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General (7/31/13)

Acceptance of Airport Improvement Program (AIP) funds obligates a Sponsor to comply with several Civil Rights statutes, Executive Orders and other Federal Regulations. There are 5 general areas that address applicable civil rights requirements.

- 1. Nondiscrimination in Benefits for and Service to the Public**
The sponsor must assure that no person, on the grounds of race, color or national origin, be denied nor be subjected to discrimination in the provision of benefits and services to the public. ([49 CFR Part 21](#)) and Section 520 of the Airport and Airway Improvement Act of 1982.
- 2. Nondiscrimination in Employment in Federally Assisted Construction Contracts**
For all federally assisted construction projects that exceed \$10,000, the Sponsor must incorporate all applicable contract clauses and certifications within the bid documents and contract agreements to ensure equal opportunity for all persons regardless to race, color, religion, sex or national origin. ([41 CFR Part 60](#))
- 3. Nondiscrimination in Airport Employment Opportunities**
The sponsor must assure that they, their tenants, their contractors, their lessees and their concessionaires do not discriminate on the basis of race, color, national origin, sex, creed or handicap in the area of employment. (Section 520 of the Airport and Airway Improvement Act of 1982)
- 4. Disadvantages Business Enterprise Program**
Per 49 CFR Part 26, Sponsors seeking AIP participation in projects that equals or exceeds an accumulative amount of \$250,000 within a fiscal year must have an approved DBE program on file with the FAA prior to issuance of a grant. The Sponsors approved program must establish regional goals that facilitate participation by available DBE firms in their federally assisted projects. ([49 CFR Part 26](#))
- 5. Nondiscrimination in Benefits for, Services to, Employment of and Accessibility for the Handicapped**
Sponsors must make reasonable accommodation to avoid discrimination on the basis of handicap disability in the provision of benefits, services or employment. ([49 CFR Part 27](#))

Limitations of Use

The obligation for any required action addressed within this guidance originates within applicable Federal directives such as United States Code (USC), Public Law (PL), Code of Federal Regulations (CFR) and official FAA policies. The supplemental information provided within this guidance does not establish additional requirements for participation in the AIP.



210 - DBE Overview

General (7/31/13)

Federal regulation [49 CFR Part 26](#) establishes requirements for recipients of the U.S. Department of Transportation (DOT) Federal financial assistance (namely, state and local transportation agencies) as they relate to establishment disadvantaged business enterprise (DBE) programs. A separate regulation, [\(49 CFR Part 23\)](#) addresses specific DBE requirements that pertain to airport concessions.

Objectives of the DBE Program (7/31/13)

Some of the primary purposes of a DBE program include:

- To ensure non-discrimination in the award and administration of DOT-assisted contracts
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts
- To ensure that the DBE program is narrowly tailored in accordance with applicable law
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBE's
- To help remove barriers to the participation of DBE's in DOT-assisted contracts
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's

Who must have a DBE program? (7/31/13)

FAA grant recipients must have an approved DBE program on file with the FAA if they receive AIP assistance for airport planning or development that involve the award of prime contracts exceeding a cumulative amount of \$250,000.

The \$250,000 threshold is not a project specific threshold. This threshold represents the sum of AIP assistance a sponsor receives in a fiscal year. For example, if a Sponsor intends to award two separate prime contracts within a fiscal year with one project requiring \$100,000 AIP funds and the 2nd project requiring \$150,000 in AIP funds, the sponsor must have an approved DBE program on file with the FAA because the value of federal assistance sums to \$250,000 for that fiscal year.

Qualifying DBE firms (9/6/13)

To qualify as a disadvantaged business enterprise for DOT-assisted contracts, eligible firms must apply for and receive certification from the Unified Certification Program (UCP) within their State. The certification process includes a review of the personal net worth limitations, size standards, ownership and control requirements and social economic status. Refer to 49 CFR Sub-Part D (§26.62 -§26.73) for complete information on certification requirements.

