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The U.S. DOT Disadvantaged Business Enterprise Program

The Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) program seeks to offer small disadvantaged businesses a fair opportunity to compete for federally funded transportation contracts. Small disadvantaged businesses are small businesses that are owned and controlled by socially and economically disadvantaged individuals, and have been certified as such by the state where they wish to operate as a DBE. The program is implemented through DOT regulations (Title 49, Parts 23 and 26, of the *Code of Federal Regulations*).

Program Purpose

The DBE program has aimed to prevent discrimination against DBEs by providing them equal opportunity to compete for federally funded transportation contracts. Although DOT, like all executive agencies, establishes agency procurement goals for contracting with small disadvantaged businesses (P.L. 100-656), this program is distinct from that effort because it applies to the contracts awarded by state and local governments that receive DOT grant assistance. Funding for transportation projects flows through grant assistance, making the contracts awarded by grant recipients relevant to DOT policy.

Program objectives include the following:

- removal of barriers to the participation of DBEs in DOT-assisted contracts;
- a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- promotion of the use of DBEs in all types of federally assisted contracts and procurement activities conducted by grant recipients; and
- development of firms that can compete successfully in the marketplace outside the DBE program.

DBE Qualifications

A DBE is defined by criteria from both Small Business Administration (SBA) and DOT regulations. A DBE must be (1) a for-profit small business, and (2) at least 51% owned by socially and economically disadvantaged individuals. A firm must also be organized so that the disadvantaged individuals hold the highest positions in the company or, in the case of corporations, control the board of directors (49 C.F.R. §26.69, 49 C.F.R. §26.69, and 49 C.F.R. §26.71).

To be a small business, a firm must

- meet SBA size standards, defined by the annual receipts or employee number caps outlined for each North American Industry Classification System code; and
- have average annual gross receipts over the preceding three fiscal years that do not exceed $32.82 million (although the Federal Aviation Administration (FAA) Reauthorization Act of 2018 removed the gross receipts cap for FAA-assisted work). DOT set the gross receipts cap and adjusts it annually to account for inflation.

To be considered socially and economically disadvantaged, a firm's owner must demonstrate disadvantage, generally by stating how and to what extent impediments to the owner's progress caused the owner economic harm, including a full description of type and magnitude of those impediments (49 C.F.R. §26.67). A state-level certifying agency may find any individual who is a citizen (or lawfully admitted permanent resident) of the United States to be socially and economically disadvantaged on a case-by-case basis (49 C.F.R. §26.5). Apart from setting the certification criteria in regulations, DOT is not involved in firm certification. The DOT definition of socially and economically disadvantaged was modified by a DOT Interim Final Rule (IFR) on October 3, 2025 (90 *Federal Register* 47969). Among other changes, the IFR established a new definition of "socially and economically disadvantaged," without regard to race or sex. For more information, see CRS Insight IN12627, *DOT Interim Final Rule on DBE Program*.

In addition to meeting the definition of disadvantaged, each socially and economically disadvantaged owner must not have a personal net worth in excess of $2.047 million. The net worth cap excludes ownership interest in the owner's firm and equity in their primary residence, as well as in qualified retirement accounts (49 C.F.R. §26.68(c)).

Program Origin and Guiding Goal

Congress has regularly reauthorized the DBE program for highway and transit projects in surface transportation bills since 1983. DBE programs for airport projects and airport concessionaires were authorized by the Airport and Airway Safety and Capacity Expansion Act of 1987 (P.L. 100-223). As early as 1969, DOT imposed a requirement on federal-aid highway projects to make their best effort to use minority-owned firms, and established a Minority Business Enterprise program through agency regulations in 1980.

Since the first DBE program, Congress has maintained a cumulative national goal of at least 10% contracting by DBEs where federal highway, transit, or airport project assistance is used. State and local transportation agencies that receive DOT grants are required to develop aspirational

DBE contracting goals of their own. These goals are based on the share of DBEs ready, willing, and able to perform the contracts a grantee expects to award. Grantees are not required to use the same 10% goal that DOT uses to guide program policy at the national level (49 C.F.R. §26.41).

