

111 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Federal and state Disadvantaged Business Enterprise (DBE) requirements serve the purpose of ensuring nondiscrimination in the award and administration of government-funded contracting opportunities. These regulations aim to provide a level playing field for businesses owned and operated by individuals who are socially and economically disadvantaged, including

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women, minorities, and individuals with disabilities. By mandating a certain percentage of contracts to be awarded to DBEs, governments encourage fair competition and help address historical disparities in access to economic opportunities.

DBE requirements are a central part of the federal civil rights enforcement framework in transportation contracting. Prohibitions of discrimination based on race, color, or national origin (Title VI requirements), Americans with Disabilities Act (ADA) requirements, equal employment opportunity (EEO) requirements, and employee training requirements are also components of the federal civil rights framework. These topics are further described in supplemental guidance document [100 SG-6](#), which should be referenced along with this topic as there is some overlap in information.

111-1 GOALS.

Goals for DBE participation are expressed as a percentage of the total contract amount. While DBE goals are often driven by requirements of the US DOT for federally funded projects, projects without federal funding may also contain DBE goals. Contracts with DBE goals are described as “Race Conscious.” Contracts that do not contain DBE goals are considered “Race Neutral.” The requirements of [SSHHC 111.08](#) and [SSHHC 111.09](#) apply to all contracts, regardless of race neutrality. See [111-8](#) and [111-9](#).

111-2 CERTIFICATION.

Certification eligibility is based on requirements stated in federal law that consider the size of the business, its disadvantaged status, and ownership and control of the business. DBE certification is not intended to reflect on the capabilities or capacity of any business to perform satisfactorily. Work performed on a project by a firm prior to obtaining DBE certification cannot be counted as participation towards a contract DBE goal.

111-3 SUBMITTAL OF DBE UTILIZATION PLAN.

[Form OE-110, DBE Utilization Plan](#) is required to be submitted by bidding contractors to the Bureau of Office Engineer. Form submittal is required within five calendar days of the contract letting date.

111-4 FAILURE BY LOW BIDDER OR CONTRACTOR TO MEET DBE GOAL.

If the [DBE Utilization Plan](#) submitted prior to bidding does not meet the contract DBE goal, or if DBE goals are not met during construction, the bidder or contractor must show proof of good faith efforts to meet the goal. This includes trying to find new DBEs to replace any that drop out or cannot finish their assigned portion of the work. See [111-5](#) for a description of good faith efforts.

111-5 GOOD FAITH EFFORTS.

A good faith effort starts with reaching out to certified DBEs in every possible way. Examples of good faith effort outreach include attending meetings, advertising, sending letters, and contacting the ALDOT's DBE Liaison Officer. Adequate information about the plans, specifications, and requirements of the contract should be shared with time allowed for response. Contractors should follow up with contacted DBEs to gauge interest and availability and assist with their response if needed.

Good faith efforts include offering DBEs a chance to perform manageable portions of the work, even if the work could be performed by the prime contractor. Good faith DBE solicitation and participation may cause the contractor to incur additional costs. However, unless the actual quotes from the DBE are excessive or unreasonable, additional solicitation costs are not sufficient reason to not meet the DBE goal for the project.

The contractor may determine that a prospective DBE is not capable of performing the work. This determination must be based on sound reasoning after thorough investigation. Industry standing and political or social affiliations are not sufficient cause to reject or disqualify a DBE.

To further demonstrate good faith effort, contractors may assist DBEs with obtaining bonds, credit, or insurance if they need them. The contractor may also help DBEs secure equipment, supplies, or other things they need to do the work.

Several agencies, offices, and groups exist to support minority and women-owned businesses. Services are available to both prime contractors and DBEs and should be utilized as a part of offering good faith efforts.

111-6 EVALUATION OF GOOD FAITH EFFORTS.

Prior to contract award, the ALDOT Good Faith Efforts Committee reviews low bidder documentation to assess compliance with DBE requirements. Failure to meet the contract DBE goal or demonstrate good faith efforts may result in the contractor not being awarded the contract.

111-7 DBE TERMINATION AFTER AWARD OF THE CONTRACT.

