



November 3, 2025

The Honorable Sean Duffy
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Disadvantaged Business Enterprise Program Implementation Modifications
Docket No. DOT-OST-2025-0897

Dear Secretary Duffy –

On behalf of the American Council of Engineering Companies (ACEC) – the business voice of the nation’s engineering industry – we wish to provide recommendations and seek additional guidance from the Department on the changes to the Disadvantaged Business Enterprise (DBE) program.

The Interim Final Rule (IFR) has raised a number of significant questions for our member firms. We appreciate the initial list of Frequently Asked Questions (FAQs) that was posted on October 24. That list addressed some of the initial uncertainties. However, we believe additional clarity is needed to promote a workable and orderly transition.

ACEC supports the mission of growing and advancing a strong and diverse engineering industry that reflects the communities we serve. Approximately 25% of ACEC member firms have a DBE certification. According to recent survey data, more than 85% of those firms say that the DBE program is important to the success of their participation in federally funded transportation projects, and the elimination or significant alteration of DBE program would negatively impact their ability to secure public sector contracts. We also know that a majority of all our firms have developed successful and mutually beneficial partnerships under the current program framework.

Enabling engineering businesses at all levels to compete fosters a stronger and more innovative industry. Additional guidance and clarity from U.S. DOT on the DBE program changes is essential to mitigate disruption to the industry.

Since the IFR was published, we have identified the following key questions:

1. How should agencies handle procurements advertised but not yet contracted prior to the issuance of the IFR, and what happens to subconsultants on existing contracts with DBE goals?
2. What are the expected timelines for certifying agencies to complete the reevaluation and recertification process and restart goal setting?

3. What evidence will satisfy the new standard for demonstrating individualized economic and social disadvantage in accordance with the new rules?
4. Will interstate certification requirements (i.e. reciprocity) be enforced?
5. Will a final ruling in the *Mid-America Milling* case change the parameters of the DOT Rule?

Existing Contracts

We direct your attention to the implementation guidance and responses from the Georgia and Colorado Departments of Transportation as examples of a good approach. In an October 2nd letter from the Chief Engineer of the Georgia DOT to the FHWA Division Administrator in Georgia, they indicate their intent that

- GDOT will continue to enforce the existing goals and contract language on executed contracts with DBE goals; and,
- On contracts recently awarded but not executed, GDOT will continue with execution of the awarded contract and will enforce the existing goals and contract language as stated in the procurement documents.

Similarly, in an October 13th letter to the FHWA Division Office, Colorado DOT has indicated the intent to continue with execution of awarded contracts to avoid construction delays and to enforce the executed contract requirements pending further guidance from the FHWA.

We support this approach as it gives all involved businesses clarity and confidence to advance work promptly. We encourage U.S. DOT to affirmatively allow states to take these steps. Forcing the agencies to recompute these awards – which were based on technical proposals and merits of the team – would cause project delays and increase costs. It would also be a significant disruption to the firms with awarded contracts, who made staffing and other business decisions based on those awards.

The FAQs include information (Question B.1.) on the effect on projects that are currently authorized/advertised and projects/contracts already awarded that have DBE goals. However, the information seems directed at construction bids and lettings, not on engineering. Since the procurement requirements are different for engineering and design-related services – using a qualifications-based selection and negotiation process – it is not clear to us whether the same standards would apply.

State DOT Certification Adjustments

With respect to reevaluation and recertification, we are pleased to see the responsive steps taken by the Ohio Department of Transportation to facilitate a workable transition. Ohio DOT is replacing and supplementing existing DBE goals with Small Business Enterprise goals, under a plan recently approved by FHWA. Other states are exploring similar approaches. We believe this can provide a fallback option for many firms facing decertification of their DBE status. It may also promote additional competitive opportunities in the market.

Our members are also concerned about the timeline for completing the evaluation and recertification process. We encourage the Department to provide the necessary technical support and assistance to help all states transition “as quickly as practicable” as noted in the FAQs.

Evidence of Social and Economic Disadvantage

We have heard questions from member firms about the expressed standard for certification and the need to better understand what is sufficient to demonstrate social and economic disadvantage. For example, some firms have asked whether the impact of race or gender discrimination ought to be referenced and considered in the personal narrative. Some firms have asked how to quantify economic harm, especially if they have benefitted from certification under the DBE program.

They have also raised the possibility of subjectivity among certifying agencies. What may suffice in the eyes of one certifying official may not be adequate for another. It would be helpful for the Department to expand on the IFR and provide additional guidance on what level of detail and specificity is required. The expected updates to the Uniform Application Form noted in the FAQs (Question E.1.) may help in this regard.

Interstate Certification

When the DBE program was updated in 2024, ACEC strongly supported the measures put in place to facilitate interstate certification. Applying for DBE certification and renewal of certification is time-consuming and costly to small businesses. The new requirements for an individual narrative and specific evidence of social and economic disadvantage will only be more complicated and time intensive. Many of our member firms compete for work in multiple states, and a patchwork of differing rules and interpretations would be extremely burdensome because of differing deadlines, documentation requirements, and delays in processing renewals.

We appreciate the clarification in the FAQs on how firms certified in multiple states should proceed (Question C.1.), i.e. DBEs that were certified through interstate certification procedures should be reevaluated first by the jurisdiction of original certification (their home state). We want to reiterate our support for the interstate certification rules in §26.85 and encourage the Department to maintain and enforce them. Once a firm is recertified in one state, it should not be subjected to additional scrutiny or application requirements in another state.

Efficient interstate certification will significantly reduce the anticipated compliance burdens and facilitate more consistency and uniformity, which will also produce cost and time savings for the certifying agencies.

Ongoing Lawsuits

We acknowledge the Administration's litigation position in the *Mid-America Milling* case. The ultimate outcome of that case and any appeals may have implications for the changes outlined in the IFR. We respectfully request the Department to be ready and responsive to any necessary adjustments and be prepared to provide guidance and direction to implementing agencies as quickly as possible.

We appreciate your consideration and attention to these comments.

Sincerely,

A handwritten signature in black ink, reading "Linda Bauer Darr". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Linda Bauer Darr
President & CEO