



AMERICAN COUNCIL OF ENGINEERING COMPANIES

**Statement of Geri E. Boyer, P.E.
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On behalf of the American Council of Engineering Companies

**Before the House Transportation & Infrastructure Committee
hearing on
“Driving Equity: The U.S. Department of Transportation’s
Disadvantaged Business Enterprise Program”**

Wednesday, September 23, 2020

Chairman DeFazio and Ranking Member Graves:

Thank you for the opportunity to testify before the committee today. It’s an honor to represent my firm and my colleagues in the nation’s engineering industry to you and the members of the committee.

My name is Geri Boyer. I am the President and sole owner of Kaskaskia Engineering Group, a civil engineering, environmental, and contracting firm headquartered in Belleville, Illinois.

I am testifying today on behalf of the American Council of Engineering Companies (ACEC) – the business association of the nation’s engineering industry. ACEC member firms drive the design of America’s infrastructure and built environment. Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing nearly 5,500 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide.

Firm Profile

I founded Kaskaskia Engineering Group, LLC (KEG) in 2006 with the mission of making the world a better place through the practice of engineering. Through partnerships with our clients and regulatory agencies, we plan, design, and build projects that enhance communities, spur economic development, and respect the environment. From the beginning, we have recruited highly skilled employees from a variety of public and private sector backgrounds. Armed with good experience, a great reputation and the Disadvantaged Business Enterprise Program, I have built an impressive portfolio of federal, state, local, and private project experience. Since 2006, KEG has earned over \$100 million in revenue and provides engineering services in Illinois, Iowa, Indiana, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, and Wisconsin.

KEG specializes in transportation engineering, traffic engineering, geotechnical engineering, structural engineering, environmental science, infrastructure analysis and planning, water resource management, right-of-way acquisition, and general highway construction.

DBE Certifications and DOT Experiences

KEG is a certified DBE through the Illinois Unified Certification Program, Iowa Department of Transportation, Indiana Department of Transportation, Kentucky Transportation Cabinet, Missouri Regional Certification Committee, Minnesota Unified Certification Program, and Wisconsin Unified Certification Program.

KEG is a certified Women Business Enterprise (WBE) through the Illinois Central Management Services, Indiana Department of Administration, Minnesota Central CERT Certification Program, Missouri Office of Equal Opportunity, Metropolitan Water Reclamation District of Greater Chicago, and the Women Business Enterprise National Council.

KEG is a certified Small Business Enterprise (SBE) through the Kentucky Transportation Cabinet and Minnesota Central CERT Certification Program.

KEG is a self-certified Women Owned Small Business (WOSB) and Economically Disadvantaged Women Owned Small Business (EDWOSB) through the Small Business Administration.

In an ever changing and volatile business market, corporate growth and stability rely on diversification strategies, which often include providing services to multiple federal, state, and local agencies, as well as private corporations across regional, national, and international markets. Diversification has long been a successful strategy for large businesses, and it is just as important for the survival and development of small firms.

Using the opportunities that the DBE program has provided, I have diversified my company within the engineering and construction industry throughout the Midwest. It's this diversification that has helped me grow and weather economic storms. But it takes all these certification programs in multiple states in order for me to have the same opportunities as non-DBE firms.

One challenge for DBE firms like mine that work in multiple jurisdictions is the lack of a unified approach to DBE certification. The amended 49 CFR Part 26 which was included in MAP-21 implemented a revised uniform certification application and reporting forms. However, even though there is a uniform process, there is not a uniform certification. All the agencies I mentioned before use the uniform application but require the entire application again at different times of the year. The application must be current to equipment purchases, loans, and anything else a business uses to run their day-to-day operation. This creates unnecessary work for the DBE firm and the public agency who both have limited time and budget pressures. And with the rising problem of identity theft, it's stressful to be sending all your personal information to multiple agencies in multiple states.

I encourage the committee to consider additional reforms to streamline and simplify the DBE certification process, creating a program that is more efficient and effective for women and minority firms working for multiple agencies across multiple states.

