

When to Use Special Provisions for DBE

The Special Provisions for DBE can be found at

www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/plans_and_specifications/dbereqst.doc

Situation	DBE Special Provisions Sections to Use
Airport has an entirely race neutral goal	<ul style="list-style-type: none">• Policy• DBE Obligation• Bidders list• Prompt Payment
Airport has a goal that is partially or entirely race conscious	All paragraphs are required

NOTE:

- The information in ***bold italics*** is intended to assist the sponsor in tailoring the statements to their situation. This information should not be in the special provisions that appear in the bid.
- Be certain to **tailor the special provisions to your DBE plan requirements**. Some requirements vary by airport (i.e., Prompt payment days, time that good faith efforts are due, when bidders list information is due, bidders list form may be different)

SPECIAL PROVISIONS
(Bid Language)

DBE REQUIRED STATEMENTS – 49 CFR PART 26
(11/19/01)

Policy: It is the policy of the Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBE's) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

DBE Obligation: 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: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than (*specify number of days as defined in recipient's DBE plan*) days from the receipt of each payment the prime contractor receives from the recipient. The prime contractor agrees further to return retainage payments to each subcontractor within than (*specify number of days as defined in recipient's DBE plan*) 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 recipient. This clause applies to both DBE and non-DBE subcontractor.

(Note: The above prompt payment statement is sample language. If different than above, recipients should use the clause as provided in their DBE Plan in accordance with 49 CFR Part 26.29)

Contract Goals: (*Note the following statements should only be used if the recipient does not expect to meet the overall goal through race-neutral means AND the contract has subcontracting possibilities*):

The bidder shall subcontract _____ percent of the dollar value of the total amount of a DOT-assisted contract (*or of the Federal share of a DOT-assisted contract as defined in recipient's DBE plan*) to qualified DBE subcontractors. *At (state the time as identified in the recipient's DBE plan)* the bidder shall submit:

1. The names, addresses of DBE firms that will participate in the contract;
2. A description of work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm;
4. Written and signed document of commitment to use the DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the bidder fails to meet the contract goal, evidence of good faith efforts, as described below shall be submitted.

A bidder who fails to meet these requirements and who cannot show good faith effort will be considered non-responsive (*or non-responsible as defined in the recipient's DBE Plan*).

Good Faith Effort. (*Note: This clause is only required if contract goals are used*). The following actions, by the bidder, are generally considered a sign of good faith effort. This list is not exclusive or exhaustive, but should be used as a guide in determining good faith effort.

1. Attendance at pre-bid meetings scheduled to inform DBE's of the project.
2. Advertisement in general circulation, trade association and minority focus media concerning subcontracting opportunities.
3. Written notice to DBE's allowing sufficient time for reply.
4. Follow up of initial solicitation.
5. Selection of portions of the work likely to be performed by DBE's.
6. Provide interested DBE's adequate information for bidding.
7. Negotiation with interested DBE's.
8. Assist interested DBE's with bonding, insurance or credit.
9. Use of minority contractors' groups and minority business assistance offices.

Bidders List: (*Note: 49 CFR Part 26 requires recipients to create a bidders list containing information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The regulation does not mandate a particular method for developing the list. Use of a contract clause is one such method. If the recipient's DBE Plan provides for the contract clause method, the following clause – or one developed locally – may be used to include in each DOT-assisted contract. Recipients that choose to use another method would not include such a clause in their DOT-assisted contracts.*) The bidder shall submit the name, address, DBE status, age, and gross receipts of all firms bidding or quoting subcontracts on DOT-assisted projects. The attached form may be used to report this information.

Note: The decision on when to require bidders list information from contractors and the impact on contractors who do not submit the information is made by the recipient.

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION: The undersigned has satisfied the requirements of the specifications in the following manner (please check the appropriate space):

- The bidder is committed to a minimum of _____ % DBE utilization on this project.
- The bidder (if unable to meet the goal of _____ % DBE) is committed to a minimum of _____ % DBE utilization on this project and has submitted documentation showing good faith effort.

Contractor _____

By _____ (Signature) _____ (Title)

Address _____

Phone Number _____ Zip Code _____

LETTER OF INTENT

Name of Bidder's Firm: _____

Bidder's Address: _____

City: _____ State _____ Zip _____

Name of DBE Firm: _____

Address: _____

City: _____ State _____ Zip _____

Telephone (including area code): _____

Description of work to be performed by DBE firm:

Bidder intends to utilize the above-named minority firm for the work described above. The estimated amount of work is valued at \$_____.

If the above-named bidder is not determined to be the successful bidder, the Letter of Intent shall be null and void.

(Copy this page for each minority subcontractor)

Additional Optional Bid Language

When a Portion of the Goal is RN

The overall DBE goal for (*sponsor's name*) for this *project (if you have more than one project this year, use "fiscal year")* is *XX%* of the *total amount of the DOT assisted contract (or the federal share of the contract)*. Contractors are encouraged to meet or exceed this goal. However, the DBE goal the bidder must meet or show proof of good faith efforts to meet is *XX %*.

When the Entire Goal is RN

The overall DBE goal for (*sponsor's name*) for this *project (if you have more than one project this year, use "fiscal year")* is *XX%* of the *total amount of the DOT assisted contract (or the federal share of the contract)*. Contractors are encouraged to meet or exceed this goal. However, bids will not be evaluated based on DBE participation.

When Good Faith Efforts Are Due At Bid Time

Even if a bidder believes it has met the DBE goal, the bidder may, at its election, also submit documentation of its good faith efforts with its bid in the event that the (*sponsor's name*) determines that the DBE goal was, in fact, not met.