

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Make it Easier to Work with DBE Firms to Help Ensure Their Success

Action Needed:

House and Senate: Tell U.S. DOT to reform the DBE program by allowing DBEs to grow and make it easier to do business as a DBE.

Background:

The DBE program was originally established by regulation in 1980. In the years since it was established, Congress included provisions in certain transportation laws, including most recently the Infrastructure Investment and Jobs Act (IIJA), that established goals for a certain amount of federal funding to be expended through DBEs.

Unfortunately, over the years, the U.S. Department of Transportation (DOT) has limited the success of DBE firms by not allowing them to grow and as a result handicapping their success. Instead of making it easier for prime contractors to utilize specialty DBE firms, the program has made it more difficult. DOT has made it harder for states to meet or even exceed their DBE goals by limiting the work these DBE firms are able to perform.

AGC Message:

- **Grow DBE capacity by assigning the same NAICS code to all DBEs.** AGC believes the current DBE size standard is misleading. When Congress and other stakeholders reference the current cap of \$30.4 million, they usually do not refer to, or understand, that specialty contractors are often limited to a lower threshold because of the NAICS codes. Likewise, a State DOT may prequalify a DBE at a higher threshold creating the impression that the DBE has the capacity to take on new construction work when they are actually facing a lower threshold because of the NAICS codes.
- **Allow DBEs to specialize without being forced out of the program.** As written, the existing rules punish a DBE for choosing to specialize in a particular industry segment by being faced with a smaller cap to grow. That is why rather than limiting DBEs to certain sub-sizes as specialty contractors—as NAICS codes for specialty contractors are generally capped at a \$19 million gross annual revenue threshold (AGC supports maintaining just the one singular code and its accompanying \$45 million threshold - 237310 (Highway, Street, and Bridge Construction))—to avoid administrative confusion that could lead to DBEs being prematurely removed from the program. Such a change would not be unprecedented, Congress made this change in the 2018 FAA Reauthorization for airport construction.