



CHAPTER 2

DISADVANTAGED BUSINESS ENTERPRISES

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Section 2.1

OVERVIEW

2.1.1 Purpose

The Department's Disadvantaged Business Enterprise (DBE) Program is designed to assist small businesses owned and controlled by socially and economically disadvantaged individuals to participate on Department contracts. The objectives of the DBE Program are:

- (a) To ensure equal opportunity in the award and administration of DOT contracts in the Department's highway, transit, and airport construction programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet the eligibility standards are certified as DBEs;
- (e) To help remove barriers to the participation of DBEs in FDOT contracts;
- (f) To assist in the development of firms that can compete successfully in the marketplace outside of the DBE program; and
- (g) Improve the flexibility and efficiency of the DBE Program, and reduce burdens on small businesses.

2.1.2 Scope

The Department's Disadvantaged Business Enterprise (DBE) Program encompasses both our federal and state funded highway and bridge program and all projects and contracts associated with this program. The scope of this section includes all the requirements associated with how the Florida Department of Transportation implements these federal regulations. In general, the State's DBE program mirrors the requirements of the federal program, but is analyzed and reported separately.

Section 2.2

CERTIFICATION OF DBEs

2.2.1 General

The U.S. Department of Transportation (USDOT) requires all recipients of FAA, FTA, and FHWA Federal funds to participate in a Unified Certification Program (UCP) within their respective states. The UCP provides “one stop shopping” for all firms seeking certification as a DBE in Florida. Therefore, the DBE certification of a firm will be accepted by all USDOT recipients in Florida. Certifying members certify DBEs in accordance with 49 CFR Parts 23 and 26.

When a contractor uses a DBE on a Federal Aid project, only a single DBE certification letter or certificate from a certifying member is needed.

The Department can only report the participation of DBEs certified in the Department’s DBE directory. See Section 2.5 and 2.6 for additional information on reporting requirements. If there are questions about a firm’s certification status, contact the certifying member. A list of certifying members is listed on the FDOT Equal Opportunity Office web site.

2.2.2 DBE Directory

A single DBE directory allows for the identification and location of a certified firm authorized to participate in Florida’s DBE program. The DBE directory can be found on the FDOT Equal Opportunity Office website. The DBE directory includes all companies and DBEs are specifically identified as such.

Section 2.3

DBE AFFIRMATIVE ACTION PLAN

2.3.1 General

Contractors are required to submit a DBE Affirmative Action Plan to ensure that all contractors doing business with the Department and their subcontractors are not discriminating on the basis of race, color, religion, national origin, disability, sex or age in the administration of contracts with the Department.

2.3.2 Disadvantaged Business Enterprise Affirmative Action Policy and Plan (DBE/AA Plan)

A sample DBE/AA Policy and Plan is available on the FDOT Equal Opportunity Office website. The contractor's DBE/AA Plan must include, at a minimum, the information contained in this sample. Plans that do not meet these mandatory requirements may not be approved.

A DBE policy statement is included in the DBE/AA Plan and it expresses the contractor's commitment to use Disadvantaged Business Enterprises in all aspects of its contracting program, outlines various levels of responsibility, and states the objectives of the program. The contractor's DBE/AA Plan is to be circulated throughout the contractor's organization and to minority, female, and non minority community and business organizations.

The first page of the DBE/AA Plan is printed on company letterhead. The president, chief executive officer or chairperson must sign and date the DBE Affirmative Action Policy and Plan. The Plan must include designation of an appointed DBE Liaison Officer.

2.3.3 DBE Liaison Officer

The DBE Affirmative Action Plan includes identification of an appointed DBE Liaison Officer who is responsible for maintaining and monitoring the implementation of the Plan. This person will be the main contact for the Department for all issues related to the DBE Program and must be available to obtain any documents requested by the Department. The duties of the DBE Liaison Officer are included in the DBE/AA Plan.

2.3.4 Submission, Expiration and Renewal of DBE/AA Plan

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan on file with the FDOT Equal Opportunity Office before execution of a contract. DBE AA plans must be received with the contractor's bid or received by the FDOT Equal Opportunity office prior to the award of a contract.

