

FAA DBE Program Update



Federal Aviation
Administration

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Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY



49 CFR Part 26

New DBE Final Rule

- Published: January 28, 2011
- **Effective:** February 28, 2011

Continuing Need for the Program

Confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.

What's  ?

What's New?

- Improved Program Administration
 - Increased accountability for meeting overall goals
 - Modified and updated certification requirements
 - Personal Net Worth (PNW) cap adjusted for inflation
 - Expedited interstate certification
 - Provisions to foster small business participation
 - Improved post-award oversight
- Office of Inspector General's DBE Program Compliance Review

Termination of DBEs



Termination of DBE Firms

49 CFR 26.53

“No Termination for Convenience”

- Primes can't terminate DBE sub listed in procurement response, or approved substitute DBE firm, **without sponsor's prior written consent**
- Termination requires good cause

Termination of DBE Firms Continued

49 CFR 26.53(f)(3) “Good Cause”

- DBE fails / refuses:
 - to execute contract
 - perform work consistent with normal industry standards
 - to meet the prime’s reasonable, non-discriminatory bond requirements

Termination of DBE Firms Continued

49 CFR 26.53(f)(3) “Good Cause”

- DBE ineligible:
 - to work on public works projects
 - to receive DBE credit for the type of work required
- DBE unable to complete work
- DBE determined by sponsor not a responsible contractor
- DBE voluntarily withdraws from the project with written notice
- Other documented good cause

Termination of DBE Firms Continued

Good Cause Does Not Exist If:

- Failure / Refusal of DBE to perform work results from bad faith or discriminatory action of prime
- Prime seeks to terminate DBE to Self-Perform the DBE's portion of work, or to **substitute** another DBE or non-DBE **after contract award**

Personal Net Worth (PNW)



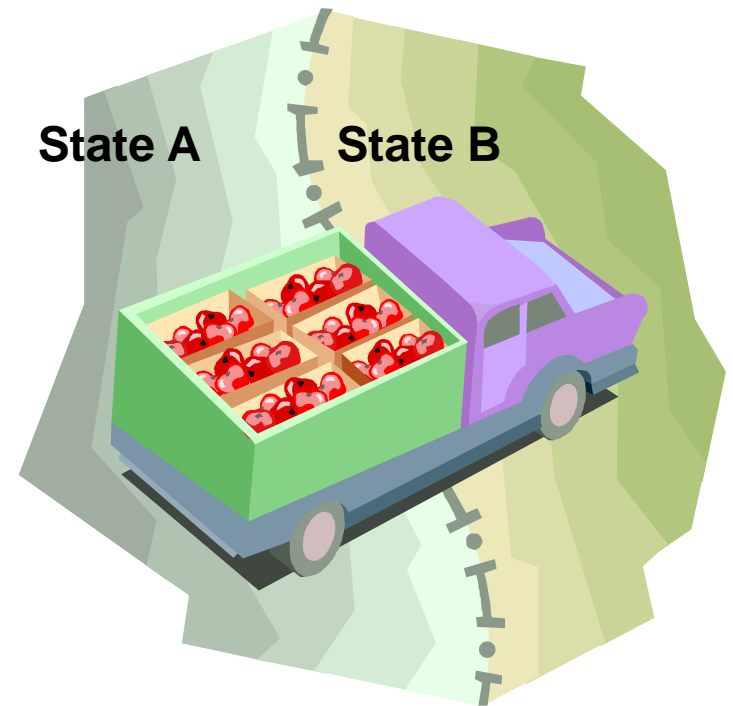
Personal Net Worth (PNW)

49 CFR 26.67 *What rules determine social and economic disadvantage?*

- **\$1.32 million PNW** - *Adjusted for Inflation*
- DOT will examine other PNW issues in NPRM* and propose improved PNW form
- All actions as of effective date must be based on the revised PNW standard, even if action pertaining to PNW began before this date

**Notice of Proposed Rulemaking*

Interstate Certification



Interstate Certification

49 CFR 26.85 -- *Effective Date: January 1, 2012*

- Enhances ability of UCP* to protect integrity of DBE program and affords DBEs right to pursue business outside home state
- Provided sponsors and UCPs time to train and establish administrative mechanisms to carry out new provision
- DOCR** nationwide database of denials and de-certifications is operational

**Unified Certification Program*

***Departmental Office of Civil Rights*

Interstate Certification Continued

49 CFR 26.85(d)

- “State B” must make a *Good Cause* determination that “State A’s” certification is erroneous or should not apply:
 - Evidence of fraud
 - New information
 - Factually erroneous or inconsistent with Part 26
 - State law requires different result
 - Information did not meet requirements of 26.85(c)