RESOURCES

U.S Department of Transportation

- [USDOT Office of Small & Disadvantaged Business Enterprise](#)
 - [DBE Program](#)
 - [Guidance for DBE Administrators](#)
- [FAA Office of Civil Rights - Airport DBE Program](#)

Regulation

- [49 CFR Part 26](#) (pdf)- Participation By DBEs in DOT Financial Assistance Programs

State Transportation DBE Websites

- [Iowa](#) – Link to DBE directory provided on web page
- [Kansas](#) - KDOT Office of Civil Rights
- [Missouri](#) - Link to DBE directory provided on web page
- [Nebraska](#) – Link to Certified DBE provided on web page



220 - DBE Program Submittal Information

When Should the DBE Program Be Established? (9/6/13)

Effective March 2010, the DOT modified the frequency for which a grantee must update their DBE program. The FAA will now evaluate a Sponsor’s DBE program on a 3 year frequency interval instead of the past

yearly annual review. To facilitate the workload, the FAA staggered the implementation of this new policy by basing the requirement for submitting an overall program update upon an airports classification and region location. Sponsors must submit their overall program updates per the following schedule and thereafter on a 3-year frequency.

Schedule for DBE Program Goal Updates (9/6/13)

Airport Classification	Region	Due Date	Period Covered	Next Submittal
Large & Medium Hubs (Primary)	All Regions	August 1, 2013	2014/2015/2016	August 1, 2016
Small Hub (Primary)	All Regions	August 1, 2014	2015/2016/2017	August 1, 2017
Non-Hub (Primary)	All Regions	August 1, 2015	2016/2017/2018	August 1, 2018
Non-Primary & State DOTs	Alaskan Eastern Great Lakes	August 1, 2013	2014/2015/2016	August 1, 2016
Non-Primary & State DOTs	New England NW Mountain Southern	August 1, 2014	2015/2016/2017	August 1, 2017
Non-Primary & State DOTs	Central Southwest Western-Pacific	August 1, 2015	2016/2017/2018	August 1, 2018

Available Guidance for Preparing a DBE Program (7/31/13)

The FAA Office of Civil Rights has prepared a [sample DBE program](#) (11/20/12) that administrators may use as a template when developing their specific DBE program. The DOT Office for Small & Disadvantaged Business Utilization also has a website that includes [Guidance for DBE Program Administrators](#).

FAA Point of Contact (7/31/13)

The [FAA DBE Compliance Program Regional Point of Contact List](#) identifies which specialist a Sponsor should contact with regard to their DBE programs (Part 23 and Part 26). Central Region sponsors with specific questions regarding their DBE program may contact:

Patricia Wright
Federal Aviation Administration
Western-Pacific Region Headquarters, AWP-9
P.O. Box 92007
Los Angeles, CA 90009-2002
310-725-3955

RESOURCES

Department of Transportation

- [Office of Small & Disadvantaged Business Enterprise](#)
 - [DBE Program](#)
 - [Guidance for DBE Administrators](#)
- [FAA Office of Civil Rights - Airport DBE Program](#)
 - [Sample DBE Program \(Part 26\)](#) (pdf) – As of 11/20/2012

Regulation

- [49 CFR Part 26](#) (pdf) - Participation By DBEs in DOT Financial Assistance Programs



230 - DBE Goals

General (7/31/13)

Sponsors are required by 49 CFR Part 26.45 to establish an overall DBE participation goal that reflects the ratio of ready and willing certified DBE firms relative to all ready and willing firms for their regional area. Sponsors may not simply rely on the national aspiration goal of 10% as the basis for their own overall goal. The overall goal must reflect the Sponsor's reasonable determination of DBE participation absent the effects of discrimination.

Sponsors should note that the establishment of an overall DBE goal does not represent a quota for any DOT assisted project. Sponsors may not incorporate set aside contracts for DBEs in order to meet the overall DBE goal.

Program versus Contract Goals (7/31/13)

The recent change from an annual program goal to a three year program goal has highlighted the confusion between an overall DBE program goal and a project specific goal. The three-year overall DBE goal the FAA approves does not serve as the contract goal used for all projects during that period.

