



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

Subject: **SBE MEMORANDUM NO. 24-02**
Policies and Procedures
Related to Disadvantaged **Effective: January 2, 2025**
Business Enterprise
Participation **Expires: Indefinite**

PURPOSE: This memorandum is intended to provide guidance regarding Department policies and procedures for the administration of the Disadvantaged Business Enterprise (DBE) Program and achievement of DBE Participation goals on all contracts awarded by the Department, as well as all contracts awarded by local authorities, which include federal funding. Because all contracts with federal funding are subject to the requirements of the DBE regulations, the Bureau of Small Business Enterprises (SBE) seeks to establish a broad policy for implementing those requirements, applicable throughout IDOT.

BACKGROUND: The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts as set forth in the federal regulatory provisions of 49 CFR Part 26. Part 26 establishes the federal DBE Program, which governs recipients' programs for ensuring diversity in contracting paid for with Federal aid funds and includes additional requirements related to monitoring, data reporting and prompt payment of all subcontractors. The requirements of Part 26 apply to **all** contracts with federal funding, whether for construction or consulting services, for state or local letting, and with or without DBE goals.

1. OVERALL GOAL SET FOR THE DEPARTMENT

As a requirement of compliance with 49 CFR Part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal applies to all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a good faith effort to achieve the overall goal. The dollar amount paid to all certified DBE companies performing work in all contracts with federal funding is eligible to be credited toward fulfillment of the Department's overall goal.

2. STATE OBLIGATION.

The Disadvantaged Business Enterprise Participation (DBE) Special Provision and this Policy Memorandum will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. When DBE policies are used to satisfy state law requirements on 100 percent state-funded contracts, the federal government is not involved in such contracts (not a federal-aid contract) and has no responsibility to oversee the implementation of the DBE requirements by the Department on those contracts. DBE participation on 100 percent state-funded contracts will not be credited toward fulfilling the Department's annual overall DBE goal required by the US Department of Transportation to comply with the federal DBE program requirements.

3. DBE PARTICIPATION AND BIDDING

Compliance with the Disadvantaged Business Enterprise Participation (BDE) Special Provision is a material bidding requirement. In evaluating the Utilization Plans required under the Special Provision, SBE may, in its discretion, request from a bidder the correction of a technical or clerical error observed within the Utilization Plan and

accompanying documents. Technical or clerical errors may include such things as typographical errors, missing contact information, calculation, or arithmetic errors. Missing or incorrect information regarding details of the DBE participation or failure to verify that a DBE is certified to do work in appropriate work categories are not considered technical or clerical errors that may be corrected after bid submission. Failure to submit all required forms and information may render a bid non-responsive. A bid deemed non-responsive for failure to provide complete Utilization Plan information or documentation does not constitute a finding by the Department that the bidder failed to make a good faith effort to obtain DBE participation in accordance with the provisions of Part 26, and is not subject to the good faith effort reconsideration process set forth herein.

4. GOOD FAITH EFFORT RECONSIDERATION PROCEDURE

If SBE determines that a bidder has failed to make a good faith effort to obtain sufficient DBE Participation to meet the established DBE goal for the contract, the bidder will be notified of the right to request reconsideration of that determination.

- (a) The bidder may request administrative reconsideration of a determination that it has not met the requirements of the Disadvantaged Business Enterprise Participation (BDE) Special Provision and 49 CFR 26.53, by emailing the Department at "DOT.DB.E.UP@illinois.gov" within the five calendar days after the receipt of the notification of the determination. The determination shall become final if a request is not made on or before the fifth calendar day. A request may include additional written documentation or argument concerning whether the bidder met the goal or made good faith efforts, **provided the documentation and arguments address efforts made prior to submitting the bid.**
- (b) The request will be reviewed by the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet to discuss the issue of whether the bidder met the goal or made a good faith effort to do so.
- (c) After the review by the Reconsideration Officer, the bidder will be sent a written decision, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. Upon a final decision by the Reconsideration Officer that a good faith effort was made, the Utilization Plan shall be approved as submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid non-responsive and is not administratively appealable to USDOT.

5. CALCULATING GOAL CREDIT

The Department, in evaluating Utilization Plans for approval and award of contract, and for evaluating contract compliance with DBE commitments, will apply and count DBE goal credit for various types of work and work arrangements as follows:

- (a) DBE as the Contractor: 100 percent goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE does not count toward the DBE goals. If the DBE bidder plans to subcontract a portion of the work to another DBE firm, the bidder must submit an SBE 2025 Participation Statement for each other DBE firm to perform work on the contract to be counted toward the contract goal, and must comply with all of the same bidding procedures and requirements in relation to the DBE subcontractor as any non-DBE bidder.
- (b) DBE as a joint venture Contractor: 100 percent goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.