DBE/AA Plans should be mailed to: Florida Department of Transportation Equal Opportunity Office, Mail Station 65, 605 Suwannee St., Tallahassee, FL 32399-0450

DBE/AA Plans are approved for a three (3) year period and should be updated prior to expiration or when there is a change in the DBE Liaison Officer, address and/or telephone number changes.

2.3.5 Review and Compliance with DBE/AA Plan

The DBE Special Provisions included in executed contracts states that the DBE Affirmative Action Plan and commitment to carry out the plan is incorporated into and becomes a part of the awarded contract. The contractor's failure to keep these commitments is deemed noncompliance with the specifications and a breach of the contract.

The Department will monitor contractor compliance with the DBE specifications of the contract and the implementation of the contractor's DBE Affirmative Action Plan through formal reviews including contract compliance reviews. Additionally, contractors with low DBE participation will be subject to a Title VI assessment to ensure that discrimination is not the factor for the lack of DBE utilization on Department projects.

The contractor will make all records available to the Department upon request.

Section 2.4

BID OPPORTUNITY LIST

2.4.1 General Information

Federal regulations require the Department to create and maintain a bidders list. The purpose of the bidder's list is to provide as accurate data as possible about the universe of DBE and non DBE contractors and subcontractors who seek to work on federally-assisted contracts for use in helping to establish an annual DBE goal each year that would reflect the level of DBE participation expected absent the effects of discrimination. The Department uses a Bid Opportunity List to determine the number of ready, willing and able DBE's relative to all ready, willing and able businesses as the method to help determine the Department's annual DBE goal.

2.4.2 Submission of Bid Opportunity List

The Bid Opportunity List, FDOT Form 275-03-10 must be submitted to the Department in the bid or proposal package.

Section 2.5

ANTICIPATED DBE PARTICIPATION

2.5.1 Purpose

Prime contractors report to the Department the names of DBEs, type(s) of work or specialty code(s), and the dollars awarded to DBE's as a subcontractor on specific contracts. This information has many uses including reporting of FDOT's performance against its DBE Utilization goal and the grading of prime contractor DBE Utilization.

This information will be reported to the Federal Highway Administration and is the primary tracking mechanism used to measure the progress in achieving the Department's annual DBE goal. This information is also used to determine a contractor's annual letter grade based on DBE participation.

2.5.2 Anticipated DBE Participation Statement: Initial Submission and Revisions

FDOT Form 275-030-11A, Anticipated DBE Participation Statement (ADBEPS) is used by the prime contractor to report planned DBE utilization and utilization updates. The Anticipated DBE Participation Statement for Local Agency projects is FDOT Form 275-030-12.

The form must be submitted to the Resident Compliance Specialist at the Preconstruction Conference. District Compliance offices will ensure prompt submission of the ADBEPS to the Equal Opportunity Office within three (3) working days of that conference.

Primes are to include the dollars that a DBE is anticipated to earn for work they will perform with their own workforce and equipment. Work performed in the specialty area that a DBE is certified in may be counted. Work performed in a specialty area a DBE is not certified in will not be counted for DBE utilization.

As DBEs are added or removed from projects or as dollars to DBE subcontractors change, primes are to submit a revised ADBEPS to the Resident Compliance Specialist as soon as changes occur to ensure reporting accuracy. Changes and updates to the ADBEPS should not be held for end-of contract submittals.

Prime contractors who are certified DBEs must submit an ADBEPS and specify the portion of the contract which will be performed directly by them with their own workforces. Other DBE subcontractors that the prime DBE anticipates using should also be listed.

2.5.3 Counting DBE Participation

DBE Certification does not guarantee that the firm's work on a project will be counted as utilization towards FDOT's DBE goal. For services performed by a DBE firm to count toward the goal, the firm must perform a 'commercially useful function' and their work must be in the specialty area(s) for which the DBE firm is certified.

Some of the considerations used in determining what portion of a DBEs work on a project may count toward the DBE goal are listed in Table 2.5.1. The Table is not an exhaustive list. FDOT may request additional information from the prime contractor and or DBE firm in order to determine which portions of work may be included as DBE participation.