Program Structure

DBE contracting goals apply to the projects funded by federal grants from the following DOT agencies: the Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA). All direct recipients of FHWA financial assistance must implement DBE programs; all FTA recipients receiving planning, capital, or operating assistance are required to implement DBE programs; other FTA recipients are required to implement DBE programs when they anticipate awarding prime contracts of more than $670,000 per fiscal year (excluding transit vehicle purchases); FAA recipients receiving grants for airport planning or development that will award prime contracts totaling more than $250,000 in FAA funds in a fiscal year must also implement DBE programs (49 CFR 26.21(a); 89 *Federal Register* 24898).

Although projects are necessarily funded by nonfederal sources in addition to federal grants, only the federal funds from the FHWA, NHTSA, FTA, and FAA are subject to DBE contracting goals. However, contracts for the purchase of transit vehicles are not subject to DBE goals regardless of federal assistance.

State and Local Program Implementation

Grantees implement DBE programs using their own locally developed DBE contracting goals. The goal setting process focuses on estimating the level of contracting to DBE firms that would take place in the absence of discrimination. Grantees set their goals based on the market conditions and upcoming projects in their location. Regulations specify how to create goals using data on the availability of DBEs relative to contracts to be awarded in a given fiscal year (49 C.F.R. §26.45). Grantees set goals for three-year periods and submit them, along with the "determining methodology," to the FAA, FHWA, or FTA for review and approval. In some cases, DOT permits DBE goal-making for a particular grant or project rather than on a fiscal year basis (49 C.F.R. §26.45(e)(3)).

Grantees cannot be penalized for noncompliance with the program so long as they administer their programs in good faith (49 C.F.R. §26.47). Nevertheless, eligibility for DOT financial assistance depends on DOT approval of grantee DBE programs (49 C.F.R. §26.21(c)). Grantees must also maintain records of data on DBE firm participation in federally funded projects and report it to DOT; specifically, FHWA and FTA grant recipients must submit a report twice per fiscal year, and FAA recipients must submit a report once per fiscal year (49 C.F.R. §26.11).

In order to attain approved DBE contracting goals, grant recipients utilize state directories of certified DBE firms and might provide technical assistance to area DBE firms. Grantees are required to use "DBE-neutral" means to the greatest extent feasible to meet their goals (49 C.F.R. §26.51(a)). Prior to the IFR, they were required to use "race-neutral" and "gender-neutral" means. Examples of neutral means include providing technical assistance and other services to DBEs (49 C.F.R. §26.51(b)). Grantees are not permitted to use quotas or set aside contracts for DBEs (49 C.F.R. §26.43).

Certification of DBE Firms

DOT regulations lay out the "certification standards" to be used when certifying DBE firms (49 C.F.R. Part 26 Subpart D). Only certified firms are eligible for a contract award as a DBE and states must establish Unified Certification Programs (UCP) that handle state-wide firm certification. UCPs make certification decisions on behalf of all DOT grant recipients in a state, and maintain a state's directory of DBE firms. Per the IFR, DOT required all state certifiers to adapt their program applications and procedures for new certification standards and to identify and offer recertification to DBEs in their jurisdiction. Under the new standards, a small business owner must provide the certifier a personal narrative "that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons" (49 C.F.R. §26.67(a)). Until certifiers have completed re-evaluation of their DBE firms under the new certification standards established by the IFR, grant recipients are not required to update their overall DBE goals (49 C.F.R. §26.45(h); 49 C.F.R. §26.111).

DBEs seeking contracts in multiple states generally need to recertify themselves with all applicable UCPs but states can accept certification from other states (49 C.F.R. §26.85).

Considerations for Congress

Congress may be interested in the DBE program's effectiveness and impacts on businesses in the transportation sector. Some stakeholders have questioned whether the program has meaningfully increased DBE participation in transportation contracts and have observed bureaucratic inefficiencies. Others have contended that the program has successfully helped remove barriers to business ownership for disadvantaged groups.

Since the issuance of the IFR, Congress may consider how significant changes to the program are progressing, as well as whether the changes further the aims of the program. The American Association of State Highway and Transportation Officials and the American Road and Transportation Builders Association submitted letters to DOT remarking on burdens and implementation questions created by the IFR for state-level transportation departments.

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