

The Disadvantaged Business Enterprise Program (DBE) is an affirmative action program that seeks to implement Title VI of the Civil Rights Act of 1964 in regards to federally funded contracting programs for the US Department of Transportation. One of the modal agencies of USDOT is the Federal Highway Administration. The DBE program here is a complete mess replete with corruption, cartel activity and noncompetitive scenarios administered by state transportation departments as they receive federal funds by the billions of dollars.

The intent of the DBE program is to develop businesses via a subcontracting program. Of course, when the Civil Rights Act was won it was basically bringing African Americans under the full utility of the US Constitution. At last, there would be assurances that we would no longer be discriminated against. However, that has not been the case. The fact is African American owned firms are doing less in highway construction today than we did when the program was first started.

How could this happen? They simply twisted the program to work against us. Instead of directing prime contractors to subcontract to developing Black owned firms, they have encouraged them to use any other group besides Black owned firms. Namely, they have put white women owned firms into the program like they were the ones being discriminated against. Also, every other ethnicity has been included into the program to actually compete against or offer an alternative to using Black owned firms. Thus, the discrimination continues at a ruthless and Jim Crow type pace. Many of our Black elected officials appear to be confused or aloof about this dismal matter. In sum, white women owned firms (many of whom are actually funded and managed by white males) get the lion's share of DBE subcontracts.

Relief seems to be slowly forming. It is not coming from Black elected officials and certainly not from career federal employees at the Justice Department or Department of Transportation. These employees are defenders of the abuse and cause more damage than any type of help. Surprisingly, it is coming from conservative court decisions. Judges who are strict constructionists are starting to make decisions that will correct the corruption, deceit and under-handedness that goes on with these state managed programs.

It all started with the Croson Decision by the US Supreme Court. Later, it was reconfirmed by the Supreme Court via the Adarand Decision. These decisions say that the programs are constitutional as long as they directly address discriminatory practices and the remedies are "strictly tailored". In other words, they can't lump all groups and genders together under the same goal program and assume that discrimination is being thwarted. What is really happening

is that they take women and other ethnicities and use them to further discriminate against Black owned firms. The programs are like pouring “gasoline” on a fire as opposed to “water”. Case by case the sham is starting to unravel.

The biggest and most recent breakthrough has come from the United States Court of Appeals, 4th Circuit, concerning the program with the North Carolina Department of Transportation. The Court concluded in the matter of Rowe Company Incorporated V. Tippet NAACP Legal Defense and Education Fund that the North Carolina DBE program is flawed. Having women, Hispanic and Asian contractors in the program is, in effect, unconstitutional as they are over utilized while African American and Native American firms continue to be discriminated against. In sum, the program should only be in effect for Black and Native American firms only. The others need to be kicked out of the program.

This is real big – really, really big! Oh, they are upset and will try to resist. Keep in mind this decision (No. 09-1050) came on July 22, 2010. The white press did not say a word about it. They don’t want us to understand it and certainly don’t want Black legislators to understand the deal and become active. The North Carolina DOT, to date, has ignored the court decision. I guess we will have to take them back to court and have the judges force them out of their corrupt and discriminatory ways. At long last, Black construction firms in North Carolina can have a program as our civil rights leaders intended it to be.

The Court stated: “The State has a compelling interest, indeed an “absolute duty”, to remedy this injustice” (Against African American and Native American firms), “affecting as it does the distribution of funds...However, because the State has failed to justify its application of the statutory scheme to women, Asian American, and Hispanic American subcontractors, we cannot find those applications constitutional.”

There is victory in North Carolina. Now let’s begin to take it state by state until liberty starts ringing across the whole nation.

Mr. Alford is the co-founder, President/CEO of the National Black Chamber of Commerce®. Website: www.nationalbcc.org . Email: halford@nationalbcc.org .