
DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS
Demonstration of Good Faith Efforts

This contract is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. FHATA has established an overall goal for DBE participation of 1.16 percent. **The contract goal for this procurement is 2.5%.**

1. If applicable, provide a list of subcontractors, including their DBE status and estimated contract amounts using Forms 1 -3. A contractor must make efforts to invite DBE participation and must document those efforts. A list of qualified Kansas DBE businesses may be found at <https://kdotapp.ksdot.org/dbecontractorlist/>.
2. **Non-discrimination** - The contractor shall not discriminate on the basis of race, color national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this FTA-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as FHATA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph. See 49 CFR 26.13(b).
3. **DBE Certification** - FHATA will only recognize firms that are certified as DBE's under the DOT guidelines found in 49 CFR Part 26 and must be certified with the Kansas Department of Transportation (KDOT). The KDOT list of certified firms may be found at <https://kdotapp.ksdot.org/dbecontractorlist/>. Firms not certified by KDOT will not be considered.
4. **DBE Participation Credit** - DBE firms may participate as Prime Contractors, Subcontractors or Suppliers.
The following shall be credited towards achieving the goals, except as provided herein:
 - a) The total contract dollar amount that a qualified DBE Prime Contractor earns for that portion of work on the contract that is performed by its own workforce, is performed in a category in which the DBE is currently certified and is a commercially useful function as defined by the Program. DBE Prime Contractors must perform thirty percent (30%) of the contract value.
 - b) The total contract dollar amount that a Prime Contractor has paid or is obligated to pay to a subcontractor that is a qualified DBE; and
 - c) Subcontractor participation with a lower tier DBE subcontractor; and
 - d) Sixty percent (60%) of the total dollar amount paid or to be paid by a Prime Contractor to obtain supplies or goods from a supplier who is not a manufacturer and who is a qualified DBE. If the DBE is a manufacturer of the supplies, then one hundred percent (100%) may be credited, to be determined on a case-by-case basis.
 - e) **NO CREDIT**, however, will be given for the following:
 - i. Participation in a contract by a DBE that does not perform a commercially useful function as defined by the Program; and
 - ii. Any portion of the value of the contract that a DBE Subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified DBE; and

- a. Materials and supplies used on the contract unless the DBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
- b. Work performed by a DBE in a scope of work other than that in which the DBE is currently certified.

5. Documents Due at Bid Closing:

- a) **Schedule of Participation by Contractor and Subcontractors** - This form is to be completed and should include all subcontractors scheduled to perform on the project. The first section, "Prime Contractor," is the amount of work the Prime will be performing. List all DBE and non-DBE subcontractors in the second section. The "DBE % Participation" is the amount of work each DBE (prime or sub) will perform compared to the total contract amount. If using DBE suppliers count 60% of their contract amount.
 - Total Value of Work: Total Bid/Proposal Amount
 - Total DBE Participation: Total amount of all work to be performed by DBEs (subs or primes)
 - Total DBE Percentage: Dollar amount of "Total DBE Participation" divided by "Total Value of Work"
- b) **Letter of Intent to Subcontract** - To be completed for each DBE firm on the project and signed by both the Prime and the DBE.
- c) **Contractor Utilization Plan/Request for Waiver** - This is a commitment that the Prime understands the DBE participation required on the project. In the event the Prime is not making a commitment to meet or exceed the established goal on the project, they must request a waiver and provide documentation that good faith efforts were expended to try to meet the goal. Good faith efforts are efforts that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goals can reasonably be expected to make.

FHATA treats bidders' compliance with good faith efforts requirements as a matter of responsiveness. Failure to meet the contracted DBE participation commitment without documented evidence of good faith efforts may result in termination of the contract. It is the bidder's responsibility to provide evidence demonstrate it has made sufficient good faith efforts prior to submission of its bid.

In evaluating good faith efforts, *FHATA* will consider whether the bidder has demonstrated sufficient good faith effort in accordance with 26.53(a) & (c) using the following process:

- *FHATA* will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts.
- *FHATA* will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.
- The determination concerning the sufficiency of the firm's good faith efforts is a judgment call: there is no quantitative formula.
- *FHATA* will ensure that all information is complete and accurate and adequately document the bidder's good faith efforts before they commit to the performance of the contract by the bidder.

Bid Submission: Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information with the bid/proposal submission:

- The names and addresses of DBE firms that will participate in the contract.
- A description of the work that each DBE will perform.
- The dollar amount of the participation of each DBE firm participating.

- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
- If the contract goal is not met, evidence of good faith efforts (see next section for examples).