The overall DBE goal represents the anticipated participation by certified DBE firms over a three year period and includes both race/gender neutral means and race/gender conscious means. The contract goal represents the anticipated participation by DBE firms for a specific project and only addresses race/gender conscious means. The factors and circumstances associated with a project may also affect the available subcontracting opportunities. A project specific DBE goal will rarely be the same value as the overall DBE goal.

Prime Contracts and \$250,000 (7/31/13)

The recent change to a 3 year program highlights another confusing matter, that being the purpose of the \$250,000 threshold. Per §26.21, the \$250,000 establishes when a grant recipient must have an approved DBE program on file with the FAA. This value does not have any real relation to any project specific DBE goal.

A project contract goal is a race/gender conscious method of obtaining DBE participation. Contract goals apply only if race/gender neutral methods are not sufficient in obtaining DBE participation. When neutral methods are inadequate, Sponsors may apply project specific goals on projects that have subcontracting opportunities.

The contract goal should reflect the availability of certified DBE subcontractors as it relates to all available subcontractors taking into consideration the nature and character of the work. The \$250,000 DBE program goal threshold is not relevant with determining whether a project contract goal is necessary. A project expecting to cost \$100,000 may very well require a DBE contract goal to assist the Sponsor with meeting their 3 year overall goal.

RESOURCES

Department of Transportation

- [Office of Small & Disadvantaged Business Enterprise](#)
- [FAA Office of Civil Rights - Airport DBE Program](#)

Regulation

- [49 CFR Part 26 \(pdf\)](#) - Participation By DBEs in DOT Financial Assistance Programs



231 – Establishing Overall DBE Goal (3 –year goal)

Demonstrable Evidence (7/31/13)

Sponsors must establish their 3-year overall goal based upon demonstrable evidence of the availability of ready and willing DBE firms **relative to all** ready and willing firms. The Sponsor’s documentation shall identify all applied data sources and processes they used to establish the goal. This includes assumptions made, any public comments they received that pertain to the proposed goal and their resolution of those comments. Failure to adequately document how a Sponsor derived their overall goal can result in delays with approval of your program.

3 step process -§26.45 (7/31/13)

Section 26.45 of 49 CFR Part 26 recommends Sponsors apply a 3-step process to establish their overall DBE goal. The process to establish a 3-year overall goal should take into consideration all anticipated AIP funded projects the Sponsor intends to pursue within the 3 year period.

Step 1 - Determine base figure for available DBEs relative to all available firms

- Establish market area
- Identify different types of work and associated NAICS code
- Calculate percentage of work types for all identified projects (e.g. 10% trucking, 45 % concrete and etc)
- Research DBE directories to establish ready and willing DBE firms
- Use Bidders lists, NAICS codes and etc to establish all firms (DBE and non-DBE firms) ready and willing to participate
- Using a weighted calculation based on percentage work types, divide number of DBE firms by the number of all firms to establish a base figure for your market area

Step 2 - Examine the base goal to determine what adjustments are necessary.

- Sponsor must consider all evidence available in their jurisdiction to determine whether such an adjustment is necessary (i.e. Sponsor cannot forgo this step).

- Evaluate current capacity of certified DBE firms to perform the work.
- Evaluate results from past participation.
- Research evidence from disparity studies conducted in your market area (including relevant studies commissioned by other contracting agencies in your market area).
- Evaluate statistical disparities in the ability of DBEs to get financing, bonding and insurance.
- Research data on employment, self-employment, education and training, union apprenticeship programs.
- Consider any other data that would help to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination.

Step 3 – Calculate the race/gender neutral component

- Sponsors must meet the maximum feasible portion of their overall goal by using race/gender-neutral means
- Sponsors must be able to explain how they established the percentage of DBE participation that they could achieve through race/gender-neutral means
- Consider the amount by which you exceeded your advertised DBE goals on past projects. The value of DBE participation over the advertised goal value is race/gender neutral participation
- Awards made to prime contractor that are a certified DBE firm is a race/gender neutral procurement action

FAA Assistance (9/6/13)

Sponsors may contact the FAA Civil Rights Office for assistance with establishing a program goal. Please consult the following document for your assigned point of contact:

