



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM INFORMATION FOR BIDDERS

Authority Contact Person:

If you are in need of assistance, or have questions regarding the Authority's DBE Program, please contact:

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For certification questions or to search the DBE directory visit the Ohio UCP DBE Program Website:

www.ohioucp.org

DBE Program Purpose:

The DBE program is a federal program operating under the guidance of the United States Department of Transportation (U.S. DOT). Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26).

The overall goal of the DBE program is to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient in order to create a level playing field on which they can compete fairly for contracts and subcontracts in the transportation industry.

COMMONLY USED TERMS:

Disadvantaged Business Enterprise (DBE):

A Disadvantaged Business Enterprise or DBE is defined as a for-profit small business concern that:

1. Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

By definition, socially and economically disadvantaged individuals are those citizens of the United States, or lawfully admitted permanent residents, who:

- a) Have an individual personal net worth, excluding the value of their primary residence and assets of the firm applying for DBE certification, not exceeding the personal net worth standards as established by 49 CFR § 26.67;
- b) Are women or members of minority groups designated in 49 CFR § 26.5 and 26.67, including individuals who are Black Americans, Hispanic, Asian Pacific, Asian Indian, or Native American; or,
- c) Are individuals who, although not a woman or a member of one of the designated minority groups, establish social and economic disadvantage based on guidelines established in Appendix E to 49 CFR Part 26.



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DBE Certification / Ohio Unified Certification Program (UCP):

In accordance with federal regulations, Disadvantaged Business Enterprises participating in the Authority's DBE Program must have a current certification status with the State of Ohio Unified Certification Program (Ohio UCP), which is administered by the Ohio Department of Transportation (ODOT). For purposes of the Authority's bidding procedures, a valid DBE certification MUST be in place at the time of bid/proposal submission.

The UCP's certification of any firm is effective for three years after the date of an approved application. If not certified by the Ohio UCP, the Authority will honor those certifications conforming to 49 CFR 26 from other agencies receiving federal funding from the U.S. Department of Transportation, to be reviewed on a case-by-case basis.

To obtain an updated listing of certified DBE firms or to download an application for DBE certification, please visit the Ohio UCP website at www.ohioucp.org. For questions related to certification, website issues, and other general DBE program concerns, please contact the Ohio Department of Transportation DBE Program, 1980 West Broad Street, Columbus, OH 43223 or call the program office at (614) 728-2067.

Commercially Useful Function:

In order for the work of a DBE firm to be counted toward the contract goals of a specific project, for which a DBE participation goal has been established, the DBE firm(s) must perform a Commercially Useful Function §26.55(c). 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 with the DBE's employees. With respect to materials and supplies used on the contract, the DBE must also be responsible for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. It is the responsibility of BOTH the prime contractor and the DBE firm to ensure that the DBE firm(s) committed to the project performs a commercially useful function.

1. 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.
2. 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, it is presumed that the DBE is not performing a commercially useful function.

Failure of a DBE(s) to perform a commercially useful function will result in that work NOT being counted toward the prime contractor's DBE goal. Use of false, fraudulent or deceitful statements, representations or information by a prime contractor or subcontractor in furtherance of satisfying the Authority's DBE Program requirements or objectives may subject the prime contractor, the subcontractor, or both to legal action pursuant to 49 CFR Part 26, including but not limited to 49 CFR § 26.107, in addition to any other legal remedies available to the Authority under the contract or pursuant to applicable law.

Counting DBE Participation:

In order to receive credit for the participation of a DBE firm(s), the prime contractor must use DBE firms certified by the Ohio Unified Certification Program (OH UCP), which is administered by the Ohio Department of Transportation (ODOT) or similar public entity certifying DBE's in accordance with 49 CFR 26, unless otherwise noted in the contract specifications.

***** DBE Credit Will Be Counted Only For Work Performed By A Certified DBE Firm(s). *****



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM INFORMATION FOR BIDDERS (cont'd...)

When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

DBE Prime Contractor:

As a DBE prime contractor, the DBE firm must also comply with the good faith efforts requirements of 49 CFR Part 26. As a DBE prime contractor, count the entire value of the work to be performed by the DBE's own forces, as well as the work that they commit to be performed by DBE subcontractors.

DBE bidders on prime contracts will be expected to make the same outreach efforts as other bidders and to document good faith efforts in situations where they do not fully meet contract goals.

DBE Subcontractor:

Count 100% of the amount paid to a DBE contractor for labor and materials provided to perform a defined and clearly measurable portion of the contract. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials.

1. Count the entire amount of that portion of a construction contract (or other type contract such as professional, technical, consultant, or managerial services contracts or other DOT-assisted 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 you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. 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 goals.
5. DBE Broker – Count 100% of the fee or commission received by the DBE for assistance in the procurement of materials and supplies, or fees or transportation charges for the delivery of materials or supplies to the job site. A DBE broker is a DBE firm that does not manufacture products or supply goods on a regular basis.

DBE Manufacturer:

Count 100 percent (100%) of the value paid for materials furnished which becomes a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the contract and purchased by the contractor.



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DBE Supplier (Regular Dealer):

Count 60 percent (60%) of the value paid for materials and supplies furnished which becomes a permanent part of the project. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store.

1. 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.
2. 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.

DBE Trucking:

In order to count DBE participation for a DBE trucking company:

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 meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE trucking company receives credit for the total value (100 percent-100%) for transportation services it provides on the Agreement, using trucks and equipment it owns or long-term leases, insures, and operates, using employees of the DBE firm.
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 from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks 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. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

6. For purposes of DBE trucking leases, the lease must indicate that the DBE has exclusive use 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, as 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.



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DBE Replacement:

The Authority requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without The Authority's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to The Authority its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to The Authority for consideration of the request to terminate. The DBE will then have five (5) days to respond and advise The Authority of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity (e.g., safety.)

In those instances where "good cause" exists to terminate a DBE's contract, The Authority will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The Authority will require the prime contractor to notify the Manager, Business Diversity immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, The Authority will require the prime contractor to obtain The Authority's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, affidavits of DBE intent to perform as a subcontractor/sub-consultant/supplier, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, the Office of Contracts and Procurement (OCP) may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the OCP may issue a termination for default proceeding.

If the Contractor desires to change a Subcontractor or add an additional Subcontractor, the Contractor shall submit in writing to the Owner:

1. The name of the new or additional subcontractor,
2. A description of the Work to be performed by the new or additional subcontractor, and
3. A statement concerning why it is necessary to change or add subcontractors.

In the event that the Contractor is replacing a DBE Subcontractor, the Contractor shall also submit in writing a documented explanation of the Contractor's good-faith efforts to find a replacement DBE Subcontractor.

Good Faith Effort:

Good faith effort means efforts to achieve a DBE goal or other requirement of which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirements.

Joint venture:

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

LEGAL NOTICE:

Use of false, fraudulent or deceitful statements, representations or information by a prime contractor or subcontractor in furtherance of satisfying the Authority's DBE Program requirements or objectives may subject the prime contractor, the subcontractor, or both to legal action pursuant to 49 CFR Part 26, including but not limited to 49 CFR 26.107, in addition to any other legal remedies available to the Authority under the contract or pursuant to applicable law.