

Training, Education, and Workforce Development

Disadvantaged Business Enterprise Program

Background:

The Disadvantaged Business Enterprise (DBE) program is a legislatively mandated program administered through the U.S. Department of Transportation (USDOT) that applies to Federal-aid dollars expended on federally assisted contracts issued by USDOT recipients such as State transportation agencies (STAs). The U.S. Congress established the DBE program in 1982 to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts,
- Help remove barriers to the participation of DBEs in DOT-assisted contracts, and
- Assist the development of firms that can compete successfully in the marketplace outside of the DBE program.

Section 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) reauthorized the DBE program. The program is administered by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Implementation of the DBE program has been guided by USDOT regulations found at 49 Code of Federal Regulations (CFR), Part 26. The U.S. Court of Appeals for the 9th Circuit rendered a decision in 2005 that significantly impacted the ability of STAs within that Circuit to set race-conscious measures in implementing their DBE programs. The STAs within the 9th Circuit Court are now required to conduct disparity studies to determine whether discrimination and its effects have occurred sufficiently to support the use of race-conscious measures. While the decision currently only impacts the 9th Circuit Court's STAs, it is conceivable that, over time, the remaining STAs will be required to implement a similar process.

Authorities: SAFETEA-LU, § 1101(b)
49 CFR, Part 26

FHWA Stewardship/Oversight Responsibilities:

- Ensure that all FHWA recipients have an approved DBE program that is being implemented in accordance with regulations and reflects progress in meeting program objectives.
- Reduce fraud and ensure that the program benefits only qualified businesses.
- Ensure that recipients receive appropriate training and technical assistance

STA Responsibilities:

- Develop and implement a DBE program that achieves its goals and objectives.
- Carry out all administrative requirements, which include:
 - ▶ A signed and dated policy statement expressing commitment to the program
 - ▶ A DBE Liaison Officer with independent and direct access to the Chief Executive Officer to implement and ensure compliance with the regulations
 - ▶ Prompt payment mechanisms requiring full payment of retainage from prime contractors within 30 days after DBE's work is satisfactorily completed
 - ▶ A bidder's list must be developed and maintained
 - ▶ A monitoring and enforcement mechanism to ensure work committed to DBE firms at contract award is actually performed by DBEs
- Develop annual overall goal for DBE participation in DOT-assisted contracts:
 - ▶ Project amount of goal to be met through race-neutral and race-conscious measures
 - ▶ Conduct consultation with minorities, women, general contractors, officials, and organizations
 - ▶ Collect and analyze data; submit semi-annual reports
- **Certification:** Administer or participate in a statewide Unified Certification Program (UCP) that ensures "only firms that fully meet" the eligibility standards participate in the program.
- **Compliance and Enforcement:** The STAs must implement mechanisms to ensure that program participants comply with DBE requirements.
- **Non-compliance Complaints:** Anyone who believes that an STA has failed to comply with the DBE regulations can file a non-compliance complaint. A compliance review may be conducted and a finding of non-compliance could result in enforcement proceedings from the FHWA, the FTA, or the FAA.

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