

**Official Frequently Asked Questions (FAQs) on the U.S. Department of Transportation's
Disadvantaged Business Enterprise (DBE) Program and Disadvantaged Business
Enterprise in Airport Concessions (ACDBE) Program Implementation Modifications,
Interim Final Rule**

(Effective Date October 3, 2025)

The General Counsel of the Department of Transportation has reviewed these questions and answers and approved them as consistent with the language and intent of 49 CFR parts 23 and 26. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

A. General

1. When did the Interim Final Rule (IFR) become effective?

The IFR was published in the Federal Register on October 3, 2025 and became effective that day.

2. By when must the recipients update their DBE program plans?

In accordance with § 26.21(b), significant changes to DBE plans must be submitted to DOT for approval. The Department believes the IFR significantly changes the way recipients must implement their DBE plans. Therefore, we expect that recipients will amend their plans as soon as practicable after the Unified Certification Program (UCP) in their jurisdiction completes the reevaluation process described in § 26.111 to reflect the changes in the IFR. Any portion of a DBE program plan that is dependent upon presumptions of disadvantage, DBE goals, or any aspect of the prior DBE rule that has changed based on the IFR is no longer valid.

3. Do these changes apply to the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program?

Yes, the IFR made changes to the ACDBE regulations in 49 CFR part 23 in a substantially similar manner to those changes made in 49 CFR part 26. Accordingly, these FAQs apply to ACDBEs.

B. Contracting Questions

1. How does the IFR affect projects that are currently authorized/advertised and projects/contracts already awarded that have DBE goals?

Recipients with DBE goals on contracts that have been advertised but not yet let (*i.e.*, bids not yet opened) must issue amendments to the advertisements removing the DBE contract goals.

For projects with DBE contract goals that have been let (*i.e.*, bids opened) but contracts not yet awarded (*i.e.*, executed), recipients must take appropriate action to zero out the DBE goal. Due to the program changes in the IFR, DOT will allow recipients to amend the contracts without readvertising the projects, but each recipient should make its own determination on whether the contract needs to be recompeted under State law.

Contracts with a DBE goal that were let and executed prior to October 3, 2025 are not required to be modified, but DBE participation on such contracts cannot be counted toward the DBE contract goal or toward the recipient's overall DBE goal until the UCP in the recipient's jurisdiction completes the reevaluation process described at 49 CFR § 26.111. If, after the reevaluation process, every DBE performing work on a contract is recertified under the new standards, then the contract will not need to be modified. In contrast, if a DBE performing work on a contract is not recertified during the reevaluation process, the recipient will be required to take appropriate action to discontinue the effect of the unconstitutional certification; if a recipient does not take appropriate action with respect to a contract, DOT will not make any payments with respect to that contract.

2. Do recipients need to continue to perform commercially useful function (CUF) reviews of DBE work on existing contracts during the reevaluation process described in 49 CFR § 26.111?

No. Because the purpose of CUF reviews is to ensure that DBE participation on a project can be properly counted toward DBE goals (contract goals and overall DBE goals) and the counting of DBE participation is suspended during the reevaluation process, it is unnecessary for recipients to conduct CUF reviews during the reevaluation process. Recipients may determine whether any existing contracts should be modified with respect to ongoing CUF requirements.

3. Do the regulatory DBE termination provisions continue to apply during the reevaluation period described in 49 CFR § 26.111?

Yes. The termination provisions at 49 CFR § 26.53(f) continue to apply to existing contracts. A prime contractor cannot terminate a DBE or any portion of the DBE's work

listed in response to the good faith efforts bidding requirements of 49 CFR § 26.53(b) without the recipient's prior written consent upon a showing of good cause, unless the recipient causes the termination or reduction. (49 CFR § 26.53(f)). The regulations provide:

“Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.”

Good cause for termination exists if a DBE loses its DBE certification after the reevaluation process described in § 26.111 is completed because it is ineligible to receive DBE credit for the type of work required. (49 CFR 26.53(viii)).