[FAA External EEO Program Manager](#)
Western-Pacific Region Headquarters, AWP-9
P.O. Box 92007
Los Angeles, CA 90009-2002
310-725-3955



232 – Project Contract DBE Goals (49 CFR Part 26.51)

Contract Goals (9/6/13)

Sponsor may not apply race/gender conscious goals (contract goals) unless they can reasonably demonstrate they will not be able to meet their overall DBE goal relying on race/gender neutral means. Incorporation of a contract DBE goal is a race/gender **conscious** method of obtaining DBE participation. Sponsors must strive to meet the maximum feasible portion of their overall goal by using race-gender **neutral** means. The purpose of a contract goal is to meet that portion of the overall DBE goal that the Sponsor is not able to meet by race/gender neutral means.

Factors for establishing Contract Goals (7/31/13)

Sponsors may apply the same general steps used to establish an overall program DBE when establishing a project specific goal. Because the project specific goal only applies to that portion of the overall goal not met by neutral means, the establishment of a project specific goal only applies to the subcontracting opportunities that are available for a given project. Any contract award made to a DBE as a prime contractor is by definition race/gender neutral participation.

The contract goal should represent a percentage of ready and willing DBE firms relative to all ready and willing firms available for subcontracting opportunities on the given project. The following apply when establishing a contract goal:

- Contract DBE goals are not set asides or quotas that prospective bidders must meet to be a responsive bidder.
- Sponsor may only use contract goals on AIP projects that have subcontracting possibilities. Sponsors should keep in mind that under the AIP, unless otherwise approved by the FAA, the prime contractor should accomplish at least 25% of the project work with their own forces. Sponsors should take this provision into account when preparing a contract DBE goal that addressing subcontracting opportunities.
- Sponsors are not required to establish a DBE contract goal on every DOT-assisted contract. If a Sponsor has already met their overall goals or the current procurement action does not have subcontracting opportunities, the Sponsor procurement package

should incorporate race/neutral methods rather than race/gender conscious contract goal.

- Sponsor should not set a contract goal to equal the same percentage as their overall DBE goal. The goal for a specific contract will typically be higher or lower than their 3 year overall goal.
- If a Sponsor can meet their overall goal through race/gender neutral means, Sponsor must avoid setting contract goals and instead rely on race/gender neutral methods.
- Contract goals must reflect participation by all DBEs and should not be subdivided into group specific goals.
- Unless otherwise requested by the FAA, the Sponsor does not need to submit their contract goal methodology to the FAA for review and approval. However, Sponsors must make this methodology readily available if requested by the FAA or the U.S. DOT.

Adjusting Contract Goals (7/31/13)

To ensure Sponsors administer their program in a narrowly tailored manner as required by the DBE rule, Sponsors must adjust their contract goals to reflect the current status of their effort in meeting their overall goal. Sponsors shall evaluate their progress in meeting their three year overall goal and make appropriate adjustments by increasing, lowering or eliminating contract goals. [Section 26.51\(f\)](#) provides several examples that explain when it appropriate to rely on neutral means vs. making necessary adjustment to contract goals.

- If after 2 years into your overall goal, you discover your DBE participation to date exceeds your originally projected value, lower your contract goal so that you do not exceed the overall DBE goal at the end of your 3 year period.
- If after 2 years into your overall goal, you discover your DBE participation to date is less than your originally projected value, raise your contract goal so that you will meet your overall DBE goal at the end of the 3 year period.
- If during the course of the 3-year period, you meet your overall DBE goal; all future projects within the remaining 3-year period must be based only upon race/gender neutral means. Sponsors may not apply contract goals in this case.



Bid Solicitation (7/31/13)

To remain eligible for AIP reimbursement, Sponsors may only award contracts to the bidders who have demonstrated a good faith effort in meeting the advertised DBE contract goal. Prospective bidders accomplish this by:

1. Obtaining sufficient participation by certified DBE firms that meets the contract goal
2. Documenting that they made reasonable good faith effort in obtaining participation by certified DBE firms even though they were unsuccessful in meeting the contract goal.