- (c) DBE as a subcontractor: 100 percent goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by a DBE subcontractor from the Contractor or its affiliates or by a 2nd Tier DBE Subcontractor from the First Tier DBE subcontractor. Work that a DBE subcontractor in turn subcontracts to a non-DBE does not count toward the DBE goal.
- (d) DBE as a trucker: 100 percent goal credit for trucking participation, provided the DBE firm manages and supervises the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed, and insured by the DBE must be used on the contract. Credit will be given as follows:
- (i) The Weekly Trucking Report (SBE 723) must be submitted for any DBE trucking on the project, whether or not included in the Utilization Plan for goal credit. The Weekly DBE Trucking Report (SBE 723) must be submitted to the Engineer and no goal credit will be counted for any trucking that is not properly reported and submitted on SBE 723. Weekly DBE Trucking Reports are only required for weeks when DBE trucking occurred.
 - (ii) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (ii) The DBE may also lease trucks from a non-DBE firm, including from an owner/operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
 - (iii) No goal credit may be counted for trucking participation if the Utilization Plan does not include form SBE 2023 (DBE Participation Statement - Trucking) completed and executed at the time of bidding.
- (e) DBE as a material supplier:
- (i) Goal credit for expenditures with DBEs for materials or supplies will be calculated as follows, per 49 CFR 26.55:
 - (1) 100 percent goal credit for the cost of materials of supplies obtained from a DBE manufacturer. As defined in 49 CFR 26.55(e)(1), to be a manufacturer for DBE purposes, the firm must own or lease and operate a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract; manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications.
 - (2) 60 percent goal credit for the cost of the materials or supplies purchased from a DBE regular dealer. As defined in 49 CFR 26.55(e)(1), a regular dealer is a firm that owns or leases and operates a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. **To receive 60 percent credit as a regular dealer,**

all or at least 51 percent of the items under a purchase order or subcontract must be provided from the DBE regular dealer's inventory. A DBE may be a regular dealer in bulk items such as petroleum products, steel, concrete or concrete products, gravel, stone or asphalt or in items that are not typically stocked due to their unique characteristics (e.g., limited shelf life, or items ordered to specifications) without owning or operating a store, warehouse or other establishment if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of the bulk item regular dealer DBE's own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis. Packers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers.

(3) 40 percent credit for the cost of materials or supplies purchased from a DBE distributor. As defined in 49 CFR 26.55(e)(1), a distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A distributor must assume responsibility for and demonstrate ownership of the items it purchases once they leave the point of origin and be liable for any loss or damage during transportation not covered by the carrier's insurance, as evidenced by the purchase order or a bill of lading indicating Free on Board at the point of origin, or similar terms that transfer responsibility of the items to the DBE distributor. If the distributor meets all the requirements set forth in 49 CFR 26.55(e)(1) and herein, the contractor may receive 40 percent goal credit for items drop-shipped by the distributor. A distributor will not receive goal credit for drop-shipped items if the requirements of this Section are not satisfied. Terms that transfer liability to the distributor at the delivery destination or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(4) The cost of materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor as set forth herein does not count toward goal credit. In such cases, only the entire amount of reasonable fees or commissions, including transportation charges for the delivery of materials or supplies, will be counted toward achieving the DBE goal.

(ii) No goal credit may be counted for costs of materials or supplies from a regular dealer or distributor if the Utilization Plan does not include form SBE 2024 (DBE Participation Statement - Supplier) completed and executed by the DBE regular dealer or distributor. Bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

(iii) The bidder must verify that the DBE material supplier has the ability to provide the materials or supplies required by the contract in accordance with the requirements for that work category at the time of bidding.

(f) DBE mobilization: Mobilization may not be counted for DBE goal credit.

6. CONTRACT COMPLIANCE AND CHANGES TO UTILIZATION PLAN COMMITMENT

Any deviation from the DBE condition-of-award must be approved, in writing, by the Department in accordance with federal regulatory requirements and the following.

