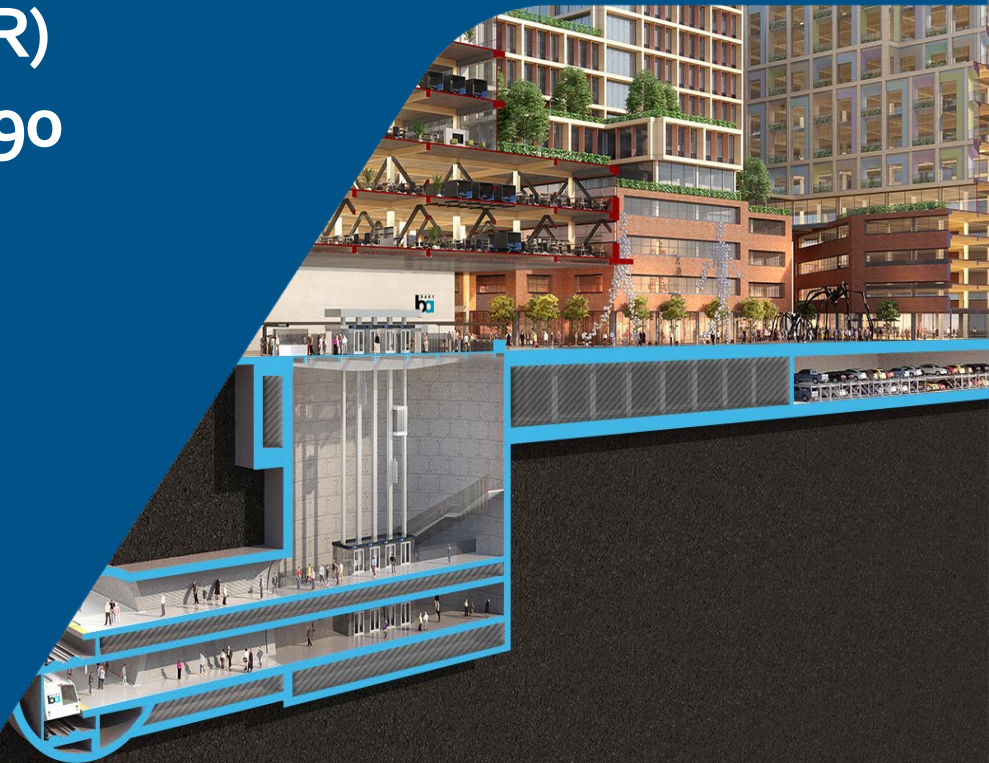


USDOT Interim Final Rule (IFR) Federal Register No. 90, Vol 190 DBE-Neutral Program Training for Contractors

Effective October 3, 2025



Core Purpose and Legal Context

- On October 3, 2025, USDOT aligned 49 CFR Parts 26 and 23 with constitutional equal protection requirements following DOJ/DOT legal findings in *Mid-America Milling Company (Kentucky) vs US DOT DBE Program*
- Removes unconstitutional race- and sex-based presumptions of social disadvantage.
- Requires individualized determinations of social and economic disadvantage for all DBE/ACDBE applicants.
- Opens the opportunity to be certified as a DBE to all firms! (aka, Small Businesses)
- The IFB does not suspend or terminate 49 CFR Part 26 – DBE Program



Unified Certification Program (UCP) Reevaluation Requirement

- §26.111 Each California UCP must reevaluate all currently certified DBEs/ACDBEs.
- Reevaluation will be based on the firm providing a Personal Narrative that addresses social disadvantaged and a new PNW to support economically disadvantage
- Must recertify firms that meet new standards and decertify those that do not.
- Until reevaluation is complete:
 - Recipients cannot set contract goals (§26.51(h)).
 - Cannot count DBE participation toward goals (§26.55(i))
 - Some compliance provisions suspended (§26.47(e) (CUF, running tally))



Effective Date & Transition

- Effective Date: October 3, 2025
 - With issuance of the Interim Final Rule.
 - Rule is in force immediately.
 - California UCPs and recipients must start transition activities at once.
 - USDOT will consider public comments until November 3, 2025, for any potential amendments.