The solicitation must establish that the award of contract is contingent on meeting the following requirements:

- a) All bidders are required to submit the information listed below.
 - Names and addresses of DBE firms that will participate
 - Description of the work each DBE will perform
 - The dollar amount of the participation of each listed DBE firm
 - Written documentation of the bidders commitment to use the listed DBE firm
 - Written confirmation from the DBE that it intends to participate in the contract if the prime contractor is awarded the contract.
 - Evidence of good faith efforts if the bidder does not meet the published goal
- b) The sponsor has the discretion of requiring this submittal as part of bid responsiveness or prior to actual commitment of a contract.

The following sample Invitation for Bids (IFB) language is acceptable for notifying potential bidders of the DBE requirements. Sponsors may use this or draft their own language provided the language meets the requirements of 49 CFR Part 26.53.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the <Name of Recipient> to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a Disadvantaged Business Enterprise (DBE).

The <Name of Recipient> has established a DBE contract goal for this contract. The Bidder/Offeree shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to subcontract <Insert DBE Goal> of the dollar value of the prime contract to certified DBE firms as defined in 49 CFR Part 26.

All bidders shall submit the following information with their proposal on the forms provided:

- (1) *The names and addresses of DBE firms that will participate in the contract;*
- (2) *A description of the work that each DBE firm will perform;*
- (3) *The dollar amount of the participation of each DBE firm participating;*
- (4) *Written documentation of the Bidder/Offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;*
- (5) *Written confirmation from the participating DBE firms verifying their intent to participate as in the project*
- (6) *Evidence of good faith efforts undertaken by the bidder, as described in appendix A to 49 CFR Part 26*

Note: Per Federal Regulation 49 CFR Part 26.53.b.3, Sponsors have the discretion to require the bidder/offeror to submit the DBE confirmation as a matter of bid responsiveness or anytime prior to commitment to performance of the work (contract award). The solicitation should explicitly state when all DBE information is to be submitted.

Bid Solicitation for Race/Gender Neutral Means (9/6/13)

For projects where race/gender neutral methods apply, the invitation for bids should not identify a contract goal that prospective bidders must meet in order to be responsive. Instead, Sponsor should consider inserting within the Invitation for Bids race/gender neutral language similar to the following:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the <Name of Recipient> to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals.



DBE Proposal Forms (7/31/13)

Sponsors have the discretion to require the bidder/offeror to submit the DBE affirmation as a matter of bid responsiveness or any time prior to commitment to performance of the work (contract award).

The preferred method is to make the bidder's DBE commitment a matter of bid responsiveness. This approach greatly helps the Sponsor identify bidders that apply pro forma efforts. Prospective bidders must make a good faith effort to seek participation by DBE firms prior to submitting their bid. Bidders may not simply state they will meet the advertised goal and then initiate contact with DBE firms only after they are awarded the contract.

For the sponsor's convenience, we have prepared sample proposal forms that Sponsors may use to meet the requirements of 49 CFR Part 26.53.

1. [DBE Utilization form](#) – Addresses Prime Contractor's DBE Commitment
2. [Letter of Intent form](#) – Addresses required DBE information and affirmation



240 - Good Faith Efforts

Bidders Good Faith Efforts - 49 CFR Part 26.53 (7/31/13)

In order to qualify as a responsible and responsive bid, bidders must make good faith efforts to meet the advertised project goal. They may accomplish this in one of two ways:

1. By meeting the goal and documenting the commitments of the DBE firms;
2. By documenting their good faith efforts in the event they are unable to meet the advertised goal.

A good faith effort means the bidder must demonstrate that it took necessary and reasonable steps to achieve participation by DBE firms. To remain responsive, a bidder that fails to meet the advertise goal must be able to demonstrate they were actively and aggressively trying to obtain DBE participation sufficient to meet the advertised goal.

Prospective bidders may not apply “pro forma” efforts in meeting the advertised goal. This essentially means the bidder cannot as a formality simply state in their bid that they will meet the published goal without actually conducting the necessary efforts to obtain DBE participation.

