

DISADVANTAGED BUSINESS ENTERPRISE (DBE) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

**BONDING ASSISTANCE REIMBURSABLE FEE PROGRAM
GUIDANCE**

1. Who can I contact to speak with a Disadvantaged Business Enterprise ARRA Bonding Assistance Reimbursable Fee Program?

Answer: For further information concerning this notice, contact OSDBU at U.S. Department of Transportation, 1200 New Jersey Ave, S.E., Room W56-497, Washington, DC 20590. Telephone: 1-800-532-1169. Email: bap.arra@dot.gov.

2. What is the title of the Legislation that provides for Disadvantaged Business Enterprise Bonding Assistance?

Answer: The legislation is known as the American Recovery and Reinvestment Act (ARRA) of 2009, (P.L. 111-5), February 17, 2009. The legislation is also referred to as the "Recovery Act".

3. What authority does the U.S. Department of Transportation (DOT), Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) have to establish the DBE ARRA Bonding Assistance Reimbursable Fee Program?

Answer: Funding has been provided to DOT by the American Recovery and Reinvestment Act ("ARRA") (Pub. L. 111-5, Feb. 17, 2009). The ARRA made available \$20 million for DBE Bonding Assistance to be administered under 49 U.S.C. § 332(e). DOT established the Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. OSDBU administers the provisions of 49 U.S.C. § 332, the Minority Resource Center (MRC). Section 332(e) provides the MRC authority to provide assistance in obtaining bid, payment, and performance bonds to DBEs.

4. How many awards does the US Department of Transportation (DOT) expect to make?

Answer: DOT anticipates making 1,770 awards at an average award amount of \$11,300. DOT is not bound by any estimates presented in this guidance. Awards will be made in the order of application receipt until funding is fully expended or the program closes on September 8, 2010.

5. What is a Disadvantaged Business Enterprise (DBE)?

Answer: For the purposes of the DBE ARRA Bonding Assistance Reimbursable Fee Program, the term "Disadvantaged Business Enterprise" ("DBE"), includes a for-profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women and, in accordance with regulations set forth at 49 CFR part 26.

6. What is the meaning of “transportation-related” contract?

Answer: “transportation-related contract” is defined as a contract for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation’s modes of transportation with any public or commercial provider of transportation through any Federal, State or local transportation agency. The transportation contract can be a prime contract or subcontract at any tier, awarded by the U.S. Department of Transportation or by a State or local recipient of DOT ARRA funds.

7. What is the purpose of the Disadvantaged Business Enterprise Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP)?

Answer: On February 17, 2009, the President of the United States signed the American Recovery and Investment Act of 2009 (Pub. L. 111-5) (ARRA) to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. Pursuant to ARRA, the US Department of Transportation (DOT) was appropriated a combined \$48.1 billion in funding for the purpose of stimulating the economy and investing in the nation's transportation infrastructure. ARRA also appropriated \$20 million to DOT for Disadvantaged Business Enterprise bonding assistance.

The purpose of the DBE ARRA program is to assist DBEs to participate in the ARRA investment in transportation infrastructure and to address the disproportionate effect that the increase in unemployment has had on minority-owned and women-owned businesses by assisting them to obtain transportation infrastructure contracts at the local, state and federal levels through a reduction in the cost of bonding.

The bonding assistance provided by the DBE ARRA BAP will allow DBEs with traditionally less working capital than large transportation-related contractors to perform on transportation infrastructure projects receiving ARRA funding from any DOT mode of transportation, such as Federal Highway Administration, (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the Maritime Administration (MARAD). In addition, the assistance provided to the DBE to compete for, and execute contracts for ARRA projects, will position the DBE to compete for future transportation contracts at any tier from any Federal, state, or local transportation agency.

8. Why do I need to acquire bonding for construction contracts for projects receiving direct or indirect Federal funding?

Answer: The federal Miller Act (40 U.S.C. Section 3131 to 3134) provides that, before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the federal government with a performance bond in an amount that the contracting officer regards as adequate for the protection of the federal government and; a separate payment bond for the protection of suppliers of labor and materials. A bid/proposal bond may also be required. States have enacted "Little Miller Acts" that impose similar bond requirements for state and local projects.

