

---

## CHAPTER 2: DISADVANTAGED BUSINESS ENTERPRISES

### 2.1 DISADVANTAGED BUSINESS ENTERPRISES OVERVIEW

#### 2.1.1 Purpose

The Florida Department of Transportation (FDOT) designed the Disadvantaged Business Enterprises (DBE) Program to assist small businesses owned and controlled by socially and economically disadvantaged individuals with participating on FDOT contracts. The objectives of the DBE Program are:

1. To ensure equal opportunity in the award and administration of FDOT contracts in FDOT's highway, transit, and airport construction programs;
2. To create a level playing field on which a DBE can compete fairly for FDOT contracts;
3. To ensure implementation is narrowly tailored in accordance with applicable law;
4. To ensure that only a firm that fully meets the eligibility standards is certified as a DBE;
5. To help remove barriers to a DBE's participation in FDOT contracts;
6. To assist in the development of firms that can compete successfully in the marketplace outside of the DBE program; and
7. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs

#### 2.1.2 Scope

FDOT's DBE Program encompasses both federal- and state-funded highway and bridge programs and all projects and contracts associated with these programs. The scope of this section includes all of the requirements associated with how the FDOT implements these federal regulations. The State of Florida's DBE program mirrors the requirements of the federal program, but it is analyzed and reported separately.

#### 2.1.3 Training

The Equal Opportunity Compliance (EOC) system's **Computer Based Training (CBT)** provides an overview of the EOC system and the reports available in the system. It demonstrates how to gain access to the system, how to prepare a subcontractor list and a bidder's opportunity list, and how to create contractual agreements for sub-contractors and sub-consultants. It also explains how to input DBE commitments and DBE payments. This training is intended for FDOT staff, prime contractors, prime consultants, and Local

---

Agency Program (LAP) Resident Compliance Specialists. The link for the CBT Training is located in **Section 1.4 Directory of Compliance Websites & Addresses**.

## 2.2 CERTIFICATION OF DBEs

### 2.2.1 General

The USDOT DBE regulations require state and local transportation agencies that receive federal assistance to establish a Unified Certification Program (UCP) that maintains goals and assistance for participation in the DBE program. The UCP provides “one stop shopping” for all firms seeking certification as a DBE in Florida.

Once a firm is certified as a DBE by a certifying member of the UCP, all agencies that receive USDOT assistance in Florida accept the certification. A certifying member is a recipient of funds from the USDOT who has a current DBE Program Plan approved by the appropriate USDOT operating administration that includes provisions for DBE certification in accordance with **49 C.F.R. 26 Subpart D and E** or **49 C.F.R. 23 Subpart C**.

Certification is done in accordance with **49 C.F.R. Parts 23 and 26**.

Businesses are certified as a DBE for specific types of work for which the business has the knowledge and resources to perform. Each DBE certification includes specific North American Industry Classification System (NAICS) Codes indicating the area(s) of work that FDOT may count toward DBE utilization. The areas a DBE is certified in can expand, as the business expands its expertise and ability.

FDOT can only report the participation of DBEs that are certified in FDOT’s DBE Directory. See **Section 2.5 and 2.6** for additional information on reporting requirements. If there are questions about a firm’s certification status, contact the certifying member. A list of certifying members is on the [FDOT Equal Opportunity Office \(EOO\) Website](#).

### 2.2.2 Florida UCP DBE Directory

FDOT maintains a single **DBE Directory** with a listing of the certified firms authorized to participate in Florida’s DBE program. The **DBE Directory** can be found on the [FDOT Equal Opportunity Office \(EOO\) Website](#).

## 2.3 DBE AFFIRMATIVE ACTION PLAN

### 2.3.1 General

FDOT requires a contractor to submit and maintain a record of a DBE Affirmative Action (AA) Plan to ensure that all subcontractors doing business with FDOT are not discriminating on the basis of race, color, religion, national origin, disability, sex, or age in the administration of contracts with the FDOT.

---

### **2.3.2 DBE Affirmative Action Policy and Plan (DBE AA Plan)**

A sample *DBE AA Policy and Plan Form 275-030-11B (as referenced by 7-24.1 of the Florida Standard Specification of Road and Bridge Construction)* is available on the [FDOT website](#). The contractor's DBE AA Plan must include, at a minimum, the information contained in the sample. FDOT will not approve a plan that does not meet the mandatory requirements outlined in the sample.