4. How does the IFR affect DBE open-ended performance plans for design-build projects?

In cases in which a design-build contractor has already signed contracts prior to October 3, 2025 with DBE subcontractors toward meeting an open-ended performance plan, the contractor should proceed with the contract. The DBE subcontractor may not be terminated or have its work reduced without the written consent of the recipient and only for good cause, including a change in eligibility. See 49 CFR 26.53 for additional grounds for good cause. Where a DBE goal has been established for a design-build contract or a separate phase of a design-build contract, but no DBEs have yet been awarded contracts, the recipient should take appropriate action to zero out the DBE goal.

If, after the reevaluation process, every DBE performing work on a design-build contract is recertified under the new standards, then the recipient need not take any further action. In contrast, if a DBE performing work on a design-build contract is not recertified during the reevaluation process, the recipient will be required to take appropriate action to discontinue the effect of the unconstitutional certification; if a recipient does not take appropriate action with respect to a contract, DOT will not make any payments with respect to that contract.

5. How does a recipient remove an advertised DBE contract goal prior to a letting?

Recipients should issue amendments to the project advertisements to remove the DBE goal.

6. Does Section II (Nondiscrimination), Part 10.a, of Federal Highway Administration (FHWA) Form 1273 incorporate by reference the DBE regulations as amended by the IFR?

Yes. For contracts awarded on or after October 3, 2025, the new DBE program regulations apply.

7. What changes should be made to DBE special provisions that recipients use for contract awards?

DBE special provisions based on the DBE regulations in effect before October 3, 2025, should not be included in contracts entered into on or after October 3, 2025. For any contracts entered into on or after October 3, 2025, recipients should review and update any such DBE special provisions to comply with the DBE regulations as amended by the IFR. To the extent that an operating administration approves DBE special provisions, updated DBE special provisions must be approved by that DOT operating administration. Recipients may use their revised and DOT-approved DBE special provisions (when required) on contracts entered into after the recipient's UCP has completed the reevaluation described in 49 CFR § 26.111 and adopted a new overall DBE goal in accordance with 49 CFR § 26.45.

8. Are DOT recipients required to include the contract clauses in 49 CFR §§ 23.9 and 26.13 in contracts awarded on or after October 3, 2025 during the UCP reevaluation period?

Yes, DOT recipients are required to include the contract clauses listed in 49 CFR §§ 23.9 and 26.13(a-b) in all contracts. The IFR did not make changes to this requirement.

9. Are DOT recipients required to comply with the prompt payment requirements in 49 CFR § 26.29 during the UCP reevaluation period?

Yes. DOT recipients are required to implement and document compliance with the prompt payment requirements in 49 CFR § 26.29, including: (1) ensuring prime contractors pay subcontractors for satisfactory performance of their contract no later than 30 days from receipt of each payment made to the prime contractor, and (2) prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractors work is satisfactorily completed. The IFR did not make changes to this requirement.

C. Certification Reevaluation

1. Does a UCP have to reevaluate all currently certified DBEs in its DBE directory or only those DBEs for which the UCP was the jurisdiction of original certification?

Under the certification reevaluation requirements at 49 CFR § 26.111, UCPs are required to reevaluate the certifications only of those DBEs for which the UCP is the jurisdiction

of original certification. UCPs are not required to reevaluate the certifications of DBEs that obtained certification from the UCP through the interstate certification procedures at 49 CFR § 26.85. DBEs that received certification from UCPs through interstate certification will have their certifications reevaluated by the UCPs in their jurisdiction of original certification. If such DBEs are recertified by the UCP in their jurisdiction of original certification, they will be required to reapply for interstate certification with the UCPs for the jurisdictions in which they wish to be certified.

2. Is there a date by which a UCP must complete its certification reevaluation process?

No. The regulation at 49 CFR § 26.111 provides that UCPs should complete the reevaluation process “as quickly as practicable.”

3. Can a UCP impose a deadline on currently certified DBEs for submission of the reevaluation documentation required under 49 CFR § 26.111?

No, the regulation at 49 CFR § 26.111 does not provide a deadline for a currently certified DBE to submit documentation demonstrating its DBE eligibility under the new standards provided in the IFR. Firms that do not submit the necessary information, however, will remain ineligible for the DBE program until they submit the required documentation demonstrating DBE eligibility under the new standards.

