

200 - Civil Rights

Acceptance of Federal funds obligates the sponsor to comply with several Civil Rights statutes, Executive Orders and other Federal Regulations. Advisory Circular 150/5100-15 is available as a ready reference that identifies the various statutes, Executive Orders and implementing regulations required with Federal assistance.

Advisory Circular 150/5100-15 addresses the complex nature of various civil rights requirements by categorizing them into 5 main subject areas.

1. **Nondiscrimination in Benefits for and Service to the Public**
The sponsor must assure that no person, on the grounds of race, color or national origin, be denied nor be subjected to discrimination in the provision of benefits and services to the public. Authorized by Title VI of the Civil Rights Act of 1962 and implemented by 49 CFR Part 21 and Section 520 of the Airport and Airway Improvement Act of 1982
2. **Nondiscrimination in Employment in Federally Assisted Construction Contracts**
The Sponsor must incorporate all applicable contract clauses and certifications within the bid documents and contract agreements to ensure equal opportunity for all persons regardless to race, color, religion, sex or national origin in the participation of federally assisted construction. This provision is applicable for all federally assisted projects that exceed \$10,000. Authorized by Executive Order 11246 and implemented by 41 CFR Part 60.
3. **Nondiscrimination in Airport Employment Opportunities**
The sponsor must assure that they, their tenants, their contractors, their lessees and their concessionaires do not discriminate on the basis of race, color, national origin, sex, creed or handicap in the area of employment. Implemented by Section 520 of the Airport and Airway Improvement Act of 1982.
4. **Disadvantages Business Enterprise Program**
Sponsors seeking AIP participation in a project that equals or exceeds \$250,000 must have an approved DBE program on file with the FAA prior to issuance of a grant. Sponsors must establish regional goals to facilitate participation by DBE firms in the federally assisted project. Implemented by 49 CFR Part 26.
5. **Nondiscrimination in Benefits for, Services to, Employment of and Accessibility for the Handicapped**
Sponsors must make reasonable accommodations to avoid discrimination on the basis of handicap disability in the provision of benefits, services or employment. Authorized by Section 504 of the Rehabilitation Act of 1973 and implemented by 49 CFR Part 27.

RESOURCES

Advisory Circulars

- [AC 150/5100-15](#) – Civil Rights Requirements for the Airports Improvement Program

Regulations/Policy

- [49 CFR Part 26](#) - Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- [41 CFR Part 60](#) - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor

210 - DBE Overview

Effective March 4, 1999, Federal Regulation 49 CFR Part 26 replaced 49 CFR Part 23 as the Department of Transportation's official regulation regarding the Disadvantaged Business Enterprise (DBE) program. Grant recipients must comply with 49 CFR Part 26 as a condition of the receipt of Federal funds under the Airport Improvement Program.

As of August 21, 1999, FAA grant recipients receiving \$250,000 or more in federal funds must submit a DBE program conforming to 49 CFR Part 26. Objectives of the new goal include the following (49 CFR 26.1):

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBE's.
- To help remove barriers to the participation of DBE's in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.

RESOURCES

Department of Transportation OSDBU

- [Office of Small & Disadvantaged Business Enterprise](#)
 - [DBE Program](#)
 - [Guidance for DBE Administrators](#)
 - [Sample DBE Program \(pdf\)](#)

Regulation

- [49 CFR Part 26](#) - Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

State Transportation DBE Websites

- [Iowa](#) – Link to DBE directory provided on web page.
- [Kansas](#) - KDOT DBE Contractor List
- [Missouri](#) - Link to DBE directory provided on web page.
- [Nebraska](#) – Link to certified DBE provided on web page.

220 - DBE Program Submittal

Sponsors seeking FAA AIP participation that equals or exceeds \$250,000 must have an approved DBE program on file with the FAA prior to issuance of a grant offer by the FAA.

In order to avoid delays in project implementation, it is critical that sponsors coordinate **early** in the project development phase to assure compliance with 49 CFR Part 26. Sponsors are urged to begin work on establishing an approved DBE program and DBE goal establishment as soon as the FAA provides notification that funding for the project appears favorable for the upcoming fiscal year. Failure to accomplish timely coordination may result in significant delays to the project. A Sample DBE program may be accessed from the website of the Office for Small & Disadvantaged Business Utilization.

Sponsors should strive to have their project goal methodology submitted to the DBE office prior to January 1st of the approaching construction season

Central Region sponsors with specific questions regarding their DBE program and goal methodology should contact:

Christine Whitehead
FAA External EEO Program Manager
Northwest Mountain Regional Office, ANM-9
1601 Lind Avenue S.W.
Renton, Washington 98057
425-227-2095

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230 - DBE Contract Goal and Provisions

CONTRACT GOALS

(49 CFR Part 26 Subpart C)

As part of their approved DBE program, Sponsors are required to establish an overall DBE goal prior to solicitation for bids. Sponsors are cautioned not to utilize the national aspiration goal of 10% as the basis for establishing their own goal. The goal should reflect the regional availability of DBEs willing and ready to participate in the project.

