

Testimony
Committee on Transportation and Infrastructure
United States House of Representatives
The Department of Transportation's
Disadvantaged Enterprise Program
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Chairman Oberstar, Congressman Mica, and Members of the Committee:
Thank you for the opportunity to appear here today. My name is Joann Payne and I am President of Women First National Legislative Committee. Women First National Legislative Committee is a nonpartisan, national grassroots advocacy group that aggressively promotes and protects the interests of women owned businesses certified in the United States Department of Transportation Disadvantaged Business Enterprise (DBE) Program.

Introduction

It has been seventeen years since I last testified before this Committee concerning the authorization of the Disadvantaged Business Enterprise (DBE) Program. I guess today should be headlined DBE the Sequel.

Mr. Chairman, I wish with all my heart I could look you straight in the eye and say to you that the Committee does not need to authorize the DBE Program but sadly I can not testify to that statement.

In 2001, Women First submitted an amicus brief to the Supreme Court in *Adarand Construction v. Mineta*. In the brief, it said, “they have experienced firsthand the detrimental effects of the discriminatory practices, which, to this day, continue to plague the construction industry. As a result of this discrimination, the ability of women owned businesses to compete for government contracts in the transportation related area has been severely hampered.”¹

And in 2009, those words are still true.

In 2004, during the Transportation Authorization process, Senator Max Baucus on behalf of Women First submitted for the record 15 letters from women-owned DBE firms from different states who had continued to face discrimination in the highway, airport and transit construction industry.

And in 2009, the words in those letters are still true today.

I am here to give voice to women-owned DBEs who continue to face discrimination on a daily basis.

¹ Brief of Women First National Legislative Committee, et al, *Amici Curiae* In Support of Affirmance of the Tenth Circuit Court of Appeals.

In surveying DBE's across the country regarding discrimination they have faced, I was not surprised by the anecdotal evidence of discrimination that was sent to me as these women owned businesses continue to face a number of the same challenges they have been facing for years.

Said one DBE, "When I applied for my first business line of credit the bank's loan officer actually said, 'Couldn't you get a man to co-sign? Your husband perhaps?' It took me a moment to register this flagrant disregard for about a half-dozen federal laws and banking regulations, and this guy's casual admission that unlawful discrimination is his bank's routine and pervasive policy. Calming myself, I pointed out that having my husband co-sign would make little sense, since he had no involvement with my company or the construction industry, not to mention that my own personal credit score was better than his. The bank officer said, 'Still, we'd be a lot more comfortable with a man's name on the application.'"

Another DBE from Indiana told me that "I own my companies 100% but I still face discrimination. Some of it is merely insulting and annoying, such as when a project's resident engineer won't speak to me on the job site but directs all his comments to the (male) foreman standing two feet to my left. Other things though affect my bottom line and are not so easily dismissed."

A women-owned DBE from Illinois wrote, "My Company is twenty-three years old and I have been in highway construction since 1971, yet I still deal with discrimination on a regular basis."

Another woman who has been in business for over twenty years was applying for certification in her state with a different city agency. The person reviewing the certification was in the DBE's office and the reviewer looked up at her and said that "all white women were fronts."

A DBE from Michigan wrote that she is still asked after 25 years in business as a contractor, 'Who runs the Company?' 'Who should I call?' Her response is, "I run my Company and proud of it."

A DBE in Delaware wrote she had a disagreement with one of her prime contractors. The Prime kept calling her office, but always asking to talk with the male foreman rather than her. This went on for several months. The foreman kept telling the contractor he needed to talk to the boss. The prime contractor decided to take a different approach so he called the DBE's home phone and left a message—for her husband.

Her husband had nothing to do with the project. The contractor said in the message, again, left for her husband, that they needed to sit down and talk about this to get it straightened out, and “we don’t have to have your wife involved.” When this failed to get a meeting, the prime contractor had no other choice but to meet with the boss, the woman who owns the company, to resolve the issue and the first thing he said to her was, ‘I am sorry this has taken so long but I don’t like dealing with women.’”

Program Overview

The DBE Program is a competitive small business program that is an innovative goal setting economic development program that produces results year after year.

The program:

- Creates jobs—approximately 100,000 jobs are created by DBE companies annually;
- Serves as an engine of growth for our nation’s economy;
- Establishes a tax base from women and minority owned businesses;
- Promotes competition in an industry where there was very little for years;
- Levels the playing field by opening access;
- Promotes diversity

The DBE Program has proven to be an equal opportunity program, which benefits all Americans by promoting the development and competitiveness of America’s small businesses. In fact, the DBE Program is the most successful small business contracting program for women. For example, the DBE Program has significantly increased the percentage of women owned construction firms. Women DBE participation has increased from 1.6% in 1986 to over 6% in 2008.

The DBE Program shows the government’s commitment to its citizens on the notion that we all can, must and should contribute when given the chance.

If the Program Does Not Continue

In representing women-owned DBEs for twenty three years, I have heard women discuss the problems they face in the construction industry with Members of Congress and the Administration. These women, everyday, have to face the assumption by others that they can not do the work and run their businesses. Women owned businesses still have problems obtaining loans and bonding and after years in business they still have to explain that they are the boss to men on the jobs who refuse to believe that a woman can be the boss.