Table 2.5.1	
Determining What Portion of a DBEs Work May be Counted Toward the Goal	
1.	The DBE firm is performing a commercially useful function.
2.	The work is in the specialty area(s) for which the DBE is certified.
3.	The work is actually performed by the DBE's own workforces.
4.	Supplies and equipment purchased or leased by the DBE are not affiliated with the prime.
5.	The cost of supplies and materials obtained by the DBE for the work is counted including purchases and leased equipment.
6.	Reasonable fees or commissions charged by a DBE firm for providing a bona fide service, or for providing bonds or insurance required for the performance of a DOT contract may be counted. Examples of bona fide services include professional, technical, consultant, or managerial services.
7.	The value of work the DBE subcontracts to others is counted only if the work is subcontracted to another DBE. Work subcontracted to a non DBE firm does not count toward the DBE goal.

2.5.4 Newly Certified, Graduated and de-Certified DBEs

During the term of a contract, prime contractors may report the utilization of firms that become certified beginning with the date of their certification.

DBE firms that graduate from the DBE program during the term of a contract may be reported as DBE utilization throughout the term of the contract. On subsequent projects, the graduated DBE does not count as utilization.

None of the work performed by a de-certified DBE may be counted as utilization.

Section 2.6

REPORTING ACTUAL PAYMENTS

2.6.1 General

CFR 49 Part 26 requires the Department to track actual payments as well as commitments to DBEs. Additionally, the Department's Standard Specifications requires the reporting of actual payments to DBE and MBE subcontractors in the Equal Opportunity Reporting (EOR) System.

2.6.2 Payment Reporting

Prime contractors are required to report in the EOR System monies paid to DBEs for work performed in the area(s) they are certified from each monthly progress estimate. Payment reporting is an element in determining the prime contractor's past performance rating.

Local agencies, not their prime construction contractors, enter all DBE payment information into the EOR System.

Resident Compliance Specialists (RCS) monitor the EOR System to confirm the reporting of required data.

Only that portion of the payment associated with the performance of a commercially useful function by DBEs performing work in the area(s) for which they are certified are to be reported. Payments for the following should not be reported:

Work performed by the DBE in areas for which they are not certified.

No (zero) payment is to be reported if the DBE did not self perform a minimum of 30% of the work subcontracted to them.

If payments have been reported and is later determined that the DBE did not perform 30%, the prime will enter a negative payment amount equal to the previously reported amount to reduce the countable participation to zero dollars (\$0.00).

2.6.3 EOR System Access

Refer to Workbook Section 1.3.4, How to Access the EOR System; Addressing EOR System problems if you do not have access for entering payments, or are experiencing problems or have other questions.

Section 2.7

MONITORING

2.7.1 General

When a DBE participates on a contract, only the value of the work actually performed by the DBE is counted as DBE participation.

A DBE firm performs a commercially useful function (CUF) when it is responsible for execution of a distinct element of the work with its own workforce and it carries out its responsibilities by actually performing, managing and supervising the work involved.

Checks will be done, at a minimum, during each of the DBE's first three active months to determine if DBEs are performing a CUF. FDOT Form 275-021-18 'Commercially Useful Function DBE Monitoring Report' is used to record each observation and review.

2.7.2 Counting the Value of Work

When a DBE participates on a contract, only the value of the work actually performed by the DBE is counted as DBE participation.

Count the entire amount of that portion of a construction contract that is performed by the DBEs own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

Count toward the DBE goal, the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided they are reasonable and not excessive when compared with fees customarily allowed for similar services.

2.7.3 Considerations in Determining Commercially Useful Function

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. Considerations in determining commercially useful function include the following;

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by

actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBE's do not participate.

3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

4. When a DBE is presumed not to be performing a commercially useful function as provided in paragraphs 2 and 3, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

2.7.4 DBEs Subcontracting work to others & Joint Ventures

When a DBE subcontracts part of its work to another firm, the value of the subcontracted work is counted only if the work is subcontracted to another DBE. Work that a DBE subcontracts to a non DBE firm does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE participation.

