

Separate and Unequal

Automatic presumptions, subjective interpretations: Women business owners charge gender discrimination in federal DBE programs.

BY JEANIE M. BARNETT

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Take a look at most any minority and women business development program in the nation: Chances are, where there are separate goals, women get the smaller share.

In an era when female entrepreneurs are starting businesses at one-and-a-half times the rate of men-when, by the turn of the century, women are expected to own nearly 40 percent of all U.S. businesses-women owned firms still account for only 14 percent of business receipts. Women owned firms receive less than one percent of government contracts. Even women business owners who have been around for 15 or 20 years still refer to discrimination they face daily because of their sex: In obtaining credit, in winning a contract, or must getting a foot in the door. And some are now charging that federal programs designed to assist women business owners are inherently discriminatory.

Central to the argument is the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program. Nineteen eighty-seven marked the first time in history that a federally mandated set aside program was created for women when Congress included female business owners as disadvantaged in DOT's 10 percent goal, which represents over one billion dollars annually in federally funded highway and transit projects. Under the original program, which was enacted in 1982 by the Surface Transportation Assistance Act, women were not considered in the overall 10 percent set aside; the legislation left it up to the states and local agencies to establish their own "good faith" WBE goals. At least several states and numerous agencies had no WBE goals at all.

Now, in the four years since women have participated as DBEs in federal highway and transit set asides, an increasing number of those firms have either lost their certification or cannot

get certified because of the way the federal DBE regulations are interpreted by individual state and local agencies.

"It is a proven fact that women who are certified in the DBE program are scrutinized much more closely than their minority counterparts," states Joanne Payne, president of the National Women Business Enterprise Association (NWBEA), a Little Rock, Arkansas-based trade association representing about 133 women owned construction firms in 43 states. A tenacious advocate of DOT's combined goal who lobbied extensively for the inclusion of women in the federal set aside law, Payne claims that decertification of female DBEs since the new goal took effect has "skyrocketed" by an average of 30 to 60 percent.

The 1987 amendment to DOT's DBE program states that women, "like black Americans, Hispanic Americans, and other groups currently designated in the regulations, are presumed to be socially and economically disadvantaged individuals." (Section 106 (c) (2) (B) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.) But Payne contends that those who do the certifying are subjecting women to a "double standard" in determining their status as a disadvantaged business. Payne accuses DOT of practicing "Jane Crow" regulations in their "separate and unequal" treatment of women business owners.

For instance, to become certified as a DBE, a woman owned business cannot have used as start-up capital any monetary gift from a non-minority male, either through inheritance or the transfer of stock. A female enterprise is not considered independent if any loan was cosigned by a male. A company is considered in noncompliance if a female owner has a son or husband on her company's board of directors, or if she calls her business "family owned," or if the company was started with her and her husband's joint funds. Who really controls her company is questioned if any male employees receive a higher salary than she does, or if she hires a male worker who has more technical

expertise as a field manager, supervisor or estimator.

"Decertification based on employing relatives only applies to white women," says Payne. Minorities, in contrast, are not faced with this problem, because generally, the relatives they employ are also minorities. Nor is a male business owner, regardless of race, ever questioned about who is in control should his wife or other family members happen to be employees.

"There is the automatic presumption on the part of people doing the certification that if there is any [non-minority] male who is part owner of the company, or even a field supervisor, that the woman can't possibly run the company," agrees Deborah Wilder, a San Francisco attorney and former executive director of the California Chapter of Women Construction Owners and Executives (WCOE) who specializes in WBE certification cases. "I'm not sure that it's even a conscious thought, but it may be societal."

Wilder points out that running a business "does not mean just performing in the field, but also dealing with contracts, estimating, bank loans, and everything else in between. 'But those who do the certifying, especially when it comes to construction firms, want to see women owners 'in the field, riding a machine, wearing jeans and getting grubby,'" says Wilder. "But how do you run an effective business if you're always out in the field?"

NWBEA's Payne says women face another "Catch-22" in the certification process: Lack of experience. The language of the law presumes that regardless of their race, women, like minorities, are socially and economically disadvantaged as a result of historic discrimination, which barred them because of their sex from entering the construction trades to gain the needed expertise to run a business from the wheel of a bulldozer.

But any business person understands that technicians, more often than not, don't make good managers, and vice versa. Both Payne and Wilder contend that a minority who hires those

who have more technical experience than he, is not automatically held suspect as a front; a white woman who does the same, on the other hand, is.