Several different methodologies are available to determine a recipient's DBE goal. Sponsors should contact the FAA Civil Rights Office regarding questions on establishing a project specific goal. Within the FAA Central, the Sponsor's goal methodology should be submitted to the following office:

Christine Whitehead
FAA External EEO Program Manager
Northwest Mountain Regional Office, ANM-9
1601 Lind Avenue S.W.
Renton, Washington 98057
425-227-2095

To avoid delays in establishing a grant, Sponsor should submit their goal methodology to the FAA prior to January of upcoming construction season.

BID SOLICITATION

(49 CFR Part 26.53)

Once a goal has been established, the Bid Solicitation must convey the requirements of the contractor to comply with the DBE provisions. Contracts may only be awarded to bidder/offers who have demonstrated good faith effort in meeting the goals. The following paragraphs are considered acceptable for notifying potential bidders of the information required for submittal.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the <Recipient> to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a Disadvantaged Business Enterprise.

The Owner has established a DBE contract goal of _____ percent for this contract. The Bidder/Offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to subcontract _____ of the dollar value of the prime contract to certified DBE firms as defined in 49 CFR Part 26.

All bidders shall submit the following information with their proposal on the forms provided:

- (1) The names and addresses of DBE firms that will participate in the contract;*
- (2) A description of the work that each DBE firm will perform;*
- (3) The dollar amount of the participation of each DBE firm participating;*
- (4) Written documentation of the Bidder/Offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;*
- (5) Evidence of good faith efforts undertaken by the bidder, as described in appendix A to 49 CFR Part 26.*

The apparent successful Bidder will be required to provide written confirmation from the participating DBE firms verifying their intent to participate as in the project. This written confirmation shall be submitted “prior to execution of the contract.” or “with the proposal documents as a condition of bid responsiveness”.
<NOTE TO SPECIFIER: CHOOSE AN OPTION>

Per Federal Regulation 49 CFR Part 26.53.b.3, Sponsors have the discretion to require the bidder/offeror to submit the DBE confirmation as a matter of bid responsiveness or anytime prior to commitment to performance of the work (contract award). The solicitation should explicitly state when all DBE information is to be submitted.

REQUIRED CONTRACT PROVISIONS

The following paragraphs must be inserted in every solicitation that includes FAA AIP participation. The contract assurance clause shall be inserted verbatim.

Contract Assurance (§26.13) - *The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.*

Prompt Payment (§26.29) - *The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.*

DBE FORMS

A [DBE Utilization form](#) and [Letter of Intent form](#) shall be included in every solicitation requiring DBE participation. The specification preparer should assume multiple DBE contractors are interested in the project. Additional copies of the letter of intent form should be inserted in the proposal form so each proposed DBE contractor may complete a separate *Letter of Intent* form.

RESOURCES

Department of Transportation OSDBU

- [Office of Small & Disadvantaged Business Enterprise](#)
 - [DBE Program](#)
 - [Guidance for DBE Administrators](#)
 - [Sample DBE Program \(pdf\)](#)

Forms

- [DBE Letter of Intent Form](#)
- [DBE Utilization Statement](#)

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240 - Good Faith Efforts

49 CFR Part 26

In order to be considered responsible and responsive, bidders must make good faith efforts to meet the identified project goal. This may be accomplished in one of two ways:

1. By meeting the goal and documenting the commitments of the DBE firms;
2. By documenting their good faith efforts in the case that the proposed goal is not met.

Appendix A

Guidance pertaining to good faith efforts is provided in Appendix A to [49 CFR Part 26](#). In general, the bidder must demonstrate that they have taken all necessary and reasonable steps to achieve the identified DBE goal. The bidder should adequately document all such efforts, including contacts of DBE firms that are not interested.

The determination of what qualifies as a good faith effort is not quantitatively defined by the regulation. Appendix A does identify some actions, which could be considered as good faith efforts but does not mandate such actions. We encourage Sponsors to incorporate language similar to the following within their solicitation:

Good Faith Efforts

Bidder must demonstrate that they made good faith efforts to achieve participation with DBE firms. This requires that the bidder show that it took all necessary and reasonable steps to secure participation by certified DBE firms. Mere pro forma efforts will not be considered as a good faith effort.

Actions constituting evidence of good faith efforts are described in appendix A to 49 CFR Part 26. Such actions include but are not limited to:

- *Soliciting DBE participation through all reasonable and available means. This may include public advertisements and phone calls/faxes to known certified DBE firms.*
- *Consult State Department of Transportation office to obtain a list of certified DBE firms.*
- *Selecting portions of work that increases the likelihood that DBE firms will be available to participate*
- *Providing DBE firms with sufficient information and time to review the project plans and specifications.*

Documenting all contacts with DBE firms. This includes name, address, phone number, date of contact and record of conversation/negotiation.

Pre-Bid Meeting

Sponsors should assure that issues regarding the DBE goal and good faith efforts are thoroughly discussed at the prebid meeting. Potential bidders should have a complete understanding of what is required of them in order to comply with the DBE participation provisions.