Accountability and Goal Submissions



Accountability and Goal Submissions

49 CFR 26.47 *No Quotas*

- No sanction for failing to “hit the number”
- If awards and commitments shown on Uniform Report are less than overall goal for that year:
 - Analyze reasons for difference between overall goal and awards & commitments
 - Establish specific steps and milestones to correct problems identified and describe how you plan to fully meet goal in new fiscal year

Small Business Provisions



Small Business Provisions

49 CFR 26.39 *Fostering small business participation*#

- DBE Program must include element to facilitate competition by small business concerns
 - take all reasonable steps to eliminate obstacles to participation, (e.g., unnecessary and unjustified bundling of contracts)
- Must actively implement program elements to foster small business participation
- Doing so is a requirement of good faith implementation of DBE program

49 CFR 26.51 – references the means under 26.39 as a race-neutral measure

Small Business Provisions Continued

49 CFR 26.39

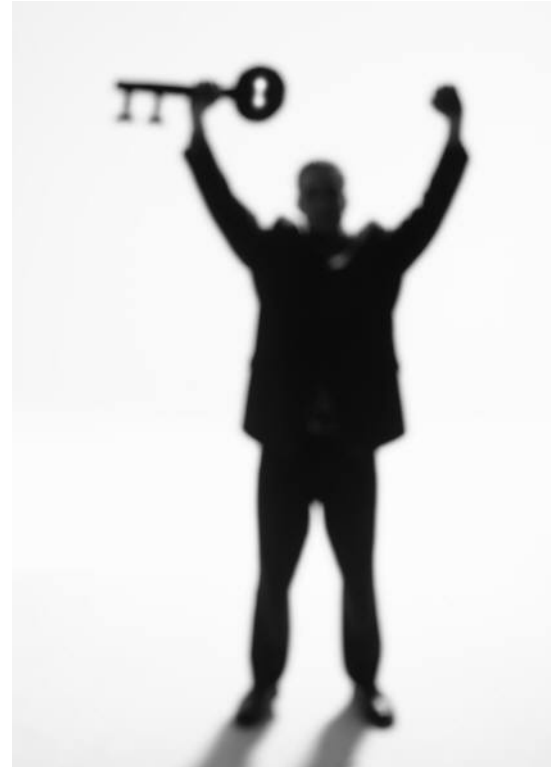
- Element must be submitted to FAA DBE Team for approval as part of DBE program by **February 28, 2012**, and may include:
 - R/N small business set-aside for prime contracts under a stated amount (e.g., \$1 million)
 - In multi-year design-build contracts or other large contracts, require bidders to specify elements of contract or specific subcontracts small businesses can reasonably perform
 - On contracts with no DBE goal, require prime to provide opportunities of a size that small businesses can reasonably perform, rather than self-performing

Small Business Provisions Continued

49 CFR 26.39

- Identifying alternative acquisition strategies and structuring procurements to facilitate ability of consortia or joint ventures consisting of small businesses to compete for and perform prime contracts
- Meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses can reasonably perform

dbE-Connect



FAA dbE-Connect



- DBE and ACDBE searchable
- Bid opportunities
- DBE program training conferences
- Airport Manager contact information
- Relevant news articles
- Links to other DBE program information
- Create an account to utilize detailed search engine
- Maintain your own profile
- Post on the forums
- Communicate with other firms
- Access DBE certification denial appeal decisions

Partnership between FAA and consultant firm, *B2Gnow*

DOT DOORS

NEW

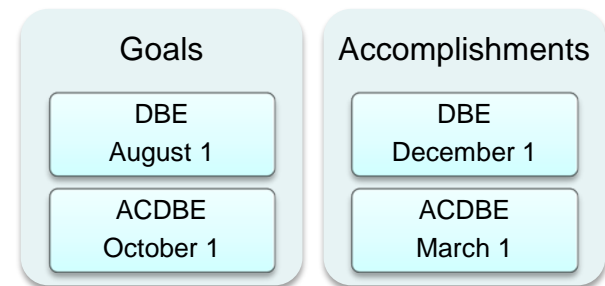
OLD



DOT DOORS

DBE Office Online Reporting System (DOORS)

- DOT DOORS (*new*) vs. FAA DOORS (*old*)
- New and improved system: different website
- DBE and ACDBE Goals & Annual Accomplishment Reporting



<http://osdbu.dot.gov/DOORS/Application/logon.aspx>

On the Horizon

DBE Program (49 CFR Part 26)

- Compliance Reviews – “Best Practices”
 - San Antonio, TX
 - Miami, FL
 - Fort Wayne, IN
 - Richmond, VA
 - Salt Lake City, UT
 - Anchorage, AL
 - Lincoln, NE

ACDBE Program (49 CFR Part 23)

- Regulatory Conformance to Part 26
- Long-Term and Exclusive Lease Prohibition Guidance

QUESTIONS??

