



New Jersey Department of Transportation
Division of Civil Rights & Affirmative Action
Contract Compliance Unit

October 31, 2025

**Guidance to Consultants, Contractors & Local Public Agencies for NJDOT
Federally Funded Contracts or Contracts Administered through NJDOT**

Pursuant to the **Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program: Implementation Modifications**, 90 Fed. Reg. 190 (October 3, 2025) (to be codified as 49 C.F.R. pt. 23 and 26) please note the following guidance below:

Pre-Award

1. For solicitations or projects with DBE or ESBE goals advertised, but proposals or bids not opened, recipients must issue amendments to remove the DBE or ESBE contract goal.
2. For solicitations or projects with DBE or ESBE goals where the proposals or bids have been evaluated or opened but contracts not yet awarded (i.e. executed), the DBE or ESBE goal must be removed (zeroed out). Recipients should amend contracts without re-advertising the solicitation or project. Each recipient should determine whether the contract needs to be re-competed under State law.

Post-Award

1. Recipients are not required to modify contracts with DBE or ESBE goals advertised and awarded prior to October 3, 2025. However DBE or ESBE participation cannot be counted toward the project DBE or ESBE goal until the NJ Unified Certification Program ("NJUCP") completes a re-evaluation of the eligibility of existing DBEs.
2. Termination provisions continue to apply during the NJUCP reevaluation period, unless the NJDOT or the Local Public Agency ("LPA") causes the termination or reduction. DBEs may not be terminated without "good cause."

"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."

If a DBE loses its certification after the NJUCP reevaluation process is completed, good cause for termination exists because the DBE is ineligible to receive credit for the type of work required.

3. Commercially Useful Function (CUF) reviews are suspended until the NJUCP completes a reevaluation of the eligibility of existing DBEs.
4. Prime contractors are required to comply with contract prompt payment requirements to pay subcontractors (all those involved on the project – on-site and off-site) no later than 10 days from receipt of payment from the State of NJ or local public agency, and to not withhold retainage. This applies to tier-down firms as well.

NOTE: This guidance is subject to change based on issuance of additional guidance by the US Department of Transportation.