



WASCITO

CIVIL RIGHTS TRAINING SYMPOSIUM | AUSTIN 2019

A photograph of the Austin skyline at sunset, with buildings reflected in a body of water. The sky is a mix of purple, blue, and orange. A bridge is visible in the foreground on the left.

DBE Best Practices – Alternative Contracting Methods (ACM) Projects

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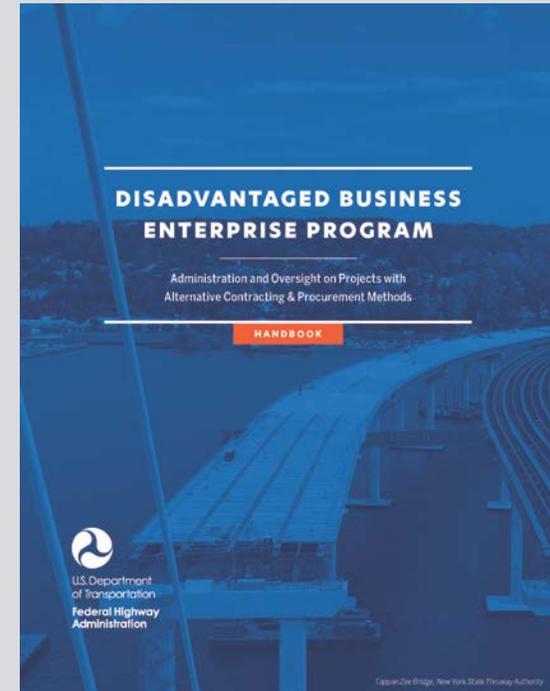


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DBE Program Administration and Oversight

DBE Administration and Oversight on Projects with Alternative Contracting & Procurement Methods Handbook

- Background
 - Summary tables
 - Links to key terms
 - Project information
- Pre-Award
 - Goal setting
 - Contract documents
 - Outreach/Education
- Post Award
 - Monitoring
 - Reporting
 - Outreach
- Final Acceptance
 - Documentation



How to Determine DBE Goal

Involving civil rights practitioners early in the goal setting process is key.

Involve	Consider
Civil rights practitioners	Subcontracting opportunities
Input from all stakeholders	Availability of DBEs
Project Engineers	Market area (may not just be in geographic boundaries of State)

Same considerations as setting any goal!

ACM DBE Goal Setting – Best Practices

- For Design-Build – One goal or two?
- P3 Projects - Design-Build-Finance-Operate-Maintain
 - DBE goal for D-B
 - Work with FHWA Finance Office to determine if federal funding in O&M - set goals on the items of work that are eligible
- Document your goal setting process and make it available
- Use credible data
- Goal setting process must be repeatable, transparent and defensible
- Do not be influenced by political pressure
- Include input from civil rights practitioners, stakeholders, project engineers and construction specialists

ACM/Design Build – Commitment to the Goal

- Design-build - minimal plans
- Lack of design details, quantities, scheduling at time of award
- Conditions of 49 CFR 26.53(b) cannot be met – names of DBEs, description of work, dollar amount of contracts
- List of work items or type of work with DBE opportunity – estimate total value of work type – if commitment is to goal it should add up
- As project is designed, anticipated commitments become actual commitment to a DBE as subcontracts are made available

DBE Performance Plan (DBEPP)

Details the proposer's commitment to the DBE goal and program requirements

- The Performance Plan must have enough detail
- Details must be described in the Request For Proposal (RFP)
- The DBEPP must be approved by the project sponsor
- BEST PRACTICE - required as part of proposal
- Provides a “roadmap” of how proposer will achieve the goal
- Monitoring DBEPP continues through life of project

DBEPP – Successful Monitoring Practices

- Continual monitoring of Good Faith Efforts
- Tracking anticipated commitments → actual commitment
- Requires anticipated work items (and dollars) for Disadvantaged Business Enterprise (DBE) solicitation to meet the goal
- Design-Builder has qualified DBE Team
- Monthly progress meetings with State DOT/FHWA (the right people at the table)
- Flexibility: If DBE is not awarded subcontract for anticipated work type, find another opportunity

Contract Documents: Request for Qualifications (RFQ)

The Request For Qualifications (RFQ) is the first phase of the Design-Build selection process whereby the owner lists proposer's minimum qualifications.

