

## **Driving Equality: The U.S. Department of Transportation's Disadvantaged Business Enterprise Program**

Why is the Disadvantaged Enterprise Program (DBE) important? In other words, why does VDOT have the DBE program in place?

Thank you very much, Mr. Chairman, and other members of the Transportation and Infrastructure Committee. Thank you all so much for allowing me to be a part of this process here today. I am very honored and pleased to appear before you today.

My name is Sandra D. Norman, Division Administrator, Virginia Department of Transportation (VDOT), Civil Rights Division. I know firsthand of the DBE Program's that importance that is within your jurisdiction. I am also aware and stand in respect of the positive impact this Committee's work has on our Commonwealth. I am very supportive of the DBE program that assists minority business owners. I believe it is the right thing to do. Advancing diversity and making money are not conflicting goals; it is good for business and society.

The Disadvantaged Business Enterprise (DBE) program for the U.S meets constitutional tests. Every court has held that the DBE program regulations at 49 C.F.R. Part 26 are constitutional. The laws were revised in 1999 to meet the test of strict judicial scrutiny applied by the courts to race-based government decision-making.

The courts have found that Congress has extensive evidence that race remains a significant barrier to minority firms' participation in federally-assisted transportation contracts and that the DBE. The program is narrowly tailored to address that evidence.

**Why is the DBE Program Important, great question Mr. Chairman? Here's what Transportation and Infrastructure (T&I) need to know.**

The Disadvantaged Business Enterprise Program (DBE) has its roots in the Civil Rights Act of 1964. It has been regulated through a series of reauthorization legislative initiatives. The DBE programs apply to airports and surface transportation (Highway and Transit). They have been enacted by Congress to address historical discrimination against minority-owned firms in the transportation and to ensure that minority and women-owned businesses have a fair opportunity to participate in contracting opportunities made possible by Federal financial assistance.

The DBE program, with its rigid certification requirements, presents an excellent opportunity for a win-win for all parties. It is a success for VDOT and a success for the community. We want the residents of those communities to benefit from the public investment in that community. The majority of employment growth in the United States comes from small businesses. When small businesses are allowed to do contract work, it is also an opportunity for people who might have been excluded from the relevant workforce to showcase their talents and skills, get trained and work within the transportation industry to have more employment opportunities in the future. Advancing diversity and making money are not conflicting goals; it is good for business and good for society.

If women and minorities were not a part of the DBE program, DBE's would not get contracts just because some large contractors feel that the DBEs and women owned firms incapable of running a construction company daily. DBE's would take a backward step to the struggles of where they were before the DBE Program became in existence.

All they are asking is for the opportunity to bid and receive projects without bias. Small businesses are the Country's economic engine, and when we can include them in major construction projects, we should. Advancing diversity and making money are not conflicting goals; it is good for business and good for society.

Because of the legacy of inequity in employment and business for minorities within the industry, our DBE Program is as relevant today as ever: to level the playing field in transportation for individuals, businesses, and communities of race, color, and gender. Our Country suffers when talented people, who have new ideas, and who want to work hard, are denied the opportunity to compete because of their ethnic background, race, or gender. This is why there is a continued need for the Disadvantaged Business Program to ensure that small business can compete fairly for federal funded transportation related projects.

Following are some examples of discrimination that minority and women business owners have reported in both public and private contracting (this list is not exhaustive):

- Little or no opportunity to bid compared to majority male contractors (bid manipulation).
- Unfair denial of contracts that are then awarded to majority companies.
- Unequal access to bonding, credit or financing as compared to majority competitors.
- Contracting specifications that are applied in a more restrictive way to minorities and women.
- Exclusion from events, organizations or business networks where contracting opportunities are discussed among successful majority companies.
- Double standards in measuring performance.
- Stereotypical attitudes about competence, capacity, and quality of work.
- Predatory business practices such as price discrimination by suppliers, inspectors, bid shopping, slow payment or nonpayment.
- False or fraudulent reporting and use of minority and/or women subcontractors or suppliers.
- Refusal by agencies, primes, suppliers and/or customers to deal with minorities or women.
- Discriminatory collusion and conspiracy in restraint of trade by competitors and suppliers.
- Use of racial slurs or workplace violence, intimidation or sabotage.

We understand that sometimes retelling these stories, especially in a public context, can be embarrassing and even emotional. That is one of the most toxic and corrosive aspects of discrimination it can make the victims, rather than the perpetrators, feel as though they have done something wrong. They haven't. Importantly, by telling their story, they can inspire others to come forward and, together, they can provide the critical evidence needed to ensure that the DBE program continues to be upheld by the courts.

