

Disadvantaged Business Enterprise (DBE) Program Management

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Overview

- History of Department of Transportation (DOT) DBE Program
- What is a DBE?
- Criteria for DBE Certification
- Setting the Overall Three Year DBE Goal
- Contract Goals
- Prime Contractor Responsiveness to Bids
- Use of Transit Vehicle manufacturers (TVMs)
- Uniform Report of DBE Commitments/Awards and Payments
- Creation of DBE Program Plan



History of DOT DBE Program

- **Croson v City of Richmond, 1989:** Supreme Court ruled that the City of Richmond failed to establish a “compelling interest” in race based programs
- **Adarand v Pena, 1995:** Supreme Court ruled that federal affirmative actions are subject to “strict scrutiny”
 - Narrow tailoring
 - Focus on victims of discrimination
 - Be flexible
 - End when purposes achieved
- **49 CFR part 26, March 4, 1999:** Final Rule for Participation by DBEs in DOT Financial Assistance Programs



What is a DBE?

- **DBEs are for profit small business concerns whose owners are:**
 - Socially and economically disadvantaged
 - Own at least 51%
 - Control management and daily business operations
- **Social and economic disadvantage**
 - Net worth no more than \$1.32 million
 - African American
 - Hispanic
 - Native American
 - Asian Pacific Islander
 - Subcontinent Asian Americans
 - All Women
- **Small Business – Gross receipts not to exceed \$23.98 million**

Criteria for DBE Certification

- **Ownership, control and expertise** must reside with socially and economically disadvantaged individuals
- Contribution of capital or expertise to acquire ownership must be **real substantial and continuing**
 - Insufficient contributions include:
 - A promise to contribute capital
 - An unsecured note payable to the firm or a non -disadvantaged owner
 - Participation as an employee
 - Capitalization not commensurate with value of the firm
- The disadvantaged owners **must share in the risks and profits** commensurate with their ownership

DBE Certification Onsite Procedures

- Perform on-site visit to place of business and interview applicant
- Documents to review:
 - Articles of incorporation/organization
 - By-laws
 - Board minutes
 - State construction licenses
 - Proof of capital contributions
 - Loan agreements
 - Income tax returns
 - Payroll records

Certification Scenario



Scenario

Linda Smith has applied for certification as a Disadvantaged Business Enterprise. She is the owner of Smith Concrete Company, Inc. During the on-site interview you discover the following:

- Linda is the President of the company
- Her husband Bob is the Vice President
- Linda financed the company with inheritance money from her Mother
- Linda is the bookkeeper for the company and is responsible for company finances, supplies and the payroll
- Linda has no field experience in concrete but makes the highest salary in the firm
- Bob holds both commercial L9 Concrete and the residential C9 Concrete licenses and has 20 years experience in concrete construction

Can you certify this company as a DBE?

Overall Three Year DBE Goal

- Required of any Recipient that contracts more than \$250,000 in a Federal fiscal year
- Goal is based on evidence of ready, willing and able DBEs relative to all businesses to participate in your DOT assisted contracts
 - Anticipated contracting opportunities for the three year period
 - **Step One Figure**: Compare all ready willing and able DBEs to all firms (DBEs and non-DBEs)
 - **Step Two Figure**: Adjust the Step One figure using the following factors:
 - Past participation
 - Disparity Studies
 - Any other data that helps to measure DBE participation

Overall Three Year Goal *Example*

Step One Base Figure

Ready Willing and Able DBEs
All Firms Ready Willing and Able

44 DBEs in Heavy Construction
+ 14 DBEs in trucking
300 firms in heavy construction = **12.8%**
+150 firms in trucking

Step Two Base Figure (Past Participation)

Median Past Participation During Last Five Years = 15%
12.8% + 15% = 27.8% divided by 2 = **13.9%**

13.9% is the Step One Base Figure Adjusted for Past Participation

Overall Three Year Goal

- Express your goal as a percentage of all FTA funds (exclusive of purchase of transit vehicles) you will expend in the next three years
- The overall goal applies to each year during the three-year period.
- You may adjust your three-year overall goal in order to reflect changed circumstances.
 - You must submit such an adjustment to the FTA for review and approval.
- Not required to obtain FTA approval of your initial overall goal



