

DBE and ACDBE Programs:

Common Misunderstandings



**Federal Aviation
Administration**

Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY

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Common Misunderstandings

- Following are issues regarding the DBE Program that are frequently misunderstood
- Focus is on the most common misinterpretations
- Discussion after each topic

There is reciprocity between SBA and DOT

True

False

- SBA–DOT MOU on certification matters **lapsed** over six years ago
- SBA has self-certification approach for small disadvantaged businesses
- SBA 8(a) program differs from DBE program
- **USDOT has deleted former sections 26.84 and 26.85, relating to provisions of that MOU.**
- *See: <http://osdbu.dot.gov/documents/pdf/dbe/2011-1531.pdf> - page 5090*

Airport's Overall Goal number is applied to each project

True

False

- **No requirement to set each contract goal at the same percentage level as the overall goal**
- **Goal for a specific contract may be higher or lower than the overall goal, or no goal at all depending on such factors as:**
 - the type of work involved
 - the location of the work, and
 - the availability of DBEs for the work of the particular contract

The Airport is acquiring ARFF Equipment and Land with its entire annual grant award totalling \$750,000 and therefore, does not need to set a DBE.

It Depends!

- Contracts solely for land purchase are excluded from the DBE program and goal requirements. (Order 5100.38C Para. 1422.a.)
 - However, surveying and appraisals are included.
 - If the contracts awarded for surveying and/or appraisals is over \$250,000, a DBE goal is required.
- Snow plows, ARFF vehicles. It has been stated by DOT and others that there are no known DBE equipment manufacturers or suppliers of such equipment, i.e. snow plows, ARFF vehicles.
- Therefore, we do not require recipients to include the procurement of this type of equipment in their DBE goals.
 - **Subtract the acquisition amount.**

The Airport is Awarding Three Contracts During the Year, \$150,000, \$200,000 and \$125,000 – Each award is under \$250,000 therefore, a DBE goal is not required.

True

False

26.21 states:

- **(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.**
 - **Total of all prime contracts awarded within the FY.**
- (b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

The FAA Office of Civil Rights approves contract goals

True

False

- **Operating administration approval of each contract goal is not necessarily required.**
However, operating administrations may review and approve or disapprove any contract goal you establish.
- *See: § 26.51(e)(3) What means do recipients use to meet overall goals?*

The DBE goal numerator should only include certified DBEs

True

False

- **Look to relevant data sources to supplement your DBE directory**
- **Consider supplementing number of firms in your DBE Directory (for the purposes of goal-setting only)**
 - carefully examine lists of MBE/WBEs from other sources
 - examine your own databases such as vendors, bidders' lists, pre-bid or pre-proposal conference attendance lists and outreach session attendance lists

The DBE goal numerator should only include certified DBEs, cont'd.

True

False

- **Rationale: denominator may be too broad**
 - US Census data is all-inclusive and may skew the goal
 - Expectation is to compare “apples to apples”

- *See: Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program, II. Step One, C*

All airports who fall short of their overall DBE goal must justify the shortfall to the FAA

True

False

- Only CORE (formerly, OEP) Airports must submit an analysis to FAA explaining the shortfall.
- *All other airports must retain analysis and corrective actions in records for three years and make it available to FAA on request.*
- Many airports also determine an annual DBE goal, however, it is the formally submitted and reviewed three-year overall DBE goal that counts toward the accountability mechanism.
- See 49 CFR Part **26.45 (f)(i)(v)**, which references 26.47(c)

There is only one way to determine the DBE goal figure

True

False

You may choose an average, median or weighted figure.

