

49 CFR Part 26 OVERVIEW

Presented to: Airport Sponsors and Consultants

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Federal Aviation
Administration



Your Speakers

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Overview of the DBE Construction Goal Setting Process



When Must You Set a Goal?

When you award \$250,000+ in prime contracts from AIP grants in the FY

What is Counted?

- Professional Services
- Land acquisition services (Surveying, title, appraisal, etc)
- Contracts funded by pooling AIP funds from multiple years

What is NOT counted?

- AIP grant for project awarded in prior year that had a goal
- Land purchase



Tools for Goal Setting



- **49 CFR Part 26**
- **Overall Goal Calculation – Sample Plan Attachment 4**
- **Tips on Goal Setting**
- **Checklist**

DBE Goal Setting Overview

Step 1: Determine Availability

Determine DBE availability in Market Area

- Market Area
- Type of Work and amount
- # DBEs
- # total firms



Step 1 Data Collection

NAICS Code	% of Work	DBEs	All Firms
235930 – Excavation	50%	4	25
234110 – Asphalt Paving	40%	1	25
484220 – Local Trucking	10%	8	50



Step 1 Base Figure Calculation

Basic Calculation

Total DBEs/All Firms

$$13/100 = 13\%$$

Weighted Calculation

[%work(DBE/All Firms) + %work(DBE/All Firms)] X 100

$$[.50(4/25) + .40(1/25) + .1(8/50)] X 100$$

$$(.08 + .016 + .016) X 100 = 11.2\%$$



DBE Goal Setting Overview: Step 2: Adjust the Goal

- **Past participation**
- **Disparity study**
- **Information from consultation**



Estimating Race Neutral/Race Conscious Breakout

RC – Conscious action to get DBEs

- Putting a goal on the invitation to bid

RN – Measures to increase opportunities for all small businesses



Estimating RN/RC Breakout

- **Past participation on similar contracts**
 - Amount exceeding goals on AIP funded after 1999
 - Non-AIP funded
- **Other participation sources (MBE/WBE)**
 - Other airports (similar size & market area)
 - FHWA, FTA, city, county, school projects
- **Information from consultation**



What if there is no past participation data anywhere?





Answer the Following Questions

- **Do you think you will get DBE participation without a contract goal?**
- **How much?**
- **How did you arrive at this number?**
 - Prime contractor has mentor program
 - DBEs are known to primes and competitive.
 - Primes have their own network and it does not include DBEs.

Consultation

- **You must consult with:**
 - Minority, women's and general contractor groups;
 - Community organizations; And...
 - Other officials or organizations

- **Look for and Consider**
 - evidence that affects DBE opportunity to form, grow and compete
 - Effects of discrimination on opportunities
 - Airport's efforts to level the playing field



Methods for Consultation

- **Informational meetings**
- **Telephone surveys**
- **Mail surveys**
- **Meeting w/ DBEs on past projects**





Document Your Consultation

- **Who you consulted with**
- **A summary of the information provided**
- **What you did with the information**
 - How does it impact Step 2
 - How does it impact RN/RC breakout



Public NOTICE of Goal

- **Publish a notice announcing**
 - the proposed overall goal & methodology
 - Where available to inspect for 30 days.
 - Comment accepted for 45 days
 - June 1st
- **See Sample Notice**

**DO NOT WAIT FOR DOT/FAA APPROVAL
OF GOAL TO PUBLISH NOTICE**

When & How to Update Your Goal



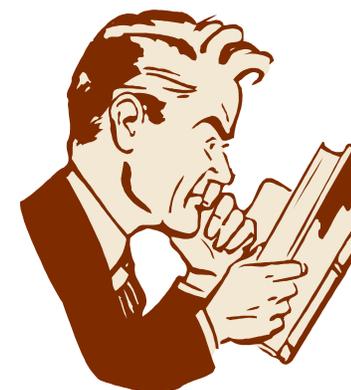
- **When you have new projects with different types of work**
- **Develop a new overall goal**
- **Re-advertise overall goal**

DBE Program Administration Overview



Do You Know What's In Your Plan?

- **It must be readily accessible to the Airport Manager and DBELO.**
- **The Airport Manager and DBELO MUST know what is in the plan.**





Good Faith Efforts

26.53(a) & (c)

- **Responsive or Responsible**
- **Bidding Language**
- **Signs of Good Faith Efforts**
- **Decision maker**



Important Information for Bidding Projects

- **Bidding Language**
- **Prompt Payment**
- **Documentation as matter of Responsiveness or Responsibility**
- **Signs of Good Faith Efforts**
- **Forms**

Bidding Contracts

Your Bids **MUST** match your Plan & Goal

Special Provisions Bidding Language

- **Prompt Payment**
- **Contract Goal Documentation (responsive v. responsible)**
 - **Responsive** – Due at time of bid
 - **Responsible** – Due within a certain timeframe by apparent low
- **Good Faith Efforts (responsive v. responsible)**
- **Bidders List**



Bidding Contracts (Forms)

- **DBE Utilization form**
- **Letter of Intent**
- **Bidders List**



Documentation Required

26.53(b) & Special Provisions

- **Names, addresses of DBE firms that will participate in the contract**
- **Description of work that each DBE will perform**
- **Dollar amount of each DBE firm's participation**



More Documentation Required

26.53(b) & Special Provisions

- **Written/Signed document of commitment to use DBE subcontractor whose participation is submitted to meet the goal**
- **Written/Signed confirmation from DBE that it is participating in the contract as provided in Prime's commitment**
- **Evidence of good faith efforts, if bidder fails to meet contract goal**





Signs of Good Faith Efforts

(Appendix A & Special Provisions)

- **Attendance at pre-bid meetings**
- **Advertisement in general circulation, trade association and minority focus media**
- **Written notice to DBE's w/ sufficient time to reply**
- **Follow-up of initial solicitation**

More Signs of Good Faith Efforts

- **Selection of portions of work likely to be performed by DBE's**
- **Provide interested DBE's adequate information for bidding**
- **Negotiation w/ interested DBE's**
- **Assist interested DBE's w/ bonding, insurance or credit**
- **Use of minority contractor groups and minority business assistance offices**





Good Faith Effort Decisions

- **Final decision rests with the airport**
- **Administrative Reconsideration process is in DBE Plan**
 - # of days bidders have to appeal (not more than 5-7)
 - Reconsideration official is someone not involved in the original determination.

Some Myths

- **Myth: A DBE Certified in any state can be counted toward the goal**
 - To be counted the DBE must be certified by your state UCP
- **Myth: HubZone Business cannot be counted toward the goal**
 - HubZone can be counted toward the goal, but does not get the 10% preference
- **Myth: The State DOT office has approval authority for my DBE goal.**
 - Goals based on AIP funds are approved only by FAA, Office of Civil Rights



One Last Myth

Myth: It doesn't matter if I meet my overall goal.

**You will not be penalized for falling short,
but you can be found in noncompliance for not
implementing your program in good faith.**

- Continued failure to meet goals
- Failure to take action to improve accomplishments.
- Telling bidders that meeting the DBE goal is not important



The End – Thank You!

