



Disadvantaged Business Enterprise

Training for Contractors and Consultants

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Presented by the County of El Dorado, Transportation Division

Introductions

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DISCLAIMER: This Presentation provides guidance and information in conjunction with the provisions under 49 CFR Part 26, pertaining to the implementation of the County of El Dorado, Community Development Agency's Disadvantaged Business Enterprise (DBE) program. This Presentation is not legally binding or mandatory, and does not constitute regulations. It is issued for informational purposes only and to provide an acceptable means, but not the only means, of compliance with 49 CFR Part 26.

Helpful Acronyms/Definitions

- ❖ DBE: Disadvantaged Business Enterprise
- ❖ GFE: Good Faith Effort
- ❖ Goal: Percentage of total contract amount that is expected to be performed by certified DBEs
- ❖ CUF: Commercially Useful Function
- ❖ WCC: Work Category Code
- ❖ CUCP: California Unified Certification Program
- ❖ CUCP Database: location to search for DBEs
http://www.dot.ca.gov/hq/bep/find_certified.htm
- ❖ LAPM: [Local Assistance Procedures Manual](#)
- ❖ CFR: Code of Federal Regulations
- ❖ Consultant Contract: Contract, Task Order or Work Order

Topics to Discuss from Invite

- ❖ Will DBE goals be handled per project or per each work order or task order?
- ❖ How will work orders be handled if task only needs the prime and no subs? These have been listed as 0%, will they continue as such. (i.e. pre-con surveys) What documentation is needed for these types of projects?
- ❖ Expectations for consultants on the level of DBE participation and roles DBE firms might have.
- ❖ What types of environmental projects will have a DBE requirement?
- ❖ GFE requirements and steps to prepare a GFE
- ❖ How are trucks and/or service subs calculated (sweepers, water trucks, saw cutting, etc.)
- ❖ Bid proposal rules

Overview

- ❖ Purpose of DBE Program
- ❖ Recent Changes to the DBE Program
- ❖ DBE Goal Setting Background
- ❖ Required DBE Forms
- ❖ Requirements When the DBE Goal is Met
- ❖ Commercially Useful Function
- ❖ Trucking, Materials and Supplies Contribution Towards DBE Goal
- ❖ GFE's Required When the Goal Cannot be Met
 - Explanation
 - Requirements
- ❖ DBE During the Contract
- ❖ Common Errors in Submitting DBE/GFE Packages
- ❖ Q&A

Purpose of DBE Program

- ❖ The Community Development Agency, Transportation Division (County) has adopted this DBE program based on federal regulations and Caltrans Local Assistance requirements and methodology. The DBE program goals and objectives are:
 - To ensure non-discrimination in the award and administration of both Consultant and Construction contracts;
 - To create a level playing field on which DBEs can compete fairly;
 - To ensure that only firms that fully meet this 49 CFR part 26 eligibility standards are permitted to participate as DBEs;
 - To help remove barriers to the participation of DBEs;
 - To assist in the development of DBE firms that can compete successfully in the marketplace; and
 - To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

Recent DBE Changes

- ❖ DBE program is governed by 49 CFR 26.
 - LAPM Chapter 9 translates these requirements into plain language.
- ❖ FHWA set a 10% overall Agency goal.
- ❖ Caltrans set a 12.5% overall statewide goal for this year.
 - The State has come up short in past years in meeting the goal.
- ❖ No longer an automatic 0% DBE goal for Consultant Contracts.
- ❖ New procedure to calculate DBE goals as of April 2015.
- ❖ FHWA is putting pressure on States to monitor Local Agencies more closely to assure more DBE involvement.
- ❖ Caltrans is now monitoring Local Agencies more closely and strictly enforcing ALL requirements of 49 CFR 26.
- ❖ Caltrans has added funding de-obligation clauses for failure to comply with DBE requirements.

Goal Setting Background

- ❖ County calculates DBE goals using the same method for both Consultant and Construction Contracts.
- ❖ A DBE goal will be assigned to all contracts, work orders, and task orders with federal funds.
- ❖ Contractors and Consultants are not required to solicit for or even meet the goal using the same items of work or method the County used in determining the contract goal.
- ❖ The County's search criteria for determining available DBEs is District 3 and the WCC in the CUCP database for the DBE opportunities made available.
- ❖ Caltrans Exhibit 9D - DBE Contract Goal Methodology of the LAPM is used to calculate the contract goal. ([LAPM 9D Form](#))

Goal Setting Background

❖ Steps to set a contract goal:

1. Create detailed estimate
2. Determine potential opportunities for DBE subcontractors
 - An assumption is made on the intended Prime Contractor/Consultant
 - Intent of self-performance does not negate opportunity
 - If the Local Agency determines there is no reasonable opportunity for subcontractor involvement, the DBE goal is 0%.
3. Determine the [WCC](#) for each DBE subcontractor opportunity (handout)
4. Search [CUCP database](#) for number of potential DBEs available in District 3
5. If 10 or more DBEs are available in the CUCP database, 100% of the estimate for that item is counted toward goal. If less than 10 DBEs are available count 0%. If there is the opportunity for supply or trucking 10-12%, respectively of the item total is counted toward the goal regardless of the number of DBEs.

