

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 DOT contracts;
- (f) To assist in the development of firms that can compete successfully in the marketplace outside the of DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

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 federal regulations and how the Florida Department of Transportation is implementing the federal regulations. In general, the state DBE Program mirrors the requirements of the federal program, but is analyzed and reported separately.

Section 2.2

CERTIFICATION OF DBE's

2.2.1 General

The U.S. Department of Transportation (USDOT) now requires all recipients of FAA, FTA, and FHWA Federal funds to participate in a Unified Certification Program (UCP) with 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. Responsible 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 Responsible Certifying Member is needed. 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 Department's website by clicking on “Doing Business with FDOT”, “Equal Opportunity Office,” “DBE Program,” then “DBE Directory.”

The Department can only report the participation of DBE's that are 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 Responsible Certifying Member. A list of Responsible Certifying Members is listed on the DBE Directory web site.

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 DBE AA Plan

The president, chief executive officer or chairperson must sign the DBE Affirmative Action Plan. The Plan must include an appointed DBE Liaison Officer and the methods that will be used to ensure that DBE's have the opportunity to compete and perform the work contracted with the Department. The Equal Opportunity Office has a sample Plan that is available on its web site. The major elements included in the sample plan must be included in the contractor's plan.

2.3.3 DBE Policy Statement

Incorporated in the DBE Affirmative Action Plan or done separately is the requirement to have a DBE Policy Statement. The policy statement must express a commitment to use Disadvantaged Business Enterprises in all aspects of contracting. The contractor's policy making body (Board, Council, etc.) shall issue the policy statement, signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility, and states the objectives of the program. The contractor's policy statement shall be circulated throughout the contractor's organization and the minority, female, and non-minority community and business organizations.

2.3.4 DBE Liaison Officer

The DBE Affirmative Action Plan must include an appointed DBE Liaison Officer who will be 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.

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 must be submitted to the Department in the bid or proposal package. This form can be found at <http://www.dot.state.fl.us/equalopportunityoffice/>.

Section 2.5

ANTICIPATED DBE PARTICIPATION STATEMENT

2.5.1 General

The Anticipated DBE Participation (ADBEP) Statement is the form used by contractors to 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 a specific contract. The form must be submitted to the Resident Compliance Specialist at the Preconstruction Conference. Resident Compliance Specialists will then submit the ADBEP Statement to the Equal Opportunity Office within three (3) working days following the preconstruction conference. As DBEs are added to or removed from projects, contractors are encouraged to submit a revised ADBEP Statement to the Resident Compliance Specialist as soon as possible to ensure reporting accuracy.

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 Reporting

When reporting anticipated DBE participation or actual payments, the guidelines in 49 CFR part 26 as prescribed below shall apply. Prime contractors certified as DBEs must also submit an ADBEP Statement as well as follow the guidelines as set forth in 49 CFR part 26.

(A) When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted as DBE participation.

1. Count the entire amount of that portion of a construction contract that is performed by the DBE's 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).

2. Count 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, toward DBE goals, provided the determined is reasonable and not excessive as compared with fees customarily allowed for similar services.

3. 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.

(B) 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.

(C) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

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.

5 Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but cannot be administratively appealed to DOT.

(D) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

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.

(E) Count expenditures with DBE's for materials or supplies toward DBE participation by 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. ii) 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.

(F) Do not count the dollar value of work performed under a contract with a firm that has been decertified.

Section 2.6

REPORTING ACTUAL PAYMENTS

2.6.1 General

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CFR 49 part 26 requires the Department to track actual payments as well as commitments to DBEs. Additionally, the Department's Standard Specifications work book requires the reporting of actual payments to DBEs, all other subcontractors and major suppliers in the Equal Opportunity Reporting (EOR) System. All DBE payments and non DBE payments must be submitted monthly by the contractor. Contractors should contact Business Innovations Plus, the vendor responsible for maintaining this system, toll-free at (877) 249-8725 or e-mail: techsupport@biplus.com, for a user name, password, and user instructions to access the EOR System.

Section 2.7

MONITORING

2.7.1 General

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 Contract Compliance Reviews. 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 2.8

PRIME CONTRACTOR GRADING SYSTEM

2.8.1 General

The Department's DBE goal for the 2006-2007 federal fiscal year is 8.1%. 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).

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.

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.

Section 2.8

PRIME CONTRACTOR GRADING SYSTEM

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.

**Prime Contractor
DBE Utilization Grading Scale
Federal Fiscal Year**

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

Section 2.8

PRIME CONTRACTOR GRADING SYSTEM

2.8.3 Sample Letter

Below is a sample letter of a prime contractor with an "A+" letter grade.

SAMPLE LETTER

Date

Company Business Name
Company President/CEO
Address
City, State Zip Code

Dear Company President/CEO:

Thank you for your conscientious efforts during the 2005-2006 federal fiscal year to use Disadvantaged Business Enterprises (DBEs) on Department of Transportation funded projects. The State of Florida achieved 8.15% exceeding the 7.9% DBE goal established for the 2005-2006 federal fiscal year. Your company has been instrumental in the achievement of the state's goal. The actual percentage reported for your company is 10.28% on 18 project(s). This results in a DBE utilization grade of A+. Your efforts are commendable and have shown us that you are truly interested in being a partner with Governor Bush, 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 2005-2006 federal fiscal year grading scale and reporting criterion.

Thank you again.

Sincerely,

Denver J. Stutler, Jr.
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.

Section 2.9

SUPPORTIVE SERVICES

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/subconsulting/supplier opportunities. Another opportunity for prime contractors to identify DBEs for subcontracting/subconsulting/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 four 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 DBE Supportive Services, contact the Blackmon-Roberts Group at:

902 South Florida Avenue, Suite 205
Lakeland, Florida 33803
Telephone: (863) 802-1280
Toll Free: (877) 450-3237
Fax: (863) 802-1290
www.blackmonroberts.com

Section 2.9

SUPPORTIVE SERVICES

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 the **Florida A&M University Small Business Development Center** at:

**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
www.sbdcatfam.u.org**