2.7.5 Commercially Useful Function of DBE Trucking Companies

Considerations in determining whether a DBE trucking company is performing a commercially useful function include the following:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and

there cannot be a contrived arrangement for the purpose of reporting DBE participation.

2. The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. 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.
4. 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.
5. 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.
6. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

While a DBE trucking company must own and operate one fully licensed, insured, and operational truck on a contract, that alone does not fulfill the commercially useful function requirements which include, among other considerations, the requirement to self perform a minimum of 30% of the total contract costs with its own employees and trucks.

2.7.6 DBE Manufacturers and Suppliers

Considerations in determining if expenditures with DBE's for materials or supplies may be counted for DBE utilization include the following:

1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(b) 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, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE participation.

3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE participation, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE participation.

2.7.7 Contractor Records for Commercially Useful Function Verification

Contractors are to maintain and make available to the Department upon request, records substantiating the performance of commercially useful functions by DBE contractors and suppliers as part of their compliance with FDOT Specification 3-8, "Audit of Contractor's Records". Records which may be reviewed to substantiate commercially useful function include, but are not limited to:

- Contracts, subcontracts, rental agreements
- Delivery Tickets
- Invoices
- Lease Agreements
- Hauling Tickets
- Canceled checks
- Bank Records
- Equipment Titles of Ownership
- Material/Supply Agreements
- Payroll Records

Section 2.8

PRIME CONTRACTOR GRADING SYSTEM

2.8.1 General

The Department's annual DBE goal is posted on the Equal Opportunity Office website. The Department tracks DBE participation monthly to monitor achievement. A Prime Contractor Grading System was implemented to reflect and highlight a contractor's commitment to using DBEs on Department projects. The grading scale is applied to all prime contractors with contract awards totaling \$1 million or more. Prime contractors awarded \$1 million or more are graded based on their DBE participation during the federal fiscal year (October 1 to September 30).

Additionally, routine Title VI Assessments on prime contractors are conducted where the Department determines that an unacceptable level (less than 2%) of DBE participation is noted on contracts. The purpose is to ensure that discrimination is not the factor for the lack of DBE utilization on Department projects.

2.8.2 Grading Scale

Based on the ADBEPS reported to the Equal Opportunity Office, prime contractors receive a letter grade, A+ thru F. The letter grade is based on the prime contractor's total contracts awarded, total anticipated DBE participation, and DBE percentage during the reporting period. The grading scale is applied to all prime contractors with contract awards totaling \$1 million or more. Prime contractors with total contract awards below the \$1 million threshold do not receive a letter grade.

A+	8.51% and Above
A	8.5% to 6.76%
B	6.75% to 5.01%
C	5.0% to 3.51%
D	3.5% to 1.51%
F	1.5% and Below

2.8.3 Sample Correspondence Issued to Primes

Following is a sample of the letter sent by the Secretary of Transportation to prime contractors advising them of the DBE Utilization Grade earned during the federal Fiscal Year.

Date
Prime Company Business Name Company President/CEO Address City, State Zip Code
Dear Company President/CEO:
Thank you for your conscientious efforts during the 20XX-20XY federal fiscal year to use Disadvantaged Business Enterprises (DBEs) on Department of Transportation funded projects. The State of Florida achieved X.xx% exceeding the X.X% DBE goal established for the 20XX-20XY federal fiscal year. Your company has been instrumental in the achievement of the state's goal. The actual percentage reported for your company is XX.XX on X project(s). This results in a DBE utilization grade of XX. Your efforts are commendable and have shown us that you are truly interested in being a partner with the Governor, the Federal Highway Administration and the Department in our efforts to ensure that minority and female owned firms obtain work on transportation projects in Florida.
I encourage you to continue with these efforts that will not only strengthen the overall economy of the State, but will also strengthen the transportation industry. If the Department can provide you with any assistance in the DBE Program, please contact Art Wright, Manager, Equal Opportunity Office, at (850) 414-4749 or e-mail: Arthur.wright@dot.state.fl.us .
I also encourage you to visit the Equal Opportunity Office website at www.dot.state.fl.us/equalopportunityoffice/ to view the 20XX-20XY federal fiscal year grading scale and reporting criterion.
Thank you again.
Sincerely, FDOT Secretary