If the DBE Program were not to continue, I believe not just women and minority owned companies will be severely affected, but small majority owned sub-contracting businesses will be affected as well.

The only small business program in the highway, airport and transit industries will disappear. There would be no reason for sub-contract work even to majority firms thus competition would be eliminated and prices will climb.

The trend of the industry the last several years has been the prime contractors are doing more of the work in-house. For example, a women-owned DBE in Minnesota told me that in her state, because of a court ordered injunction, the Minnesota's DOT DBE Program was suspended for approximately two years.

Prior to this injunction, the Minnesota DBEs participation rate was 11% during the injunction period, participation dropped to 2%.

Much of the DBE work was absorbed by large prime contractors rather than going to specialty contractors. Most majority prime contractors returned to the same "good old boy" policy of exclusion.

In 1998, Congress again looked at the DBE Program specifically in states that had dismantled affirmative action programs and left it up to the marketplace to determine who would get contracts.

For example, less than one year after the state of Michigan dropped its state M/WBE program, the percentage of highway construction projects fell to zero even though DBE's participation in the federal program was at 13%.²

In Idaho, for state funded contracts, the rate of M/WBE's participation held steady in 2004 from 6.17% to 2005 at 6.29% to 2006 at 6.20% and when Idaho went to a race-gender neutral program, the M/WBE participation rate in 2007 dropped to 3.96%.³

In California, a state of great diversity which ranks amongst the ten largest economies in the world, the California Department of Transportation (Caltrans) discontinued setting DBE goals on federally-funded contracts on May 1, 2006. Their disparity analysis, written in 2007, compares utilization of minority- and women-owned firms for federal funded contracts when DBE contract goals are in place to what happened when the program was discontinued in 2006.

From 2002 through April 2006, total utilization of certified DBEs on federally funded contracts was 9.0 %. Since 1998, Caltrans has implemented only race- and gender-neutral measures on state-funded contracts. State funded contracts during this same time period was 6.7% for M/WBE companies.

After May 2006, when California discontinued setting DBE goals, certified DBE's participation in federally funded contracts was 4.9%, with WBEs participation at only .1%. Furthermore, the report went on to state that after May 2006, "Utilization of certified DBEs substantially decreased."⁴

² S1409, S1404 Statements by Senators Kerry and Baucus

³ Idaho Department of Transportation

⁴ Availability and Disparity Study California Department of Transportation, June 2007

It is very clear from the chart below that there is a great discrepancy between the participation of women and minority owned businesses in the federal DBE program and the state funded program. Most states do not have an affirmative action highway, transit, and airport contracting programs. Those states that do have contracting programs, they are usually for all small businesses and do not require specific goals on contracts.

Past history and present DBE participation percentages on state funded projects reflect what will happen if the DBE programs do not continue. I believe within two years the participation of women and minority owned businesses will drop nationally to approximately 2% based on past history and present reality.

2007, 2008 Federal DBE Participation⁵
2007, 2008 State Funded M/WBE Participation⁶

<i>STATE</i>	<i>FEDERAL 2007</i>	<i>FEDERAL 2008</i>	<i>STATE 2007</i>	<i>STATE 2008</i>
ARKANSAS	8.5%	8.7%	1.0%	1.0%
CALIFORNIA*	10%		3.0%	
FLORIDA**	7.5%		9.4%	
IDAHO	7.39%		3.96%	
MICHIGAN	10.6%		2.0%	
MINNESOTA	8.6%		2.0%	
NEVADA	5.9%		2.0%	
NEW YORK***	3.0%	10%	3.0%	3.0%
VIRGINIA	10.2%	9.8%	.297%	.25%
WASHINGTON	12.3%	13%	3.6%	

*CalTrans does not keep records, but estimated 3%

**Florida has an outstanding Human Resources Department that grades its prime contractors by their DBE participation rates.

***New York DOT had reporting problems in 2007 and feels that the 3% is a low estimate.

⁵ Federal DBE Participation rates provided by each state's Department of Transportation

⁶ State DBE Participation rates provided by the state agency that oversees the DBE program.

Conclusion

I had a member of the Women First Board of Trustees tell me when asked why she still felt the burn of discrimination after years in business. She said to me that when she attends meetings there are very few women, if any, around the table.

She thinks, “Well it will be ok because I am at the table, I know these people, I’ve worked with them and I make a pretty good living—so why do I still feel the subtle discrimination—and then I realized why.”

She told me, “It’s because I am not like them, I will never be like them, I am different and they don’t understand the importance of that.” I have thought about her statement a lot and I believe this awareness should empower her and other women owned businesses because they contribute and make better an industry that is vital to our country’s daily life. And it also why diversity is so important in the highway industry and in our nation. Our diversity is what strengthens and binds us together. We are a government for all the people and all of our people deserve a chance to compete and to contribute.

Recently, in Minnesota, a Minneapolis-based DBE told a local radio station about work that she and other women and minority owned firms performed on par with any other contractor on the same project. "I think we've been given a chance to show that if a contractor can value the DBE's experience. . . We can add value to the final product and to the taxpayers of Minnesota." ⁷

Mr. Chairman, I think that says it all.

⁷ Minnesota Public Radio Interview with Susan Rani, Rani Engineering, December 8, 2008