

Attachment Q – Disadvantaged Business Enterprise Participation PPM 300.18

Form 103050wd
7-97



Iowa Department of Transportation Policies and Procedures Manual

Title		Policy No.
Disadvantaged Business Enterprise Participation		300.18
Responsible Office		Related Policies and Procedures
Office of Contracts		300.04, 300.05, 300.12
Effective/Revision Dates	Approval(s)	
10-9-80/		

Authority: Director of the Highway Division in accordance with 49 CFR Part 26; Iowa Code sections 307.44, 313.10, 314.1 and 314.15; and Article 1102.17 of the Standard Specifications.

Contents: This policy establishes procedures to encourage and increase participation by disadvantaged business enterprises in federal-aid highway contracting opportunities.

Affected Offices: All Highway Division Offices.

Who to Contact for Policy Questions: Office of Contracts.

Definitions:

Affirmative Action - Specific steps to be taken to assure that disadvantaged business enterprises will have an equitable opportunity to compete for federally funded contracts.

Disadvantaged Business Enterprise (DBE) - A small business that is both owned and controlled by socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals must own 51% or more of the business and control the management and daily operations of the business. There shall be a rebuttable presumption that members of the following groups who are U.S. citizens (or lawfully admitted permanent residents) are socially and economically disadvantaged:

1. Black Americans - Persons having origins in any of the Black racial groups of Africa.
2. Hispanic Americans - Persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
3. Native Americans - Persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
4. Asian-Pacific Americans - Persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
5. Subcontinent Asian Americans – Persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

6. Women.
7. Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration.

Forms:

102115--Disadvantaged Business Enterprise Information: Statement of DBE Commitments.
102116--Certification of DBE Accomplishment
650194--Uniform Certification Application

Policy and Procedure:

IX. Policy

It is the policy of the Department that disadvantaged business enterprises (DBEs) shall have the maximum practicable opportunity to participate in the performance of contracts financed in whole or in part with federal-aid highway funds.

X. Responsibilities

- A. The Director of the Statewide Operations Bureau of the Highway Division shall serve as DBE Liaison Officer for the federal-aid highway program and shall be responsible for:
 1. The overall development, coordination, and implementation of the Highway Division's DBE program.
 2. The assurance that all reasonable effort is undertaken to provide the necessary staff, funding, authority, and administrative support to maximize efforts in carrying out the program.
- B. The Contracts Engineer shall be responsible for developing the Highway Division's DBE program and managing/implementing it on a day-to-day basis. The Contracts Engineer may delegate responsibilities in sections III.B., C. and D. of this policy to the EEO Supervisor in the Office of Contracts.

XI. Procedures

A. Overall Goals for Federal-Aid Highway Contracts

The Contracts Engineer, with the approval of the Director of the Statewide Operations Bureau, shall:

1. Review proposed federal-aid highway contracts to identify those contracting activities which have the greatest potential for DBE participation.
2. Establish separate overall goals for the percentage of work to be performed by DBEs. Overall goals shall be based on:
 - a. Projections of the number and types of federal-aid highway contracts to be awarded and the number and types of DBEs likely to be available to compete for the contracts.

- b. The past level of DBE participation and the capabilities of known firms.
 - c. The requirements of 49 CFR Part 26.
3. Submit overall goals to the FHWA for approval in accordance with 49 CFR Part 26.

B. Federal-Aid Highway Construction Contracts

1. Affirmative Action Techniques. The Contracts Engineer shall:
- a. Arrange solicitations, times for the presentation of bids, and delivery schedules to facilitate the participation of DBEs.
 - b. Provide technical assistance to DBEs and aid them in overcoming barriers such as the inability to obtain bonding or financing.
 - c. Disseminate information to DBEs regarding highway construction contracting opportunities.
2. Certification. The Contracts Engineer shall certify the eligibility of DBEs and joint ventures involving DBEs.
- a. An applicant DBE firm must complete a Uniform Certification Application (Form 650194) with documentation of the firm's ownership and control according to the requirements of 49 CFR Part 26, Subpart D, and submit the application and documentation to the Office of Contracts. The application form is available from the Office of Contracts; the form is also available on the Iowa DOT's Website.
 - b. The Contracts Engineer shall review the application and documents to determine the firm's eligibility for certification by investigating and analyzing information in accordance with the requirements of 49 CFR Part 26.
3. DBE Directory. The Contracts Engineer shall:
- a. Maintain a current directory of certified DBEs, identifying their general interest to perform specific types of work.
 - b. Make the directory available to all recipients of US DOT funds.
- A copy of the directory is available on the Iowa DOT's Website.
4. Contract Involvement Goals. The Contracts Engineer shall:
- a. Review proposed federal-aid highway construction contracts to identify those contracting activities which have the greatest potential for DBE participation.
 - b. Establish contract involvement goals for the percentage of work to be performed by DBEs on prime federal-aid contracts with subcontracting possibilities. Goals for a specific contract shall be based on the known availability of certified DBEs.

