



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **ACTION:** Preliminary Injunction
Affecting Disadvantaged Business
Program

Date: October 8, 2024

From: Irene Rico
Associate Administrator
Office of Civil Rights

In Reply Refer To:
HCR - 1

To: Shundreka Givan
Division Administrator
Boday Borres
Deputy Division Administrators

On September 23, 2024, the U.S. District Court for the Eastern District of Kentucky issued a preliminary injunction against the U.S. Department of Transportation (“USDOT”) in Indiana and Kentucky with regard to the Disadvantaged Business Enterprise (“DBE”) program. The decision was issued in a lawsuit brought by two non-DBE firms: Mid-America Milling Company (“MAMCO”) and Bagshaw Trucking (“Bagshaw”) (collectively, the “Plaintiffs”).

The Court enjoined USDOT from “mandating the use of race- and gender-based presumptions for United States Department of Transportation contracts impacted by DBE goals upon which the Plaintiffs bid.” The court’s decision also states that “the scope of the preliminary injunction shall apply to the Plaintiffs in the states within which they operate, Kentucky and Indiana.”

USDOT is continuing to analyze the preliminary injunction in consultation with the U.S. Department of Justice (“DOJ”). I am writing to provide immediate guidance for Federal-aid projects that are obligated by the Kentucky Transportation Cabinet (“KYTC”). FHWA, after consultation with the USDOT Acting General Counsel and DOJ, is issuing this guidance to comply with the court’s preliminary injunction.

1. Plaintiffs have provided a written list that highlights KYTC contracts on which they wish to bid that are scheduled for letting on October 24, 2024. The federally funded contracts with DBE goals above 0% identified by Plaintiffs are listed in Appendix A.
2. Notwithstanding 49 CFR Part 26, USDOT will not mandate that KYTC include DBE contract goals on any of the contracts identified in Appendix A. Therefore, KYTC should set 0% DBE goals for the contracts identified in Appendix A. In addition, FHWA will not concur in the award of a contract listed in Appendix A that has a DBE goal higher than 0% (including contracts for which the FHWA’s concurrence responsibility has been assumed by KYTC under the FHWA/State Stewardship and Oversight Agreement).

3. KYTC, in turn, will issue an addendum setting 0% DBE goals for the contracts identified in Appendix A prior to the letting.
4. Plaintiffs MAMCO and Bagshaw have indicated that they may identify additional USDOT-funded KYTC contracts, scheduled for letting after October 24, 2024, on which they intend to bid. USDOT will consult with INDOT about any actions that are necessary to ensure compliance with the preliminary injunction with respect to such contracts.
5. Other than the limitations set forth in this guidance, KYTC should continue to fully implement the DOT DBE program, including setting DBE contract goals on contracts that are not identified in Appendix A.

USDOT will provide updated written guidance as necessary. Please share this guidance with KYTC.

cc: Ayanna Butler, Chief Counsel
Karla Petty, Acting DFS South

Appendix A

CALL 100 **CONTRACT ID 245366**

HARLAN COUNTY

STP BRZ 9030 (484) : KY 72 (MP 13.313) ADDRESS DEFICIENCIES ON KY 72 OVER POOR FORK OF CUMBERLAND RIVER (048B00138N) (MP 13.403), A DISTANCE OF 0.09 MILES. BRIDGE REPLACEMENT.
SYP NO. 11-10196.00. THE DBE PARTICIPATION GOAL IS 2.50%.

CALL 101 **CONTRACT ID 241318**

OHIO COUNTY

STP 5054 (006) : HARTFORD-SEBREE ROAD (KY 136) REPLACE BRIDGES OVER STILLHOUSE BRANCH (MP 0.0171), HANLEY CREEK (MP 1.07), BARNETT CREEK (MP 3.356), TOMS BRANCH (MP 5.425), LITTLE NO CREEK (MP 5.668) AND NO CREEK (MP 5.998) GRADE, DRAIN & SURFACE WITH BRIDGE.
SYP NO. 02-08812.20. THE DBE PARTICIPATION GOAL IS 6.00%.

CALL 111 **CONTRACT ID 242957**

GRAYSON COUNTY

FPB 0403 (199) : BRANDENBURG ROAD (KY 259) BRIDGE 043B00001N OVER ROUGH CREEK BRIDGE REPAIRS.
SYP NO. 04-10047.00. THE DBE PARTICIPATION GOAL IS 8.50%.

CALL 200 **CONTRACT ID 241111**

HOPKINS COUNTY

054GR24D011

I-69

THE DBE PARTICIPATION GOAL IS 8.00%.

HOPKINS COUNTY

FE02 054 0069 B00066N : PENNYRILE PARKWAY (I-69) BRIDGE 054B00016N OVER I-69 AT MP 117.04 ASPHALT PAVEMENT & ROADWAY REHAB.

HOPKINS COUNTY

NHPPIM 0691 (013) : I-69 PAVEMENT REHABILITATION, A DISTANCE OF 4.34 MILES. ASPHALT PAVEMENT & ROADWAY REHAB.

SYP NO. 02-20029.00.

CALL 201 **CONTRACT ID 242353**

PERRY COUNTY

097GR24P049 - FD05, FD04, & HSIP

HYDEN - HAZARD - HINDMAN ROAD (KY 80)

THE DBE PARTICIPATION GOAL IS 6.00%.

PERRY COUNTY

FD04 097 0080 012-013 : HAZARD TO TALCUM ROAD (KY 80) (MP 12.700) FROM 930 FEET EAST OF KY 3351 EXTENDING EAST TO 500 FEET WEST OF ELK RUN/TAMETHA LEE DRIVE (MP 12.900), A DISTANCE OF 0.17 MILES. ASPHALT RESURFACING.

SYP NO. 10-04700.00.

PERRY COUNTY

FD05 097 0080 008-016 : HYDEN - HAZARD - HINDMAN ROAD (KY 80), (OMIT MP 14.513-15.053) (MP 8.330) FROM 940 FEET WEST OF JUSTICE DRIVE, EXTENDING EAST TO KNOTT COUNTY LINE (MP 15.824), A DISTANCE OF 7.49 MILES. ASPHALT RESURFACING.

PERRY COUNTY

HSIP 9010(544) : KY HIGHWAY 80 (KY 80) (MP 15.60) 0.192 MILES WEST OF PHOENIX PLACE BOULEVARD TO THE PERRY/KNOTT COUNTY LINE (MP 15.824), A DISTANCE OF 0.22 MILES. ASPHALT RESURFACING.

SYP NO. 10-00942.00.