A prime contractor may terminate a subcontract with a DBE for failure to perform or for poor performance. Should a contractor decide that termination is necessary, it must notify the project manager in writing with a copy being sent to the State Construction Engineer. The notification must provide reasons for the termination with supporting documentation. The State Construction Engineer will make the final determination of approval for the termination.

If the termination is approved, the contractor must submit a revised DBE Utilization Plan meeting the contract goal or show good faith efforts as described in [111-5](#). Contractor and DBE contract noncompliance are described in [111-9](#).

111-8 CREDIT FOR WORK ASSIGNED TO MEET THE DBE GOAL.

In general, DBE credit is awarded only for work performed by the DBE itself or for the DBE by a lower-tier DBE subcontractor. The work performed must serve a “commercially useful function” (CUF). The value of work performed includes the cost of materials and supplies purchased and equipment leased by the DBE (unless these are purchased or leased from the prime contractor or its affiliates). Fees charged for professional, technical, or managerial services, or for providing insurance or bonds also count toward meeting the DBE goal. If a DBE is a part of a joint venture, only the work performed by the DBE forces will count towards the DBE goal.

SSHC 111.08 outlines additional rules for determining whether work done by a DBE counts towards meeting the DBE goal. It describes what performing a "commercially useful function"

looks like. 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 performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract - for negotiating price, determining quality and quantity, ordering, installing (where applicable), and paying for materials and supplies.

A DBE is not performing a commercially useful function unless they are responsible for performing at least 30% of the subcontracted work with their own forces. They must not simply appear as if they are participating in the work. When ALDOT determines that a DBE is not performing a commercially useful function, the prime contractor and the DBE are given the opportunity to provide documentation to dispute and appeal the determination.

Trucking. Several factors are considered when determining if a DBE trucking company is doing work that counts towards meeting goals. The DBE must manage and supervise all trucking operations for the contract under genuine arrangements to meet the DBE goals. The DBE must also employ drivers and own and operate at least one fully licensed, insured, and working trucks used in the contract. The DBE receives credit for the full value of the transportation services it provides using trucks it owns and drivers it employs.

The prime contractor must submit a list of all trucks owned by DBE subcontractors that will be used on the project. A copy of the truck titles as proof that the trucks are owned by the DBE firm should be provided with the list.

If a DBE leases trucks from another certified DBE, they also get credit for the full value of those services. DBE ownership must be documented with copies of truck titles. If the DBE leases trucks from a non-DBE, they only get credit for the fee or commission they receive from the lease, not for the full value of the services. The lease agreement must show that the DBE has exclusive control over the truck, and leased trucks must display the DBE's name and ID number. Copies of lease agreements, whether with DBE or non-DBE firms, must be provided with the DBE Utilization Plan or the first Form DBE-10 submission after the lease agreement is used on the contract.

Materials. If materials or supplies come from a DBE manufacturer, the entire cost counts towards meeting the DBE goal. A DBE manufacturer is a company that produces needed materials or equipment are made.

A DBE that owns and operates a borrow pit and delivers materials to the project site on a Free-On-Board (FOB) basis may be eligible for DBE credit. Credit for materials will be awarded only if

the DBE is certified as a manufacturer or supplier. No sublet is required for FOB hauling of materials. However, if the DBE also performs on-site grading or additional work, a subcontract is required.

Additionally, to be certified for DBE material credit, the firm must provide documentation including: proof of pit ownership, an ADEM stormwater permit, historical and archaeological clearance, a biological report, and equipment ownership records. Copies of invoices and pit agreements must be attached to monthly DBE-10 forms when DBE credit for furnished materials is claimed.

If materials or supplies are bought from a DBE regular dealer, 60% of the cost counts towards meeting the DBE goal. A DBE regular dealer is a company that owns or operates a store or warehouse where the specified materials are usually sold to the public as part of their regular business. To qualify, the company must be established and primarily engaged in buying and selling these products.

When materials are purchased from a DBE broker (not a manufacturer or regular dealer), the fees or commissions charged for assistance or transportation will count towards the DBE goal if they are reasonable. However, the actual cost of the materials will not count towards the goal.