Sponsors should also advise prospective bidders of the consequences of DBE fraud and actions that may be construed as red flags for DBE fraud

RESOURCES

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250 – DBE Reporting Requirements

Reporting Requirement

AIP Grant recipients with Disadvantaged Business Enterprise (DBE) programs are required by Federal Regulation 49 CFR Part 26 to report annually their DBE commitments, awards and payments. Sponsors have generally accomplished this by completing and submitting the form "Uniform Report of DBE Commitments/Awards and Payments" and the associated DBE contractor participation information form. Both forms are due each year by December 1st.

DBE Office Online Reporting System (DOORS)

Sponsors may now conveniently submit these forms and information on-line using the "DBE Office Online Reporting System" (DOORS). The DOORS system is a new web-based automated system for completing the Uniform Report of DBE Awards/Commitments and Payments (Uniform Report) as required by Federal Regulation 49 CFR Part 26.

The DOORS system provides the following benefits:

- Web-based application
- Basic instructions on all menus
- Automatic totaling and calculating
- An option to add Adobe Acrobat updates to your personal computer
- Easy account setup
- Access to view previous records
- Access to a DBE contractor participation listing for the entire USA

AIP grant recipients that have DBE participation are strongly encourage to use the web-based DOORS system in lieu of the paper version of the Uniform Report of DBE Commitment/Awards and Payments.

DOORS Website

The DOORS system may be access at the following website:

<https://www.faa.gov/secure/doors/>

Forms

[Uniform Report of DBE Awards or Commitments and Payments Form](#)

260 – Identifying DBE Fraud

AIP Grant recipients with Disadvantaged Business Enterprise (DBE) programs are required to monitor the contract DBE firms to verify the named DBE's are performing a commercial useful function and are properly compensated. Sponsor should be diligent in monitoring contracts to detect fraud indicators.

A Sponsor whose project incurs DBE fraud risks having all such costs being ruled ineligible under the Airport Improvement Program.

Red Flag Indicators

Listed below are some common indicators that DBE fraud and deceit may be occurring. While the Sponsor is ultimately responsible to the FAA, the Sponsor's consultant should also be diligent in identifying the following situations:

Bidding Phase

- *Pro Forma* efforts to meet DBE goal. No good faith efforts to seek and obtain available DBE firms.
- Pre-arranged agreements. such as DBE firm agrees to be listed in proposal with understanding prime contractor will accomplish work.
- Conditional participation such as "Prime will use a DBE firm contingent upon all material installed by the DBE firm being procured from the prime contractor"
- Pre-arranged agreement between the prime and DBE that artificially inflates the DBE participation
- DBE firms does not have regular employees and equipment.
- DBE firm has little or no experience in the type of work required (e.g Painting contractor used to perform paving tasks)

Commercial Useful Function (CUF)

The DBE must carry out their contract responsibilities by actually performing, managing, and supervising the work under their subcontract. A DBE firm is not performing a commercial useful function if their role in the project is that of an extra party in a transaction through which funds are passed through thus giving the appearance of DBE participation

- Supervision of DBE employees is performed by personnel associated with the prime contractor or any other firm or business.
- DBE provides little or no supervision of work.
- DBE's superintendent is not a regular employee of the DBE.
- DBE firm contracts out their work to a non-DBE firm.
- Pass through agreements.
- DBE firm does not schedule work operations, order materials or make managerial decisions.

Equipment

Operation of the equipment must be under the control of the DBE firm. The DBE firm is expected to provide the operator for the equipment and is responsible for payroll and DOL labor compliance requirements.

- Equipment used by the DBE belongs to Prime contractor with no established lease agreement.
- Equipment signs and marking of the DBE firm cover the actual name of the equipment owner.
- A DBE trucking business utilizes trucks owned by the prime contractor

Material

DBE must be responsible for negotiating the cost, arranging delivery and paying for the materials and supplies for the project. The DBE firm is responsible for determining quantity of material and ensuring quality of materials

- Materials for the DBE are ordered and/or paid for by the prime contractor
- Two party checks from prime to DBE subcontractor and supplier or manufacturer
- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to or paid by another business.
- Drop shipments. DBE firm never takes possession of material.

Workforce

DBE firm must maintain a regular workforce. DBE firms may not share employees with non-DBE Contractors. The DBE firm is responsible for all payroll and DOL labor compliance requirements.

- Movement of employees between contractors.
- Employees paid by both the DBE and the prime contractor.
- Employee working for prime in morning and DBE in afternoon. Materials or supplies necessary for the DBE firm's performance are delivered to, billed to or paid by another business.

Consequences of DBE fraud

Engaging in any of the referenced practices and schemes may result in the following actions:

- Loss of AIP eligibility.
- Immediate suspension of work.
- Cessation or withholding of project payments.
- Investigation by the U.S. DOT Office of the Inspector General and/or the U.S. Attorney
- Revocation of DBE firm's certification.
- Debarment of the DBE firm, prime contractor and/or subcontractor.
- Prosecution of the DBE firm, prime contractor and other parties with knowledge of the fraud and deceit.

RESOURCES

Department of Transportation – Office of Inspector General

- [OIG Fraud Hotline](#)