- Filters to a “short list” of qualified proposers
- May notify proposers
 - Project will include Disadvantaged Business Enterprise (DBE) goal (No State/local Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) goals!!)
 - DBE Performance Plan will be required
 - Link to DBE directory to begin planning commitment to goal
- Can also ask for proposers past history of DBE compliance

Contract Documents: Request for Proposals (RFP)

The Request For Proposals is the second part of the Design-Build selection process whereby the owner describes the project parameters and specifications in detail.

- Most successful projects had RFP that:
 - Involved civil rights staff in developing RFP
 - Provided details of DBE requirements/expectations of staffing and oversight
 - Scored DBE performance plan (No additional points for exceeding goal!)
 - Required proposer to certify they were aware of the goal and DBE requirements
 - Required proposer to schedule outreach events throughout project for DBEs and potential DBEs
 - Required experienced DBE oversight staff and listed as “Key Personnel”
 - Details of monitoring, data collection, analysis and sanctions

Outreach

Outreach is effective when it results in DBE participation—the owner should set performance metrics to document and evaluate the value of the efforts.

- Early involvement
- Partnership
- Visible leadership
- Transparent goal setting
- Targeted outreach to DBEs to meet the goal objective
- Leverage resources – DBE Supportive Services

Monitoring: Commercially Useful Function (CUF)

The CUF determination indicates that the DBE is performing with its own forces the work that it is certified and was contracted to perform.

- Early CUF recommended
- Know when DBEs are working
- Request “Look Ahead Schedule” in RFP
- CUF final approval from public agency
- May need additional resources
- CUF of Professional Engineering firms – same process
- Use Skype, internet, other resources

Monitoring: Prompt Payment/Return of Retainage

Lack of timely payments/return of retainage affects the growth and capacity of small businesses and threatens the future health of the industry.

- Federal requirement that all sub-firms are paid no later than 30 days after the upper-tier firm has been paid
- Oversight agency must have mechanism to monitor
- Applies to all subcontractors, including DBEs
- Make sure electronic data system can monitor tiering
- Financial structure of the ACM may not pay prime regularly
- Address in RFP when payments will be due to lower tiers, even when prime is not paid

Major Takeaways in ACM Projects

Successful DBE Program in a ACM Project includes:

- Early communication of DBE requirements in pre-award
- Well documented goal setting process – for D-B and Possibly O&M (for P3)
- Requiring DBE Performance Plan at time of proposal submittal
- After award, continual monitoring of Good Faith Efforts towards the commitment
- Detailed DBE oversight plans Post Award– CUF, Prompt Payment, Crediting,
- Frequent meetings with partners to evaluate progress towards goal achievement and resolution of issues

ACM Project Commitment to DBE Participation



North Tarrant Express
Seg 1 & 2W*- Texas



LBJ Express *- Texas



North Tarrant Express – 35W
Seg 3A- Texas



SH 99 Seg. H & I
Grand Parkway *- Texas

Project	ACM	DBE Goal (s) (Prof Svcs/Const)	DBE Achievement	DBE Participation Amount	DBE Contracts	# of Firms (Prof Svcs/Const)	Project Completion?
North Tarrant Express Seg 1 & 2W*- Fort Worth	P3	12.12%/ 12.12% DBE	21%*	\$217,000,000	193	52-77 (129) DBE	Completed
LBJ Express* - Dallas	P3	12.12%/ 12.12% DBE	20%*	\$290,388,200.02	222	40-96 (136) DBE	Completed
North Tarrant Express Seg 3A – Fort Worth	P3	6% DBE	10.7% (Committed to Date)	\$100,000,000	109	83 DBE	Closeout
SH 99- Grand Parkway- Houston	DB	10% DBE	5.1% (Committed to Date)	\$47,400,000	44	35 DBE	Ongoing

ACM Project Commitment to DBE Participation



95 Express Lanes- Virginia



495 Express Lanes - Virginia



Transform 66 (Outside the Beltway) - Virginia

Project	DBE Goal (s)	DBE Achievement	DBE Participation Amount	DBE Contracts	# of Firms (Prof Svcs/Const)	Project Completion?
95 Express Lanes- Virginia	10% DBE	15.68%*	\$102,749,444.49	59	48 DBE	Completed
495 Express Lanes - Virginia	15% DBE	16.46%*	\$221,591,202.23	216	140 DBE	Completed
Transform 66 (Outside the Beltway)	15% DBE	7.05%*	\$107,075,350.17	78	72 DBE	Ongoing

FHWA DBE/ACM Handbook

https://www.fhwa.dot.gov/civilrights/DBEandACM_Handbook/