Demonstration of Good Faith-Efforts may be documented using the following procedures:

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs.
 - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, include DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs.
- If a firm is certified in another state or with another department, they can find information [here](#) about applying for KDOT certification. Contractors can share this information to firms interested in becoming certified as part of their good faith effort in the bid process. Additional resources can also be obtained through Local Small Business Development Center at Washburn University. <https://washburnsmallbusiness.com/>

6. **Documents Due After Award:**

- a) FHATA reserves the right to review the Contractor's written agreement with its subcontractors (DBE and non-DBE) to confirm that required federal contract clauses are included. FHATA may perform random audits and contact minority subcontractors to confirm the reported participation.
- b) **Subcontractor Monthly Utilization Report** - Contractors will be required to submit this report with each pay application to FHATA. This report will include payments to ALL subcontractors – DBE and non- DBE. FHATA may require lien waivers from all subcontractors before reimbursement is made to the Contractor. FHATA may perform random audits and contact minority subcontractors to confirm the reported participation. Failure to meet the contracted goal without documented evidence of good faith effort may result in the termination of the contract.
- c) **Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation** - Contractor is responsible for meeting or exceeding the DBE commitment amounts listed on the *Schedule of Participation by Contractor and Subcontractors* form submitted as part of Contractor's Bid Documents and as amended by any previously approved Request for Modification/Substitution. Any Change Orders or amendment modifying the amount Contractor is to be compensated will impact the amount of compensation due to DBEs for purposes of meeting or exceeding the Bidder/Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution if the DBE commitment changes.
 - i. **Termination Only for Cause** - Once the contract has been awarded; Contractor may not terminate a DBE subcontractor without FHATA's prior written consent. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
 - ii. **Good Cause** - Good cause includes the following circumstances:
 - a. The listed DBE subcontractor fails or refuses to execute a written contract; or
 - b. The listed DBE subcontractor fails or refuses to perform the work of its normal industry standards. Provided, however, that the 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 Prime Contractor; or
 - c. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements; or
 - d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
 - e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or
 - f. The DBE subcontractor is not a responsible contractor; or
 - g. The listed DBE subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;
 - h. The listed DBE is ineligible to receive DBE credit for the type of work required;
 - i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - j. Other documented good cause that compels FHATA to terminate the DBE subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non- DBE contractor.
 - iii. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to FHATA, of its

- intent to request to terminate and/or substitute, and the reason for the request.
- iv. The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise the FHATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why FHATA should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.
 - d) DBE Job-Site Review Commercially Useful Function (CUF) Determination. FHATA will be conducting on-site interviews with all DBE contractors. The number of interviews will be based on the DBE's projected scope of work. FHATA staff will work closely with the Prime Contractor on the project schedule to determine when DBE subcontractors will be on the project.

For questions concerning FHATA's DBE Program or Vendor Registration/Affirmative Action Requirements please contact FHATA's DBE Liaison Officer at (785) 537-6345 or via email at dmcnelly@fhata.org.

F2. FORM: DISADVANTAGED BUSINESS ENTERPRISE (DBE) SCHEDULE OF PARTICIPATION

This contract is subject to requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Federal Transit Administration Assistance Programs*. This form is to be completed and should include all subcontractors scheduled to perform on the project. The "DBE % participation" is the amount of work each DBE (prime or sub) will perform compared to the total contract amount. If using DBE suppliers count 60% of their contract amount.

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract. Details of DBE participation are provided below.

_____ The bidder/offeror is unable to meet the DBE goal of _____% and has demonstrated Good faith effort, but is committed to a minimum of _____% DBE utilization on this contract. Details of DBE participation are provided below, and we have attached documentation of Good-faith efforts.

_____ The bidder/offeror is unable to meet the DBE goal of _____% and has demonstrated Good-faith effort, in which documentation is attached.

DBE Participation: (you may attach a separate sheet if more space is needed _____)

Bid Item / Description of Work to be Performed	Qualified DBE Firm Name (must attached certification)	Letter of Intent Included	DBE \$ participation	DBE %
	Total \$ DBE Participation (A)			
	Total \$ Value of Work (B)			
	Total DBE Percentage (A / B)			

Bidder / Offeror Name: _____

Name / Title: _____

Signature: _____ Date: _____

Form 2: Letter of Intent – DBE

Name of bidder/offeror's firm: _____ Bid No: _____

Address: _____

City: _____ State: _____ Zip: - _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: - _____

Contact Name: _____ Telephone / email: _____

DBE Certification Type: _____ Attached Certification: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and is a qualified DBE as certified by Kansas Department of Transportation.

By _____ (Signature)(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

GBE Factor Item 4: Describe the Bidder's efforts to solicit DBE quotes through advertisements. If published in paper, on website, etc please indicate dates and time period published *FHATA reserves the right to request proof of documentation of the attempt to solicit to aid in determination of adequate good faith efforts.* You may attach a spreadsheet if more space is needed, check here .

Name / Type of Publication	Dates of Publication

GBE Factor Item 5: Describe the Bidder's efforts made (if any) to assist interested DBE's in obtaining bonding, lines of credit, or insurance, necessary equipment, supplies, or to complete their certification through KDOT / State of Kansas and/or other assistance. *FHATA reserves the right to request proof of documentation of the attempt to solicit to aid in determination of adequate good faith efforts.* You may attach a spreadsheet if more space is needed, check here .

If no firms were identified, check here _____.

DBE Name	Assistance Requested	Date Assistance Provided

GBE Factor Item 6: List the names of agencies and the dates on which they were contacted to obtain assistance in contacting, recruiting, and using DBE firms. *FHATA reserves the right to request proof of documentation of the attempt to solicit to aid in determination of adequate good faith efforts.* You may attach a spreadsheet if more space is needed, check here .

Name of Agency	Date of Contact