

2025

# ACI-NA & ACI World Annual General Assembly, Conference and Exhibition

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## The Evolving Legal Landscape in Washington

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# The Evolving Legal Landscape in Washington



- Agenda:
  - Grant Conditions
  - AC/DBE Interim Final Rule
  - Other Regulatory Matters

# Grant Conditions

- Grant Assurances/Grant Agreement templates
- Key changes
- Status of litigation
  - King County
  - City of Fresno
  - State of California
- Non-litigation options



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# Grant Conditions

- Key changes

- DEI: The sponsor “(a) agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of 31 U.S.C. 3729(b)(4); and (b) certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.”
- Immigration: The sponsor “will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security and in the enforcement of Federal immigration law.”



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# Grant Conditions

- Status of litigation and scope of existing injunctions
  - King County
  - City of Fresno
  - State of California
- Non-litigation options?



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# DBE and ACDBE Programs

- 40 years old
- Required by federal law
- Designed to remedy historic discrimination
- Creates certification requirements for small businesses whose owners are economically and socially disadvantaged and a program to give them assistance in obtaining contracts on federally-funded activities
- Disadvantaged Business Enterprise - enterprises in almost any area of commercial activity
- Airport Concessions Disadvantaged Business Enterprises - specific for airport concessions such as food, retail and rental cars



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# Interim Final Rule

- An interim final rule is a rulemaking under the Administrative Procedures Act that does not require “notice and comment”
  - Effective before the comment period
  - Comment period until November 3
- Modifies the DBE and ACDBE regulations similarly
- Eliminates the presumption of disadvantage for based on sex and race
- Requires submission of a personal narrative demonstrating individual social and economic disadvantage
- All DBEs and ACDBEs must be reevaluated by their home state’s Uniform Certification Program

# Certification Requirements



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“Under the revised rule, any individual seeking to demonstrate that he or she is a ‘socially and economically disadvantaged individual’ will be required to make the same individualized showing of disadvantage, regardless of the individual’s race or sex” (§ 26.5)

The applicant must show “individualized proof” of “specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner’s progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.” (§ 26.67)

# Changes During Reevaluation

“These requirements will ensure that existing DBEs and ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.”

- Cannot set DBE or ACDBE goals or enforce existing ones depending on the contract
- Cannot collect data involving race and sex of contractors or the previous DBEs/ACDBEs
- Do not report data regarding race and ethnicity of DBEs and ACDBEs
- Will need to do a disparity study or other evaluation to set new goals



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# Future Issues to Watch For

- Congressional Action & Surface Transportation Reauthorization Act
- *Mid-America Milling v. U.S. Department of Transportation*
  - Legal challenge to DBE program
  - Motion for entry of consent order is pending
- *Landscape Consultants of Texas, Inc. v. City of Houston*
  - Legal challenge to Houston's local DBE program
  - Trial set for December 2025
- Comments to IFR
- More Guidance and FAQs from Department of Transportation

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- Comments to IFR
- Challenges to IFR?

# Other Regulatory Matters

- Evolving Noise Policy
  - Executive Order 14304: Leading the World in Supersonic Flight
  - Forthcoming updates to 14 C.F.R. Part 150
  - Noise Policy Review, Docket No. FAA-2023-0855
- Air Traffic Control System – Request for Solutions
- Unleaded Aviation Fuel
- Forthcoming updates to the AIP Handbook (Order 5100.38)
- Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations, 90 Fed. Reg. 38212 (Aug. 7, 2025)
- Forthcoming regulation pursuant to Section 2209 of the FAA Extension, Safety, and Security Act of 2016

# Conference Materials

<https://tinyurl.com/acilegal25>



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