

# Engineering Firms with DBE Certifications: The New U.S. DOT Policy and Next Steps

Tuesday, October 7, 2025

# DBE Program Challenges

- Key Legal Precedents:
  - SCOTUS decision in *SFFA v. Harvard* (2023) – race-based admissions programs at universities violated the Equal Protection Clause of the Fourteenth Amendment.
  - *Ultima Services* (2023) – race-based assumptions in SBA 8(a) program violate the Equal Protection component of the Fifth Amendment's Due Process Clause.
  - *Nuziard* (2024) – presumption of economic disadvantage based on race in Minority Business Development Program is unconstitutional under 5<sup>th</sup> and 14<sup>th</sup> Amendments.

# DBE Program Challenges

- *Mid-America Milling v. U.S. DOT:*
  - Lawsuit filed by two plaintiff contractors in Oct. 2023.
  - Preliminary injunction issued by district court in Nov. 2024 – limited to two companies and states in which they compete for contracts.
  - Settlement and consent order proposed by plaintiffs and U.S. DOT / DOJ in May 2025.
  - Court granted intervention by minority contractor groups.
  - Briefs filed but no final ruling yet.

# DOT Interim Final Rule

- Every currently certified DBE will lose certification and must undergo reevaluation.
- Firms will be required to submit new documentation and personal narratives to establish eligibility.
- Burden of proof is on the applicant firm.
- Until reevaluation is complete by the certifying agency, federal funding recipients may not set DBE contract goals or count DBE participation toward existing goals.
- The rule does not require cancellation of existing contracts.
- The rule retains compliance with the Personal Net Worth cap and alignment with small business size standards.



# DOT Interim Final Rule

- New standard for certification:

- (1) Demonstrate that the owner is socially and economically disadvantaged based on his or her own experiences and circumstances that occurred within American society, and without regard to race or sex;
- (2) Submit a personal narrative establishing the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding 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;
- (3) State how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

# DOT Interim Final Rule

- Other changes:
  - Replaces “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral”.
  - Replaces “discrimination” with “social and economic disadvantage”.
  - Amends state agency process and methodology for updating goals (includes consultation with contractor groups) and conducting disparity studies.
- Interim Final Rule went into effect immediately on October 3, 2025, with 30-day comment period.
- Waiting on additional guidance from FHWA on intersection between DBE program goals and QBS requirements and scoring on A/E procurements.

# DOT Interim Final Rule

- Key Questions:
  - What evidence will satisfy the new standard for demonstrating economic and social disadvantage?
  - How long will it take for certifying agencies to adjust their programs?
  - Will a final ruling in the *Mid-America Milling* case change the parameters of the DOT Rule?
  - Will interstate certification requirements be enforced?
  - What happens to subs on existing contracts with DBE goals?

# Questions / Comments

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