5. Solicitation and Contract Award. When specific contract involvement goals have been established, bidders shall be required to meet the goals or meet or exceed the average commitments of other bidders as the measure of good faith effort.
 - a. Bidders shall complete Form 102115 as required by Article 1102.17 of the Standard Specifications. Failure to provide the information specified shall render the bid non-responsive.
 - b. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid. To be considered responsive, the bidder must have exceeded the goal, met the goal, or made a good faith effort to meet the goal.

6. Contract Performance.

- a. The contractor shall use the DBEs listed on Form 102115 for the amounts submitted at the letting. If any DBE is unable to perform items that were listed on this form, the DBE shall provide to the Engineer a signed statement saying why it is unable to complete the work. If a DBE is unable to perform any item, the prime contractor shall document its efforts to have another DBE perform that item or to have a DBE perform other items to replace the original DBE goal amounts.
- b. The contractor shall maintain records of eligible DBE work for the contract. The contractor shall submit a certification (Form 102116) listing all DBE firms that were engaged in the contract and report the total dollar amount paid, or which will be paid, to each. This certification must be submitted to the Contracts Engineer as part of the final project documents. It must be dated and signed by a responsible official legally representing the contractor.
- c. On receipt of the final documents, the Contracts Engineer will verify that the contractor has attained the DBE commitment specified on Form 102115. Failure to meet the specified DBE commitment will result in a penalty of an amount equal to the difference between the actual DBE dollars paid and the contractor's DBE commitment.
- d. For the repeated failure of the contractor to meet the DBE commitment, the contracting firm may have limitations imposed on its bidder qualifications in accordance with Article 1102.03 of the Standard Specifications.

C. Federal-Aid Transportation Consultant Contracts (See also Policy Nos. 300.04 & 300.12)

1. Pre-Selection.

- a. The Contracts Engineer shall:
 - (1) Certify the eligibility of DBEs and joint ventures involving DBEs.
 - (2) Maintain a current directory of certified DBEs.
 - (3) Assure that affirmative action techniques are used to encourage DBEs to prequalify in accordance with Policy No. 300.04 and to assist them in doing so.

- (4) Assure that DBE contract involvement goals are established when warranted.
 - b. If information in an application for prequalification is not satisfactory and the applicant is a DBE, the Consultant Contract Coordinator shall contact the DBE and make a good faith effort to assist the firm in becoming prequalified.
 - c. The office to be responsible for administration of the contract (administering office) shall establish a DBE involvement goal if the contract will be funded in whole or in part with federal-aid transportation funds.
2. Selection. The Consultant Contract Coordinator and the Selection Committee shall:
 - a. Assure that full consideration is given to the use of prequalified, certified DBEs as prime consultants and that a good faith effort is made in meeting a DBE involvement goal.
 - b. Assure that the consultants considered are furnished with the names of prequalified (if required), certified DBE consulting firms that could be involved as subconsultants.

Note: Prime consultants must be prequalified. Prequalification of subconsultants is also required if a work category exists for the services to be provided by the subconsultant.
3. Negotiations and Contract Award. The administering office shall assure that the DBE involvement goal will be met or that a good faith effort has been provided.
4. Contract Performance.
 - a. The prime consultant shall use DBEs as subconsultants or suppliers as indicated in its proposal. Failure to do so shall be reported in writing to the administering office.
 - b. The prime consultant shall make a good faith effort to replace a DBE unable to perform successfully with another DBE. The administering office in consultation with the Contracts Engineer shall approve all substitutions both before execution of the contract and during contract performance to assure that the substitute firms are prequalified (if required), certified DBEs.
 - c. The administering office shall review the prime consultant's DBE involvement effort to assure that all DBE obligations are met.

D. Denial of Certification and Removal of Eligibility

1. Any DBE that is judged to be ineligible for certification shall be notified in writing by the Contracts Engineer of the reasons for the denial of certification and of the steps that may be taken to appeal the action.
2. The aggrieved firm shall have 15 days to appeal the denial of certification in writing from the date the notice was received.
3. The appeal shall be reviewed by the DBE Appeal Committee.

- a. A six-member DBE Appeal Committee shall be appointed by the Director of the Statewide Operations Bureau.
 - b. The members shall serve two-year terms. One member of the committee shall be from the Office of Contracts and shall serve as chairperson. This member will be a non-voting member of the committee.
4. The chairperson of the committee shall notify the aggrieved firm of the date, time and place the committee will meet with the aggrieved firm to consider the appeal.
5. The EEO Supervisor or the DBE Certification Auditor from the Office of Contracts may brief the committee prior to the meeting.
6. The committee shall meet to thoroughly discuss the reasons for denial of certification and to receive the aggrieved firm's rebuttal. A secretary from the Office of Contracts shall attend to take notes and prepare a synopsis of the meeting.
7. As soon as possible after this meeting with the aggrieved firm, the committee shall come to an agreement and render a decision. Another meeting may be held with only committee members present to discuss the decision.
8. The chairperson of the committee shall notify the aggrieved firm of the committee's decision within 7 days after the meeting with the aggrieved firm. If the denial of certification is upheld, the notice shall include the steps for appeal to the FHWA.