Overall Three Year Goal

- In establishing an overall goal, you must provide for public participation
 - Consultation with minority, women's and general contractor groups, and community organizations
 - Any other groups that may have information regarding the availability of disadvantaged businesses
 - Consultation must include direct and interactive exchanges with the public
 - Consultation must occur before goal submittal
 - The goal must be published and available for comment for 30 days prior to submittal to the FTA



Contract Goals

- You must meet the maximum portion of your overall goal by using **race-neutral means**
 - **Race neutral** – DBE wins a prime contract or a contract without a DBE goal
- You must establish contract goals to meet any portion of your overall goal that **will not be race neutral**
- Not required to set a goal on every contract
 - Calculation of contract goal approximates the **Step One Overall Goal process**
- Regularly compare use of contract goals to meet your overall goal



Good faith Efforts

DBE Contract Goal Is Met

- **Responsiveness**

- Required documents if DBE participation to meet the goal is submitted by the bid deadline
 - Names and addresses of DBE firms
 - A description of work that each DBE will perform
 - Each DBE firm must be certified in the work so specified
 - The dollar amount of each DBE firm participating
 - Written commitment by bidder to use the DBE firm
 - Written confirmation by DBE firm that it is participating in the contract

- **Responsibility**

- Documents are submitted 5 calendar days after bid opening



Bidder Responsiveness Scenario



Scenario

Prime contractor, Bridgeworks Inc., has submitted a bid with a 10% DBE goal on a City project for a small bridge across a canal. They have met the bid deadline and submitted all of the required documents to demonstrate that they have met the DBE goal. The value of the contract is **two million** and they have included DBE firms that total **\$200,000** (right at the 10% goal figure). All DBE firms are certified in construction except for one DBE firm that is certified in graphic arts.

Has Bridgeworks demonstrated good faith effort in meeting the goal?



Good Faith Efforts

DBE Goal Not Met

- The bidder can document adequate good faith efforts if the goal was not met
- The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal
- **Factors to consider:**
 - Market research to identify small business contractors and suppliers
 - Breaking out contract work into smaller tasks
 - Negotiating in good faith with interested DBEs (names of DBE firms)
 - Efforts to assist DBEs in obtaining bonding, lines of credit or insurance
 - Efforts to assist DBEs in obtaining equipment and supplies



Transit Vehicle Manufacturers (TVM)

- Transit Vehicle Manufacturers must establish and submit an annual overall percentage DBE goal
- TVMs are guided by the same principles underlying the overall DBE goal methodology for FTA recipients
- TVMs must comply with goal setting and reporting requirements to bid on FTA funded vehicle procurements
- Only those TVMs listed on FTA's certified list of TVMs are eligible to bid on FTA funded solicitations

Uniform Report of DBE Commitments/Awards and Payments

- New form established in 2014 Final Rule to 49 CFR part 26
- Established a new Section B to record contracts awarded to minority women owned DBEs
- Established a new Section C to record ongoing payments to DBEs as opposed to contracts awarded

Uniform Report of DBE Commitments/Awards and Payments

- **Section C Line 18 (A-E)**

- 18(A) Provide the total number of contracts where work was performed during the reporting period
- 18(B) Provide the total dollar amount paid to all firms performing work on contracts
- 18 (C) Provide the total number of contracts that are being performed by DBEs for which payments have been made
- 18(D) From the total dollar amount paid to all firms in 18B, provide the total dollar amount paid to DBEs
- 18 (E) Provide the total number of DBE firms that received payment during this reporting period
- 18(F) Of all payments made during this period calculate the percentage going to DBEs – Value of 18 D divided by value in 18B



Creation of DBE Program Plan

- **Who Must Have a DBE Program?**
 - FTA recipients of federal funds who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in a Federal fiscal year
 - **Plan Contents**
 - Bidders List
 - Non-discrimination clause for contracts
 - Name of DBE Liaison Officer
 - Prompt Payment Clause for contracts
 - DBE Overall Goal methodology
 - Contract goal methodology
 - Good faith effort and bid responsiveness procedures
 - Certification process and Unified Certification Program participation
 - Directory of all DBE certified firms
 - Monitoring and Enforcement Mechanisms for Payments to DBEs



THANK YOU!

- ***QUESTIONS?***

- ***COMMENTS?***