The contractor must include a DBE policy statement in the DBE AA Plan. The DBE policy statement must express the contractor's commitment to using DBEs in all aspects of contracting. The DBE policy statement must outline various levels of responsibility, and states the objectives of the program. The contractor's DBE AA Plan should be circulated throughout the contractor's organization and may be used as a marketing tool at minority, female, and non-minority community and business organizations.

### **2.3.3 DBE Liaison Officer**

The DBE AA Plan shall include identification of an appointed DBE Liaison Officer who will be responsible for maintaining and monitoring the implementation of the DBE AA Plan. The DBE Liaison Officer will be the main contact for FDOT for all issues related to the DBE Program and must be available to supply any documents requested by FDOT. The DBE AA Plan must state the duties of the DBE Liaison Officer.

### **2.3.4 Submission, Expiration, and Renewal of DBE AA Plan**

A contractor that bids on an FDOT contract must have an approved DBE AA Plan on file with EOO before execution of a contract. EOO must receive the DBE AA plan along with the contractor's bid or prior to the award of the contract.

FDOT approves a DBE AA Plan for a three-year period; the contractor must update the plan prior to expiration or when there is a change in the DBE Liaison Officer, or the contractor official who signs the plan or both.

The contractor should email a completed and signed DBE AA plan to:  
[EEOfirms@dot.state.fl.us](mailto:EEOfirms@dot.state.fl.us).

FDOT will review the plan, update FDOT records, and issue a notification of approval or disapproval. FDOT will not return a copy of the submitted plan to the contractor.

### **2.3.5 Review and Compliance with DBE AA Plan**

The DBE Special Provisions included in an executed contract states that the DBE AA Plan and commitment to carry out the plan is incorporated into and becomes a part of the awarded contract. FDOT deems a contractor's failure to abide by the commitment as noncompliance with the contract specifications and treats the noncompliance as a breach of the contract.

FDOT will monitor contractor compliance with DBE specifications in the contract and the contractor's implementation of the DBE AA Plan through formal reviews including

---

contract compliance reviews. The DBE AA Plan is not a requirement for a local agency project; however, a local agency must comply with **49 C.F.R. Part 26**.

A contractor with low DBE participation will be subject to a DBE assessment to ensure that discrimination is not the basis for the lack of DBE utilization on an FDOT project.

A contractor will make all records available to FDOT upon request.

## **2.4 BID OPPORTUNITY REPORTING**

### **2.4.1 General Information**

Federal regulations require FDOT to create and maintain a bidder's list. The purpose of the bidder's list is to provide data related to DBE and non-DBE contractors and subcontractors who seek to work on federally-assisted contracts. The bidder's list can also be influential in establishing an triennial DBE goal. A DBE goal reflects the level of DBE participation expected each year. FDOT uses a Bid Opportunity List to determine the number of ready, willing, and able DBEs relative to all ready, willing, and able businesses as the method to help determine FDOT's annual DBE goal.

### **2.4.2 Bid Opportunity Data and Submission**

All contractors bidding on construction, design-build contracts, or other types of contracts must provide information about the subcontractors that provided bids regardless of whether they were solicited or non-solicited. The information must contain the specific type of work for which the bid was requested or received.

All CONTRACTORS MUST enter their bid opportunity information in the Equal Opportunity Compliance (EOC) system within three business days of submission of the bid or proposal. The link to the EOC system is located in **Chapter 1 Section 1.4, Directory of Compliance Websites & Addresses**. For further information reference the DBE bid package information and *Form 275-030-11*. **Failure of bidders to enter Bid Opportunity List information is a violation of 49 C.F.R. 26.11 and grounds for compliance actions up to and including withholding of progress payments.**

**Note:** All unregistered primes submitting a bid will need to apply for an EOC user ID and password to gain access to the EOC system.

## **2.5 DBE PARTICIPATION COMMITMENTS**

### **2.5.1 Purpose**

A prime contractor must report to FDOT the names of DBEs, the type(s) of work or specialty code(s), and NAICS to be used, and the contract dollar amount of DBE subcontractors on specific contracts. FDOT reports this information to the Federal Highway Administration (FHWA). The report is the primary tracking mechanism for measuring FDOT's progress in achieving its annual DBE goal.

---

## 2.5.2 DBE Participation Commitments: Initial Submission and Revisions

Prime contractors on federal- and state-funded construction, design-build, and other types of contracts are required to report and maintain information about planned and actual utilization of DBEs and the progress payments made to the DBEs.