Infrastructure investments as the ones we have in the State of Virginia are essential sources of revenue for local construction and engineering firms. We have established a proud record of reaching out to work with small and minority businesses. We have made payments in the amount of \$391,538,972 over the last five years to DBE's in the State of Virginia.

For the next three Federal Fiscal Years, beginning on October 1st of this year, the Virginia Department of Transportation is proposing to FHWA an 11.18% DBE Triennial goal, for which we have deemed appropriate in light of the number of DBE businesses currently involved in providing services to the transportation sector, as well as other minority and women-owned businesses from census data in the Commonwealth of Virginia's market area that is also capable of providing services.

Therefore, you can see the DBE program, independent of the inherent challenges and the nature that comes with that, has provided opportunities for minorities, women-owned small businesses, and other contractors to participate in an arena that had historically not seen such participation. It has allowed people to create jobs and give their employees a quality of life, which they wouldn't have been able to do before the DBE program. So independent of all the challenges we have, the right part of the program is ACCESS.

ACCESS to many construction projects that use governmental money that will have a requirement with a designated percentage of the total contract values awarded are awarded to DBEs. This allows access to DBE businesses that may not be able to compete on price with larger operations to win contracts on projects that such businesses may not traditionally be able to win on price alone. In addition to the financial benefit, contacts are made with respective industries that may lead to additional work. It is about people, it is about jobs, and too often, we forget that our industry's golden nuggets are the people who participate in the DBE program and the thousands upon thousands of people they employ. It gives access to people and for groups of people who primarily, traditionally, and historically have not had access. Oftentimes we forget that the faces behind the businesses also want to leave a legacy for their children, grandchildren, and for generations yet unborn.

The Commonwealth of Virginia looks forward to making sure that the transportation industry in our state continues to provide programs that ensure contract opportunities for Disadvantaged Business Enterprises and appreciate your continued support and that of the United States Department of Transportation in achieving this goal.

It is about people, and it is about jobs, and too often, we forget that our industry's golden nuggets are the people who participate in the DBE program and the thousands upon thousands of people they employ. If the DBE program were not to continue, I believe not just women and minority companies will be severely affected. Still, small minority-owned subcontracting businesses will be affected as well. There will be no reason for subcontract work, even to large firms.

It is well-known that multitudes of minority and women business owners face severe discrimination. Government contracting programs are a critical tool for leveling the playing field and helping these entrepreneurs deal with the impact of racism. Real-life stories of discrimination from minority and women business owners are vital to assisting courts, policymakers, and the public understands the need to preserve and improve government disadvantaged business programs.

The success of VDOT's DBE Program depends on the rich diversity, skills and talents of our DBEs. VDOT will continue to serve as a model DBE Program to ensure that minority and women-owned businesses have a fair opportunity to participate in contracting opportunities at VDOT. Therefore, we are committed to championing and strengthening our DBE Program. It is the real life stories of discrimination from minority and women business owners that are vital to assisting courts, policymakers such as yourselves, and the public to understand the need to preserve and improve the government disadvantaged business programs that help to DRIVE EQUALITY.

In closing, For these reasons, here are some opportunities that VDOT has put in place:

Established program provisions and policies that enhance stewardship and oversight and to establish vigorous DBE goals on construction and consulting contracts that ensure DBEs have the most significant opportunities to participate beyond a 10% aspirational goal.

Civil Rights Division continues to provide oversight and engage the Design-Builder throughout all phases of the project to support the following areas:

Sponsoring outreach events, individual opportunity sessions, individual debriefing sessions, individual/group training, business development, and employment opportunities outreach events.

Linking the Design-Builder with VDOT Business Opportunity Workforce Development Center (BOWD) designed to support the growth and development of DBE firms.

Connecting the Design-Builder to community agencies and organizations to expand their outreach efforts for construction opportunities.

Facilitating a Civil Rights Compliance Workgroup for the designated project to support greater collaboration and early detection of compliance issues.

Established Stakeholder/Community Roundtables for select projects

This community-based group served as an advisory committee for the project, comprised of those impacted by the project, elected officials, and community leaders.

While the agenda is tailored to help communicate the status of the project, these meetings provided an opportunity for Civil Rights personnel to engage and educate those unfamiliar with VDOT's Civil Rights Program requirements and its impact on the project and community.

Because of business and community relationships built, these businesses and communities became stronger advocates for the project and support for Civil Rights in disseminating information and outreach opportunities.

Again, VDOT will continue to serve as a model DBE Program to ensure that minority and women-owned businesses have a fair opportunity to participate in contracting opportunities at VDOT.

Thank you very much for your time and consideration.