

# DBE INSTRUCTIONS TO BIDDERS/PROPOSERS AND FORMS

## D100 DBE PROGRAM

**D100** **FEDERAL OBLIGATION:** The Los Angeles County Metropolitan Transportation Authority (Metro), as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 Code of Federal Regulation (CFR) Part 26, as amended, concerning the utilization of Disadvantaged Business Enterprises (DBE) applies to this contract.

**D101** **METRO POLICY STATEMENT:** Metro has established a DBE Program in accordance with 49 CFR Part 26. It is the policy of Metro to implement the following steps in the administration of its program to ensure DBEs have an equal opportunity to receive and participate on Metro DOT-assisted contracts:

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

**D102** **INTERPRETATION:** Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or Metro's DBE Program shall be resolved first in favor of the federal regulation and second Metro's DBE program.

**D103** **METRO OVERALL DBE GOAL:** As a requirement of compliance with 49 CFR Part 26, Metro has set an overall goal for DBE participation on its federally assisted contracts. The overall goal applies to federal-aid funds Metro expects to expend for the fiscal year. Metro will strive to meet its overall goal through race neutral measures. Metro supports the use of race neutral measures to facilitate participation of DBEs and other small businesses, and encourages prime contractors to subcontract portions of their work that they might otherwise perform with their own forces. To ascertain whether the overall DBE goal is being achieved, Metro will track the dollar amount paid to all certified DBE firms performing work called for in this contract that is eligible to be credited toward Metro's overall goal.

**D200 DBE PARTICIPATION**

**D200 DBE PARTICIPATION FOR THIS CONTRACT:** This contract may include a DBE Anticipated Level of Participation (DALP) percentage established by Metro. If established, the DALP is listed in the “Letter of Invitation Supplement (Federal Funding)” of this solicitation document. The DALP is established when Metro has determined that the work of this contract has subcontracting opportunities that may be suitable for performance by DBE firms. This determination is based on an assessment of the type of work and the availability of DBE firms ready, willing and able to do a part of the work.

**D201 ACHIEVEMENT OF DALP PERCENTAGE:** Bidders and Proposers are advised that if a DALP percentage is established for this contract, obtaining the DALP percentage is encouraged but is not a condition of award nor an issue of responsiveness. Notwithstanding, Bidders/Proposers are strongly encouraged to obtain DBE participation at the established percentage. If a DALP percentage is not established for this contract, Bidders and Proposers are encouraged to utilize DBE firms when opportunities are available. DALP participation listed in the Bid or Proposal will be listed in the executed contract as the DALP percentage the Contractor will strive to achieve during the performance of the contract.

**D202 CONTRACTOR ASSURANCE:** The Contractor makes the following assurance and agrees to include the assurance in each subcontract that the Contractor signs with a subcontractor:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**D203 DBE INFORMATION:** Bidders and Proposers shall be informed of the following:

1. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company;
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest;
4. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
5. DBE firms must be certified by the California Unified Certification Program (CUCP). See Section D600 DBE Certification Requirements.

**D204**      **RECOMMENDED DBE OUTREACH:** Bidders and Proposers are encouraged to outreach to DBE firms in all available subcontract work categories identified for this contract. The following are recommended outreach efforts the Bidder/Proposer can undertake to provide maximum opportunities to DBE firms include the following:

1. Solicit certified DBE firms that have the capability to perform the work of the contract through all available means (e.g. attendance at pre-bid meetings, advertising and/or written notices). Provide sufficient time for DBE firms to respond and take appropriate steps to follow-up initial solicitations.
2. Select portions of work to be performed by DBE firms in order to obtain DBE participation, which may include breaking out contract work items into economically feasible units to facilitate DBE participation even when the Bidder/Proposer might otherwise prefer to perform these work items with its own work forces.
3. Provide interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist with response to a solicitation.
4. Negotiate in good faith with DBE firms.
5. Make efforts to assist interested DBE firms in obtaining lines of credit or insurance as required for the contract.
6. Effectively use the services of available minority/women business organizations and other business assistance offices to provide assistance in the recruitment of DBE firms.

**D205**      **REPLACEMENT OF A DBE FIRM:** If a Bidder or Proposer list a DBE firm, which is denied prequalification, the Bidder or Proposer may replace the DBE firm with another subcontractor. The Bidder or Proposer is encouraged to replace the DBE firm with another DBE firm. The Bidder or Proposer shall notify Metro in writing prior to such replacement.

