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October 17, 2025

VIA ELECTRONIC MAIL:

Secretary Justin P. Powell
South Carolina Department of Transportation
955 Park Street
Columbia, SC 29201
Email: PowellJ@scdot.org

RE: *Request for Confirmation of the DBE Program Pursuant to the U.S. Department of Transportation's Interim Final Rule (90 Fed. Reg. 47969, Oct. 3, 2025)*

Dear Secretary Powell:

I write on behalf of Contractors for Equal Opportunity (CEO), a coalition of construction contractors and subcontractors committed to nondiscriminatory contracting practices on public infrastructure projects. I serve as Deputy Counsel at the Wisconsin Institute for Law & Liberty (WILL), which represents CEO in legal and regulatory matters. We have filed nationwide lawsuits to enforce non-discrimination in highway contracting, including the landmark case of *Mid-American Milling, Inc. (MAMCO) v. USDOT*, No. 3:23-CV-00072-GFVT, 2024 WL 4635430 (E.D. Ky. Oct. 31, 2024) (granting injunction against the DBE program).

We respectfully request formal written confirmation of the current status of the South Carolina Department of Transportation's Disadvantaged Business Enterprise (DBE) Program following the U.S. Department of Transportation's Interim Final Rule (IFR) published in the Federal Register on October 3, 2025 (Docket No. DOT-OST-2025-0897; RIN 2105-AF33).

As you are aware, the Interim Final Rule removes all race- and sex-based presumptions of social and economic disadvantage from the federal DBE and Airport Concession DBE programs, finding those provisions unconstitutional. The IFR further mandates that each Unified Certification Program (UCP) reevaluate all currently certified DBEs under the new individualized standards. Importantly, the new 49 C.F.R. § 26.111 provides that, until such reevaluations are complete, state and local recipients may not set DBE contract goals, count DBE participation toward such goals, or enforce any compliance provisions related to DBE participation.

Although you have posted your position online, it is vague and contains much less detail than other agencies, such as [California](#), [Virginia](#), and [Arkansas](#). Accordingly, on behalf of our member contractors, we request that SCDOT confirm in writing:

1. That SCDOT's DBE program has been suspended effective October 3, 2025, in accordance with the Interim Final Rule; and
2. That contractors working under existing SCDOT contracts containing DBE participation goals are no longer required to submit DBE-related documents, reports, or other compliance materials during the reevaluation period established by 49 C.F.R. § 26.111.

This confirmation will provide essential clarity to contractors seeking to remain in full compliance with both federal and state law during this transition period.

We appreciate your prompt attention to this matter and look forward to your written response. Please do not hesitate to contact me at (414) 727-9455 or dan@will-law.org with any questions. Without sufficient clarity, we will take all appropriate legal action or further communication with the United States Department of Justice, which is monitoring state compliance with the *MAMCO* court order.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY INC.



Daniel P. Lennington
Managing Vice President & Deputy Counsel

On behalf of Contractors for Equal Opportunity

CC: Allen Hutto, Chief of Staff; Email: HuttoA@scdot.org
Barbara Wessinger, Chief Counsel; Email: WessingerBM@scdot.org