Surety companies charge a premium fee to all contractors to ensure the surety company's financial backing and guarantee. These premium rates vary between 2% and 3% of the contract amount. If a contractor wants to use SBA's Surety Bond Guarantee Program (SBGP), SBA charges the contractor or small business concern (principal) a fee of .729% of the contract price to finance potential claims against the bond.

9. What types of surety bonds are eligible for premium and fee reimbursements under the Disadvantaged Business Enterprise Bonding Assistance Reimbursable Fee Program?

Answer:

A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The premiums and fees to acquire the following surety bonds are eligible for reimbursement:

- Bid/Proposal – Bond which guarantees that the bidder on a contract will enter into the contract and furnish the required payment and performance bonds. Proposal bond which is use in response to an RFP (Request for Proposals).
- Payment - Bond which guarantees payment from the contractor of money to persons who furnish labor, materials equipment and/or supplies for use in the performance of the contract.
- Performance - Bond which guarantees that the contractor will perform the contract in accordance with its terms.

10. What are the eligibility criteria for the Disadvantaged Business Enterprise Bonding Assistance Reimbursable Fee Program?

Answer: To be eligible for a performance, payment, or bid/proposal bond fee cost reimbursement under the DBE ARRA BAP, a contractor must:

- be certified as a DBE from an agency using federal guidelines, CFR Part 26;
- provide a current annual affidavit, if certified longer than one (1) year;
- have a current Data Universal Numbering System (DUNS) (Dun and Bradstreet) number);
- be registered in the Central Contractor Registration (CCR), CCR.gov, complete with bank information for electronic payment;
- provide goods or services on a contract for a transportation-related project receiving DOT funding pursuant to ARRA or if a bid/proposal bond is required, bid on a contract for a transportation infrastructure project receiving DOT funding pursuant to ARRA; and
- submit an application package in time for the US Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization to receive the application package by mail or electronically on or before September 8, 2010 for bonds issued on ARRA projects with issue dates on or after August 28, 2009. The bond issue date is the date of the bond. It is not the date the DBE paid for the bond. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications. Bonding premiums and fees incurred by the DBE prior to this notice are not eligible for reimbursement under the DBE ARRA BAP.

11. What other General Requirements apply to the DOT DBE ARRA Bonding Program?

Answer:

- Civil Rights Act of 1964, as amended (42 U.S.C. 2000d). Compliance with civil rights statutes is required, including compliance with equity in service.
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act (ADA) requirements in 49 CFR parts 27, 37, and 38.
- A DBE must execute a Certificate Regarding Lobbying in compliance with 49 CFR Part 20
- An application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98

Refer to question number 18 for examples of the certifications required to be submitted with the application package.

12. How do I seek reimbursement for the bond premiums and fees I paid to acquire bonding for contracts on transportation-related projects receiving US Department of Transportation ARRA funding?

Answer:

- The contractor will select an approved surety company listed in Department of the Treasury's Listing of Approved Sureties (Department Circular 570) and establish a business relationship.
- The contractor will submit a bond application to the local bond producer or agent of the surety company in accordance with the surety company's requirements.
- Links to Surety companies can be found at: www.nasbp.org; sio@sio.org; and www.surety.org
- Upon approval, the DBE will pay all required bonding premiums.
- The DBE does not submit the cost of fees with their first invoice from the prime contractor
- The DBE will then be required to submit an Application for Reimbursement of Surety Bond Fees to DOT. The DBE will be required to submit the following information on the form:
 - (1) Legal name and address of the company
 - (2) Federal Tax ID Number
 - (3) Dun & Bradstreet Number (DUNS)
 - (4) Affirmation that the DBR is registered in central contractor registration (ccr.gov), inclusive of banking information
 - (5) Surety bond information
 - Bond number
 - Date of issue
 - Name of surety company
 - Type of bond
 - Bond amount
 - Total surety bond premium fees for which the DBE is seeking reimbursement
 - (6) Transportation-related contract information
 - Contract Awarder (Agency/Prime/Subcontractor)
 - Contract number
 - Federal project number AND Name
 - Contract amount
 - Contract start date
 - Contract estimated completion date

