
TO: AIRPORT COMMISSION

FROM: Magdalena Nodal
Senior Analyst

SUBJECT: ACDBE/DBE Update

DATE: May 1, 2026

Background

On October 3, 2025 San Jose Mineta International Airport (SJC) received a letter from the Office of Secretary of Transportation, Attachment A.

In the letter it states the following:

The U.S. District Court for the Eastern District of Kentucky determined on September 23, 2024 that the use of race- and sex- based presumptions is unconstitutional as it does not provide equal protection under law. Due to this determination the Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) programs will need to go through re-evaluations to remove eligibility based on sex- or race presumptions.

On May 28, 2025 the U.S. Department of Transportation (DOT), represented by U.S. Department of Justice (DOJ), asked for a Consent Order resolving a constitutional challenge to the DBE program (and ACDBE). In the proposed consent order, they want to ensure DOT does not approve any federal, state or local DOT-funded projects that have DBE goals based on these race- or sex-based disadvantaged presumptions.

Following this On June, 25, 2025 the Solicitor General wrote to the Speaker of the House to advise that DOJ had concluded the DBE program's presumptions violate the Constitution and they would no longer defend the presumptions. Thus, they would be moving to litigation and DOT agreed with the Solicitor General's advisement.

This is what led to the DOT issuing the Interim Final Rule and Guide described in the previous mentioned attached letter, but mainly that Unified Certification Programs may not use race- or sex-based presumptions in determining DBE/ACDBE eligibility.

Next Steps

SJC is not a Unified Certification Program but utilizes our DBE and ACDBE from neighboring programs such as San Francisco International Airport (SFO), Valley

Transportation Authority (VTA), and Caltrans. All these programs are in the process of recertification to ensure they no longer have any presumptions made based on sex or race.

In the meantime, SJC will wait for those agencies to finish the recertification to continue the ACDBE and DBE programs as required by the Federal Aviation Administration (FAA) to obtain grant funding.

Until the recertification is complete the airport cannot include DBE or ACDBE goals in their contract goals and cannot count any participation towards overall DBE or ACDBE goals. This avoids any benefits to any DBE or ACDBE continuing under the old certification standard. Also note, that no recipient is subject to the compliance provisions of 49 CFR § 23.57 or 49 CFR § 26.47. Meaning, SJC will not need to update our overall goals during this process.

Interim Final Rule (IFR) Notes

The IFR and associated frequently asked questions indicate sponsors are not required to update DBE or ACDBE program plans or goal methodologies until after the Unified Certification Program for the sponsor's state has finalized the reevaluation of all DBEs and ACDBEs in that state.

The DBE and ACDBE program regulations were not rescinded. Airport sponsors are required to monitor prompt payment and release of retainage to subcontractors, ensure relevant contract clauses are included, and comply with all other applicable requirements of 49 CFR parts 23 and 26 as these requirements are not directly related to the reevaluation of certification.

The airport sponsor is responsible for meeting all FAA grant agreements and statutory requirements.

Summary

SJC has paused all DBE and ACDBE goal participation counting or contract goals until the Unified Certification Program finishes the recertification process to ensure that no unconstitutional presumptions will be awarded in their programs. SJC will continue to monitor the other aspects of the program that are ongoing and will provide a new DBE and ACDBE goal once the recertification process has finalized.