

# GAINING ACCESS

Rules May Be Changing, But Challenges Persist In Airport DBE, ACDBE Programs



By Carol Ward

Rules governing DBE and ACDBE operators in airports are currently in a state of flux, with new proposals from the U.S. Department of Transportation set to change the playing field if implemented. From concessionaires' perspectives, the rule changes would be the culmination of a long-fought battle to update and improve the parameters under which they operate. For airports, the changes could bring some new requirements in implementing DBE programs at their airports.

On a broader scale, challenges continue to surround the complex program to ensure minorities and women have adequate opportunities to operate their businesses at airports. In the following roundtable discussion five industry executives talk to Carol Ward about the key issues surrounding the programs. Clarence Daniels Jr., president and CEO, **CMS Hospitality Corp.**; Mara Rosales, managing partner, **Rosales Law Partners**; Bob Silvas, director of small business development, San Diego County Regional Airport Authority; Kathleen Verret, manager of revenue development, Metropolitan Washington Airports Authority; and Nancy West, managing member, **Exstare Federal Services Group LLC**.

*Ward: The proposed rule change from the DOT, released May 7, includes a*

*proposal to increase the personal net worth limit and exclude retirement savings, streamline the certification process and require airports to analyze their plan if they fall short of their DBE goals. Are you confident that this will be implemented, and, if so, how big an impact will it have on DBE programs at airports?*

*Rosales:* I think if this rulemaking is adopted, we'll see more certified DBEs, more small businesses in the mix, hopefully landing more business opportunities at airports. On the good faith compliance suggestion – that the airports essentially keep track of their compliance with their goals and make an explanation or prepare to make explanations when they fall short of some of those goals – I think that's excellent from a constitutional perspective, speaking as an attorney, but I do see that there would be some extra administrative load on the airports.

*West:* I think that the proposal is excellent, I only wish that it had been extended to the ACDBE program at the same time. I think the personal net worth cap increase in the proposal is good for starters. I agree with Mara in terms of the reporting. I think there is going to be more administrative requirements placed on airports, but I also believe that it's necessary, particularly on

LEFT TO RIGHT:

*Clarence Daniels Jr., president and CEO, CMS Hospitality Corp.; Mara Rosales, managing partner, Rosales Law Partners; Bob Silvas, director of small business development, San Diego County Regional Airport Authority; Kathleen Verret, manager of revenue development, Metropolitan Washington Airports Authority; Nancy West, managing member, Exstare Federal Services Group LLC*

the good faith effort side, because airports should work diligently in setting goals and expecting their concessions participants to meet them.

*Silvas:* I am concerned with the good faith compliance portion, especially if an airport is in a transition period.

*Verret:* One of the things that we're a little bit concerned with is the streamlining of the certification process. Not only do we think that it's going to be a heavy administrative burden, but also the timelines are so short that we worry that sometimes we may not be able to make them.

*Ward:* Clarence, the rule as it is currently written doesn't apply to Part 23 ACDBE operators. Is that a big concern for you?

*Daniels:* We're hoping that it will be

extended to ACDBEs. I'm cautiously optimistic. With a personal net worth cap of \$750,000, there's no way you're going to be able to grow as an airport concessionaire. Even if we go to the \$1.3M, I think that actually is also low given the high cost of construction in the airport and the challenge we have in borrowing money in the first place.

*Ward: Based on your professional and personal experiences, has it gotten better or worse in terms of the industry's understanding and implementation of DBE programs?*

*Silvas:* I have always taken the approach that if you're running a DBE program, you're doing the minimum, and you need to take a look at what the spirit of the ruling is all about and what they're trying to achieve. We're doing a lot of things [at **San Diego International (SAN)**] to expand our diversity participation in our contracting beyond just the DBE program. We're having

certifying agencies.

*Ward: I'm also hearing that the certifying agencies are so overwhelmed with work, due to budget cuts at the state level, that they can't really address the issues like maybe they would want to.*

*Rosales:* Exactly. These are major issues. So I think it's a mixed bag, but definitely it is much better.

*Ward: One constant lament heard from concessionaires is the lack of access to capital, which constrains their ability to build their businesses. Clarence, how big a problem is this for you?*

*Daniels:* It's a challenge and because we don't actually own the asset, we don't have the collateral in the business that a lot of banks look for. I can say, however, that banks are starting to look at our industry a little differently. If you've got some experience, and if they spent the time trying to understand our business and they see the kind of cash flows that are available,

companies that have reached the max from an ACDBE standpoint, and give them an opportunity to continue to expand and grow their airport concession business. I think all of the successful ACDBEs do not have a dream to reach a ceiling. They have a dream to take it as far as they can.

*Verret:* We've looked at unique ways to possibly give opportunities to companies that are doing business with our airports, particularly in building out their spaces. Here at MWAA, we don't lease directly to the tenants. We use **Westfield Concessions Management**, and in their proposal when they bid, they offered a pool of money to assist DBE operators in building out. It's not directly MWAA, but it was something that we certainly saw as a positive to attract DBEs. I don't know from a financial standpoint how much more an airport can do.

