

103.06 Disadvantaged Business Enterprise (DBE) Program Requirements.

The Department is required to set an overall annual goal for DBE participation in Federal-aid projects. In order to fulfill that goal, Bidders during the bidding stage and the low Bidder after the opening of bids are encouraged to demonstrate best efforts to utilize minority Subcontractors by soliciting bids from DBEs. These measures to obtain participation are known as race-neutral. Race-neutral DBE participation occurs when a DBE receives a prime Contract through customary competitive procurement procedures, is awarded a subcontract on a prime Contract that does not carry a DBE Contract goal, or even if there is a DBE Contract goal, wins a subcontract from a prime Contractor that did not consider its DBE status in making the award (e.g. prime Contractor that uses a strict low bid system to award subcontracts). The Department will use Contract goals as a race-conscious means of meeting any portion of the overall goal not achieved by use of race-neutral means.

A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

- (1) “ Socially and economically disadvantaged person” means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- (2) “ Owned and controlled” means a business which is:
 - (a) a sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - (b) a partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).
 - (c) a corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real economic interest and must include proportionate control over management, capital, and earnings, as above.

If the disadvantaged group ownership interests are real, substantial, and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE.

A current listing of certified DBEs that may wish to participate in the highway construction program and the scope of work for which they are certified will be in the Proposal.

Credit will be given for the value described by a DBE performing as:

- A. A prime Contractor; actual value of work performed by own forces.
- B. An approved Subcontractor; 100% of expenditures committed.
- C. An owner-operator of construction equipment; 100% of expenditures committed.
- D. A manufacturer; 100% of expenditures committed.
The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
Brokers and packagers shall not be regarded as manufacturers.
- E. A regular dealer; 60% of expenditures committed.
A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public.
Brokers and packagers shall not be regarded as regular dealers.
- F. A renter of construction equipment to a Contractor; 20% of expenditures committed, with or without operator.
- G. A bona fide service provider; 100% of reasonable fees or commissions.
Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the Contract.
Eligible services also include agencies providing bonding and insurance specifically required for the performance of the Contract.
- H. A trucking, hauling, or delivery operation.
100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the Contract and, if applicable, includes the cost of the materials and supplies.

100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator.

100% of reasonable fees or commissions the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.

I. Any combination of the above.

On all Federal-aid projects, the Contractor, during the life of the Contract and on a semi-annual basis for the periods covering October 1st –March 31st and April 1st –September 30th shall submit a listing of all DBEs that were engaged in the Work, specifying item(s) of work performed by each DBE and the dollar amount paid for each item of work. Copies of canceled checks to the DBEs or statements from the DBEs together with supporting documentation (i.e., billings, invoices, etc., referenced to the Contract) must be submitted as proof of payment. This documentation shall be submitted to the Department within 30 days of the reporting period end. Failure of the Contractor to submit this information may result in the Department withholding progress payments.

On Federal-aid projects that specify a DBE Contract goal in the Information Report, Bidders during the bidding stage and the low Bidder after the opening of the bids, shall make every reasonable good faith effort to use certified disadvantaged business enterprises for work to be performed under the proposed Contract. In addition the following is also required on Federal-aid projects which specify a DBE Contract goal:

Within 3 working days after the bid opening date, the low Bidder shall file with the NHDOT Office of Federal Compliance a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE firms that will be used during the execution of the Work. The list shall show the name of the firm, the item/material/type of work involved and the dollar amount of work to be performed. The dollar total of each commitment shall be totaled and a percentage determined. In addition to the commitment form, letters of intent signed by principals of the low bidder and each DBE firm listed, shall be submitted prior to Department approval of the DBE commitment.

If the low bidder cannot provide the list and accepted letters of intent showing DBE participation in the Work, within the above time frame, the Contractor may request additional time through the Department's DBE Liaison Officer to comply or to provide written documentation of efforts to obtain participation. Acceptable documentation showing all good faith efforts made to obtain participation may be reason to waive the goal requirement of the project.

Failure to provide the required listing with the dollar participation total or acceptable documentation of good faith efforts to obtain DBE participation within 3 working days after the bid opening date, or by another deadline established by the DBE Liaison Officer will be considered a lack of responsiveness on the part of the low bidder. Rejection of the low bid under these circumstances will require the low bidder to surrender the Proposal Guaranty to the Department.

The submission and approval of the above forms does not constitute a formal subcontract as required in 108.01.

If for any reason during the progress of the Work the Contractor finds that DBEs included on the list are unable to perform the proposed work, the Contractor, with written release by the committed DBE or approval of the Department, may substitute other DBE firms for those named on the list.

If the Contractor is able to document clearly his inability to find qualified substitute firms to meet the project goal, the Contractor may request in writing a waiver of that goal.

If at any time during the life of the Contract it is determined that the Contractor is not fulfilling the goal or commitment(s) and is not making a good faith effort to fulfill the DBE requirement, the Department may withhold progress payments.

Failure of the Contractor to meet the project goal or the specified DBE commitment(s), whichever is the lowest, will result in a reduction in Contract payment by an amount equal to the difference between the actual Contract dollars multiplied by the applicable commitment percentage and the dollar value of the work actually performed by the DBEs. If the Contractor's failure to meet the DBE goal or commitment(s) in the Contract is the result of circumstances clearly documented to be beyond the control of the Contractor, a written request for waiver of the goal or commitment(s) must be received. The Commissioner may waive, in whole or part, the reduction in Contract payments specified herein.

Fulfillment of the goal percentage shall be determined by dividing the dollars committed to the DBEs by the Contract Amount.

These requirements are in addition to all other Equal Employment Opportunity requirements on Federal-aid Contracts.