Recordkeeping and Reporting

- §26.11 – Reporting Requirements
 - Still need Bidders List information on each federally assisted contract
 - Simplifies bidder list requirements
 - Removes data collection on the firm owner's race and or sex
 - Pauses data collection on DBE utilization on contracts awarded prior to October 3, 2025
 - Data used to track complete the Uniform Report of DBE Awards or Commitments
 - Data used to track individual contract DBE contract attainments

USDOT Contract Guidance

- USDOT Frequently Asked Questions (October 24, 2025)
 - After October 3rd, amend contract advertisements to remove DBE contract goals
 - DBE Special Provisions based on the DBE regulations will not be included in new awards
 - Bids Opened or Proposals received but not yet awarded – Zero Out the DBE Goal
 - USDOT will allow recipients (VTA) to amend the contracts without readvertising the projects
 - Contracts or Proposals executed prior to October 3rd are **not** required to be modified, however,
 - DBE participation is not counted towards the DBE contract or overall DBE goal until reevaluation is completed
 - If after reevaluation every DBE performing on the contract is recertified under the new standards, then the contract will not need to be modified
 - If the DBE is not recertified, will need to take appropriate action to discontinue the effect of the DBE's participation in the contract (termination/substitution)
 - If a VTA does not take appropriate action with respect to a contract, FTA/FHWA/FAA will not make any payments with respect to that contract



USDOT Contract Guidance

(continued)

- USDOT Frequently Asked Questions (October 24, 2025)
 - Pauses data collection on DBE utilization on contracts awarded prior to October 3, 2025
 - Prior to October 3, 2025 DBEs under subcontract may not be terminated or have its work reduced without VTA's written consent
 - The DBE termination/substitution provisions still apply
 - The Assurance of Non-Discrimination still applies [26.13(b)]
 - Commercially Useful Function (CUF) reviews on existing contracts are not required



USDOT Contract Guidance

(continued)

- USDOT Frequently Asked Questions (October 24, 2025)
 - Open-Ended (DBE) Performance Plans for Design Build projects
 - Contracts executed prior to October 3rd
 - DBE project goal and participation should proceed as identified in the performance plan
 - DBEs under subcontract may not be terminated or have its work reduced without VTA's written consent. The DBE termination/substitution provisions still apply
 - Where a DBE goal is on a Design-Build contract or a separate phase of a Design-Build contract, but **no** DBEs have signed subcontracts, the VTA should take action to zero out the DBE goal on that Design-Build project
 - If the DBE is not recertified, VTA will need to take appropriate action to discontinue the effect of the DBE's participation in the contract (impact to DBE no protections under the termination/substitution provisions)
 - If VTA does not take appropriate action with respect to a contract, FTA/FHWA/FAA will not make any payments with respect to that contract



Small Business and Monitoring Adjustments

- §26.37 & §26.39
 - Still requires the assurance that all subcontractors, suppliers, subconsultants, truckers, etc. are paid promptly
 - Encourages **DBE-neutral small business set-asides** for contracts under defined thresholds.
 - Still requires implementing the Fostering Small Business Participation
 - Voluntary small business inclusion is encouraged

Our Message

- DBE Program (*49 CFR Part 26*) still exists ---with a new name –DBE Neutral Program
- Contractors must follow the Assurances of Non-Discrimination [26.13(b)] and be included in contract provisions
- Collect Bidders List with the bid or after negotiations (Consultant and Design Build)
- VTA will continue monitoring prompt payment through B2GNow
- The DBE termination/substitution provisions still apply for DBEs under subcontract, prior to October 3rd
- DBEs may not be terminated or have its work reduced without VTA's written consent

Our Message (Continued)

- Implement the Fostering Small Business Participation Elements
 - Small Business outreach will resume (No race/gender-specific outreach)
 - Pre-bids and Prime Contractor Networking will resume
- No DBE goal assignments on new contracts until California UCP Directory has a sufficient number of certified DBE-Neutral firms
- Pause DBE participation counting on contracts awarded before October 3, 2025



Any
Question