*West:* I think that airports need to do more outreach to lenders. What I find in talking to lenders is they are never invited to outreach meetings. They don't have any communication with the airport directly in terms of understanding the concession program itself or understanding the ACDBE program.

*Ward: I know at least one airport has a program to facilitate loans for ACDBEs – not guaranteeing the loans but facilitating them through their bank. Bob or Kathleen, have you done anything like that?*

*Verret:* No, we don't do anything like that here at MWAA.

*Silvas:* We're exploring it, but right now we don't have anything like that on the concession side. We do have something similar to that on the construction and professional service side.

*Daniels:* I think it is within the realm of reason for airports to talk to banks [about lending to concessionaires]. They have millions of dollars deposited with banks in their areas. Airports should ask those banks to at least consider learning about the concessions program, learn about the DBE program and be willing to at least have the loan officers hear pitches from people who win contracts.

*Ward: What are some suggestions for DBEs to be able to participate in concession opportunities or win a contract on their own merit without the help of a prime concessionaire?*

*West:* There are a lot of sophisticated companies, and I think instead of competing against each other, they need to create alliances so they can go after

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*– Clarence Daniels Jr., president and CEO, CHS Hospitality Corp.*

more success in our local program versus our federally funded [DBE] program. Our draft disparity study indicates that only one out of every four firms that's eligible to be certified as a DBE is, in fact, certified. If you're looking at just doing a DBE program from the airport standpoint, you're really only focusing in on 25% of the firms and we're expanding that.

*Rosales:* As a personal experience, I'm now in the seat of a small business person, minority- and woman-owned, and I'm pleased to say that my own personal experience for certification as a DBE was very easy, maybe because I know the rule so well that nobody had any questions. But on the professional side, I see challenges. I have a lot of clients, small businesses, DBEs, or folks who want to be ACDBEs and DBEs, that keep coming up against obstacles. I'd say that the certifying agencies are grappling, I think, with more complexity in the regulations and as a result, we're not getting as good decisions as we would like from the

more and more lenders are interested. We've been in business now for 14, 15 years, and we've stayed with the same bank since day one, and not because it's always been the best bank to work with. We took the approach that we wanted to educate one lender about our business and about the airport business. But it's the dilemma of our industry. You need to be small enough to get certified, but often because of that, you're too small to get financed. There's money out there, but there's an education process and there's a length of time you need with these lenders to get them comfortable lending to you.

*Ward: Are there ways that airports can help?*

*Silvas:* From the airport standpoint, we can obviously make opportunities available to an up-and-coming ACDBE where it's not a financial burden on them. I think the other thing an airport can do, and again this gets back to looking at the spirit of the rule versus the rule itself, is to make opportunities available for those

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some of the larger contracts.

**Rosales:** I agree. I would suggest DBEs do not overlook teaming or associating with either graduated DBEs or other small or medium-size businesses that are not necessarily the traditional primes. There are opportunities where you can go toe to toe with even some of those major players if you team up.

**Daniels:** Another strategy is to identify a strategic financial partner, to look for someone who may not be a concessionaire but may have money to invest and who

might get excited about the kinds of returns they can get in the airport.

**Ward:** *What is the airport perspective?*

**Verret:** One of the things that I think is very, very key is the DBE needs to stay in constant communication with the airport and not make assumptions that whatever we have coming out is going to be simply for the big companies.

**Silvas:** It’s really important that the concessionaire understands the objectives of the airport. Don’t exclude yourself because you may think there isn’t an opportunity for you there. Also, I always tell ACDBEs the importance of creating your brand. Create a brand [and] be consistent with it, because that goes a long way as far as an airport’s evaluation on an ACDBE.

**Ward:** *What are the biggest areas of concern still surrounding the DBE program, and what can be done to address those concerns?*

**Rosales:** Since I’m an attorney, I’ll throw out a legal concern. I would say that I find myself constantly reminding folks that DBE programs and ACDBE programs, affirmative action programs and public contracting are, in fact, remedies for identified discrimination that puts them in a special place within the contracting

world. It’s not a matter of racial politics or a numbers game. These programs impose a heightened duty, a constitutional one, on the grant recipients to supervise, to pay close attention to contract compliance, and to ensure fair opportunity and equal protection of the laws. That’s something that gets overshadowed constantly in these conversations.

**Silvas:** Mara is absolutely right. The legal challenges are the biggest challenges we have with the DBE program, and that’s why it’s imperative that a public agency takes it upon itself to look at how it can go above and beyond in putting together a race-gender neutral approach to achieving the spirit of the DBE program, and that’s in increasing diversity in our contracting both on the Part 26 contracts and the concession contract.

**Daniels:** As a DBE operator, I think the biggest challenge for me is trying to get to some scale and having life beyond one contract – not letting your business cycle be one contract and out. 

*We’d like to hear your opinion about this article. Please direct all correspondence to Carol Ward at [carol@airportrevenue.com](mailto:carol@airportrevenue.com).*



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