Appendix A (7/31/13)

It is the responsibility of the grant recipient to make a fair and reasonable judgment in determining whether a bidder that did not meet the advertised goal made adequate good faith efforts. It is important for the Sponsor to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

Because the DBE program is not a set aside program, Sponsors are prohibited from requiring a bidder to meet the advertised goal as a condition for award of contract. Sponsors may not ignore bona fide good faith efforts made by a bidder that fails to achieve the advertised goal. Sponsors may not deny award of contract to an apparent low bidder who fails to achieve the advertised DBE goal but does demonstrate a good faith effort in trying to obtain DBE participation.

Appendix A to [49 CFR Part 26](#) provides guidance pertaining to good faith efforts. In general, the bidder must demonstrate that they have taken all necessary

and reasonable steps to achieve the identified DBE goal. The bidder should adequately document all such efforts, including contacts of DBE firms that are not interested.

The DBE rule does not quantitatively define what qualifies as a good faith effort. For the most part, this determination is qualitative. Appendix A does identify some actions that Sponsors should consider when making determination for good faith efforts.

Instructions to Bidders (7/31/13)

To make prospective bidders aware of the requirement for good faith efforts, we encourage Sponsors to incorporate language similar to the following within their Instructions-to- Bidders:

Good Faith Efforts

Bidder must demonstrate that they made good faith efforts to achieve participation with DBE firms. This requires that the bidder show that it took all necessary and reasonable steps to secure participation by certified DBE firms. Mere pro forma efforts will not be considered as a good faith effort. Actions constituting evidence of good faith efforts are described in appendix A to 49 CFR Part 26. Such actions include but are not limited to:

- *Soliciting DBE participation through all reasonable and available means. This may include public advertisements and phone calls/faxes to known certified DBE firms.*
- *Consult State Department of Transportation office to obtain a list of certified DBE firms.*
- *Selecting portions of work that increases the likelihood that DBE firms will be available to participate*
- *Providing DBE firms with sufficient information and time to review the project plans and specifications.*
- *Documenting all contacts with DBE firms. This includes name, address, phone number, date of contact and record of conversation/negotiation.*



Pre-Bid Meeting (7/31/13)

In addition to inserting language addressing Good Faith Efforts within the Instruction-to-bidders, Sponsors should thoroughly discuss the DBE contract goal and required good faith efforts at the pre-bid meeting. Potential bidders should leave this meeting having a complete understanding of what is required of them in order to comply with the DBE provisions of the contract. This includes discussing the consequences of DBE fraud and actions that may be construed as red flags for DBE fraud

RESOURCES

U.S Department of Transportation

- [USDOT Office of Small & Disadvantaged Business Enterprise](#)
 - [DBE Program](#)
 - [Guidance for DBE Administrators](#)
- [FAA Office of Civil Rights - Airport DBE Program](#)

Regulation

- [49 CFR Part 26](#) (pdf)- Participation By DBEs in DOT Financial Assistance Programs



250 – DBE Contract Provisions

Required Contract Provisions (7/31/13)

Sponsors must insert the following paragraphs in every solicitation that includes AIP participation. This includes both project with contract goals and project relying on race/gender neutral means.

Other than to insert appropriate Sponsor information into the noted spaces, the Sponsor should not modify these contract clauses.

Contract Assurance (§26.13) - *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 (§26.29) - *The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} 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 {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors*



260 – DBE Reporting Requirements

Reporting Requirement (7/31/13)

AIP Grant recipients with Disadvantaged Business Enterprise (DBE) programs are required by Federal Regulation 49 CFR Part 26 to report annually their DBE commitments, awards and payments. Sponsors have generally accomplished this by completing and submitting the form “Uniform Report of DBE Commitments/Awards and Payments” and the associated DBE contractor participation information form. Both forms are due by December 1st of each calendar year.

DBE Office Online Reporting System (DOORS) (7/31/13)

Sponsors may now conveniently submit these forms and information on-line using the “DBE Office Online Reporting System” (DOORS). The DOORS system is a web-based automated system for completing the Uniform Report of DBE Awards/Commitments and Payments (Uniform Report) as required by Federal Regulation 49 CFR Part 26.

