

Disadvantaged Business Enterprise (DBE) Update

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Every once in a while you need some positive legal news.

As a result of a case out of the U.S. District Court, Eastern District of Kentucky, a new regulation was issued by the U.S. Department of Transportation (DOT) applicable to the 10% DBE requirement. The case, *Mid-America Milling Company, LLC v. United States Dept. of Transportation*, was decided on October 31, 2024, and examined the Disadvantaged Business Enterprise (DBE) program enacted in 1983 for federally funded projects.

Under the federal DBE program, there was a “presumption” of disadvantage extended to certain minority and women-owned businesses. These ‘presumptions of disadvantage’ have been around since the 1980s and each of you live with them in the projects you bid as you strive to comply with bidding requirements. Many state and local governments and municipal entities also have enacted DBE requirements for their projects.

In the *Mid-America* case, the plaintiff regularly bid on DOT projects having DBE goals but on many occasions, at least 82 times, the plaintiff lost bids to DBE firms - even when the plaintiff’s bids were lower - because the plaintiff did not receive the ‘rebuttable presumption’ of disadvantage status. The litigation was to challenge the application of the DBE program and its ‘presumptions’ of disadvantaged status being granted to only certain disadvantaged groups, but not others who were similarly disadvantaged.

After careful consideration, the Court’s reasoning in *Mid-America* was that presumptions of disadvantaged status grounded solely on race or gender as promulgated and applied by the DOT cannot stand the test of constitutionality under the Equal Protection component of the Due Process Clause of the Fifth Amendment.

As a result of this case, the DOT issued the proposed Interim Final Rule (IFR), effective October 3, 2025, which affects the administration of the DBE program in a number of ways:

- It generally invalidates any state DBE program which is operated under the pre-*Mid America Milling* formulation of the law.
- It further requires that any DBE be reevaluated to confirm their eligibility under the new standards which require an individualized showing of disadvantage.

It appears that the consequences of the *Mid-America* case already have been considered by PennDOT who issued an Addendum Report on October 6, 2025, that quietly stated on page 4 of 8: “**DBE Goal Percentage revised to Zero.**” It would be our belief that PennDOT published this addendum to come into compliance with the IFR, or to remove the DBE requirements until the Commonwealth can reformulate its program to meet these new regulations. It is unlikely that DBE goals will not re-appear in a future bid package, but for now, there will very likely be a revision to DBE programs to address an inequity acknowledged by the U.S. District Court for the E.D. of Kentucky.

We note that the *Mid-America Milling* case finding the current federal government’s DBE program unconstitutional is still ongoing and as such this issue is subject to further development as that case

proceeds. Additionally, the newly effective IFR is also potentially subject to its own challenges that may subject this area to further change, however at this time we are not aware of any challenges to this rule.

This judicial action should not apply to past bids, but if you have concerns about specific bids or projects, please let us know and we can examine them more specifically, or you can immediately submit a written, pre-bid question if you have the opportunity to do so. On future bids, you can review the Instructions To Bidders for the DBE goals or make pre-bid inquiries as noted above.

Please [contact us](#) today for further information or to evaluate your specific situation.

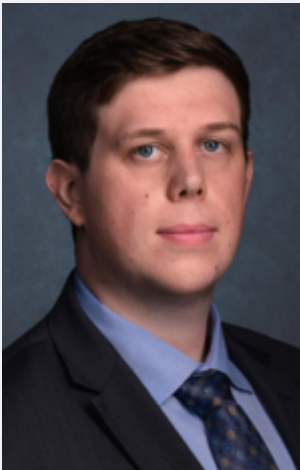


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