

The Disadvantaged Business Enterprise Program: how it affects your airport

The purpose of the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Program is to help businesses owned and controlled by socially and economically disadvantaged individuals, including minorities and women, have an equal opportunity to receive and participate in DOT-assisted contracts.

As an airport sponsor or owner, you are required by the USDOT to develop your own DBE program if you receive federal financial assistance of more than \$250,000 within a fiscal year. Your DBE program must be in accordance with the 49 Code of Federal Regulations, Part 26 (49 CFR 26), hereafter referred to as "the regulation," which is designed to:

- ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- ensure that the DBE program is narrowly tailored in accordance with applicable law.
- ensure that only firms that fully meet 49 CFR 26 eligibility standards are permitted to participate as DBEs.
- help remove barriers to the participation of DBEs in DOT-assisted contracts.
- assist in the development of firms that can compete successfully in the marketplace outside of the DBE program.

Developing a DBE Program

Obtaining Mn/UCP membership

The regulation requires all state DOT fund recipients to participate in the Minnesota Unified Certification Program (Mn/UCP). Thus, the first step in developing a DBE program is to contact a Mn/UCP representative and request a packet of information on becoming a member of the Mn/UCP for Disadvantaged Business Enterprises [contact information can be found at the end

of this article]. The Mn/UCP is a one-stop shop for certifying all DBEs on DOT-assisted contracts in Minnesota in accordance with the regulation. The requirements for the UCP program can be found in 49 CFR Part 26.81.

The packet contains the most recent information on the Mn/UCP and a Memorandum of Agreement between the airport sponsor and the state that needs to be signed by the sponsor and returned.

Drafting a DBE program and setting goals

The next step is to draft a plan and calculate overall DBE goals. Begin by reviewing the USDOT's Web site [<http://osdbuweb.dot.gov/business/dbe/index.html>] and looking over the sample DBE program and goal-setting tips. [See Resources at the end of this article for more assistance.]

The DBE program need only be prepared once; however, each year that federal funds are used, a new goal must be established and approved by the FAA. You must submit new goals by August 1 (or the date specified by the Civil Rights Office of the FAA) for the following fiscal year. Include the methodology used for the overall goal calculation and the minimum goals (as Attachments 4 and 5).

As a recipient of FAA funds, if you anticipate awarding prime contracts of \$250,000 or more for airport planning or development within a fiscal year, you must complete and submit a DBE program. You do not need to submit regular updates other than Attachments 4 and 5 as long as you remain in compliance, but you do need to submit significant changes. The program must be approved before you are eligible to receive federal funds and must be carried out until all federal funds have been expended. It is recommended that language from the DBE Sample Program be used in your DBE program and that additional information/calculations be added as required and appropriate.

Calculating a goal. Your program must identify a goal for percentage DBE participation. When setting the goal, you will need to address the following:

- Method: indicate how the goal was derived (explain and show calculations).
- Public review process (include a copy of the notice of overall goal and information on any consultation, e.g., where it was held or when it will be held, who attended, what the result was, comments made regarding the goal, etc.).
- Breakout of estimated race-neutral



and race-conscious participation: explain the breakout and show the percentages. List race-neutral measures that will be used to increase race-neutral participation.

- Contract goals section: multiple contracts can be used to meet an overall fiscal-year goal. The DBE participation percentage from each of the multiple contracts, which add up to the \$250,000, can be averaged to help obtain the overall goal. For example, say an airport has an overall DBE goal of 5 percent. Throughout the year there are five \$50,000 contracts at the airport, which add up to \$250,000. Two of the contracts have zero percent DBE participation, one of

the contracts has 15 percent DBE participation, and the other two contracts have 5 percent participation. The average of these five contracts is 5 percent, which meets the annual overall goal for the airport. Contract goals are only established on DOT-assisted contracts that have subcontracting possibilities.

The race/gender-neutral and race/gender-conscious division of the goal is extremely important in the goal-setting process. You must meet the maximum feasible portion of your overall goal by using race/gender-neutral means of facilitating DBE participation. You must also carefully explain why you expect to achieve the level of race/gender-neutral participation you propose and the specific reasoning and data that support your conclusion.

Steps for calculating an overall goal:

1. Determine the base figure for the relative availability of DBEs:

$$\text{Base figure} = \frac{\text{DBEs ready, willing, and able}}{\text{All firms ready, willing, and able}}$$

2. Determine if an adjustment is needed to the base figure in order to arrive at the overall goal.

3. Publish your goal information in a legal advertisement and announce it at a public meeting.

Breakout of estimated race-neutral and race-conscious participation. You must calculate the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation.

Contract goals are used to ensure that a DBE program will be narrowly tailored to overcome the effects of discrimination. You will need to adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation. Track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not limited to, DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation

Toolkit available online

Flying High: A Marketing Toolkit for Minnesota Airports is now available online at www.airtap.umn.edu/toolkit/index.html. This document includes easy-to-use ideas to help airport personnel build support for airport operations and demonstrate the value of the airport to its community.

Other publications available on the AirTAP Web site include past issues of *Briefings* and workshop highlights. Coming soon: best practices for airport management, maintenance, safety, and development.

through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Maintain separate written data on DBE achievements in those contracts with and without contract goals, respectively.

Identifying a DBE liaison officer. As part of the DBE program each sponsor must designate a DBE liaison officer. In this capacity, the liaison officer is responsible for implementing all aspects of the DBE program. The duties and responsibilities of the DBELO can be found in the sample DBE program [<http://osdbuweb.dot.gov/business/dbe/SampleDB.pdf>].

Documenting a good faith effort. When you establish a contract goal on a DOT-assisted contract, a bidder must make good faith efforts to meet the goal. If a bidder can meet the goal, the bidder must document commitments for participation by DBE firms sufficient for this purpose. The information that each bidder is required to submit can be found in 49 CFR Part 26.53.

A bidder unable to meet the DBE goal

must document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if those steps were not fully successful.

As a grant recipient, it is up to you to make a fair and reasonable judgment as to whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

Resources

To view information from the Mn/DOT Office of Equal Employment Opportunity and Contract Management:
<http://www.dot.state.mn.us/eeocm/index.html>

To receive the Mn/UCP information packet:
Pat Calder, EO Consultant
Mn/UCP Certification Specialist
560 Sixth Avenue North, Minneapolis, MN 55411
E-mail: pat.calder@metc.state.mn.us
Phone: 612-349-7463.

For questions on developing a DBE program or setting goals:
Nancy Cibic, External Program Manager
Civil Rights Office, FAA
E-mail: nancy.cibic@faa.gov
Phone: 847-294-7182.

To view a list of certified DBEs:
<http://ucp.eocm.dot.state.mn.us>.

For more information about good faith efforts:
<http://osdbuweb.dot.gov/business/DBE/Appendices.html>. ✈

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