



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N758
Indianapolis, Indiana 46204

PHONE: (855) 463-6848

Mike Braun, Governor
Lyndsay Quist, Commissioner

7/21/2025

U.S. Department of Transportation
Federal Highway Administration
Departmental Office of Civil Rights
1200 New Jersey Ave, S.E.
Washington, DC 20590

REQUEST FOR WAIVER OF RACE & GENDER CONSCIOUS REQUIREMENTS OF THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I. Introduction and Purpose

Pursuant to 49 CFR 26.15, the Indiana Department of Transportation (INDOT) hereby requests a waiver from the federal requirement to implement race and gender conscious components of the Disadvantaged Business Enterprise (DBE) Program, as outlined in 49 CFR Part 26. INDOT proposes to revise and implement its Disadvantaged Business Enterprise (DBE) Program to comply with the requirements of 49 CFR Part 26. INDOT proposes to administer a race-neutral DBE program based solely on economic disadvantage, ensuring nondiscrimination in the award and administration of federally assisted contracts.

INDOT is committed to creating a level playing field for all small businesses. INDOT will not use race, or gender-based presumptions in its administration of the DBE program, DBE certification, goal-setting, or contract award procedures unless and until the USDOT develops sufficient legal and evidentiary support to reinstate such measures in compliance with constitutional standards.

II. Justification for Waiver

Constitutional Compliance and Legal Precedent

INDOT recognizes its obligation to operate in a constitutionally sound manner and avoid implementing policies that may run afoul of the Equal Protection Clause of the Fourteenth Amendment. Given this, INDOT seeks a waiver to establish a DBE program based *solely* on the economically disadvantaged criteria laid out in 49 CFR 26. If the waiver is accepted, no contract-specific DBE goals will be set based on race, ethnicity, or gender. The goal-setting methodology and certification standards will focus exclusively on the availability of economically disadvantaged small businesses in the relevant geographic and industry markets.

III. Economic Disadvantage as a Constitutionally Permissible Basis

The Equal Protection Clause permits government classifications based on economic status, so long as they are rationally related to a legitimate governmental interest. A DBE program limited to economically disadvantaged

small businesses, regardless of race or gender, avoids strict scrutiny review and is fully compliant with constitutional standards.

INDOT therefore proposes maintaining a program structure based solely on the economic disadvantage factors set forth in 49 CFR Part 26. All applicants must establish their economic disadvantaged status by submitting documentation of all criteria set forth in 49 CFR Part 26 which currently includes personal net worth, business size standards, and related economic criteria.

INDOT will apply the personal net worth cap in accordance with 49 CFR §26.67(a)(2) but will no longer apply any presumptions regarding social disadvantage. If the waiver is granted, the burden of proof remains on the applicant to demonstrate an economic disadvantage without relying on any group-based assumptions.

Goal Setting Approach

INDOT will abide by 49 CFR 26.45. The goal-setting methodology will focus on the availability of economically disadvantaged small businesses in the relevant geographic and industry markets. INDOT proposes to utilize the current proposed DBE goal of 9.94% in setting DBE goals on construction projects for small businesses for the next three federal fiscal years beginning October 1, 2025.

Moving forward, INDOT will conduct and use its full 2028 Disparity Study findings to determine a new proposed DBE goal based solely on economic criteria. Data will include the capacity of small, economically disadvantaged firms within INDOT's geographic area without consideration of race or gender. The Disparity Study will also provide updated evidence of INDOT's continued efforts to meet goals through race neutral means. INDOT will submit an updated waiver request once the 2028 Disparity Study is completed.

This approach furthers the race and gender-neutral goal of providing equitable access to federal transportation funds while remaining constitutionally and legally sound.

Requested Waiver Scope

This waiver request specifically seeks exemption from the following provisions of 49 CFR Part 26:

- a) 26.45 – the use of race and gender in setting overall DBE goals;
- b) 26.51(d) the use of race and gender conscious means of meeting DBE goals;
- c) 26.53 the use of contract specific DBE goals using race or gender classifications;
- d) Appendix A to Part 26 the use of good faith efforts analysis tied to race conscious measures.