Required DBE Forms

- ❖ Forms are from the [LAPM](#) and the [Caltrans Division of Construction Forms](#)
- ❖ Consultant Contracts:
 - 10-01: Consultant Proposal DBE Commitment
 - 10-02: Consultant Contract DBE Commitment
 - 15-H: DBE Information – Good Faith Efforts
 - 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors
 - 17-O: Disadvantaged Business Enterprises Certification Status Change
 - CEM-2406: Monthly Disadvantaged Business Enterprise (DBE) Payment
- ❖ Construction Contracts:
 - 15-G: Construction Contract DBE Commitment
 - 15-H: DBE Information – Good Faith Efforts
 - 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors
 - 17-O: Disadvantaged Business Enterprises Certification Status Change
 - CEM-2404(F): Monthly DBE/UDBE Trucking Verification
 - CEM-2406: Monthly Disadvantaged Business Enterprise (DBE) Payment

Meeting the DBE Goal

- ❖ The following information is required to be submitted with the DBE commitment form(10-01/10-02 or 15-G):
 1. Names and addresses of all DBE firms that will participate in the contract
 2. Description of the work performed by each DBE
 3. Dollar amount of the participation of each DBE
 4. Written documentation of the bidder's commitment to use a DBE
 5. Written confirmation from each listed DBE firm that they are willing to perform the work (the quote on the DBE's letterhead is acceptable confirmation)
 6. If applicable, backup documentation for calculations that are not clear on quotes (i.e. trucking, traffic control, hourly rates only shown on quote, etc.)

Commercially Useful Function

- ❖ A DBE performs a CUF when it is responsible for execution of the work of the contract (including responsibility for materials and supplies) and carries out its responsibilities by actually performing, managing, and supervising the work involved.
- ❖ A DBE must perform a minimum of 30% of the total cost of its contract to be considered as performing a CUF.
- ❖ A DBE does not perform a CUF if its role is limited to that of an extra participant in a contract.
- ❖ Count expenditures to a DBE toward DBE goals only if the DBE is performing a CUF on that contract.

Trucking

- ❖ Use the following to determine if a DBE trucking company is performing a CUF:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.
 2. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 3. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 4. The DBE may also lease trucks from a non-DBE firm, including an owner operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE UNLESS, trucks leased from a non-DBE are operated by a DBE driver.

Trucking

❖ Examples:

- DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.
- DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

Materials and Supplies

- ❖ Count expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:
 - If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE participation.
 - If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation.
 - To be a regular dealer, the firm must be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR 26 if the person both owns and operates distribution equipment for the products.

Materials and Supplies

❖ Examples:

- DBE Firm X provides electrical system components for a construction project that they procured from the manufacturer. DBE credit would be awarded for 60% of the total quote from Firm X.
- DBE Firm Y provides landscape supplies procured from a landscape wholesaler for an environmental mitigation project. DBE credit would be awarded for 60% of the total quote from Firm Y.
- DBE Firm Z provides HMA that they manufacture for a construction project. DBE credit would be awarded for 100% of the total quote from Firm Z.

Good Faith Efforts

- ❖ When the DBE goal cannot be met, a GFE must be prepared and submitted in order for a bid or proposal to be considered responsive.
- ❖ A GFE must clearly demonstrate that the Contractor or Consultant took all necessary and reasonable measures to achieve the contract DBE goal.
- ❖ Efforts employed by the Contractor or Consultant should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract DBE goal.
- ❖ If an adequate GFE is made, the local agency cannot require that the contract DBE goal be met or cannot reject the proposal.
- ❖ If a GFE is rejected, administrative reconsideration must be offered to the bidder.

Good Faith Efforts

- ❖ **A proforma approach does not demonstrate a sufficient GFE**
 - Examples of a proforma GFE:
 - Insufficient solicitation of DBEs
 - Solicitation for WCCs not actually made available to DBEs
 - Not providing follow up to DBE firms requesting additional information
- ❖ **Utilize the following resources to prepare your GFE:**
 - LAPM Exhibit 15-H: DBE Information – Good Faith Efforts (handout)
 - 49 CFR Appendix A to Part 26 (handout)
 - LAPM Exhibit 9-E Sample Evaluation of Good Faith Efforts (handout)
 - LAPM Section 9.8
 - El Dorado County UDBE Good Faith Efforts Submittal Information Handbook ([Transportation Division DBE website](#))

❖ Publication Efforts

- Solicit to an adequate number of publications in order to solicit DBEs.
- Advertise with enough time to allow DBEs to provide a quote.
 - Approximately 10 – 14 days minimum.
- Provide copies of each publication and proof of publication with your GFE submittal.