In many jurisdictions, women are now being required to document specific instances of discrimination in order to justify their status as "socially and economically disadvantaged." Just as many jurisdictions have been compelled to conduct disparity studies, following the U.S. Supreme Court's historic *Richmond v. Croson* decision nearly two years ago, to prove that discrimination is not simply fanciful or self-serving paranoia, women business owners must now present their own personal "disparity study" before being considered in the DBE certification process. The only difference is, notes Wilder, many WBEs can neither afford the time nor the expense of such a task. Minority business owners, on the other hand, face no such requirement for documentation.

Many in the minority business community balked when DOT implemented its homogenized set aside. Critics of the revised program argued that by eliminating the separate WBE goal, minority business owners would be forced to compete for fewer contracts against many more firms, and that less dollars would flow into the minority community, diluting the original intent of the legislation.

In Illinois, for instance, federal highway construction contracts to women owned firms since 1987 have more than doubled, while contracts to minorities dropped by almost half, during a period when total highway spending in the state decreased by 10 percent. A September 1989 Chicago Reporter article, "Blacks Lose to Women in 'Construction Game,'" reported that on the \$210 million renovation of the Dan Ryan Expressway in Chicago - which has the fourth largest concentration of women owned businesses of any major U.S. city-women received almost 75 percent of DBE contracts through 1988, and almost 70 percent in 1989.

Those numbers raised the ire of the local minority community. Then-Mayor

Eugene Sawyer threatened to shut down the project if minorities didn't start receiving a greater share of contracts. Illinois Congressman Gus Savage (D) introduced legislation calling for a return to separate goals and guaranteeing that minorities would receive at least two-thirds of DBE set aside contracts. Observing that white contractors would rather do business with women than minorities, one black Chicago politician remarked that the combined goal represented "the emasculation of the civil rights movement."

Critics also charged that the combined goal encourages "fronting," by which a white male business owner transfers, on paper only, 51 percent ownership of his company to a daughter or wife in order to become eligible as a disadvantaged business and compete for set aside contracts.

But Payne says that perception is discriminatory especially against white women, "who are assumed to be fronts more than any other group." It also fosters an attitude that women are somehow being used by white contractors to destroy minority set asides.

"We have never said that women should be included at the detriment of minority businesses," insists Payne. "Women deserve to be part of the program...because women have been and continue to be socially and economically discriminated against."

It is expected that when the new highway authorization bill comes before the next session of Congress, a return to separate MBE and WBE goals will be a pressing issue. Payne says that only if they are also equal will she and her group support separate goals; if not, Payne believes in leaving the DBE goal as is. While WCOE has supported a return to separate goals as in the past, the group now also supports equalizing the goals.

The numbers, at least unto themselves, support such a move. In construction for instance, minorities and women owned roughly the same number of construction companies in 1982, according to the latest available U.S. Census Bureau statistics. In 1982, there

were 61,665 women owned construction firms, compared to a total of 62,111 minority owned firms. In transportation related businesses, women owned firms numbered 40,596; those run by minorities, 44,858.

But the numbers could well be used to support the contention that women are gaining at the expense of minorities. The Census Bureau, which compiles statistics on business ownership every five years, has released reports on businesses owned by women and those by blacks for 1987, the last year for which data was collected. (Statistical profiles on Hispanic and Asian owned businesses will be available sometime next year.)

Between 1982 and 1987, the number of women owned construction companies increased by 38 percent, to 94,308, which was slightly less than the 39 percent increase in black construction firms (numbering 36,763). But in the area of transportation and public utilities during the same time period, women owned firms increased a whopping 90 percent, to 76,968, compared to a 51 percent increase in black owned firms (to 36,958).

Payne and other women business advocates are also calling for the inclusion of women in the Department of Defense's five percent DBE goal, which defines disadvantaged in terms of race and ethnicity, and the SBA's 8(a) set aside program. Of the approximately 3,500 8(a)-certified firms, only seven percent are owned by women, of whom 10 are white, according to Payne's calculations (the SBA documents ownership of 8(a) firms only by race, not gender).

Payne says her organization is now seeking a grant to conduct a study to demonstrate that women are by definition socially and economically disadvantaged because of their gender. Additionally, she hints that NWBEA is preparing to file a sex discrimination suit against several federal and state agencies. Says Payne: "It's long overdue."