- (a) **CHANGES TO SCOPE.** Where a change or revision to the requirements of the project impacts the work to be performed by a DBE firm, as committed on the Utilization Plan, the following rules apply:
- (i) Where the revision results in a reduction in the dollar amount of the work committed to the DBE in the Utilization Plan, the Contractor shall notify affected DBEs and SBE in writing of the changes within five business days after the change is approved. The Contractor must continue to make good faith efforts to fulfill the contract goal. The Contractor must document its good faith efforts and shall provide such documentation to the Department.
 - (ii) Where the revision includes additional trucking or material supply provided by a new DBE firm, or where there is a commitment of additional work of a type not originally included in an existing DBE commitment, an SBE 2023, 2024 and/or 2025 and applicable documentation for the additional work must be signed and submitted for approval prior to the performance of the additional work.
 - (iii) Where the revision includes work committed to a new DBE firm, not previously involved in the project, or where there is a commitment of additional work of a type not originally included in an existing DBE commitment, a Request for Approval of Subcontractor, Department form BC 260A or AER 260A, must be signed and submitted for approval prior to the performance of the additional work.
 - (iv) No new BC 260A/AER 206A/SBE 2024/SBE 2023 is required if the change is limited to an increase in work already committed to the DBE under an existing subcontract or commitment. However, the Contractor must document efforts to assure the existing DBE firm is capable of performing the additional work and has agreed in writing to the change 10 days prior to performance of the additional work.
- (b) **ALTERNATIVE WORK METHODS.** In addition to the above requirements for reductions in the condition of award, additional requirements apply to the following Contractor initiated work substitution proposals: (1) where the contract allows alternate work methods which serve to delete or create underruns in condition of award DBE work, and the Contractor selects that alternate method or, (2) where the Contractor proposes a substitute work method or material that serves to diminish or delete work committed to a DBE and replace it with other work. In such cases, the Contractor must demonstrate one of the following:
- (i) The replacement work will be performed by the same DBE (if the DBE is certified in the respective item of work) in a modification of the work committed to the DBE in the Utilization Plan; or
 - (ii) The DBE is aware its work will be deleted or will experience underruns and has agreed in writing to the change. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so; or
 - (iii) The DBE is not capable of performing the replacement work or has declined to perform the work at a reasonable competitive price. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so.

All notice and documentation procedures set forth in subsection (a) shall be followed in the event of changes to DBE committed work due to Alternative Work Methods.

(c) **TERMINATION AND REPLACEMENT.** The Contractor must utilize the specific DBEs listed to perform the work and supply the materials and trucking services for which each DBE is listed in the Contractor's approved Utilization Plan, unless the contractor obtains the Department's prior written consent to terminate the DBE or any portion of its work. Any reduction to the work committed to the specified DBE firms in the approved Utilization Plan after contract award is considered termination and subject to the requirements of this Section.

(i) A termination includes any reduction or underrun in work the Contractor has committed to the DBE not caused by a material change to the prime contract by the Department. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE firm with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) Unless Department consent is provided for termination of a DBE firm or DBE work, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE as specified in the Utilization Plan. Failure to follow the procedures in this Section to request consent to any reduction in the work committed to DBEs in the approved Utilization Plan may result in deduction by the Department from contract payments to the Contractor in the amount of the goal not achieved as liquidated and ascertained damages.

(iii) Before transmitting to the Bureau of Small Business Enterprises any request to terminate and/or substitute a committed DBE firm or any portion of its work, the Contractor shall give notice in writing to the DBE firm, with a copy to the Bureau, of its intent to request to terminate and/or substitute, and the reason for the request.

(iv) The written notice to the DBE firm shall give the DBE five days to respond to the Contractor's notice. The notice must include the following language:

You have 5 days from the date of this correspondence in which to provide a written response to the undersigned contractor and to IDOT's Bureau of Small Business Enterprises advising of the reasons, if any, why you object to the proposed termination of its subcontract or portion thereof and why the Bureau should not approve the Contractor's request.

If required in a particular case as a matter of public necessity as determined by the Department, the Contractor may notify the DBE of a response period fewer than 5 days.

(v) Written consent will be granted only if the Department, by its Bureau of Small Business Enterprises agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate or replace the DBE firm. Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work to which the Contractor committed in the approved Utilization Plan so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE firm after award. For purposes of this paragraph, good cause includes the following circumstances:

(1) The committed DBE firm fails or refuses to execute a written contract;

- (2) The committed DBE firm fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
 - (3) The committed DBE firm fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
 - (4) The committed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (5) The committed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
 - (6) The Department has determined the committed DBE firm is not a responsible contractor;
 - (7) The committed DBE firm voluntarily withdraws from the projects and provides written notice to the Contractor of its withdrawal;
 - (8) The committed DBE firm is ineligible to receive DBE credit for the type of work required;
 - (9) A DBE owner dies or becomes disabled with the result that the committed DBE firm is unable to complete its work on the contract;
 - (10) Other documented good cause that compels the termination of the committed DBE firm.
- (vi) When a committed DBE firm or any portion of its work is terminated with Department consent, or if work committed to a DBE is reduced due to overestimations made prior to award, the Contractor shall use good faith efforts to find another DBE to substitute for the original DBE to perform at least the same amount of work under the contract as the terminated DBE to the extent needed to meet the established Contract goal. The good faith efforts shall be documented by the Contractor. If the Department requests documentation under this provision, the Contractor shall submit the documentation within seven days, which may be extended for an additional seven days, if necessary, at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether good faith efforts have been demonstrated, which determination shall not be subject to reconsideration or appeal.



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