The DOORS system provides the following benefits:

- Web-based application
- Basic instructions on all menus
- Automatic totaling and calculating
- An option to add Adobe Acrobat updates to your personal computer
- Easy account setup
- Access to view previous records
- Access to a DBE contractor participation listing for the entire USA

The FAA strongly encourages AIP grant recipients with DBE participation to use the web-based DOORS system in lieu of the paper version of the Uniform Report of DBE Commitment/Awards and Payments.

The DOORS system may be access at the following website:

<https://www.faa.gov/secure/doors/>



270 – Identifying DBE Fraud

Monitoring DBE Participation (7/31/13)

AIP Grant recipients with Disadvantaged Business Enterprise (DBE) programs are required to monitor the contract DBE firms to verify the named DBE's are performing a commercial useful function and to confirm proper compensation. Sponsors must be diligent in monitoring contracts to detect fraud indicators.

A Sponsor whose project incurs DBE fraud risks having all associated costs being ruled ineligible under the Airport Improvement Program.

Red Flag Indicators (7/31/13)

Listed below are some common indicators that DBE fraud and deceit may be occurring. While the Sponsor is ultimately responsible to the FAA, the Sponsor's consultant should also be diligent in identifying the following situations:

Bidding Phase

- *Pro Forma* efforts to meet DBE goal. No good faith efforts to seek and obtain available DBE firms.
- Pre-arranged agreements such as DBE firm agrees to be listed in proposal with understanding prime contractor will accomplish work.
- Conditional participation such as "Prime will use a DBE firm contingent upon all material installed by the DBE firm being procured from the prime contractor"
- Pre-arranged agreement between the prime and DBE that artificially inflates the DBE participation
- DBE firm does not have regular employees and equipment.
- DBE firm has little or no experience in the type of work required (e.g Painting contractor used to perform paving tasks)

Commercial Useful Function (CUF)

The DBE must carry out their contract responsibilities by actually performing, managing, and supervising the work under their subcontract.

A DBE firm is not performing a commercial useful function if their role in the project is that of an extra party in a transaction through which funds are passed through thus giving the appearance of DBE participation

- Supervision of DBE employees is performed by personnel associated with the prime contractor or any other firm or business.
- DBE provides little or no supervision of work.
- DBE's superintendent is not a regular employee of the DBE.
- DBE firm contracts out their work to a non-DBE firm.
- Pass through agreements.
- DBE firm does not schedule work operations, order materials or make managerial decisions.

Equipment

Operation of the equipment must be under the control of the DBE firm. The DBE firm is expected to provide the operator for the equipment and is responsible for payroll and DOL labor compliance requirements.

- Equipment used by the DBE belongs to Prime contractor with no established lease agreement.
- Equipment signs and marking of the DBE firm cover the actual name of the equipment owner.
- A DBE trucking business utilizes trucks owned by the prime contractor

Material

DBE must be responsible for negotiating the cost, arranging delivery and paying for the materials and supplies for the project. The DBE firm is responsible for determining quantity of material and ensuring quality of materials

- Materials for the DBE are ordered and/or paid for by the prime contractor
- Two party checks from prime to DBE subcontractor and supplier or manufacturer
- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to or paid by another business
- Drop shipments. DBE firm never takes possession of material



Workforce

DBE firm must maintain a regular workforce. DBE firms may not share employees with non-DBE Contractors. The DBE firm is responsible for all payroll and DOL labor compliance requirements.

- Movement of employees between contractors
- Employees paid by both the DBE and the prime contractor
- Employee working for prime in morning and DBE in afternoon
- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to or paid by another business

Consequences of DBE Fraud (7/31/13)

Engaging in any of the referenced practices and schemes may result in the following actions:

- a) Loss of AIP eligibility
- b) Immediate suspension of work
- c) Cessation or withholding of project payments
- d) Investigation by the U.S. DOT Office of the Inspector General and/or the U.S. Attorney
- e) Revocation of DBE firm's certification
- f) Debarment of the DBE firm, prime contractor and/or subcontractor
- g) Prosecution of the DBE firm, prime contractor and other parties with knowledge of the fraud and deceit

RESOURCES (7/31/13)

Department of Transportation – Office of Inspector General

- [OIG Fraud Hotline](#)