Payment and Reporting. Work performed by a DBE only counts towards meeting the DBE goal once the DBE has been paid for their work. Prime contractors must submit Form DBE-10 monthly for each DBE on the project, whether listed in the Utilization Plan (Form OE-110) or participating in a race-neutral capacity. The form is required to be submitted within 60 days of the close of every estimate period. Form DBE-10 is also required on federal projects even if no DBE goal is in the contract. Amounts performed shown on the form should not include bond or gross receipts tax.

The contractor must include a copy of paid invoices with Form DBE-10 for DBE material manufacturers, dealers, and brokers. A copy of each haul ticket is required for DBE truckers. The ticket should specify the trucker type (DBE-owned, leased DBE, leased non-DBE, etc.) and be sorted and tallied accordingly. A final Form DBE-10 and Form DBE-11 are required for each DBE subcontractor prior to the Area Construction Engineer sending the final estimate voucher for signing.

Form DBE-10 and attachments including invoices, pit agreements, and payment records document work performed by each DBE. Form DBE-11 is used to certify the actual payments made to DBE firms and must be submitted on all projects involving DBE participation -

regardless of whether the contract includes a DBE goal or whether the DBE is listed on the approved DBE Utilization Plan.

Joint Checks. A joint check is a two-party check issued by the prime contractor that lists both the DBE subcontractor and the DBE's material supplier or dealer as payees. The DBE must endorse or release the check to the supplier. The prime may act as guarantor of payment, but the DBE must remain responsible for negotiating price, determining quality and quantity, ordering, and paying for materials. Joint checks do not relieve the DBE of its obligation to perform a commercially useful function (CUF).

Use of joint checks is permitted only under FHWA-approved circumstances and requires pre-approval by ALDOT. The following requirements apply:

DBE Control – The DBE must make all purchasing decisions, release the check to the supplier, furnish and install the materials as applicable, and perform all other CUF elements as defined in SSHC 111.08.

Prime Contractor Role – The prime may act only as guarantor and may not dictate which supplier the DBE uses or the prices paid. Joint checks must be available to all subcontractors and not limited to DBEs. Exclusive arrangements between one prime and one DBE that compromise independence are prohibited.

Approval and Documentation –

- Joint check use must be requested in the DBE Utilization Plan (Form OE-110) or a revision.
- A formal agreement among the prime, DBE, and supplier must be submitted to ALDOT.
- Any changes in the agreement must be promptly documented.
- ALDOT will approve joint checks only where use is recognized as standard industry practice.

Monitoring – ALDOT must approve joint check use before work begins. The Construction Bureau will monitor compliance, which may include review of invoices, cancelled checks, or other records. Improper use or failure to meet these conditions may result in denial of DBE credit and constitute a violation further described under 111-9.

When used correctly, joint checks can assist DBEs in industries where the practice is common (such as reinforcing steel or stay-in-place decking). Improper use, however, may erode a DBE's independence and will not be credited toward contract goals.

See [109-12](#) for additional required final estimate documentation.

111-9 DBE VIOLATIONS.

Bidders, prime contractors, and DBEs can potentially violate state and federal laws and the contract regarding DBE compliance. Potential noncompliance by bidders and prime contractors includes: not submitting the DBE Utilization Plan within five days of the bidding date, failing to meet the contract DBE goal, not making genuine good faith efforts to involve DBEs, removing DBE subcontractors without valid reasons, submitting inaccurate DBE participation reports and other types of fraud, failing to provide Form DBE-10 reports, disregarding ALDOT decisions and directions regarding DBE activities, and engaging in fraudulent activities.

DBE subcontractors can also violate the contract and laws by failing to properly negotiate terms of contracts, failing to fulfill their obligations, and misrepresenting their DBE eligibility status or other types of fraud. Violation of the rules listed in 49 CFR Part 26.107 would be a violation of their contract in addition to violation of state and federal law.

Issues that cannot be resolved at the project level, including conflicts in the DBE Utilization Plan, failure to meet DBE goals, delinquent DBE forms and certifications, and suspected fraud should be reported to the State Construction Engineer. The Construction Bureau and its DBE Section will coordinate with the DBE Good Faith Efforts Committee, and FHWA as necessary to investigate, determine compliance, and help find resolution.