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November 2025

U.S. DOT Announces Significant Changes to DBE Program

On September 30, 2025, the U.S. Department of Transportation announced significant changes to the Disadvantaged Business Enterprise (DBE) program. DOT issued an Interim Final Rule, effective October 3, 2025, that removes the race- and gender-based presumptions of social and economic disadvantage in the DBE program. This change in the rule follows a 2024 U.S. District Court decision whereby the Court determined that the DBE program's statutory race- and sex-based presumptions likely do not comply with the Constitution's promise of equal protection under the law.

The revised regulations maintain the structure of the existing program but revise it so that certification of DBEs must now be race- and sex-neutral. Going forward, companies desiring to be certified as DBEs will have to provide a narrative and evidence of individualized social and economic disadvantage. This means that all applicants for DBE status must demonstrate social and economic disadvantage affirmatively based on their own experiences and circumstances, and without regard to race and sex. To do this, companies will have to explain the specific barriers they have encountered in such areas as education, employment, and financing, that has caused measurable hardship.

Certifying agencies (such as NYS DOT) have been directed to reevaluate all currently certified DBE, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. During this transition period, federal grant recipients are instructed to pause implementation of DBE goals under the current program, to set 0% DBE goals on all contracts, and to not enforce goals on existing contracts. Goals cannot be set until DBEs are certified by certifying agencies in compliance with the new requirements.

In addition, under the new regulations DBE programs must be "narrowly tailored to overcome the effects of social and economic disadvantage". The rule also clarifies that any disparity studies utilized by grant recipients in setting their goals must provide a detailed capacity analysis, including the methodology used.

NYS Secure Choice Savings Program Launched

Governor Kathy Hochul has announced the launch of the New York State Secure Choice Savings Act, a new state-sponsored retirement savings plan for private-sector employees who do not have access to a workplace retirement plan.

This Act, which became law in 2021, will require employers with 10 or more employees who do not currently provide a qualified retirement plan for their employees to allow their employees to participate in a state sponsored and managed plan. Qualified employers will be contacted by the Plan (administered by the NYS Department of Taxation & Finance) to register their employees. Employers who receive a request to register in error because they currently offer a qualified retirement plan (and are therefore exempt from participation) will need to certify their exemption. An employer's role is limited to facilitating employee access to the plan by registering with the plan and submitting participating employee contributions through payroll deductions each pay period. NESCA members may go to the Secure Choice website at <https://newyorksecurechoice.com> for additional information.

NESCA Membership Meeting November 13, 2025 Century House – 6:00 p.m.

6:00 Open Bar/Registration
6:30 Dinner: Sirloin Steak
7:15 Business Announcements
7:30 Program: "The Business and Individual Implications of the One Big Beautiful Bill Act"

Presented by
Rob Kind – Teal, Becker & Chiaramonte, CPAs, PC
Rochelle Moore – The Bonadio Group
Nicholas Watkins – RBT, CPAs, LLP

Reception, Dinner, Tax & Gratuities - \$70



PRESIDENT'S MESSAGE

The Fall season has certainly been a busy time for us, and I can't believe it is November already. The NESCA team has been busy this Fall planning and executing many events for all our members. I hope to see you all at the upcoming events.

On October 9th NESCA held its 44th Annual Trade Show at the Century House. As has become the norm, we quickly sold out all available exhibit space and 50 NESCA members had the opportunity to exhibit their products and services to subcontractors, general contractors, and others connected to the commercial construction industry. This was a great opportunity for networking, great food and lots of fun for everyone who attended. We were able to raise \$4,532 from the silent auction which will be turned over the U.S. Marine Corps Toys for Tots Program at our December membership meeting. Also, one lucky NESCA member walked away with \$1,946 as the winner of our Super 50/50 drawing!