Qualifications-Based Selection

It's important to note the intersection of DBE program goals with federal and state procurement requirements for the contracting of engineering and design-related services. Current laws require agencies using federal funds to follow Brooks Act qualifications-based selection (QBS) procedures for procuring engineering and design services. These rules apply to federal-aid highway, transit, and airport improvement programs through various pieces of legislation approved by this committee dating back to 1987. ACEC applauds this committee's consistent and historic leadership in protecting and expanding QBS requirements on federal infrastructure programs. Most states have a "Mini Brooks Act" that apply the same selection procedures to state programs.

Under QBS, agencies select firms based on their experience, expertise, and demonstrated competence for the types of professional services required. They first evaluate and rank submitting firms' statements of qualifications, performance data, and information regarding the proposed project or services. The contracting agency then selects and ranks firms based on those qualifications in accordance with the established/advertised criteria for the project and negotiates with the most highly qualified firm to arrive at a fair and reasonable price for the solicited services.

QBS is the gold standard for procurement of professional engineering and design services. It helps small and DBE firms compete for work by providing us a forum to demonstrate the advantages we often have, including niche market expertise, ability to be nimble to meet deadlines, local knowledge, and involvement of senior level management. Quantitative studies have shown that QBS lowers total project costs and results in more satisfactory outcomes for owners.

Current Federal Highway Administration (FHWA) regulations strike an effective balance between the QBS procurement framework and DBE program goals. Contracting agencies are required to give consideration to DBE consultants in the procurement of engineering and design related services contracts using federal-aid funds, but without set-aside contracts or quotas for DBE participation. State and local agencies set their own DBE program participation goals, as well as the method for achieving them, subject to FHWA approval. To the extent practical, a contracting agency must achieve DBE program participation goals through race and gender-neutral measures. DBE participation on all contracts funded with federal funds, whether for professional or construction services, may be counted toward overall DBE program participation goals.

FHWA regulations provide that when overall DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design-related services contracts may be achieved through either (1) the use of an evaluation criterion for DBE participation in the qualifications-based selection of firms, or (2) establishment of a contract

DBE participation goal. Prime contractors can satisfy these measures through good-faith efforts to engage DBE participation.

In its policy guidance, FHWA states that in order to “harmonize” QBS rules and DBE program implementation, a contracting agency may establish the use/participation of certified and qualified DBE firms as an evaluation criterion of no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services.

ACEC supports this current approach. It helps to achieve DBE program goals while still respecting the importance of emphasizing qualifications as the preeminent factor in selecting engineering firms. Increasing the weight of DBE as a selection criterion or adding specific set-asides, quotas, or mandates will diminish QBS and the successful project delivery that it promotes.

ACEC Diversity and Inclusion Initiatives

Lastly, I want to draw the committee’s attention to the new Strategic Plan that ACEC approved in October 2019. Embodying inclusion and diversity is one of the five pillars of the new plan. Our express goal is that the Council is recognized as a welcoming organization where all members are included, involved and can achieve their full potential. The objectives include improving the diversity of ACEC leadership, enhancing the diversity of our membership, and increasing engagement of diverse individuals from member firms.

If we’re going to be able to sustain our profession and continue to support the transportation clients we serve, it’s imperative that we deliver on these goals. Diversity makes our companies and our industry stronger, and it makes us more appealing to the next generation of professionals who we need to recruit. Federal DBE programs, as explored by this hearing today, are one tool to help firms like mine bring those goals forward.

I want to close by inserting here the statement that the Council made earlier this year, which encapsulates how I personally feel and what I strongly support about the engineering industry.

“ACEC is committed to an inclusive and diverse engineering industry.

The engineering profession has always been grounded in integrity, fairness, and service to community. Engineers build communities. We create space and by extension, we create social experience. We support equality and respect for all humankind. We believe in providing equitable opportunities within our profession to support untapped potential both within our workforce and within the communities we serve. And we have the power to foster progress by breaking down the physical barriers that can inhibit economic and social equity.

Those are the principles that have guided our community through this difficult time. Through ACEC we will embrace inclusion and diversity and continue to focus our members on ways to lift people up to become their best selves and to make our companies models of the values we embrace.”

Thank you again for the opportunity to testify.

Additional Information for hearing record.



