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THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AT A CROSSROADS: WHAT MINNESOTA CONTRACTORS NEED TO KNOW

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For more than four decades, the federal Disadvantaged Business Enterprise (DBE) Program has been a fixture for contractors who work on public projects. Created by Congress in 1983 and administered by the U.S. Department of Transportation (USDOT), the program was designed to help small businesses owned by socially and economically disadvantaged individuals compete for federally funded contracts on transportation and infrastructure projects. Today, DBE requirements are a familiar component of many highway, bridge, transit, and airport projects throughout Minnesota and across the country.

However, the DBE program is currently undergoing its most significant transformation in decades. A series of court decisions, legal challenges, and federal regulatory actions have called into question the program's longstanding reliance on race and gender-based presumptions of disadvantage, creating uncertainty for contractors, subcontractors, and public agencies.

A Brief Overview of the DBE Program

The DBE program applies to federally assisted transportation projects funded through agencies such as the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA). Its primary objective is to create a level playing field for small businesses that have historically faced barriers to participation in public contracting.

Under the program, state transportation agencies establish overall DBE participation goals and, where appropriate, contract-specific goals. General contractors must either meet those goals or demonstrate good-faith efforts to do so. In Minnesota, the Minnesota Department of Transportation (MnDOT) administers the DBE program through its Office of Civil Rights.

Historically, the program presumed that certain racial minorities and women were socially and economically disadvantaged, allowing qualifying firms to obtain DBE certification without proving disadvantage on an individualized basis.

Legal Challenges Gain Momentum

The legal landscape surrounding the DBE program shifted dramatically following the U.S. Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard*, which heightened scrutiny of race-conscious government programs.

Subsequent lawsuits challenged the constitutionality of the DBE program's race and gender-based presumptions. In 2024, a federal court in Kentucky concluded that portions of the USDOT's

implementation of the DBE program likely violated constitutional equal protection principles. The litigation, commonly referred to as the *Mid-America Milling* case, prompted the federal government to reevaluate the program's structure.

The legal challenges did not seek to eliminate the DBE program entirely. Rather, they focused on whether the federal government could continue to presume disadvantages based on race or gender without requiring individualized proof.

USDOT's Interim Final Rule

In response to these legal developments, USDOT issued an Interim Final Rule (IFR) in October 2025 that fundamentally changed the DBE certification process. The rule eliminated the longstanding race and sex-based presumptions of disadvantage and replaced them with a requirement that all applicants demonstrate disadvantage through individualized evidence.

The IFR also requires state certification agencies to re-evaluate existing DBE certifications under the new standards. During that process, many agencies have suspended or modified aspects of goal-setting and DBE participation tracking while recertifications are completed.

For contractors, the practical result is that the rules governing DBE participation may look significantly different from what the industry has known for decades.

What This Means for Minnesota Contractors

Minnesota contractors should expect continued uncertainty while federal agencies, state DOTs, and the courts work through the implications of the new rule. Several key issues are worth watching:

- **Certification Delays and Administrative Challenges**

The requirement to reevaluate existing DBE firms has created substantial administrative burdens for certification agencies nationwide. As agencies review certifications under the new standards, some firms may experience delays or uncertainty regarding their eligibility status.

- **Potential Changes to Contract Goals**

One of the most significant questions facing owners and contractors is how DBE participation goals will be established moving forward. Some transportation agencies have temporarily paused goal setting while recertification efforts are underway. Others are exploring alternative approaches that can withstand constitutional scrutiny.

- **Increased Focus on Small Business Participation**

Many industry observers believe that federal and state agencies may increasingly emphasize race- and gender-neutral small business programs as an alternative means of promoting participation by emerging contractors. Whether these efforts will supplement or partially replace traditional DBE mechanisms remains to be seen.

- **Ongoing Litigation**

The legal challenges affecting the DBE program are unlikely to end soon. Additional lawsuits, appeals, and regulatory actions are expected, meaning further changes could occur over the next several years. Contractors should closely monitor developments from USDOT, MnDOT, and industry organizations.

Looking Ahead

Reauthorization of the DBE program is a part of the BUILD America 250 Act currently making its way through Congress. The proposed legislation incorporates the IFR's shift away from presumptions based on race or gender to individualized assessments of disadvantage and constitutionally compliant methods of expanding participation in public contracting.

For Minnesota's construction industry, the challenge will be adapting to a changing regulatory environment while continuing to deliver critical infrastructure projects. Prime contractors should remain engaged with MnDOT guidance, review bidding requirements carefully, and maintain strong relationships with DBE and small-business partners as the program's future takes shape.

As federal infrastructure investments continue to drive transportation construction opportunities, understanding these changes will be essential for contractors seeking to remain competitive in the years ahead.

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