4. Can a UCP simply decertify all currently certified DBEs without completing the reevaluation process?

No. The IFR requires UCPs to identify each currently certified DBE and provide each identified firm with the opportunity to submit documentation demonstrating its DBE eligibility under the standards described at 49 CFR § 26.67

5. Are recipients required to submit Uniform Reports during the reevaluation process?

Under the IFR, recipients are not required to update their overall DBE goals until the UCP in the recipient’s jurisdiction has completed the reevaluation process described in 49 CFR § 26.111 and notified the Department that the reevaluation process is complete. In addition, recipients may not set any contract goals and may not count any DBE participation toward DBE goals until the UCP in the recipient’s jurisdiction completes the reevaluation process described in 49 CFR § 26.111. As a result of these requirements, recipients are not required to submit Uniform Reports under 49 CFR § 26.21 until the recipient has established a new overall annual DBE goal following completion of the reevaluation process at 49 CFR § 26.111.

6. What is the Department's role in the reevaluation process?

Each UCP is responsible for carrying out the reevaluation of currently certified DBEs for which the UCP was the jurisdiction of original certification. DOT is available to provide technical assistance as necessary.

7. Can a firm that is decertified through the reevaluation process appeal the decision to DOT?

Yes. A firm that is decertified under the reevaluation procedures described at 49 CFR § 26.111 is entitled to appeal the decertification to DOT under the procedures described at 49 CFR § 26.89.

D. Goal Setting and Counting

1. What do recipients need to do about their existing overall annual DBE goals?

Recipients are not required to do anything with their DBE goals until their respective UCPs have completed the reevaluation process described in 49 CFR § 26.111. Until the UCP completes the reevaluation process, a recipient is not required to update its DBE goal (§ 26.45(h)) and may not count any DBE participation toward its goal (§ 26.55(i)).

2. What is the role of DOT operating administrations in reviewing the three-year DBE goal setting methodology?

DOT operating administrations will continue to review and approve the DBE goal methodologies of their recipients in accordance with 49 CFR § 26.45. Recipients are not required to update their overall goal methodologies until the UCP in the recipient's jurisdiction has completed the reevaluation process described in 49 CFR § 26.111.

3. Can recipients continue to set DBE contract goals before the recipient's UCP has completed the reevaluation process described in 49 CFR § 26.111?

No. A recipient may not set any DBE contract goals until the UCP in the recipient's jurisdiction has completed the reevaluation process described in 49 CFR § 26.111.

4. Should recipients continue counting DBE participation on existing contracts without DBE goals toward the recipient's overall goal?

No. Starting on October 3, 2025, no DBE participation may be counted toward a recipient's overall goal, including such participation obtained through race and gender-neutral means.

E. New Certification Applications

- 1. Will new DBE applicants only need to provide a personal narrative statement and personal net worth statement, or will other components of the regulatory application process apply?**

New applicants will be required to provide a personal narrative statement in addition to meeting the other certification standards at 49 CFR part 26, Subpart D. Applicants are required to submit the Uniform Application Form found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>. DOT expects to provide an updated Uniform Application Form on its website.

F. Transit Vehicle Manufacturers

- 1. Are transit vehicle manufacturers (TVM) required to set DBE goals and submit Uniform Reports in accordance with 49 CFR § 26.49(b) and (c)?**

DOT will treat TVMs similarly to recipients. A TVM will not be required to update its DBE goal or submit Uniform Reports until after the UCP reevaluation of DBEs described in 49 CFR § 26.111. A manufacturer that wants to request eligibility as a TVM before the completion of the UCP reevaluation can submit a request to the Federal Transit Administration (FTA) at ftatvmsubmissions@dot.gov. During this time, FTA will not require the submission of a DBE program or DBE goal to become a TVM.

- 2. Are FTA recipients required to continue checking the eligible list of TVMs when purchasing vehicles?**

Yes. FTA recipients are required to continue checking the eligible list of TVMs to determine if the manufacturer is eligible to bid or propose on an FTA-assisted transit vehicle procurement. FTA is working directly with the manufacturers to ensure that this list is kept up-to-date.

- 3. Are FTA recipients required to comply with the requirement in 49 CFR § 26.49(a)(4) and report transit vehicle purchases within 30 days of becoming contractually required during the UCP reevaluation period?**

No. FTA recipients are not required to submit Transit Vehicle Award Reports during the UCP reevaluation period.