National Unified DBE Certification Program

A White Paper by ACEC Illinois
Business Practices – DBE/WBE/MBE Committee

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INTRODUCTION

In an ever changing and volatile business market, corporate growth and stability rely on diversification strategies, which often include providing services to multiple federal, state, and local agencies, as well as private corporations across regional, national, and international markets. Diversification has long been a successful strategy for large businesses, but it is just as important for the survival and development of small firms.

Firms owned by women and minority group members that want to employ diversification strategies are encumbered by the current DBE Certification process. Public agencies and small business owners have limited time and continued budget pressures. Time and budget constraints have significantly affected DBE certification in Illinois and its surrounding states. This white paper discusses how a national unified program could strengthen, streamline, and simplify the DBE certification program, creating a program that is more efficient and effective for women and minority firms working for multiple agencies across multiple states.

BACKGROUND

History of DBE Program

A policy of helping small businesses owned and controlled by socially and economically disadvantaged individuals, including minorities and women, participating in contracting opportunities created by Department of Transportation (DOT) financial assistance programs, has been in effect for more than 20 years. The Department, through its Operating Administrations, distributes billions of dollars annually to help finance thousands of projects across the country. Approximately 85 percent of the assistance dollars is for construction. The major portion of construction funds are allocated to state highway and transportation agencies for highway construction. The balance is provided to local public transit and airport authorities for mass transit and airport facilities.

In 1983, Congress enacted the first Disadvantaged Business Enterprise (DBE) statutory provision, which applied primarily to small minority-owned firms. This provision required the Department to ensure that at least 10% of the funds authorized for the highway and transit Federal financial assistance programs be expended with DBE's. In 1987, Congress re-authorized and amended the statutory DBE program to, among other changes, add women to the groups presumed to be disadvantaged. Since 1987, the DOT has established a single DBE goal, encompassing both firms owned by women and minority group members.



Primarily three major DOT Operating Administrations (OA's) are involved in the DBE program. They are the Federal Highway Administration, the Federal Aviation Administration, and the Federal Transit Administration. The DOT DBE program is carried out by state and local transportation agencies under the rules and guidelines in the Code of Federal Regulations (Title 49, Part 26). The FAA also maintains a separate DBE program for concessions in airports (Title 49, Part 23).

Title 49, Part 26 of the Code of Federal Regulation (49 CFR part 26) required all agencies in each state receiving DOT funds to participate in a state Unified Certification Program (UCP). Within three years of March 4, 1999, recipients of DOT funding had to sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The agreement provided for the establishment of a UCP, which met all the requirements. The agreement had to specify that the UCP would follow all certification procedures and standards; that the UCP would cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP would implement DOT directives and guidance concerning certification matters. The agreement also committed recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements.

DBE Unified Certification Program (UCP)

The purpose of the UCP is to provide "one-stop shopping" to applicants for certification. The program was designed so that if a firm was certified using a UCP agency in a state, they would only have to apply to one federally-funded agency within that state to work with all UCP member agencies. In Illinois, the UCP is made up of five US DOT-funded agencies, the Illinois Department of Transportation (IDOT), City of Chicago, Chicago Transit Authority (CTA), Metra, and Pace. The Regional Transportation Authority (RTA) is also part of the IL UCP, but is a non-certifying agency. Other states have very similar programs made up of all agencies that receive federal funds.

Non-DOT-funded Certifying Agencies

Within every state, there are also non-DOT-funded agencies. Some will accept the DOT's state implemented DBE Certification Program, and some have their own certification process. Several non-DOT-funded agencies have chosen to certify women business enterprises (WBE), minority business enterprises (MBE), and Business Enterprise owned by People with Disabilities (BEPD). In Illinois, the non-DOT-funded certifying agencies are Central Management Services (CMS), City of Chicago, and Cook County.



Interstate Certification Rule

While the DBE program was always a national program, state specific administrative requirements tended to impair a DBE firm's ability to fully compete for business opportunities in other states. In response to longstanding concerns from the DBE community, the USDOT issued a proposed rule aimed at breaking down these barriers. On January 1, 2012, the interstate certification provision (49 CRF 26.85) went into effect. Its intent was to clear up administrative obstacles to certification that were undermining important program objectives. The rule furthered the following fundamental objectives of the DBE program.