In their place, INDOT will implement a DBE Program that:

- 1) Utilizes a race and gender-neutral implementation strategy;
- 2) Any new DBE applicant must qualify as a small business under SBA standards. Annual gross receipts must not exceed a specified average over five fiscal years.
- 3) At the time of certification, the DBE applicant must meet the criteria set forth in 49 CFR Part 26 based on their economic disadvantages to compete for projects due to diminished capital and credit opportunities when compared to non-disadvantaged individuals in the same or similar line of business.
- 4) Continue the certifications of all currently certified DBEs for the remainder of their certification, as they previously met the criteria for certification based on the business size requirements in effect under 49 CFR Part 26. Upon their scheduled declaration of eligibility, these firms will be required to affirm that they continue to meet the economic disadvantage criteria.
- 5) Continues to offer DBE Supportive Services;
- 6) Track participation without setting race or gender specific goals;

7) Offer technical assistance and training to all economically disadvantaged businesses

INDOT currently offers supportive services to DBEs and will continue with the same services as follows:

- 1) Business Development Program
- 2) Hauler Reimbursement Program (if federal funds continue to be distributed)
- 3) Prequalification Reimbursement Program (if federal funds continue to be distributed)
- 4) Relaunch new business and hauler orientations
- 5) Launch a virtual learning program
- 6) DBE forum and networking event

IV. Public Participation

To meet the requirements of 49 C.F.R. 26.15(b), INDOT has conducted the following public participation outreach methods:

- A. Public notices published on _____, 2025 for all districts
- B. Stateholder inputs sessions occurred on: _____, 2025
- C. Consultation with the DBE community through feedback sessions on: _____, 2025
- D. Public hearings were held on: _____, 2025

V. Implementation Plan and Oversight

INDOT proposes an initial waiver period of three (3) years, during which the following will occur:

- A. Participation data will be collected and analyzed for program effectiveness;
- B. Annual reports will continue to be submitted to USDOT's Office of Civil Rights;
- C. INDOT will conduct a full disparity study (due to FHWA on August 1, 2028) pursuant to 49 CFR 26, Subpart C that examines the ready, willing and able capabilities of small businesses in INDOT's geographic area that can procure INDOT projects;
- D. Follow all federal rules, regulations, and laws, implemented with respect to DBE.

VI. Conclusion

This waiver request allows INDOT to operate a constitutionally compliant, economically focused DBE program in alignment with:

- A. Federal regulatory flexibility under 49 CFR 26.15
- B. The goal of enhancing contracting access for economically disadvantaged small businesses without relying on race or gender classifications.

INDOT believes that this narrowly tailored approach will achieve the objectives of 49 CFR Part 26. INDOT requests the U.S. Department of Transportation, Federal Highway Administration, to approve this waiver in recognition of both constitutional obligations and the need for effective, legally durable public procurement strategies.

Respectfully Submitted,

Lyndsay Quist
Commissioner
Indiana Department of Transportation

INDOT is hosting three hybrid public feedback sessions regarding the draft Request for Waiver of Race & Gender Conscious Requirements of the Disadvantaged Business Enterprise Program:

Central Region Public Meeting - INDOT Office of Materials Management, 120 S Shortridge Rd, Indianapolis, IN 46219. Monday, July 28, 2025, 5 pm -6 pm

Virtual link: [Click here to register.](#)

Northern Region Public meeting- INDOT Plymouth District, 2845 Jack Greenlee Dr, Plymouth, IN 46563. Monday, July 28, 2025, 9 am-10 am.

Virtual link: [Click here to register.](#)

Southern Region Public Meeting - INDOT Seymour District, 185 Agrico Lane Seymour, IN 47274. Wednesday, July 30, 2025, 9 am-10 am

Virtual link: [Click here to register.](#)

If you are unable to join a public feedback session but would like to leave a comment, you can do so [here](#).

DRAFT