

February 27, 2026

VIA ELECTRONIC SUBMISSION

Jerome Greene, Deputy Director
U.S. Environmental Protection Agency
Office of Small and Disadvantaged Business Utilization Division
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Re: Disadvantaged Business Enterprise (DBE) Program

Dear Mr. Greene:

On behalf of the American Road & Transportation Builders Association (ARTBA) and our more than 8,000 members in the transportation construction industry, we write requesting urgent attention to growing concerns regarding the U.S. Environmental Protection Agency's (EPA) implementation of its Disadvantaged Business Enterprise (DBE) Program and Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) goals and objectives. We respectfully request that EPA issue immediate guidance regarding firm eligibility under the program in light of the U.S. Department of Transportation's (USDOT) October 2025 interim final rule modifying its DBE certification procedures.¹ Additional details regarding this issue and its effects on our membership are provided below.

ARTBA represents all components of the transportation construction industry, including contractors, materials suppliers, planning and design firms, public agencies, equipment manufacturers, and educational research institutions. Our members build and maintain the nation's roads, bridges, airports, ports, transit systems, and other critical infrastructure that support economic activity, public safety, and mobility.

In addition, many of our members regularly engage with and bid on federally-funded and federal-assisted projects incorporating State Revolving Fund support from EPA. Generally, these projects include DBE participation requirements for contractors.

Under EPA's regulations², firms are certified with the agency's DBE classification by one of three methods, including via the U.S. Small Business Administration's 8(a) Business Development Program or the Small Disadvantaged Business Program³, the USDOT DBE program⁴, or an Indian Tribal, state, local or private

¹ Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program: Implementation Modifications, 90 Fed. Reg. 47,969 (Oct. 3, 2025) (interim final rule) (to be codified at 49 C.F.R. pts. 23 & 26).

² 40 C.F.R. § 33.202.

³ 13 C.F.R. pt. 124, subpt. A (2025) (SBA 8(a) Business Development Program); 13 C.F.R. pt. 124, subpt. B (2025) (Small Disadvantaged Business Program).

⁴ 49 C.F.R. pts. 23 & 26 (2025).

organization certification process. Firms that do not qualify through these avenues may apply directly to EPA for certification.

On October 3, 2025, USDOT imposed an interim final rule for its DBE program, effective that day, revoking the presumption of social and economic disadvantage based on race and gender. USDOT indicated the rule was issued pursuant to a pending, proposed settlement in litigation challenging the DBE program’s constitutionality, as well as related changes to the legal landscape.⁵ Firms certified as DBEs prior to that date can no longer carry that designation, but may apply to their Unified Certification Programs (UCP) for review and consideration for DBE certification under new parameters other than race or gender. States remain in varying stages of carrying out this review process. In the meantime, the DBE program – for purposes of federal-aid highway and transit projects – has effectively been suspended.

This transition is creating significant uncertainty for EPA-funded projects that incorporate DBE participation goals. In particular, contractors are seeking clarity as to whether firms previously certified as DBEs under the USDOT program may continue to be counted toward EPA MBE/WBE objectives during the transition period. ARTBA is aware of at least one large local agency that is preparing a procurement with a “DBE goal,” but has not addressed these recent complications.

Accordingly, ARTBA respectfully requests that EPA provide prompt guidance addressing the following questions:

- Is EPA considering temporary or permanent adjustments to its DBE program in light of USDOT’s revised certification framework and the evolving legal landscape?
- What is the status, for EPA program purposes, of firms previously certified under USDOT’s DBE program?
- For projects already out for bid that include DBE goals, how should contractors proceed if certified firms are unavailable?

ARTBA appreciates EPA’s prompt attention to these questions and stands ready to work with the agency to ensure continued project delivery and compliance certainty. Should you have any questions or require additional information, please contact Prianka Sharma, Vice President and Counsel for Regulatory Affairs, at psharma@artba.org.

Sincerely,



Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs
American Road & Transportation Builders Association

⁵ See e.g., *Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23-cv-00072, 2024 WL 4267183 (Sept. 23, 2024) in which the judge granted plaintiff’s preliminary injunction requesting that DBE goals be removed from transportation projects because USDOT’s programs likely do not comply with the Constitution’s promise of equal protection under the law.