

DBE:

Small Business Element



Federal Aviation
Administration

AMAC 2012

Airport Business Diversity Conference

St. Louis, Missouri

Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY

Small Business Element



Small Business Element

49 CFR Part 26, Revised DBE Final Rule

- Effective February 28, 2011
- New Q&A guidance issued December 8, 2011
- Includes *mandatory* provisions to foster small business participation

Small Business Element

49 CFR 26.39

- The Small Business Element must be submitted to the FAA DBE Team for approval by February 28, 2012.
- The submission should be integrated into the grant recipient's existing/approved DBE program.
- Airport sponsors must implement the element within 9 months of FAA approval.

Small Business Element

49 CFR 26.39 *Fostering small business participation*

- DBE Program must include and actively implement a program element to facilitate competition by small business concerns

49 CFR 26.51 (a) *Meeting Overall Goals*

- References the means under Part 26, including 26.39, as a race-neutral measure

Possible Programs

49 CFR 26.39

1. Set-Asides

- Certain prime contracts under a certain stated amount may be set-aside for small business firms.

2. Unbundling

- In large contracts, may require bidders to specify elements that small businesses can reasonably perform.
- On contracts with no DBE goal, require prime contractor to provide opportunities of a size that small businesses can reasonably perform.
- Ensure that a reasonable number of prime contracts are of a size that small businesses can reasonably perform.

Possible Programs cont'd.

49 CFR 26.39

3. General Outreach

- Marketing, Recruitment, and Educational Program efforts targeted at all small business—not just DBE firms

4. Supportive Services

- Other Supportive Services targeted at all small businesses in the market area

5. Alternative Acquisition Strategies

- Identifying alternative acquisition strategies and structuring procurements to facilitate ability of consortia or joint ventures consisting of small businesses to compete for and perform prime contracts

Required Programs

49 CFR 26.39

1. Plan **MUST** be completely race neutral
2. Plan must be detailed and clearly explained
3. DBE Participation achieved through the small business element of a DBE program **MUST** be reported as race neutral participation to the FAA

Required Programs cont'd.

4. Plan must address how small businesses will be certified to participate in the program
 - Business Size Cap and PNW should be commensurate with Part 26 limits or lower
 - Businesses should **NOT** be allowed to self-certify

5. DBE firms should be presumed eligible to participate

Required Programs cont'd.

6. At least some monitoring and enforcement mechanisms should be addressed
7. Recipients should indicate that potential DBE firms will be aggressively recruited into the DBE program
8. There should be **NO** geographic preferences established

Required Programs cont'd.

9. Federal contracts and local or state contracts must be separated; the plan must also adhere to state law(s), (e.g., procurement rules)

10. Airport sponsors must avoid creating barriers to the use of new, emerging, and untried businesses

Small Business Element

Establishing small business goals on contracts with a DBE goal is **discouraged**.

QUESTIONS??



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