Section 2.9

SUPPORTIVE SERVICES

2.9.1 General

The Supportive Services Program is structured to promote the Department's efforts to provide customized training in the form of managerial and technical assistance to DBEs and small businesses in order to increase prime and subcontracting opportunities. The Department is committed to its efforts to promote meaningful participation by disadvantaged and small business contractors and consultants in highway construction projects throughout the State of Florida.

The primary goal of the Supportive Services Program is to increase the number of DBEs and small businesses participating in Department contracts and the percentage of dollars awarded to DBEs and small businesses by:

- Matching prime contractors/consultants with certified DBEs and small businesses as a subcontractor/sub-consultant/supplier;
- Assisting certified DBEs and small businesses in becoming prime contractors/consultants; and
- Assisting certified DBEs and small businesses in obtaining contracts as prime contractors/consultants on Department projects.

2.9.2 DBE Supportive Services

The Department provides supportive services to DBEs conducting business with or seeking to conduct business with the Department. Supportive services are those activities and services that are designed to contribute to the growth and eventual self-sufficiency of DBEs so that they may achieve proficiency in competing for contracts and subcontracts. The purpose of the DBE Supportive Services Program is to increase the number of certified DBEs participating in the highway program and to contribute to the growth and eventual self-sufficiency of DBE firms. The Department's statewide DBE Supportive Services provider provides managerial and technical assistance to certified DBEs participating in the highway program at no cost. Participation in the DBE Supportive Services Program is open to firms certified as a DBE by the Florida Unified Certification Program.

The DBE Supportive Services provider is available to assist prime contractors with locating DBEs on the Department's online business directory and matching primes with DBEs for subcontracting/sub consulting/supplier opportunities. Another opportunity for prime contractors to identify DBEs for subcontracting and consulting/supplier

opportunities is to participate in DBE Matchmaker Conferences. The Department's DBE Supportive Services provider is charged with planning, coordinating, and hosting a minimum of seven (7) DBE Matchmaker Conferences statewide designed to assist DBEs in meeting with prime contractors to discuss future working relationships and to educate DBEs and non certified minority and women-owned firms about doing business with FDOT.

For more information or assistance regarding the DBE Supportive Services Program contact:

Blackmon Roberts Group
902 S Florida Ave. • Suite 205
Lakeland, Florida • 33803
Telephone: 863.802.1280
Fax: 863.802.1290
www.brgfl.com

2.9.3 Construction Management Development Program & Bond Guarantee Program

The **Construction Management Development Program (CMDP)** is a voluntary program designed to improve and develop the skills of small business owners and managers enabling them to perform successfully on FDOT construction projects. Courses offered are *Business Management, Construction Accounting, Construction Math and Estimating, Contracts, Specification and Law, Scheduling for FDOT* and *Plan Reading for FDOT*. Participation in the CMDP is open to firms certified as a DBE by the Florida Unified Certification Program or a small business firm whose annual gross receipts do not exceed \$2 million dollars average over the last three year period.

The **Bond Guarantee Program (BGP)** is a financial support program which the State of Florida acts as a second surety, guaranteeing the construction bonds for DBEs working on FDOT projects. Participation in the BGP is limited to those DBEs who have been awarded a *Certificate of Proficiency* and have documented knowledge of the principals of construction bonding. Services under the BGP include: *Packaging Bond Applications, Construction Bond Principals Seminars and Overhead Audits*, a one-time free service for DBEs seeking pre-qualification as a consultant.

For more information or assistance regarding the CMDP-BGP contact:

Florida A&M University Small Business Development Center
2035 East Paul Dirac Drive, Suite 130, Morgan Building
Tallahassee, Florida 32310
Telephone: (850) 561-2393 Toll Free: (800) 226-3881
Fax: (850) 561-2395

<http://www.sbdcfamu.org/new/sbdc/>