- (1) Facilitated the ability of DBE firms to compete for DOT-assisted contracting.
- (2) Reduced administrative burdens and costs on small businesses that sought to pursue contracting opportunities in other states.
- (3) Fostered greater consistency and uniformity in the application of certification requirements, while maintaining program integrity.

The ultimate purpose of the interstate certification rule was to facilitate certification of currently certified firms in other jurisdictions. Interstate certification was not meant to be an automatic reciprocity in the sense that each state must honor the other states' certification decisions without review. Rather, the rule created a rebuttable presumption, such that a firm certified in its home state is eligible to be certified in other states to which it applies.

The Department once again amended 49 CFR Part 26, which went into effect on November 3, 2014. The final rule improved DBE program implementation in the following three major areas.

- (1) Revised the uniform certification application and reporting forms and created a uniform personal net worth form for use by applicant owners, which collect the data required by the Department's Surface Transportation Reauthorization, Moving Ahead for Progress in the 21st Century Act (MAP-21).
- (2) The rule strengthened the certification-related program provisions, which includes adding a new section authorizing summary suspensions under specified circumstances.
- (3) The rule modified several other program provisions concerning such subjects as overall goal setting, good faith efforts, transit vehicle manufacturers, and counting for trucking companies.



PROBLEMS

Over the last several years, the DOT has made a concerted effort to improve the DBE program. Many hurdles have already been overcome, but there are still problems to be solved to make this program even more useful to small businesses owned and controlled by socially and economically disadvantaged individuals. Problems that are burdensome and limit the success of a DBE company are 1) Confusion between DBE Certification and Prequalification, 2) Duplication of Applications for DBE Certification, and 3) Slow Responsiveness of Reviewing Agencies.

The following are a few examples to support the need for additional changes to the DBE program.

1) **Confusion between DBE Certification and Prequalification**

The Bureau of Small Business Enterprises administers IDOT's DBE program. IDOT, like all other state DOT's, is tasked with the certification of DBE firms and the prequalification of firms wanting to bid on contracts and/or offer their services to the department. DBE certification and DOT prequalification are performed by two different units within IDOT. While there is some overlap in the certification and prequalification processes for DBE firms, the certification process is generally concerned with establishing if a business qualifies as "disadvantaged," and the prequalification process confirms if an applicant has resources and experience to self-perform each specific service. If you are a DBE engineering/architectural consultant, you are certified as a DBE through the Bureau of Small Business Enterprises and prequalified through the Bureau of Design and Environment. The Bureau of Design and Environment prequalifies firms in multiple categories of service.

If you are a DBE contractor, you are certified as a DBE through the Bureau of Small Business Enterprises and prequalified through the Bureau of Construction. The prequalification process of a contractor is governed by Title 44 Illinois Administrative Code Section 650. The prequalification process does not apply to subcontractors. However, DBE subcontractors are required to be certified through the Bureau of Small Business Enterprises but only need to be registered through the Bureau of Construction to perform work for IDOT.

Currently, the Bureau of Small Business Enterprises utilizes the uniform certification application and forms required in the final rule. These forms require the applicant to fill out a listing of NAICS codes for which they are



able to self-perform. The NAICS codes are used on the UCP online directory and generally correlate with the prequalification categories. However, the Bureau of Small Business Enterprises has taken on the responsibility of prequalifying subcontractors through the certification process. Instead of verifying NAICS codes, they are verifying the resources and experience of a DBE subcontractor to complete an IDOT specific contract pay item. They are also certifying DBE subcontractors/contractors in work classifications that are not in alignment with the Bureau of Construction. These additional requirements are limiting the expansion of DBE subcontractors/contractors.

2) Duplication of Applications for DBE Certification

The Illinois Department of Central Management Services (CMS) Business Enterprise Program (BEP) is now certifying businesses owned by women, minorities, and persons with disabilities. They claim that with their certification a company will have the opportunity to participate in the State's 20% minority, female, and persons with disabilities goal. Also, a company would be listed in their BEP directory that is used by state agencies, universities, and other large firms when they are looking for businesses owned by females, minorities, and persons with disabilities. This program's eligibility is available to companies whose gross annual sales are less than \$75 million, which far exceeds the limit of \$23.98 million in gross annual receipts required by the new federal form and exceeds the Small Business Administration size standard for all transportation-related industries.

