

JAN. 28, 2011

DBE RULE CHANGES

49 CFR PART 26

Reminders

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**Federal Aviation
Administration**



49 CFR Part 26

Revised Jan. 28, 2011

- **Purpose**
 - **Improve program oversight and accountability**
 - **Update rule to accommodate changing circumstances**
 - **Respond to programmatic issues/weaknesses**



Overview of Changes Made

- **Program Oversight**
- **Accountability and Goal Submissions**
- **Termination of DBE Firms**
- **Personal Net Worth**
- **Interstate Certification**



Overview of Changes Made

- **Other Certification Related Changes**
- **Small Business Provision**



Increased Program Oversight

Section 26.37-Certification of Monitoring

Monitoring and enforcement mechanism must include:

- **For each contract with DBE participation: a written certification that sponsor reviewed the contracting record and monitored work site to ensure that work committed to the named DBEs were actually performed by these DBEs.**
- **May be conducted in conjunction with monitoring of contract performance for other purposes.**
- **Have written certifications on file and available to the FAA.**

Accountability Mechanism

Section 26.47

If DBE awards and commitments are less than overall goal in a given year, you must:

- **Analyze the process used to achieve your overall goal and develop corrective steps to improve program implementation in the future, so that overall goal can be met in the next year.**

Accountability Mechanism (continued)

- **If you are one of FAA's core 30 airports, or an airport designated by the FAA, you are required to submit your analysis and corrective action plan to your FAA point of contact for approval within 90 days of the end of the fiscal year.**
- **If you are not a core 30 airport, or an airport designated by the FAA, you must keep your report and plan on file for 3 years, and make it available to FAA upon request.**



FAA's Core 30 Airports

- **The Core 30 airports handle 63 percent of the country's passengers and 68 percent of its operations.**

- **Core Airports as of 6/8/12:**

- | | |
|---------------------------------|--------------------------|
| 1) BWI | 16) Midway |
| 2) Boston Logan | 17) Miami |
| 3) Charlotte Douglas | 18) Minneapolis-St. Paul |
| 4) DFW | 19) Newark Liberty |
| 5) Denver | 20) O'Hare |
| 6) Detroit Metro | 21) Orlando |
| 7) Ft. Lauderdale-Hollywood | 22) Philadelphia |
| 8) George Bush Intercontinental | 23) Phoenix Sky Harbor |
| 9) Hartsfield-Jackson Atlanta | 24) Salt Lake City |
| 10) Honolulu | 25) San Diego |
| 11) JFK | 26) San Francisco |
| 12) LaGuardia | 27) Seattle-Tacoma |
| 13) Las Vegas-McCarran | 28) Tampa |
| 14) Los Angeles | 29) Washington Dulles |
| 15) Memphis | 30) Washington National |

Goal Submissions

Section 26.45

- **Currently you must submit goal updates based on a three-year goal period to the FAA.**
- **The Jan. 28, 2011 rule permits sponsors to make annual goal projections for informational purposes within the three-year overall goal. However, it is the DBE achievement of the overall goal in a given year, not the annual informational projection, that is the trigger for the accountability provision.**
- **You may adjust your three-year goal during the three-year period to reflect changed circumstances. This adjustment must be submitted to your FAA point of contact for approval.**



Termination of a DBE for Convenience

Section 26.53

- **Prime contractors may not terminate DBE subcontractors from projects without “good cause” and approval from the sponsor.**
- **“Good cause” is defined.**
- **Before the prime makes its request to you to terminate a DBE, it must give notice in writing to the DBE with a copy to you, of its intent to terminate and/or substitute, and the reasons for the request. The DBE has 5 days to respond to the notice, and advise you and the contractor of the reasons , if any, why it objects to the proposed termination, and why you should not approve the prime’s action.**

Key New Certification Provisions

Sections 26.67 and 26.85

- **Personal Net Worth (PNW) increased from \$750,000 to \$1.32 million. Indexed to inflation so current PNW amount is equivalent to amount in original rule (1999)**
- **New Procedures for Interstate Certification effective January 1, 2012. Intent is to facilitate interstate certifications.**

Other Certification-Related Matters

Sections 26.71, 26.73, 26.83

- **DBE is granted certification only for specific types of work it has ability to control. Work must be described in terms of most specific available NAICS code(s).**
- **DBE directory must list DBE work using most specific NAICS code available, and the print directory must be updated at least annually.**
- **UCPs are to evaluate firms on present circumstances; not deny solely on basis that firm is newly formed or has no profits; must follow new procedures for firms that withdrew and then resubmitted, and must update on-site review of certified firms.**



Other Certification-Related Matters

- **Impact on Recipients and DBEs:**
- **DBEs must be certified in the NAICs codes that are applicable to the work to be performed. DBEs to check accuracy of their NAICs codes.**
- **Solicitations should specify the NAICs codes required.**



Small Business Program Element

Section 26.39

- **You must develop a Small Business Element in your DBE program, and submit it to your FAA point of contact by February 28, 2012 for approval.**
- **Plan must address race-neutral small business strategies to increase race-neutral DBE participation. Strategies include unbundling of contracts, small business set-asides, primes specifying portions of contract for small businesses, etc.**
- **Doing so is a requirement of good faith implementation of your DBE program.**



DOT DBE Policy Guidance

Questions and Answers (Q&A's)

- **A number of Q&A's pertaining mostly to the Part 26 program has been issued by DOT recently. Issues include:**
 - **Implementing section 26.39, Fostering Small Business Participation.**
 - **Union status.**
 - **Ownership changes in a DBE certified firm.**
 - **Commercially useful function evaluation in “Furnish and Install” contracts.**
 - **Counting DBE trucking participation.**

DOT DBE Policy Guidance

Q&A's continued...

- **Certification of “regular dealers.”**
- **Certification issues re: NAICs code eligibility, voluntary withdrawal of firm from DBE program.**
- **Prompt payment or retainage non-compliance.**
- **Evidence of good faith effort—proposal to use potential DBEs that are not certified in recipient’s state.**
- **Second NPRM on Part 26 to follow (PNW form, Accomplishment Report, etc.).**



Questions

