of DBE participation
- Firms paid the U.S. \$1.407 million to resolve allegations
- Firms entered into administrative agreements with FAA to ensure future compliance with DBE requirements

Litigation

Midwest Fence Corporation v. LaHood, et al (N.D. Ill. No. 10-05627) September 3, 2010

Non-DBE Guardrail and fencing company filed a constitutional challenge to FHWA's DBE Program

Challenge constitutionality of DBE Program on its face and as applied by US DOT, FHWA, and IDOT

Contend statute unconstitutional, fails to articulate compelling need for race-based affirmative action program

Contend DBE regulations exceed authority, not narrowly tailored

Challenge the constitutionality of the State's local DBE program

Litigation Cont.

Geyer Signal, Inc. v. Minnesota DOT (USDC Mn)

February 8, 2011

Plaintiff, traffic signal contractor, alleges overconcentration

- contend bidders forced to *overuse* DBEs in few areas - traffic signal work or landscaping
- contend non-DBEs in these areas disproportionately turned down by primes in favor of DBEs

Plaintiff seeks

- permanent injunction
 - enforcement of 49 CFR Part 26 DBE Program
 - MnDOT's implementation of the DBE Program,
- declaration 49 CFR Part 26 unconstitutional

Litigation Cont.

KLING, INC. v. Maryland DOT (USDC Md)

November 26, 2008

Plaintiff, prime contractor, bids on MdDOT highway construction contracts

- Did not meet DBE goal and sought waiver
- Waiver declined and not awarded contract

Contends conduct of MDOT violates civil rights, seeks injunction and declaration DBE laws illegal on face and as applied

Seeks to enjoin award of contract to any bidder other than Plaintiff, and compel award of contract to Plaintiff and damages

Litigation Cont.

AGC, (SAN DIEGO CHAPTER) v. CALIFORNIA DOT (USDC Eastern District CA) June 11, 2009

Contend many members not members of race and sex classes granted preference in Caltrans 2009 DBE Program

Contend bids not considered on same equal basis as members of preferred classes

Allege Defendants' 2007 Availability and Disparity Study deficient as the basis for 2009 goal and actions contrary to Proposition 209 and Equal Protection Clause of the Fourteenth Amendment

Seek injunction - program unconstitutional, invalid, and unenforceable to the extent grants preferential treatment on the basis of race, sex, color, ethnicity, or national origin

Part 16 Case

Davis v. Jackson County Airport

FAA Docket No. 16-10-01(January 18, 2011)

Complainant alleged

- Airport Authority failed to adhere to DBE rules; ignored his verbal and written input as DBELO; DBE program not narrowly tailored – goals arbitrarily established
- Violations of Grant Assurance No. 30 Civil Rights and No. 37 DBE and retaliation.

Airport Authority denied the allegations and asserted employee didn't have standing to file Part 16 Complaint

FAA Director found

- Airport Authority took reasonable steps in DBE goal methodology to ensure nondiscrimination in award and performance of federally assisted contract and administration of DBE Program Part 26.
- Airport Authority practiced good faith efforts and exercised due diligence.
- claim of retaliation by way of exclusion is not supported by reliable evidence

Questions

