

FTA

FEDERAL TRANSIT ADMINISTRATION

DBE Updates
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APTA Legal Affairs Conference
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U.S. Department of Transportation
Federal Transit Administration

Second NPRM on DBE

- **Sent to Federal Register August 22nd**
- **Published September 6, 2012**
- **Comment period ended December 2012**
- **Approximately 235 comments received**

Highlights

- New forms
- Definitions
- DBE program requirements (who must have one)
- Goal setting
- TVMs
- Good faith efforts
- Counting DBE participation
- Certification—not covered during this session!

Definitions

- Eight new definitions:
 - Assets
 - Business, business concern or business enterprise
 - Contingent liability
 - Days
 - Immediate family member
 - Liabilities
 - Non-disadvantaged individual
 - Principal place of business
 - Transit Vehicle Manufacturer

Certification Highlights

- Size determination
- Ownership
- Control
- Prequalification
- Certification decisions
- Denials of initial requests for certification
- Removal of eligibility
- Suspension of certification

Comments Received

- Proposals increase paperwork burden on small businesses
- Proposals will serve as a disincentive to participating in the program
- Proposals are more aimed at fraud deterrence than fostering small business development
- Concern that proposals are not supported by facts

Comments Cont.

- Personal Net Worth:
 - Must have a bright line test
 - Should not require forms from spouses or annually
 - Need a simplified form for small, small DBEs and more extensive info from “large”, small DBEs
 - Should follow SBA calculation of PNW
 - Should not penalize DBEs for growing
 - Should not adopt rebuttal of economic disadvantage

Comments Cont.

- Good Faith Efforts:
- Some support for including DBE names in bid and one day exception (after bid opening)
- Some disagree with including DBE names in bid as DBEs would have to negotiate for a subcontract prior to bid
- Some disagree with DBE participation plans (locking in prices without specs, plans, and drawing is nearly impossible)

Comments Cont.

- DBEs support unbundling
- Primes not so much ...
- Primes did not support prohibiting use of bidders list or prequalified list
- Need clarification of project goal proposal
- Contract goals should only be set on the subcontracting opportunities and not the overall contract

Common DBE Reporting Errors

- Prime contracts awarded to DBEs but dollars appear in race conscious column (8E&F). Ask for clarification.
- Number of prime contracts awarded unusually high (thousands), but dollar value awarded is small (e.g., \$100K). Ask for clarification. Specifically, what types of contracts were awarded during the period? Tip: Task Orders under a single contract should not be counted individually.
- Subcontracts awarded (9A) exceed dollar value awarded in prime contracts (8A). Ask for correction or clarification.
- Contracts and subcontracts don't add up or are missing (8&9F) and (8&9H). Ask for correction.
- Breakdown by gender and ethnicity does not add up to total contracts awarded to DBEs. Ask for correction.
- Breakdown by gender and ethnicity has a high dollar value in "Other" column. Ask to fit into 10A-F instead. Or ask what they mean by "other".

Common Errors Cont.

- Breakdown by gender and ethnicity dollar value does not add up to dollars awarded to DBEs. Ask for correction.
- Race neutral program reporting race conscious dollars paid in 12&B. Ask for clarification and correction.
- Race neutral program reporting dollars needed to meet goal in 12C. Ask to remove.
- Dollars paid totals dollars awarded during the period to DBEs. Ask whether only DBEs were paid. In other words, the only payments made on any contracts during the period were payments to DBE only?
- Large grantee submits a zero semi-annual report. Contact grantee and ask for clarification that no contracts were awarded or completed during the period.

Common Errors Cont.

- No contracts completed using contract goals (see line 12); therefore, there should be no value in field 12c (total dollar value needed to meet goal race conscious goal).
- Line 8: Prime contract not awarded to DBE firm. Move DBE values to Line 9.
- Line 9: Total number of sub contracts to DBE firms incorrect.
- Prime contract dollars awarded (field 8a), but no number entered for prime contracts (field 8b).
- Total dollar of prime contracts completed (field 13b) must be equal to or greater than total DBE participation (field 13d).
- Number of contracts awarded to DBEs in wrong column (f or h), should be in the same category as dollars awarded to DBEs.



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