- (7) DBE certification information
 - Certification that the applicant is a DBE and the contract being bonded is a transportation-related contract
 - Name of the certifying entity
 - State of certification
 - Certification expiration/renewal date
 - The most current annual affidavit date. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
 - (8) Signatures and contact information, and a signature confirming that the DBE has not sought reimbursement for the surety bond fees for which they are seeking reimbursement from DOT, nor will the DBE seek additional reimbursements in the event they receive reimbursement from DOT. The DBE is also providing consent for DOT to contact the agency/prime/subcontractor to confirm non-reimbursement of the surety bond premium fees.
- The DBE will be required to submit the following documentation with the application:
 - (1) A copy of the bond
 - (2) A copy of the contract. The DBE may be required to submit only selected pages of the contract and the signature page. The DBE should contact OSDBU for further guidance.
 - (3) DBE certification letter from the DBE certification office in their state
 - (4) Current annual affidavit. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
 - (5) Regardless of whether the DBE is a prime contractor or a subcontractor, a letter from the federal, state or local transportation authority, on their letterhead, indicating the DBE is a prime contractor or a subcontractor and the federal project number. In the event the DBE is already in possession of other documentation from the federal, state or local transportation authority indicating the FEDERAL project number, for instance, a subcontractor form, that documentation may be submitted in lieu of the letter.
 - (6) A copy of their invoice(s) from the surety company and if applicable, SBA and cancelled checks or other proof of payment of the bond fees in support of the total amount claimed for reimbursement.
 - The Application for Reimbursement of Bond Fees and application instructions is located at <http://www.dot.gov/recovery/ost/>

13. How do I submit my application for reimbursement of bond fees?

Answer: The Application for Reimbursement of Bond Fees and application instructions is located at <http://www.dot.gov/recovery/ost/>. You can apply for reimbursement by email or by mail. Use only one method per application. Applications must be **received** on or before September 8, 2010. Regardless, the applicant is advised to request delivery confirmation for mail submissions or return receipt for email submissions. Awards will be made in the order of application receipt until funding is fully expended or the program closes on September 8, 2010. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications.

- Applications may be submitted to OSDBU electronically via email. Scan your signed application and all supporting documentation to a .pdf document and email to bap.arra@dot.gov .
- Mail your signed application and all supporting documentation to the following address:
U.S. Department of Transportation (DOT)
Office of Small and Disadvantaged Business Utilization (OSDBU)
1200 New Jersey Ave., SE, W56-448
Washington, DC 20590
- Applicants are strongly encouraged to submit their application packages electronically. Applications submitted by mail may be delayed due to mail screening security requirements. For faster reimbursement, submit your application electronically by email.

14. Where do I get my application for the Disadvantaged Business Enterprise Bonding Assistance Reimbursable Fee Program?

Answer: The Application for Reimbursement of Bond Fees and application instructions is located at <http://www.dot.gov/recovery/ost/>

15. What must my submitted application package contain and how must it be assembled?

Answer: Submitted Applications must contain:

- A completed and signed application
- Supporting Documentation outlined in number 12
- Certificate Regarding Lobbying in compliance with 49 CFR Part 20
- Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98.

Assembled in the following order:

- A completed and signed application
- A copy of the bond
- A copy of the contract
- DBE certification letter from the DBE certification office in their state and a current annual affidavit. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
- Whether the DBE is a prime contractor or a subcontractor, a letter from the federal, state or local transportation authority, on their letterhead, indicating the DBE is a prime contractor and the federal project number. In the event the DBE is already in possession of other documentation from the federal, state or local transportation authority indicating the federal project number, that documentation may be submitted in lieu of the letter.
- A copy of their invoice(s) from the surety company and if applicable, SBA and cancelled checks or other proof of payment of the bond fees in support of the total amount claimed for reimbursement.
- Certificate Regarding Lobbying in compliance with 49 CFR Part 20
- Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98