❖ Solicitation Efforts

- Solicit all DBEs listed in the CUCP database for the WCCs made available who are qualified to perform the work through all reasonable and available means.
- Give sufficient time for DBEs to respond.
 - Approximately 10 – 14 days minimum.
- Provided sufficient information about the contract in order for the DBE to provide a bid.
- Provide proof of solicitation.
- Follow up on any additional information requested by a DBE firm.

❖ DBE Solicitations

- All DBEs qualified to perform the work must be solicited. Use the CUCP database to determine available DBEs for the WCC solicited.
- The bidder must determine with certainty if the DBEs are interested in bidding by taking appropriate follow up actions.
- Solicitations need to include a response section as well as the items included in Parts E & F.
- A solicitation log containing DBE name, type and date(s) of contact made, DBEs response.
 - All yes responses need to include a quote in GFE submittal.
 - All maybe responses need an explanation.

❖ Items of Work Made Available to DBEs

- Goal is to encourage DBE participation.
- Might have to make work items available that are normally performed by the bidder with its own forces
- It is the bidder's responsibility to demonstrate that enough work to meet the DBE goal was made available to DBE firms (this could include soliciting for a higher percentage than the DBE goal).
- Describe the work and approximate dollar amount made available to DBEs.
- Include the WCC for each item of work that was made available.

❖ Rejected DBE Documentation

- Contact information for rejected DBE firms, reasons for rejection, the firms selected for that work (include quote), and the price difference for each DBE if the selected firm is not a DBE.
- A bidder cannot reject a DBE quote simply because it was not the lowest received. In order to reject a DBE quote because of price, it must be “excessive and unreasonable”, not just “too high”.
- Bidders should show proof of negotiations between the bidder and DBEs if a DBE is rejected due to price.
- A bidder cannot reject a DBE as unqualified without sound reasons based on a thorough documented investigation of the DBEs capabilities.

❖ Efforts to Assist DBEs

- Offers of assistance need to be included on all solicitations and publications.
- Types of assistance include:
 - Obtaining bonding, lines of credit, insurance, technical assistance, information about the project, equipment, supplies, materials, etc.
- Include a contact person and contact information.
- If a DBE requests any assistance, show it was provided in GFE.

Good Faith Efforts

Form 15-H
Parts G & H

- ❖ Part G: The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e. lists, Internet page downloads, etc.).
- ❖ Part H: Any additional data to support a demonstration of good faith efforts.

DBE Review and Approval

- ❖ DBE submittal will be approved if:

 - Either:

1. The Contractor or Consultant met the DBE goal and provided sufficient proof of participation and backup documentation.

 - Or:

2. The DBE goal was not met, but a sufficient GFE was provided.

- ❖ GFE and DBE Commitments from other bidders will be considered in determining if a GFE is sufficient.

- ❖ Caltrans reviews GFE/DBE submittals:

 - ❖ Construction projects over \$2,000,000
 - ❖ Consultant contracts over \$500,000
 - ❖ If Local Agency requests it

DBE During the Contract

- ❖ During the life of the Contract, it is the Contractor or Consultant's responsibility to ensure they will meet either the original DBE goal or their commitment (if a GFE was submitted).
- ❖ If the committed goal will not be met, a GFE and attempt to obtain DBE participation to meet the committed goal must be made.
- ❖ DBE substitutions must be approved by the Contract Administrator. DBE work performed by the prime or non-DBE subcontractor that was not authorized by the Contract Administrator will not be paid for.

Common Deficiencies

- ❖ Not enough DBEs solicited
- ❖ DBEs solicited that do not perform work associated with the project (i.e. different WCC than type of work made available).
- ❖ DBEs not solicited early enough, not given enough time to respond.
- ❖ Insufficient follow up with DBEs.
- ❖ Proper documentation of the GFE was not submitted.
- ❖ The reason given for rejecting a DBEs quote was too vague.

Resources

- ❖ County DBE Website & DBE Handbook
<http://www.edcgov.us/DOT/DBE.aspx>
- ❖ Caltrans Website
<http://www.dot.ca.gov/hq/bep/>
- ❖ LAPM
<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>
- ❖ CUCP Database & Work Category Code List
http://www.dot.ca.gov/hq/bep/find_certified.htm

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Any Questions?