

Disadvantaged Business Enterprises (DBE)

Section 1101(b) of TEA-21 places significant emphasis on increasing opportunities for Disadvantaged Business Enterprises:

Legislation: TEA-21 Section 1101(b):

Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

The RTP is included within title I of TEA-21, therefore, the DBE requirement applies to the RTP. Implementing regulations are found in [49 CFR Part 26](#).

The objective of the DBE requirement is to provide disadvantaged business enterprises with opportunities to compete for government contracts. The State agency responsible for the RTP is required to have a DBE program which meets [49 CFR Part 26](#). The State agency responsible for the RTP must submit a DBE program conforming to this part to the FHWA division office ([49 CFR 26.21](#) et seq.). The State is required to make efforts to advise DBEs of the existence of the RTP, and the opportunities associated with it. Each State DOT should have a directory of qualified DBEs. The State agency responsible for the RTP may incorporate the State DOT's directory as its own. See also [49 CFR 26.81](#) regarding the Unified Certification Program. The State DOT will probably be the lead State agency for this program.

The USDOT's DBE program is not a quota or set-aside program, and it is not intended to operate as one. Section 26.41 makes clear that the 10 percent statutory goal is an aspirational goal at the national level. It does not set any funds aside for any person or group. It does not require any recipient (State, contractor, individual project sponsor) to have specific percentage goals.

States may provide direct RTP grants to project sponsors based on the merits of their project applications. However, if a State provides a large proportion of its grants directly to project sponsors, extra efforts to seek out DBEs for those projects let for competitively bid contracts may be necessary. Many projects bid out for contracts under the RTP are likely to be within the range for which many DBEs are qualified and in which they might be interested in bidding on, either as prime contractors or as subcontractors.

Each financial assistance agreement must include the assurance specified in [49 CFR 26.13](#).

If a State cannot meet the DBE requirement, it will need to apply for an exemption as provided in [49 CFR 26.15](#).

If there is evidence of any effort to circumvent the DBE requirement, a violation of Title VI of the 1964 Civil Rights Act could be found.