**D300**      **CALCULATING AND COUNTING DBE PARTICIPATION**

**D300**      **CALCULATING DBE PARTICIPATION:** Metro is only able to count toward the achievement of the overall goal and the DALP percentage the value of payments made for work actually performed by DBE firms. There will be no credit for work performed by a non-DBE prime or subcontractor. DBE participation listed in the Bid or Proposal must comply with the provisions of this section.

**D301**      **COMMERCIAL USEFUL FUNCTION:** A DBE must perform a commercially useful function (CUF) on the contract to be counted. A commercially useful function is performed when the DBE is responsible for the execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE prime or subcontractor must perform at least 30% of its listed work

with its own workforce or must not subcontract a greater portion of the work than would be expected on the basis of normal industry practices for that type of work.

Metro and the Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

1. **DBE as the Prime Contractor:** 100% DALP credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE prime subcontracts to a non-DBE firm does not count toward the DALP.
2. **DBE as a Joint Venture Contractor:** 100% DALP credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.
3. **DBE as a Subcontractor:** 100% DALP credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the DBE DALP.
4. **DBE as a Material Supplier or Broker:**
  - a) 60% DALP credit for the cost of the materials or supplies purchased from a DBE regular dealer.
  - b) 100% DALP credit for the cost of materials or supplies obtained from a DBE manufacturer.
  - c) 100% DALP credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
5. **DBE as a Trucker:** 100% DALP credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DALP credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. Metro uses the following six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:
  - a) 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.

- b) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e) The DBE may also lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- f) For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of 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, so 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.

**D400 CONTRACT COMPLIANCE**

**COMPLIANCE MONITORING:** Metro will monitor the Contractor’s compliance with the DBE Program and administrative requirements for this contract as provided in the Contract Compliance Manual Federal incorporated into the executed contract.

**D500 DBE FORMS**

**DBE SUBMITTALS:** The awarding Contractor will be required to complete DBE Forms for any listed DALP participation in the performance of the Contract. The Contractor will be notified of such submittals prior to contract award.

**D600 CERTIFICATION CONSIDERATIONS IN BID & PROPOSAL PREPARATION**

**D600 CERTIFICATION IS GOVERNED BY FEDERAL REGULATIONS**

Only firms certified as eligible DBE’s may participate in the DBE Program. Metro has a responsibility to ensure that the only firms who participate in Metro’s DBE program are those certified as eligible DBE’s under federal regulations, 49 CFR Part 26, and

13 CFR Part 121. Certification as a DBE means the firm has followed the procedures and met the standards described in the federal regulations.

Effective January 1, 2002, Federal Regulations established the Unified Certification Program (UCP) in California. Metro is an active participant. This program follows the same federal regulations, identified above, as does Metro in its capacity as a certifying member of the UCP when processing applications for DBE certification.

**D601 AGENCIES GRANTING DBE CERTIFICATION**

DBE businesses must identify the agency that granted them DBE certification and issued them their certification letter. Certifications prior to January 1, 2002 may be recognized by Metro from: Metro, the City of Los Angeles, Caltrans (with the condition that Caltrans concluded an "On-Site" visit), the RTCC, & the SBA Division of Program Certification and Eligibility (DPCE), 8(a) Business Development Program. Effective January 1, 2002, most such certifications were merged into the California Unified Certification Program (UCP). Metro is a participant in the UCP and recognizes UCP certification, subject to verification, on a case-by-case basis.

**D602 VERIFY THAT DBE CERTIFICATION IS CURRENT**

Each business represented as a DBE certified business must be verified as a current active participant in the DBE program prior to the date of bid opening or proposal submittal. DBE Certification is granted for a period of three years and verified annually. A business could be an active in the DBE program, one that was certified with in the last three years. Or a business could be an inactive in the DBE program, one certified more than three years ago but which failed to re-certify after the expiration of each cycle of three-year certification periods. A business could also be active in the DBE program, but not current, meaning it has been certified within the last three years, but its owners may have failed to provide Metro or the UCP with the annual affidavits and reports required to maintain its DBE status. A business that is a DBE will be both active in its certification cycle and current in its affidavit filing and reporting responsibilities. It is only those businesses that are eligible to participate in the program and only those businesses that will count toward the achievement of DBE contract goals

Contractors wishing to confirm the DBE certification status of candidate DBE firms should contact the California Department of Transportation (Caltrans). A list of UCP certified firms will be posted to a link listed on the Caltrans website at [www.dot.ca.gov](http://www.dot.ca.gov). If the website is not active or if the firm is not listed, contractors should contact the agency that issued the DBE certification letter. Verify the agency is a member of the California Unified Certification Program (UCP). If so, ask whether the business is a valid DBE. Contractors should keep a detailed record of these telephone calls, including the name of the person at the agency who confirmed the DBE certification.

