

Sub-Part 6203 – Office of Civil Rights

Chapter 00600 Monitoring the Disadvantaged Business Enterprise (DBE) Program

Purpose

- 100 To establish a procedure to comply with 49CFR, Part 26 of the Federal Code of Regulations. These regulations are available at <http://www.gpoaccess.gov/cfr/index.html>
- 101 Disadvantaged Business Enterprise (DBE) firms being used to meet a DBE goal on a federal-aid or AHEAD project are required to meet the guidelines of 49CFR, Part 26. The Office of Civil Rights, Project/Resident Engineers, and Prime Contractors are required to monitor DBE participation to ensure that these guidelines are met to the best of their ability.

General Rules DBE Subcontractors

- 200 The prime contractor must obtain an approved subcontract request for each DBE subcontractor performing work on a project.
- 201 The prime contractor will be encouraged to ensure that a representative for each subcontractor attends preconstruction conferences.
- 202 DBE subcontractors shall be required to submit rental agreements to verify ownership of equipment (including trucks).
- 203 Prime contractor and subcontractor employees will be interviewed every two (2) weeks for the life of the project.

Rules for Receiving DBE goal credit

- 300 A prime contractor will only be given credit toward the contract DBE goal when the DBE performs a commercially useful function. Federal regulation 49 CFR 26 states: A commercially useful function has been performed when a DBE is responsible for the execution of a distinct element of the work of a contract by actually managing, performing and supervising the work involved. The following guidelines should be used in determining a commercially useful function.

1. Work Performed:

- a. The DBE contractor must manage the work for which he/she has contracted. The management shall include scheduling work operations, ordering equipment and materials, preparing and submitting payrolls, hiring and firing employees, including supervisory positions and exercising control over the daily business operations.

- b. The DBE contractor must perform the work for which he/she has contracted with his/her own workforce. Repetitive use by a DBE of personnel from other contractors will not satisfy the commercially useful function requirement.
- c. The DBE must supervise the daily operations of the work contracted. This shall consist of independent direct supervision of the employees working for the DBE or by a skilled and knowledgeable superintendent/foreman employed by, paid wages by and under the control of the DBE contractor.
- d. The DBE must obtain all materials and equipment necessary to perform the contract work. The DBE shall negotiate and enter into equipment leases or purchase agreements directly with the equipment source. Equipment lease rates shall be in line with prevailing industry rates and shall not be inflated.

Supplier/Manufacturer: (60% credit for supplier only)

- 400 The DBE maintains an inventory.
- 401 Sells materials to contractors (delivery may be included).
- 402 Packages and ships goods to contractors.

Possible Non-Compliance Actions

- 500 The following situations may indicate DBE program noncompliance with the commercially useful function requirement and should be reported:
 1. The DBE is performing work outside the areas listed on OCR-481.
 2. The DBE provides little or no supervision to his/her employees for work performed by them. Supervision is provided by someone else not employed or under the control of the DBE and the DBE is rarely seen on the project site.
 3. The DBE's work is performed by personnel normally employed by another contractor. Prime contractor's employees are not allowed to perform the DBE's work. The DBE contractor must prepare and submit their own payrolls.
 4. The materials and equipment being used by the DBE belongs to another contractor and no rental agreements have been submitted to the project engineer.
 5. Materials and supplies needed to perform the DBE's work are delivered to, billed to or paid for by another contractor.
 6. The DBE subcontractors-sub portions of the work that is assigned to him by the prime, to a non-minority contractor.

7. The DBE is working on the project without an approved subcontract agreement or CAD-720.
8. A DBE trucking subcontractor uses or rents trucks from the prime contractor.
9. A DBE (prime contractor) subcontracts more than the allowed 60% of the total contract.

Investigations of Non-Compliance

- 600 The prime contractor may be required to provide information and documentation as a result of an investigation or on-site review into non-compliance issues. All such request will go through the District Engineer of the area where the project is being performed.
- 601 The prime contractor shall be provided a summary report and notice of any requested corrective action by the Chief Engineer of the Mississippi Department of Transportation.