But the Trade Show wasn't our only activity in October. On October 21st we

held a regional membership meeting at Coppola's in Hyde Park for our Mid-Hudson members, who were treated to a presentation by Thomas Zupan and Jolene Borell, RBT CPA's, LLP on "The Business and Individual Tax Implications of the One Big Beautiful Bill Act."

The NESCA/AGC/ECA Educational partnership was also in full swing during October. On October 23rd, we began a 7-week Supervisory Training Program (STP) class on "Risk Management and Problem Solving", and on October 28th we held a program on "DOT Roadside Safety Inspections & Hazardous Materials Compliance". But that's not all. We also held several online courses. On October 15th we began an 8-week online course on "Basic Blueprint Reading", and on October 21st we held a morning webinar on "Hacked by AI: The New Face of Ransom and Data Theft".

As you can see, NESCA was very busy in October and November will be no different. At NESCA's November 13th membership meeting we will feature a presentation on "The Business and Individual Tax Implications of the One Big Beautiful Bill Act", this time by a panel of accounts from Teal, Becker & Chiamonte, CPA's, The Bonadio Group, and RBT CPA's. That meeting will be followed by our annual "Notary Public" review class on November 18th. And on November 19th we will hold a regional membership meeting for our Bingham area members at McGirk's Irish Pub.

I'd also like to remind members to mark your calendars for NESCA's Annual Holiday Reception and Dinner, to be held on December 11th at the Century House. This is always a fun event and don't forget, your spouses or significant others can attend free of charge. In the spirit of the holiday season, we will again

ask members to bring an unwrapped toy with you as part of our Toys for Tots campaign with the Marine Corps.

In closing, as we come into the beginning of the Holiday season take the time to enjoy your family and friends. In addition, take this time to be thankful for the many good things in life and I hope to see you all soon.

Joe Jerkowski, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

The NESCA membership is very aware competitive bidding on public projects is distinctly different than competitive bidding on private projects. In that same vein, subcontractor bids on public projects are also distinguished from competitive bids on private projects.

On public projects owners are limited in the methods and procedures in which they can reject solicited competitive bids. Subject to an evaluation of the responsiveness and responsibility of a bidder, as well as the allocated contract budget for the project, a public owner is obligated to award a public contract to the lowest responsible bidder submitting a bid compliant with the contract solicitation.

Absent an agreed upon extension of time by the public owner and contractor, the contractor may withdraw its bid if a contract award and execution is not concluded within 45 days of opening of bids.

Unless the subcontractor or material supplier expressly limits the effective time of its bid, the same 45-day time limitation for acceptance of its bid may not be relied upon by the

subcontractor/materialman. It is extremely prudent for a subcontractor/materialman to incorporate a 30-day time limitation on the acceptance and enforceability of a bid price submission. The bid submission should also state that acceptance of the bid price is expressly contingent upon subcontract terms and conditions acceptable to subcontractor.

These provisions will support securing relief from your competitive bid when an award and acceptable subcontract is not awarded within 30 days from submission of your bid and avoidance of being subject to months of delay before award of the contract. In the event the time period for acceptance of your bid expires, and you no longer wish to be bound to your bid, it is wise to notify the contractor you are withdrawing your bid.

When submitting competitive bids on private projects, without involvement of public funds, there are less restrictions on a private owner to award the contract to the lowest responsible bidder or to whom it desires the contract. This is especially true when general contractors or construction managers engage in bid shopping or "buying out" the subcontract post bid.

Remaining on the subject of public and private projects, the available procedures for addressing the circumstances of a bid mistake are also distinguishable. There are multiple reasons why mistakes occur during the restricted time provided to bidders to compile their pricing and submit competitive bids.

New York has enacted General Municipal Law §103 to provide relief to contractors that commit an excusable error in compiling and submitting its competitive bid to a public owner. That relief allows the bidder to withdraw its bid containing a unilateral mistake provided, amongst other things, notice of the unilateral mistake is provided the owner within three (3) days of bid submission; the mistake was clerical in nature, it consists of an unintentional arithmetic error or omission of significant portions of work and the public agency will not be harmed by the withdrawal. It is noteworthy that overlooking an express provision of the contract such as providing temporary electric or heat is not an excusable error.

