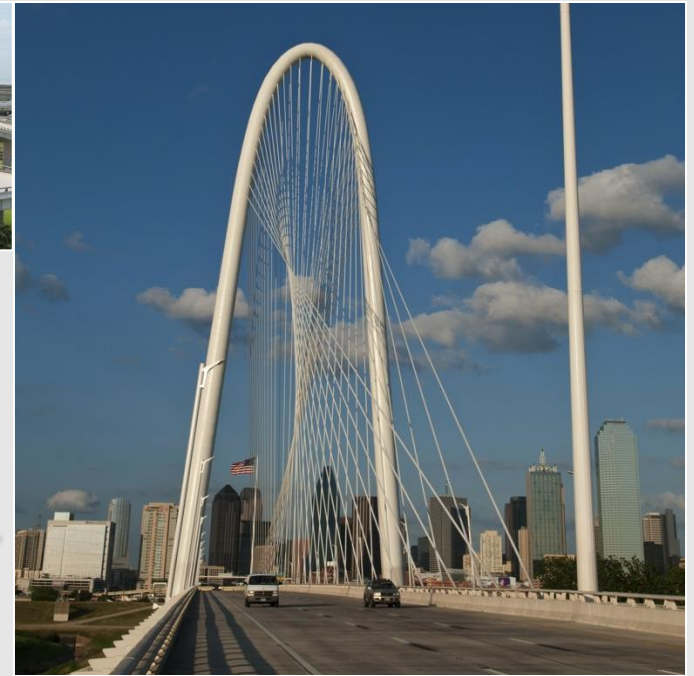




DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM OVERVIEW

Civil Rights Division



Code of Federal Regulations (CFR)

Title 49 - Transportation

Subtitle A – Office of the Secretary of Transportation

Part 26—Participation By Disadvantaged Business Enterprises in
Department of Transportation Financial Assistance Programs

49 CFR Part 26

Disadvantaged Business Enterprise (DBE)

- A for profit small business certified through the Texas Unified Certification Program, that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Texas Unified Certification Program (TUCP)

Six certifying entities:

- City of Austin
- City of Houston
- Corpus Christi Regional Transportation Authority (CCRTA)
- North Central Texas Regional Certification Authority (NCTRCA)
- South Central Texas Regional Certification Authority (SCTRCA)
- Texas Department of Transportation (TxDOT)

Goal Attainment & Utilization Plans (UP)

The prime contractor shall utilize the DBEs listed in the prime's UP:

- Race-conscious DBE participation
- The DBE must be certified at the time of the commitment
- The DBE must be certified in the NAICS code applicable to the kind of work the firm would perform on the contract

Prime enters into a contractual arrangement with the DBEs listed in the UP specifying the work to be performed and the compensation for the work:

- Subcontract Agreement or Purchase Order (P.O.)
- The DBE must be certified at the time the subcontract or P.O. is executed

Goal Credit & Counting: Types of DBE Participation

Subcontractors – 100% credit

- Must perform 30% of work with its own forces
- Any work subcontracted to a non-DBE will not count

Material Suppliers

- Manufacturers – 100% credit (alter or fabricate product)
- Regular Dealers – 60% credit
 - Selling from inventory
 - Own and operate distribution equipment

Packagers, Brokers, Manufacturer's Representatives, Transaction Expeditors

- Fees or Commissions only
- Fees or Transportation Charges for the Delivery
- Do not count the cost of the materials or supplies

Goal Credit & Counting: Types of DBE Participation

DBE Trucking Firms – 100% credit

- May lease trucks from both DBEs and non-DBEs
- Limited credit allowed for the use of leased non-DBE trucks
- Manage and supervise the entire trucking operation
- Own and operate at least one (1) fully licensed, insured, and operational truck used on the contract
- Receives credit for using trucks it owns, insures, and operates using drivers it employs
- If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers – 100% credit

Commercially Useful Function (CUF)

A DBE performs a CUF when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually:

- Performing
- Managing
- Supervising the work involved

Commercially Useful Function (CUF)

To perform a CUF, the DBE must be responsible, with respect to materials and supplies used on the contract for:

- Negotiating price;
- Determining quality and quantity;
- Ordering the material;
- Installing (where applicable) and
- Paying for the material itself.

Only when a DBE meets all of the requirements should DBE credit be counted for the procurement of the items by the DBE.

Goal Credit & Counting: Commercially Useful Function

- The DBE must be performing a CUF
- Credit is only counted if the prime has paid the DBE for the work performed
- No credit will be given for any materials, supplies, or equipment the DBE obtains from the prime or the prime's affiliates
- If a CUF is not performed, goal credit will be denied

Termination & Substitution

Any terminating or substituting of a DBE listed in the approved UP requires the following:

- Prior Departmental approval;
- Letter or notice of intent sent to the DBE;
- Documentation that the DBE was not willing or able to perform (e.g., Good Cause); and
- That the prime make a good faith effort to find another DBE to the extent needed to meet the goal.

Termination & Substitution

Good Cause:

- Failure or refusal to execute a written subcontract;
- Failure or refusal to perform the subcontract that is consistent with normal industry standards;
- The DBE firm goes out of business or exhibits credit unworthiness;
- The DBE voluntary withdraws;
- The DBE is ineligible to receive DBE credit for the type of work performed;
- Other

The prime must provide the DBE with written notice of its intent and allow the DBE 5 days to respond.

Good Faith Efforts (GFE)

- A Contractor who cannot meet the contract goal, in whole or in part, must make adequate GFEs to obtain DBE participation as stated and defined in 49 CFR Part 26, Appendix A
- A GFE evaluation begins with the amount of work made available
- Quality of Efforts – not necessarily the quantity
 - Actively and aggressively trying to meet the goal
- Form 2603 - Contractors Certification of Good Faith Efforts

Good Faith Efforts (GFE): Considerations

- Soliciting the participation of DBEs (*time considerations*)
- Providing interested DBEs with the plans, specifications, and contract requirements
- Assisting interested DBEs in obtaining:
 - bonding
 - lines of credit
 - insurance as required by the contract
 - necessary equipment
 - supplies
 - materials
 - related assistance or services
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups

References

- DBE Forms

<http://txdot.gov/business/partnerships/dbe-forms.html>

- TUCP Directory – Diversity Management System (DMS)

<https://txdot.txdotcms.com/>

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Questions?