16. How is my application approved and how do I receive payment?

Answer: The US Department of Transportation (DOT), Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) will review submitted applications in the order of receipt. Applications will be reviewed for eligibility and completeness. Applications that are incomplete or contain inaccurate information will not be considered for approval, will lose their place in line, and required to be resubmitted in whole for further consideration for approval. OSDBU will verify supporting documentation and the DBE's registration status on www.ccr.gov. OSDBU cannot review the DBE's bank information in their profile on www.ccr.gov. However, the DBE's payment information in DOT's financial system will be populated from the DBE's profile on www.ccr.gov. OSDBU will notify the applicant in the event of approval or disapproval of an application. The Director or OSDBU or his designee will provide signatory approval on applications approved for cost reimbursement. OSDBU intends to approve complete application packages in five (5) business days or less. DOT intends to expedite payment of approved applications. The DBE should expect to see payment in their bank account within three (3) business days of notification of approval. Payment will not be made for approved applications until the DBE's bank information is completed in their registration profile on www.ccr.gov.

17. Are there any reporting requirements that I must comply with?

Answer: Reporting requirements for recipients of bonding premium(s) and fee(s) under the Disadvantaged Business Enterprise (DBE) Bonding Assistance Reimbursable Fee Program (DBE ARRA BAO) are covered in Section 1512 of the ARRA. Section 1512 requires "any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual," is to provide regular "Recipient Reports.". All DBEs receiving reimbursement of bonding premiums and fees are required to submit recipient reports under the DBE ARRA BAP on a per bond basis. Upon notification of approval, the US Department of Transportation (DOT), Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) will provide a reporting template and specific instructions to the DBE to submit on <http://www.federalreporting.gov>. To be eligible for the DBE ARRA BAP, the DBE must already be subject to Section 1512 recipient reporting. The DBE will be reporting \$0 spending on a non-project and no jobs created and/or retained pertaining to the DBE ARRA BAP. The DBE must report actual recipient information to the DOT mode of transportation funding the ARRA project for which the DBE was awarded a contract.

18. Is the reimbursement for bonding fees taxable?

Answer: The proceeds of the reimbursement to the DBE should be included in taxable income. However, the premiums and fees paid by the DBE to the surety company or SBA for which they received reimbursement should be included as a deduction. Net taxable income from this transaction is \$0. The US Department of Transportation (DOT), Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) is not a substitute for the U.S. Internal Revenue Service or qualified tax preparers. In doubt, the DBE should pose this question to the appropriate income tax professional.

19. Is there additional documentation that I must submit with my application package above what is specified in question number 12?

Answer: Yes. The following documents are required for your signature.

**CERTIFICATION REGARDING LOBBYING
FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 21, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Organization: _____

Address: _____

City: _____

State: _____ Zip Code: _____

(Signature of Authorized Official)

(Title of Authorized Official)

(Date)

**CERTIFICATION OF COMPLIANCE WITH PROVISIONS OF THE DAVIS-BACON
ACT (40 U.S.C. 3141 - 3148)**

CERTIFICATION STATEMENT: I certify that _____ has obtained the latest prevailing wage rates from the U.S. Department of Labor for the State and have incorporated them into the construction contract in compliance with the Davis-Bacon Act.

SIGNATURE

DATE

PRINTED NAME

TITLE

Certification Regarding Debarment, Suspension

This certification is required the Office of Budget and Management (OMB) Circular No. A-129, Revised, Policies for Federal Credit Programs and Non-Tax Receivables.

The participant certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible from participation in a Government contract or delinquent on a Government debt.

Business Name: _____

Date: _____ By: _____
Participant

Signature of Authorized Representative

20. Where can I receive assistance with the preparation of my application package?

Answer: Technical assistance pertaining to the DBE ARRA BAP is available from OSDBU headquarters, S-40, 1200 New Jersey Avenue SE Washington, DC 20590 1-800-532-1169 or through the regional DOT Small Business Transportation Resource Centers (SBTRC).