Requests for verification of a firm's DBE certification status, granted by Metro, can be sent by fax to (213) 922-7660. This is the Metro Diversity and Economic Opportunity Department's fax number. It is recommended that verification be made within 72 hours of the bid/proposal due date. For information or questions concerning certification, call the Metro Certification Hotline at (213) 922-2600. Metro will

independently verify the certification status of each candidate business representing itself as a DBE.

**D603** Submit a copy of the current certification letter from each DBE subcontractor or source issued to that firm by their certifying authority. The successful Bidder is encouraged to submit a copy of this certification letter with requested DBE forms prior to contract award. The letter is needed for verification purposes.

**D604 CERTIFICATION IS PROTECTED AND ENFORCED WITH FEDERAL REMEDIES**

- a) Suspension or debarment proceedings may be initiated by the DOT against any firm:
  - 1. That attempts to participate in a DOT-assisted program as a DBE if the firm does not meet the eligibility criteria stated in the Certification Standards for DBE programs and if it attempts to participate on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.
  - 2. That in order to meet DBE contract goals or other DBE program requirements uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations, another firm that does not meet the DBE eligibility criteria stated in the certification standards.
- b) In either case the DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.
- c) While the DOT may consider a purported DBE firm was certified by a valid certification authority, certification does not preclude the DOT from determining that the purported DBE or another firm that has used or attempted to use the purported DBE to meet DBE goals should be suspended or debarred.

**D605 HOW DBE CERTIFICATION IS AWARDED TO SUCCESSFUL APPLICANTS**

This is an overview of DBE Certification to help inform those preparing bids or proposals. It is not intended to be an in-depth description of DBE certification standards. If your business is not a certified DBE, do not presume your business is eligible or ineligible based on this brief description.

**D606 CERTIFICATION INSTRUCTIONS DESCRIBE STANDARDS & PROCEDURES**

Metro and the UCP follow the standards and procedures defined by 49 CFR Part D to determine whether an applicant is eligible for DBE certification.

These standards and procedures are described in detail in the Certification Instructions, provided with the Application for Certification, at Diversity and Economic Opportunity Department. Interested individuals or companies will start the process by obtaining a copy of the DBE Application and DBE Certification Instructions at Metro's Diversity and Economic Opportunity Department.

**D607 DBE CERTIFICATION STANDARDS**

Each applicant for DBE certification must prove to the certification authority, by a preponderance of the evidence, that the applicant meets the criteria of the federal regulations concerning group membership, (or individual disadvantage), business size, ownership and control.

**D608 AN ELIGIBLE DBE FIRM IS AN SBA DEFINED, “SMALL BUSINESS”**

An eligible DBE firm, including its affiliates, must be an existing small business, defined by Small Business Administration (SBA) standards (found in federal regulations at 13 CFR part 121,) appropriate to the type of work that the firm seeks to perform on the DOT-assisted contract. Further, the applicant firm can only be an eligible DBE in any Federal fiscal year if the firm, including its affiliates, has had average gross receipts over the previous three years of less than \$19.57 million. The Secretary of Transportation adjusts this amount for inflation from time to time.

**D609 DBE OWNERS MUST BE SOCIALLY AND ECONOMICALLY DISADVANTAGED**

Certain groups found by the Small Business Administration (SBA) to be disadvantaged are rebuttably presumed to be socially and economically disadvantaged. Certifications with respect to social and economic disadvantage, including signed notarized statements of personal net worth and supporting documentation are required. If an individual’s Statement of Personal Net Worth shows that the individual’s personal net worth exceeds \$750,000 the individual’s presumption of economic disadvantage is rebutted and the person is not qualified to be a DBE owner.

**D610 DBE OWNERSHIP BEYOND “PRO FORMA”**

A firm’s ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in merely the ownership documents.

**D611 DBE BUSINESSES MUST BE CONTROLLED BY DISADVANTAGED OWNERS**

The firm must be independent and not depend on its relationship with another firm or firms to be viable.

**D612 MORE INFORMATION IS AVAILABLE**

Businesses deemed eligible for participation in the DBE program are small, independent concerns, owned and controlled by economically disadvantaged individuals in accordance with the standards cited above. Come to the Small Business Diversity and Labor Compliance Office for more information and the necessary application materials to investigate this opportunity further. Certification requirements are more completely described in the DBE Certification Instructions available in the Metro Diversity and Economic Opportunity Department, One Gateway Plaza, Los Angeles, CA.

