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## Civil Rights Disadvantaged Business Enterprise Program Overview

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*Disadvantaged business enterprise requirements must be met as a condition for using Federal-aid funding*



Each year, the Federal Highway Administration (FHWA) allocates approximately \$40 billion in Federal funds to State departments of transportation (State DOTs) and local public agencies (LPAs) to construct and maintain our Nation's roadways. As a Federal agency, FHWA has the responsibility to ensure that these public funds benefit everyone and do not result in discrimination prohibited by Title VI of the Civil Rights Act of 1964. Even though this law banned discrimination in federally funded programs, by the 1980s the U.S. Department of Transportation (U.S. DOT) found that discriminatory practices still existed in transportation contracting. In an effort to remedy this situation, the U.S. DOT relied on the principles of Title VI to create a program to "level the playing field" for minority- and women-owned firms to compete for DOT-funded contracts.

That program is now called the Disadvantaged Business Enterprise Program or DBE Program, and is no longer limited to minorities and women.

The DBE Program applies to State and LPAs that receive funds from FHWA, the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

As a condition of using Federal-aid dollars for your LPA-construction projects, you must understand what the DBE Program is, how it relates to your contracts, and what your specific role is for the program.

## Disadvantaged Business Enterprise Program



As recipients of Federal funds, State DOTs must comply with U.S. DOT DBE Program regulations and ensure compliance by LPAs that award or administer DOT-assisted contracts. The DBE regulations have six parts that comprise a DBE Program. All pieces fit together like a puzzle. Each piece is very important.

There are general requirements in the regulations for establishing a DBE program, the objectives, and the required records and reports. Most importantly, the regulations require the State to include DBE assurances in every contract, and in each financial agreement with LPAs. LPAs must, in turn, ensure that these assurances are in all prime contracts and subcontracts.

DBE assurances hold recipients contractually accountable to comply with the State's approved DBE Program. Non-compliance can lead to the loss of Federal funds or termination of contracts.

The requirements to properly implement the DBE Program in each State are prescribed in the administrative requirements. These include:

- Designation of a DBE liaison officer
- Establishing prompt payment and return of retainage requirements
- Developing a monitoring and enforcement mechanism.

The monitoring and enforcement mechanism verifies that the work committed to DBEs is actually performed by DBEs, and that their payments are consistent with their approved contracts.

State DOTs must ensure that all program participants, such as you, the LPA, comply with the DBE Program requirements. LPAs must perform monitoring and enforcement activities on Federal-aid projects.

The regulations require the State DOT to set an annual overall DBE participation goal and to explain how they will meet the goal. The regulations also include procedures for making certification decisions and removing the eligibility of DBE firms.

A significant component of the DBE Program is compliance and enforcement. Failure to comply with the DBE regulations may result in formal enforcement actions, or complaints filed against the State DOT or you, the LPA.

This section also explains how DBE participation is counted toward DBE goals. It defines commercially useful function and describes good faith effort procedures when a prime contractor cannot meet a DBE goal in a contract. These are contract administration requirements that LPAs must abide by. Other videos are available describing these requirements.

Certification is a key component of the DBE program. A primary objective of the program is to ensure that "only firms that 'fully' meet the eligibility standards are permitted to participate as DBEs." This part of the regulations establish the eligibility criteria to qualify as a DBE, which are:

1. The firm must be a small business, for profit
2. The firm must be at least 51 percent owned by socially and economically disadvantaged individuals
3. The firm must be controlled by socially and economically disadvantaged individuals

**If you have reason to believe that a firm does not meet these criteria, notify your State DOT.**

The regulations require that each State handle its certification procedures for DBE applications through a one-stop shopping process, called the Unified Certification Program, or UCP. Once a DBE firm is certified by a UCP, the certification is recognized by all DOT recipients in the State, including LPAs.

You will need to understand these things to ensure your Federal-aid contracts comply with DBE requirements.

Additionally, this part of the program outlines the enforcement actions that may be taken against contractors and DBE firms that make false statements or attempt to defraud the government.

Lastly, the regulations require cooperation, mandate confidentiality of information, and prohibit intimidation or retaliation against any individual or firm involved in a DBE complaint.

To comply with these requirements, each State must establish a DBE Program and develop a DBE Plan for FHWA approval. The DBE Plan is the State DOT's guide on how it will implement the DBE Program. It is an essential document for those with DBE Program responsibilities, such as you, the LPA.

Understanding your role is critical to your ability to comply with DBE Program requirements to ensure that your project remains eligible to receive federal funds.

What exactly does conformance to DBE Program requirements mean for you as the LPA?

First, contact your State DOT to get a copy of the State's DBE Program Plan. Once you receive a copy, you will know:



- What's in the plan
- Who the DBE liaison officer is
- The administrative requirements
- What the State expects LPAs to do



Second, you will also need to know:

- How your State's Unified Certification Program works
- Where to locate the directory or database of certified contractors
- How to identify the type of work DBEs are certified to perform.

This is an important first step in counting DBE participation on Federal-aid contracts.

Bottom line, as the LPA, you must know and follow your State's DBE Program Plan, unless otherwise indicated by your State. Adherence to the DBE Program requirements ensures that your local Federal-aid project funding is not jeopardized nor delayed due to complaints, challenges, or other issues.

### Additional Resources

- Regulations addressing the U.S. DOT's DBE program  
<http://www.ecfr.gov/cgi-bin/text-idx?region=DIV1;type=boolean;c=ecfr;cc=ecfr;sid=14e071f96d5d61cb9d2410ed56c59d3d;q1=dbe;rgn1=Section%20Heading;op2=and;rgn2=Section;op3=and;rgn3=Section;view=text;idno=49;node=49%3A1.0.1.1.20;rgn=div5>
- Guidance from the U.S. DOT's OSDBU office on DBE requirements  
<http://www.osdbu.dot.gov/DBEProgram/index.cfm>
- Guidance on the DBE program, from FHWA's Office of Civil Rights  
<http://www.fhwa.dot.gov/civilrights/programs/dbess.htm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH63-12-F-00025. It is brought to you by the Federal Highway Administration (FHWA), U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This Companion Resource is the script content for the video production of the same name.