On private contracts the determination whether a bid mistake is excusable or inexcusable falls within comparable criteria utilized in public contracts. The mistake must be material, the bidder can objectively demonstrate it used ordinary care in preparation of the bid and the private owner can be returned to its original status prior to the bid error.

Unfortunately, if a subcontractor commits an excusable bid error the prime contractor may have already submitted its bid utilizing the subcontractors mistaken number. The mistake is the subcontractors, not the prime contractors, and the prime contractor may assert a legal argument known as promissory estoppel to seek to compel the subcontractor to honor its bid or pay some form of damages.

The principal of promissory estoppel results from the general contractor relying upon and utilizing the subcontractor's mistaken bid in securing the contract award. Courts have held the subcontractor's submission with the numerical error as a promise to perform which the general contractor has relied upon. As a result of the contractor's reliance on the subcontractor's bid submission the subcontractor is stopped from withdrawing its bid or, should it not honor the promise, will be obligated to pay the contractor damages for the value and consequences of the mistake.

It is imperative that a contractor or subcontractor secure all of its work papers and information relied upon in compiling its competitive bid when it discovers a material error occurred in preparation of its bid. It is also important that immediate notice is given to the owner or prime contractor to mitigate the impact of the numerical error in the bid.

Walter G. Breakell, NESCA Legal Counsel

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Calendar of Events

November 13, 2025

Board of Directors Meeting
Century House, Latham, 5 pm

November 13, 2025

NESCA Membership Meeting
Century House, Latham, 6 pm

November 18, 2025

Notary Public Seminar
Building Industry Center, 12 noon

November 19, 2025

Binghamton Membership Meeting
McGirk's, Binghamton, 6 pm

December 4, 2025

Board of Directors Meeting
Century House, Latham, 6 pm

December 11, 2025

Holiday Reception & Dinner
Century House, Latham, 6 pm

Voting Leave Reminder

Election Day is November 4th, and early voting is happening from October 25th through November 2nd. All employees in NYS are eligible for up to two hours of paid time off to vote if they do not have "sufficient time to

vote". An employee is deemed to have "sufficient time to vote" if:

- They have four consecutive hours to vote from when polls open to the start of their work shift or;
- They have four consecutive hours to vote between the end of their shift and the closing of polls.

An employee who does not have sufficient time outside of his scheduled working hours within which to vote on any day at which he may vote, may without loss of pay for up to two hours, take off so much working time as will, when added to his voting time outside his working hours, enable him to vote.

If an employee requires working time off to vote, he must notify his employer not more than ten nor less than two working days before the election. In addition, employers are required to post a Voting Leave notice at least ten days before an election.

Milestone Member Anniversaries

T.J. Bell Environmental – 5 Years
Caruso Electrical Contracting – 5 Years
Modern Press – 5 Years
Pinnacle Roofing, Inc. – 5 Years
Oryx Insurance Brokerage – 10 Years

2026 Paid Family Leave Rates Released

The Department of Financial Services (DFS) has announced the paid family leave benefit and employee contribution rates effective January 1, 2026. Below are the 2026 rates compared to the 2025 rates.

	2025	2026
Weekly Benefit (% of AWW)	67%	67%
Benefit Duration	12 weeks	12 weeks
NYS Average Weekly Wage	\$1,757.19	\$1,833.63
Maximum Weekly Benefit	\$1,177.32	\$1,228.53
Employee Contribution Rate	0.388% of wages	0.432% of wages
Maximum Annual Contribution	\$354.53	\$411.91

Mark Your Calendar!

NESCA Holiday Reception & Dinner
December 11, 2025 – Century House, Latham
Look for More Information to Come!



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