Oregon Seeks Teen Queen

Applications are now being accepted for girls who are interested in participating in the eighth annual Miss Oregon American Coed Pageant which will be held at the Portland Hilton in Portland May 24, 25 and 26, 1991. The pageant has four age divisions. Coeds 16-19, Teens 13-15, Pre-Teens 8-12 and Princesses who are 4-7 years old.

The winners will receive cash awards and trophies as well as the right to represent the state at their national pageant. The Teen, Pre-Teen and Princess National Pageants will take place at the Hyatt Regency Hotel in Tampa, Florida. The contestants also will visit Walt Disney World in Orlando, Florida. The Coed National Pageant will take place at the Hyatt Regency Waikiki in Honolulu, Hawaii.

The reigning Miss Oregon American Coed is Inger Ness of Eugene and her Hostess is Jacquelyn McDougal of Lebanon. Oregon's Pre-Teen queen is Misty Merrill of Seaside and her Hostess Loretta Picard of Pendleton. Mili Wilkinson is Oregon's Princess and her Hostess is Andrea Clark both of Grants Pass. The reigning Miss American Coed is Rebecca Packard of Texas.

The reigning Miss American Teen is Christina Hacker of Maryland. Trisha Stephenson of South Carolina and Kathy Watkins of Alabama are the reigning National Pre-Teen Queen and Princess.

For an application and further information write or call: American Coed Pageant, 3775 Emma Lane, Vista, CA 92084, (619) 727-9624.

Black Strike Succeeds

If Martin were alive today, he would have been speaking, organizing and marching with the Delta Pride workers of Indianola, Mississippi. The 900 catfish production workers of Delta Pride are almost all African American and mostly women. They went on strike against some of the most powerful forces in the South, rich white former planters, and won.

Dr. Joseph Lowry, president of the Southern Christian Leadership Conference, said that "God may have chosen Indianola in the '90s, just as he chose Birmingham and Selma in the '60s, to be the watershed that turns this country around...this struggle may be the flagship for the rest of the nation in the struggle for economic justice for blacks."

Although Indianola may be the turning point, there are clearly many battle ahead. Large sectors of the labor force in the South remain to be organized. Those sectors which are predominantly black and female, among poultry workers, in rice production, and in the growing service sector, are opening up to unionization. These coming struggles--in conjunction with the ongoing movements for civil and human rights--may well make the South the critical battleground for democracy and justice in the 1990s.

"The emergency we now face is economic, and it is a desperate and worsening situation...This is no time for apathy or complacency. This is a time for vigorous and positive action," said King.

The struggle for a decent union contract tied together issues of civil rights, workers rights, and human rights. It touched people of conscience all over the nation. Support came not only from the labor movement but also from the Congressional Black Caucus, churches, community organizations, and the civil rights community.

In late December, the company settled. The union said the contract had "equal portions of dignity and dollars that signals the dawn of a new era for workers in the Mississippi Delta." The new agreement at Delta Pride includes job classification upgrades, an immediate average wage increase of about 75 cents per hour, more vacation time, a joint labor-management safety committee, an additional paid holiday, improved grievance procedures and big part of the "portion of dignity"--unlimited bathroom privileges.

The politics of this country will never be changed until the politics of the South are changed. The advances in African-American political empowerment, made possible by the Voting Rights Act, have already forced a significant shift in representation. Further shifts can be made with a larger and more effective organized labor movement that is politically active.

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Celebration Commemorates Bill of Rights

Guest speakers, special forums, mock trials and field trips are among activities planned at West Sylvan Middle School, 8111 S.W. West Slope Dr., to celebrate the bicentennial of the U.S. Bill of Rights.

The week-long celebration begins Jan. 14 and culminates with an all-school assembly Friday (Jan. 18) at 9 a.m. featuring local newscaster Lew Frederick. Frederick will speak to students about the importance of the Bill of Rights and its relationship to the work of Dr. Martin Luther King and the civil rights movement.

Each year West Sylvan develops a schoolwide focus on a special topic which touches all areas of the curriculum. This year's focus is designed to make the Bill of Rights relevant to students and to help students become active and responsible participants in a democratic society, according to principal Peter Hamilton.

"West Sylvan's celebration of the bicentennial of the Bill of Rights will give students an important civic foundation and insight into contemporary issues," Hamilton said.

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