

## **USDOT Issues New DBE Renewal Rules: No More Automatic Race or Gender Presumptions to Qualify**



The U.S. Department of Transportation (USDOT) revised its Disadvantaged Business Enterprise (DBE) Program—effective October 3, 2025—to eliminate race- or gender-based presumptions of disadvantage and requiring individualized proof of disadvantage. These changes are [detailed in the interim final rule \(Federal Register Notice 2025-19460\)](#).

### **Who Will Be Affected by the Revisions?**

Many state DOTs, airports, transit authorities, and local governments are affected if they rely on USDOT guidance or Unified Certification Program (UCP)-managed DBE directories or rely on federal funding. DBE contractors should reach out to their state's UCP as soon as possible for guidance and to start the compliance process.

### **Key Changes to USDOT's DBE Program**

- **Recertification Required for Participating Businesses**  
Participating businesses must seek recertification under the new rule—even if previously qualified for prior years. The recertification process will likely impact women and minority-owned businesses because they no longer automatically qualify on the basis of sex or race.
- **Contract Goals Temporarily Suspended**  
During recertification, contract goals and DBE participation requirements are temporarily suspended.
- **Existing Contracts Will Not Be Canceled or Invalidated**  
The rule does not retroactively change existing contracts executed prior to October 3, 2025. All current agreements involving DBE subcontractors must be fulfilled according to their terms (as indicated in [USDOT's FAQs](#)).

### **Impacts on Federal Projects**

In response to these new interim rules, public agencies have paused DBE participation goals across their contracts, at least temporarily. For these public agencies, this means:

- DBE goals on new bids are set at zero percent.
- DBE commitments are being dropped from procurements in progress.
- New project solicitations that rely on existing DBE directories are terminated.

- Agencies are assessing all currently certified DBEs before including their participation toward future projects.

## **Recertification Requirements**

Since DBE certification is often the only way for many small minority- and women-owned business to compete with larger, private-equity backed firms, it is essential that these businesses invest the time and effort to put together the personal narrative and new personal net worth statement. Doing so may give them a better chance of keeping their businesses alive.

The sections below outline the key components that a small firm should consider as part of their recertification narrative.

### **Opportunity to Bid Based on Economic Hardship**

The firm should explain how it has been denied opportunities to bid for public works projects due to prime contractors requiring a minimum company size to qualify as bidders (including bonding capacity, retained capital, size of workforce and past work experience). The firm should list specific examples and projects. This should include details of who, what, where, why, and when.

The firm should also describe the resulting harm, including loss of revenue, job experience, and reputation within the construction industry. Wherever possible, these losses should be quantified in financial terms.

### **Systemic Barriers**

The narrative should explain how the firm was denied opportunities because it was too small to meet the minimum requirements to perform work, sustain delays in payment, or provide the necessary company infrastructure to qualify for the work. Examples could include limitations related to operating in a rural location, being undercut by foreign producers on pricing or labor costs or competing against companies able to rely on foreign credit sources to gain the work.

### **Denied Opportunities**

The narrative should explain how the size of the firm resulted in lost opportunities to work on certain jobs or projects, without reference to minority status.

The firm should also provide evidence to support their narrative whenever possible—such as denial letters, correspondence, or other fact-based supporting documents demonstrating economic disadvantage has affected the firm's ability to compete in the global marketplace.

### **Personal Net Worth (PNW) Statement.**

The firm should provide a statement on its ownership and explain why it qualifies

for the DBE program. At least 51 percent of the firm's owners must demonstrate social and economic disadvantage based on their individual experiences and circumstances within American society, without regard to race or gender. The financial report requires disclosure of significant financial information which will be used to evaluate economic disadvantage—now the main factor in the DBE program under the revised rules.

## **Continued Legal and Constitutional Challenges**

The USDOT's revisions to the DBE programs are driven by constitutional concerns raised in litigation and subsequent federal court rulings questioning the legality of race- and gender-based presumptions in federal programs. Whether the lower courts' decisions invalidating these existing presumptions will survive appellate review remains an open question. This follows the same pattern as other executive orders and administrative rule changes implemented during the current administration that leave contractors with significant uncertainty as to their legal and contractual obligations.

For those involved in federal transportation contracting or certification requirements, these changes could significantly impact how DBE status is determined and maintained. Continue to pay close attention to future rulings from the appellate courts while complying with these new regulations that seek to implement changes to DBE requirement even while the legal issues are being resolved.

## **What Contractors Need to Do**

- **Request the DBE status** for upcoming bids and existing projects.
- **Evaluate DBE subcontractors** to assess recertification risks and current compliance.
- **Review procurement checklists** to assess whether race or gender status apply to the inclusion of subcontractors.

If your construction company relies on DBE participation to comply with contract goals, now is the time to verify compliance with the interim requirements, revise future strategy, and consult with counsel to ensure you remain aligned with these rapidly changing certification requirements. If you have questions, please reach out to our [ASA-WA Team](#).