



# DBE & Contractor Conference

PRESENTED BY  
Christopher Slottee  
Paige Spratt

Experience what we know about  
your industry and what it's like to  
be represented by Schwabe.

REPRESENTED BY  
**Schwabe**

March 4, 2025

## Legal Challenges to SBA and Government Contracting Programs

- The DOT's DBE Program is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally-assisted highway, transit, airport, and highway safety financial assistance transportation contracts.
- The DBE Program requires state and local transportation agencies that receive DOT financial assistance to establish goals for the participation of disadvantaged business enterprises ("DBEs") in their contracting programs, as well as establishing contract-specific DBE subcontracting goals.
- To participate in the DBE Program, a business must be considered "small" under size standards set by the Small Business Administration and the DOT and owned and controlled by socially and economically disadvantaged individuals.
- DOT regulations provide that African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis. To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed **\$2.047 million** (changed from \$1.32 million in 2024).



# Legal Challenges to SBA and Government Contracting Programs

## Infrastructure Act

- Infrastructure Investment and Jobs Act set-aside of 10% (around \$37 billion) of transportation funding for “small business concerns” owned and controlled by “socially and economically disadvantaged individuals.”
  - Section 11101(e)(3) of the Infrastructure Investment and Jobs Act provides that:

Except to the extent that the Secretary determines otherwise, **not less than 10 percent of the amounts made available for any program under this division** (other than section 14004), division C, and section 403 of title 23, United States Code, **shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.**

# Legal Challenges to SBA and Government Contracting Programs

*Mid-America*

- October 2023: *Mid-America Milling Company, LLC, et. al. v. U.S. Department of Transportation, et. al.*, Case No. 3:23-cv-72, Federal District Court, Eastern District of Kentucky
  - Court ruled that DOT’s use of a rebuttable presumption of social disadvantage for certain races and ethnicities was unconstitutional.
  - Injunction issued prohibiting the DOT from using the DBE program in any DOT-funded project that the plaintiffs in *Mid-America* submit a bid on.
  - Minority contractors and related associations have moved to intervene in *Mid-America* because they do not believe that the DOJ will adequately defend the program under the new administration.
  - Federal government and plaintiffs have requested a 90-day stay of the lawsuit to permit the DOJ to “consider [its] litigating position.”

# Legal Challenges to SBA and Government Contracting Programs

*Mid-America*

- Plaintiffs have successfully challenged two other federal government contracting programs that use a rebuttable presumption when determining social disadvantage
  - *Ultima Services Corporation v. U.S. Department of Agriculture et al.*, Case No. 2:20-CV-00041: Found that the SBA's use of rebuttable presumption of social disadvantage for certain races in the 8(a) program is unconstitutional racial discrimination and enjoined application of that rebuttable presumption.
  - *Jeffery Nuziard, et. al. v. Minority Business Development Agency, et. al.*, Case 4:23-cv-00278-P: Found that the SBA's use of a racial classifications or the plaintiffs' race or ethnicity to determine whether they can access to certain Minority Business Development Agency services and benefits is unconstitutional.

# Legal Challenges to SBA and Government Contracting Programs

## *Mid-America*

- The DOT's DBE Program has not been eliminated.
  - *Mid-America* ruling limited to the rebuttable presumption of social disadvantage.
  - Congress has repeatedly re-authorized the DOT's DBE Program.
- The new administrations executive order indicate a goal of moving away and eliminating preferences or presumptions in favor of certain races/ethnicities
- We may see:
  - Reduction in application of DOT DBE Program to DOT projects (*i.e.*, limited goals for participation of DBE firms)
  - Move towards the SBA's approach to social disadvantage – requiring written narratives describing social disadvantage that are otherwise available to all contractors, in lieu of race or gender-based presumptions



907-339-7130

[cslottee@schwabe.com](mailto:cslottee@schwabe.com)

# Christopher Slottee

## Shareholder

**Chris Slottee has over 15 years of experience handling complex litigation matters, specifically working with Alaska Native Corporations and tribal governments.**

Chris is well-versed in issues of corporate governance, legal and risk management, government contracting, corporate transactions, mergers and acquisitions, land use, and real estate matters.

Chris provides guidance related to the Small Business Administration's (SBA) small business programs, including SBA's Section 8(a) and HUBZone Business Development Programs, and have advised clients regarding 8(a) and small business joint ventures, regulatory compliance with the Federal Acquisition Regulations, requests for equitable adjustment and claims, and provided strategic advice regarding the utilization of the SBA's small business programs.



# Paige Spratt

## Shareholder

**Combining real-world construction experience with legal know-how, I help contractors find practical solutions to complex problems.**

Before attending law school, I earned a degree in Construction Management and worked as a construction manager for two large commercial contractors and the world's largest aerospace company. As a result, I can understand the business realities clients face daily.

360-905-1433

[pspratt@schwabe.com](mailto:pspratt@schwabe.com)



INDIAN COUNTRY  
AND ALASKA NATIVE  
CORPORATIONS



HEALTHCARE AND  
LIFE SCIENCES



REAL ESTATE AND  
CONSTRUCTION



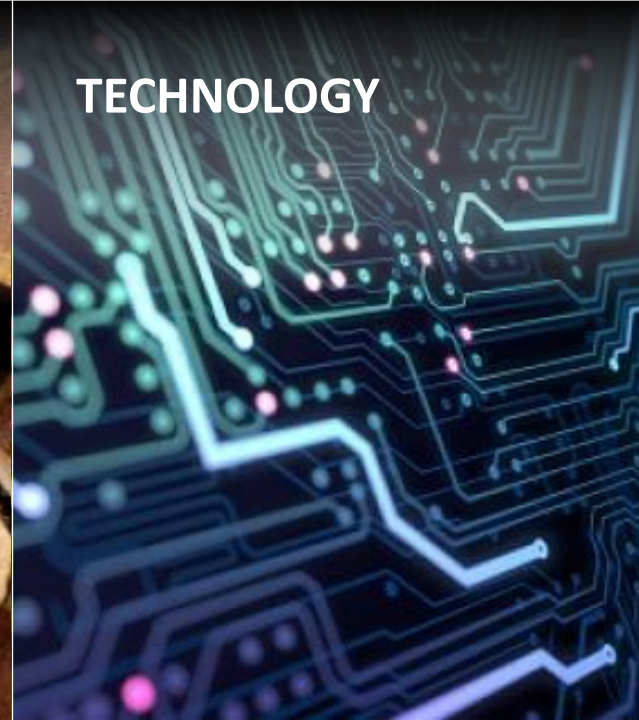
CONSUMER  
PRODUCTS,  
MANUFACTURING,  
AND RETAIL



NATURAL  
RESOURCES



TECHNOLOGY



PORTS AND  
MARITIME