- Year 1 Goal = 9.0%
- Year 2 Goal = 8.0%
- Year 3 Goal = 6.0%

Examples:

- Average of the three years $9+8+6=23/3$ **7.7%**
- Median of the three years of participation **8.0%**
(pick the one in the middle after arranging from low to high)
- Weighted $\$965,832 / \$12,234,598$ **7.8%**
DBE participation / total dollars of all contracts

Race-neutral is non-minority women

True

False



- Defined at 26.51 and 23.51

Race-neutral measure or program is one that is, or can be, used to assist all small businesses or increase opportunities for all small businesses

- History of exceeding DBE or ACDBE goals
- DBE or ACDBE prime contracts/concessions
- DBE or ACDBE participation achieved on contracts or concessions that did not have a DBE/ACDBE goal
- DBE/ACDBE participation achieved through the airport's small business element

What is Race-Conscious Participation?

Race-conscious measure or program is one that is focused specifically on assisting only DBEs /ACDBEs.

- Conscious action to obtain DBE participation
- DBE contract goals
- Anything the sponsor does just for DBEs like a bid conference or training where other businesses are not invited (not even other small businesses that are white and male owned).
- Price credits for DBE's would also be considered race-conscious.

In the goal-setting process, a public notice can count as a consultation

True

False

- **Public participation component of establishing an overall Part 26 goal includes both a consultation and a published notice**
- **In establishing a Part 26 overall goal, you must provide for public participation. This public participation must include:**
 - Published Notice, and
 - Consultation
- **For Part 23 goals, a published notice is not required, however, a consultation is required.**
- *See: § 26.45 How do recipients set overall goals?*

Accomplishment reports are now due every 3 years

True

False

- **DBE and ACDBE Uniform Reports are due annually:**
DBE – December 1, and ACDBE – March 1
- *See: Appendix B to Part 26 - Uniform Report of DBE Awards or Commitments and Payments Form – Instructions Page
and
Appendix A to Part 23 - Uniform Report of ACDBE Participation
Instructions for Uniform Report of ACDBE Participation*

GFE documentation required on every Federally-funded project, even when DBE goal is R/N

True

False

- **Contractors only have to provide Good Faith Efforts documentation when there is a race-conscious DBE goal on a project.**
- *See: § 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?*

Count participation of DBE subs who become certified during duration of project

True

False

- If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation toward any DBE goals; the firm may be counted toward race-neutral participation
- To receive DBE credit toward meeting a contract goal, a DBE firm must be certified before the due date for bids or offers on the prime contract
- *See: § 26.55(f); 26.81(c), and Official Questions and Answers (Q&A's) DBE Program Regulation (49 CFR 26)*

Airport can delegate all DBE Program responsibilities to DBE consultant

True

False

- Recipient may contract with an external consultant to assist with its DBE and/or ACDBE Program responsibilities
- Recipient is ultimately responsible for the implementation and monitoring of the program
- Recipient who signed grant assurances is fully responsible for the proper implementation and monitoring of the program

UCPs can certify ACDBE joint ventures

True

False

- Joint venture entities are not certifiable as ACDBEs
- However, ACDBE firms that are joint venture partners must be certified
- *See: USDOT Joint Venture Guidance*

“Home State” is where owner resides

True

False

- “Home state” means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business
- UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in which the firm maintains its **principal place of business**
- *See: § 26.81(d) What are the requirements for Unified Certification Programs?*

“Home State” UCP must share all information with other states

True

False

- The **applicant** must provide to State B a complete copy of the application form, all supporting documents, and any other information related to the applicant firm’s certification(s).

- *See: § 26.85(c) Interstate certification.*

State B should not accept home state certification

True

False

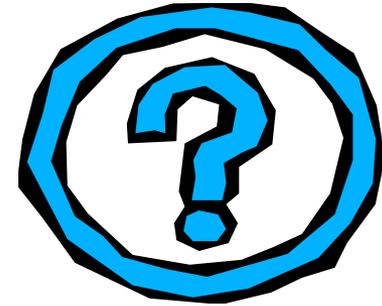
- When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, **State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.**
- *See: § 26.85 Interstate certification.*

Local small business program participation can count toward race-neutral DBE participation

It Depends!

- Only DBE-certified firms can be counted toward DBE participation; race-neutral or race-conscious
- If the small business is a certified DBE, it can count toward DBE participation

Questions?



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