CMS states that if a firm is currently certified with the City of Chicago, Cook County, Chicago Transit Authority, METRA, PACE, IDOT, Women Business Development Council, or Chicago Minority Business Development Council, you can complete the Recognition Certification Application to qualify for the "limited" Business Enterprise Certification. CMS also offers the BEP Full Certification Application, which effectively requires the same information as the UCP, but with different forms. Both of these application processes certify businesses as MBE, FBE, Female and Minority Business Enterprise (FMB), and/or Persons with Disability Business Enterprise (PBE). Although a firm may choose to be certified by CMS using the recognition certification, this certification is not considered a valid certification by agencies in other states.

For example, the Indiana Department of Administration only recognizes CMS as the official M/WBE certifying agency for the State of Illinois. As part of their application, the Illinois firm must provide a copy of the Illinois certification conducted by CMS. If the firm was initially awarded certification



by IDOT and the firm used the CMS Recognition Certification, the firm cannot apply for M/WBE certification with the State of Indiana through the Indiana Department of Administration. Also, the Indiana Minority & Women's Business Enterprise Division does not accept onsite reports from the City of Chicago, PACE, Metra, the Chicago Transit Authority, or the Chicago Minority Business Development Council, making the ability for an Illinois DBE firm to work in Indiana as an M/WBE firm very difficult.

The City of Chicago is a member of the IL UCP, which certifies DBE firms.

The City also has the following certifications:

- MBE
- WBE
- Business Enterprise owned by People with Disabilities (BEPD)
- Airport Concession Disadvantaged Business Enterprise (ACDBE)

The MBE/WBE/BEPD certification is needed to work on city-funded contracts and the DBE/ACDBE certification is needed to work on state and federally funded contracts. If a woman-owned DBE firm that is already certified through the IL UCP and CMS wants to work on a city-funded project, the firm must also apply to the City of Chicago's WBE program.

3) Slow Responsiveness of Reviewing Agencies

The goal of the DBE program is to give individuals who own disadvantaged businesses the opportunity to grow their business. DBE firms are taking advantage of the goals of the DBE program and looking for opportunities to expand their businesses outside of their home-based state. A single firm could apply to as many as 50 DBE offices, which places additional burden on certifying offices. Additionally, as state DOTs replace and/or reduce staff the burden increases.

State personnel are struggling to review the applications for home-based firms in a timely manner. Adding a maximum 60 day determination period for non-home-based firms set forth in 49 CRF 26.85 is creating an impossible situation for reviewing agencies. There have been cases in which it has taken over a year to issue a DBE certification.



SOLUTION

A proposed solution is to create a National Unified DBE Certification Program (National UCP) to serve as a "one-stop shopping" to applicants for certification. Any state agency using the unified certification application could be a coordinating member of the National UCP, and its certification would be recognized as a National UCP. Under a National UCP, the firm applies one time for certification as DBE with their participating cognizant agency or a national organization. If approved, that certification would be honored by all recipients of federally funded and non-federally funded projects in all states. The National UCP would only certify firms using the unified certification application. Prequalification, determination if an applicant has the requisite resources and experience to complete the service/category as required, would remain with the contracting agency.

The certification and record would be held by a national agency/organization, such as the Small Business Administration (SBA). The SBA already have systems in place to review a standard application, evaluate its compliance with federal regulations, and certify its credibility. It currently is certifying Women Owned Small Business (WOSB), 8(A), and HUBZone. It has the capacity for the upload of documents necessary for annual renewal (Affidavit of Continued DBE Certification). This process would significantly reduce the time and effort necessary to become licensed in multiple states.

B2GNow, a cloud-based software system for real-time collection, tracking and analysis of compliance data, currently maintains compliance of DBE firms with federal, state, and local diversity programs. It is a tool that could serve as a DBE certification record holder for federal and state agencies to utilize.

Certifying agencies that do not use unified certification application or do not choose to be a coordinating member of the National UCP could continue to certify DBE. If a firm does not intend to work with multiple agencies in multiple states, it might not be advantageous to certify with a national organization. A certified firm that had been certified by a non-coordinating local certifying agency could still apply to have their record held by the national organization.

Although this White Paper is focused on DBE firms certified to do engineering and contracting, any type of DBE business could benefit from a National UCP.



Sources

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