Small Business Transportation Resource Centers (SBTRCs):

<p>Northeast Region: New York, Headquarters New Jersey Massachusetts Connecticut Rhode Island Maine New Hampshire Vermont</p>	<p>Contact: LaGuardia Community College Elizabeth Perdomo Project Director, SBTRC LaGuardia Community College 29-10 Thompson Avenue, 9th Floor Long Island City, NY 11101 Telephone: (718) 482-5941 FAX: (718) 609-2036 Email: eperdomo@lagcc.cuny.edu</p>
<p>Mid Atlantic Region: Pennsylvania, Headquarters Maryland Ohio District of Columbia Delaware</p>	<p>Contact: Greater Philadelphia Minority Business Strategic Alliance Tiffany L. King Project Director 105 N. 22nd Street Philadelphia, Pennsylvania 19103 Telephone: (215) 399-0062 Fax: (215) 399-0063 Email: tking@gpmba.com</p>
<p>Mid South Atlantic Region: Georgia, Headquarters Tennessee South Carolina</p>	<p>Contact: Greater Atlanta Economic Alliance Gwen Coleman Winston Project Director, SBTRC 230 Peachtree Street, NW Suite 530 Atlanta, GA 30303 Ph: (336) 256-2111 Fax: (336) 334-7093 Email: gcjones@ncat.edu</p>

<p>South Atlantic Region: North Carolina, Headquarters Virginia West Virginia Kentucky</p>	<p>Contact: North Carolina Agricultural and Technical (NC A&T) State University George C. Jones, Jr. Project Director, SBTRC Rm 312-G Craig Hall The Transportation Institute NC A&T State University 1601 E. Market Street Greensboro, NC 27411 Ph: (336) 256-2111 Fax: (336) 334-7093 Email: gcjones@ncat.edu</p>
<p>Southeast Region: Florida, Headquarters Alabama Mississippi Puerto Rico US Virgin Islands</p>	<p>Contact: Miami Dade College Adrianna Clark Project Director, SBTRC Miami Dade College, Homestead 500 College Terrace, Office B230 Homestead, FL 33160 Telephone: (305) 237-5115 Fax (305) 237-5108 Email: aclark1@mdc.edu</p>
<p>Gulf Region: Texas, Headquarters Louisiana Oklahoma New Mexico Arkansas</p>	<p>Contact: Greater Dallas Hispanic Chamber of Commerce Yolanda Tafoya Diana L. Flores Project Director, SBTRC 4622 Maple Ave., #207 Dallas, Texas 75219-1101 Telephone: (214) 523-3432 Fax: (214) 520-1687 Email: diana@gdhcc.com</p>
<p>Great Lakes Region: Illinois, Headquarters Indiana Michigan Ohio Wisconsin</p>	<p>Contact: Hispanic American Construction Industry Association Jackie Gomez Project Director, SBTRC 901 W. Jackson Blvd., Suite 205 Chicago, Illinois 60607 Telephone: (312) 666-6070, ext 22 Fax: (312) 666-5692 Email: jgomez@haciaworks.org</p>

<p>Central Region: Missouri, Headquarters Colorado Minnesota Iowa Kansas Nebraska South Dakota North Dakota Wyoming</p>	<p>Contact: University of Missouri-Columbia Rhonda K. Wilson Project Director, SBTRC W1026 Lafferre Hall 400 South 6th Street Columbia, Missouri 65211 Phone: (816) 294-9803 Fax: (573) 882-9931 Email: wilsonrh@missouri.edu</p>
<p>Southwest Region: California, Headquarters Arizona Utah Nevada Hawaii</p>	<p>Contact: California Asian Pacific Chamber of Commerce Aaron Chong Project Director, SBTRC 2012 H Street, Suite 202 Sacramento, CA 95811 Phone: (916) 446-7883 Toll Free: 1-866-928-6289 x9 Fax: (916) 446-7098 Email: achong@calasiancc.org</p>
<p>Northwest Region: Washington, Headquarters Oregon Alaska Idaho Montana</p>	<p>Contact: Economic Development Council of Snohomish County Lily Keeffe Project Director, SBTRC 728 134th St., SW, Ste 128 Everett, WA 98204 Telephone: (206) 718-7250 Fax (425) 745-5563 Email: lkeeffe@snoedc.org</p>