

Wisconsin DOT starts recertification of disadvantaged business program

Posted on Friday, Feb 13, 2026

— *By Ethan Duran*

A minority contracting program connected to federally supported road projects is making a comeback in Wisconsin.

But it may take months for contractors to certify again after a ruling by the U.S. Department of Transportation. And the process so far in Minnesota is spurring complaints that may signal issues for Wisconsin contractors.

In October, U.S. DOT issued a final rule that companies registered with the Disadvantaged Business Enterprise Program – which sets goals for minority- and women-owned businesses to participate in federally supported transportation and airport concessions – would have to apply again for certification without using race or sex as a basis for eligibility.

“The department changes the definition of ‘socially and economically disadvantaged individual’ ...to remove the race- and sex-based presumptions that DOT and DOJ and have found to violate the Fifth Amendment,” U.S. DOT officials wrote in the Federal Register.

“Under the revised rule, any individual seeking to demonstrate that he or she is a ‘socially and economically disadvantaged individual’ will be required to make the same individualized showing of disadvantage, regardless of the individual’s race or sex,” U.S. DOT officials added.

The state stopped awarding contracts with goals for minority businesses after the rule went into effect on Oct. 3. The Wisconsin Department of Transportation will set minority contracting goals for road projects again after all firms are recertified, should they choose to do so, WisDOT officials said.

“Per the DBE Interim Final Rule published on Oct. 3, 2025, all Wisconsin-based DBE and Airport Concession Disadvantaged Business Enterprise firms previously certified

using race- or sex-based presumptions of social and economic disadvantage must be reevaluated for recertification by the United Certification Program,” according to WisDOT.

WisDOT officials said the recertification program will open in mid-February. Some other Midwest states, such as Minnesota, already have their recertification process open. And at least one contractor in the neighboring state has issues.

Kenneth Bush, a transportation contractor in Rochester, Minnesota, who works on projects in western Wisconsin, said he was on the fence about reapplying for the program in Minnesota.

“I’m hoping to certify as a DBE, but I’m going to see if it’s worth my time to give so much personal and private information to the government, where I don’t know if they yet can be trusted with that much power,” Bush said. “In 2025, I didn’t work on one Minnesota Department of Transportation project and I’ve worked on hundreds. Why would I apply if the DBE Program existed in 2025 and I didn’t get any contracts with the state?”

Applicants must prove social and economic disadvantages on an individual, case-by-case basis, WisDOT officials said.

Nearly 1,300 businesses were certified in Wisconsin’s DBE program, WisDOT officials said. It is not clear how long it will take for firms to recertify, and the state has little guidance from the federal government about what applications will be accepted for recertification.

First introduced in 1980, Congress enacted the first iteration of the DBE program in 1983 with a statutory provision, according to U.S. DOT. The provision required the department to ensure that at least 10% of funds used for highway and transit federal financial assistance programs are spent with DBEs.

In 1987, Congress amended the DBE program to add women to groups presumed to be disadvantaged, according to U.S. DOT. The program was reauthorized in 2021 when former President Joe Biden signed the Infrastructure Investment and Jobs Act.

The federal government classifies a disadvantaged business enterprise as a company that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged.

Before October, WisDOT shared bidding information for DBE firms who perform highway work, reported on how much federal assistance the state received and reported how much assistance was committed to DBE firms. Exceptional firms are awarded at the transportation secretary's Golden Shovel awards each year.

Ugo Nwagbaraocha, executive vice president of the National Association of Minority Contractors and president of NAMC Wisconsin chapter, said the program was a bedrock for private businesses to set hiring goals and let small firms get a foot in the door.

"When people hear about DBE, they might think about federal highway projects," Nwagbaraocha said. "But the reality is, all diverse business participation, whether private or government, is based on the criteria of the DBE program."

The final ruling follows *Mid-America Milling Company v. U.S. Department of Transportation* in the Eastern District of Kentucky, when two contractors filed a lawsuit against U.S. DOT, alleging they were losing work to DBE firms despite being the lowest bidder. In 2024, the district court agreed with highway contractors that U.S. DOT violated the Equal Protection Clause.

Another case that weighed on U.S. DOT's ruling was *Students for Fair Admissions v. Harvard*, where the U.S. Supreme Court in 2023 ruled Harvard's admissions program violated the Equal Protection Clause of the U.S. Constitution.

Wisconsin Institute for Law & Liberty, a conservative nonprofit law firm based in Milwaukee, represented the plaintiffs in *Mid-America Milling Company v. U.S. Department of Transportation*, working on the lawsuit since 2021.

Minority contracting groups in the airport and construction sectors said the DBE program gave visibility to qualified and diverse firms. The program was a foundation for diverse participation in private construction as well, advocates said.

After his inauguration in 2025, President Donald Trump vowed to stop diversity, equity and inclusion efforts in the public sector. The White House issued an executive order to cut "diversity, equity, inclusion and accessibility" programs in the federal government, "under whatever name they appear," officials said.

Meanwhile, contractors who were decertified are worried about not getting solicitations for transportation projects. More than 50,000 DBE firms nationwide are

expected to be affected.

Bush, the CEO and principal of Rochester, Minnesota-based Bush Companies, said after October he stopped receiving contract offers and saw his revenues drop by six figures. Hundreds of DBE firms in southern Minnesota are expected to apply for recertification, but Bush said he was concerned many of them wouldn't survive the process.

In a mass email chain with the Minnesota Department of Transportation, some firms said they weren't going to apply for recertification, despite winning work through the program before.

"I'm not sure the DBE program will be sustainable going into the future because there were so many people not willing to go through the recertification process," Bush said.

Plaintiff companies in *Mid-America Milling Company vs. U.S. Department of Transportation* said they wanted to see an immediate end to DBE practices.

"All we want is a level playing field," said Kraemer Koetter of Indiana-based Mid-America Milling Company, in a statement. "If my team can put forth the best product or service at a reasonable cost, then we should be rewarded for that. The DBE program's removal returns common sense back to contracting."

In November, House Democrats wrote a letter to U.S. Secretary of Transportation Sean Duffy, former U.S. representative for Wisconsin's 7th Congressional District, urging the secretary to provide more guidance to stakeholders and project sponsors and to work with Congress on changes to the program.

"Changes to the implementation of the DBE program threaten the survival of more than 50,000 existing small businesses across every state and affect the future path for small business participation in federally assisted transportation contracts," wrote U.S. Reps Rick Larsen and Nydia Velázquez in the [letter](#) also signed by Wisconsin Dems Mark Pocan and Gwen Moore.

"An approach to implementation of the department's interim final rule that seeks to punish minority- and women-owned small businesses will add chaos, cost and delay to transportation projects and will have ripple effects throughout the construction industry," they added.