FDOT requires the prime contractor to enter anticipated DBE commitments into the EOC system prior to the Preconstruction or Pre-Work Conference. Contractors shall update the EOC System monthly for any changes in commitments.

Data entered includes:

- DBE's company name
- Specialty Code(s) and NAICS code(s) reflective of work performed
- Total contract amount

Only work performed in the respective NAICS code that a DBE is certified in may be counted as DBE utilization; work performed in any area in which a DBE is not certified will not be counted.

If the prime contractor is not using any DBE subcontractors on the project, FDOT requires the prime contractor to report this information in the EOC system by clicking the zero DBE Utilization button under the DBE commitments tab. A prime contractor who is a certified DBE must report the portion of the contract that will be performed directly by the prime contractor with their own workforce. The prime contractor should also report all DBE subcontractors that the prime DBE contractor anticipates using.

## 2.5.3 Counting a DBE's Participation

DBE Certification does not guarantee that FDOT will count the firm's work on a project towards FDOT's DBE goal. In order for services performed by a DBE to count toward the FDOT goal, the firm must perform a "Commercially Useful Function" (CUF) and its work must be in the NAICS code for which the DBE is certified. In determining the portion of DBE work on a project that will count toward the DBE goal refer to **Table 2.5.3.1**. This table is not an exhaustive list; FDOT may request additional information from the prime contractor and or DBE firm to determine the portions of work FDOT will count as DBE participation. See [FDOT Standard Specification 7-24.5](#) for additional information related to counting DBE participation and commercially useful function.

**Table 2.5.3.1**  
**Determining What Portion of a DBE's Work**  
**May be Counted Toward the Goal**

1.	The DBE firm is performing a CUF.
2.	The work is in the NAICS code for which the DBE is certified.
3.	The work is performed by the DBE's own workforce.
4.	Supplies and equipment purchased or leased by the DBE that are not affiliated with the prime contractor.
5.	The cost of supplies and materials obtained by the DBE for the work is counted including purchases and leased equipment.
6.	Reasonable fees or commissions charged by a DBE for providing a bona fide service, or for providing bonds or insurance required for performance of a FDOT contract may be counted. Examples of bona fide services include professional, technical, consultant, or managerial services.
7.	The work a DBE subcontracts to others is counted only if the work is subcontracted to another DBE. Work subcontracted to non-DBEs does not count.

## 2.6 REPORTING ACTUAL PAYMENTS

### 2.6.1 General

**Title 49 C.F.R. Part 26** requires FDOT to track actual payments and commitments to a DBE. [FDOT's Standard Specifications](#) require the reporting of payments to DBE and Minority Business Enterprise (MBE) subcontractors in the EOC system.

### 2.6.2 Payment Reporting

FDOT requires a prime contractor to report in the EOC system payments from each monthly estimate to each DBE and MBE for the work performed by the DBE in their certified area(s) and mark the final payment checkbox when the prime contract has made the final payment. **Failure of contractors to monthly enter DBE payments into EOC is a violation of 49 C.F.R. 26.11 and grounds for compliance action up to and including withholding of progress payments.**

Resident Compliance Specialists and local agency staff monitor payment reporting activity through the EOC system. Payment reporting is an element in determining the "prime contractor" past performance rating on internal FDOT construction contracts.

Only that portion of the payment associated with the performance of a CUF by a DBE performing work in the area(s) for which they are certified is to be reported. A prime contractor should not report the following payments:

- Work performed by the DBE in areas for which they are not certified
- Work subcontracted to non-DBEs

---

Payments submitted in the EOC system will be negatively offset if a CUF cannot be determined or if the DBE (excluding DBE trucking) does not self-perform a minimum of 30% of their contract. The prime contractor will enter a negative payment amount equal to the amount reported that is not counted for DBE credit.

## 2.7 MONITORING

### 2.7.1 General

A DBE performs a CUF when the DBE is responsible for execution of a distinct element of the work with the DBE's own workforce and the DBE carries out the DBE's responsibilities by actually performing, managing, and supervising the work involved. CUF monitoring reports must be completed, at a minimum, during a DBE's first three active months to determine if DBEs on federally funded contracts are performing a CUF.

FDOT may complete additional CUF monitoring reports or other special reviews on DBE prime contractors and DBE subcontractors. FDOT uses [FDOT Form 275-021-18 "Commercially Useful Function DBE Monitoring Report"](#) to record each observation and review.

### 2.7.2 District Responsibilities

The District Contract Compliance Manager has oversight of the RCS's and compliance procedures as well as monitoring within the District. The RCS must monitor the progress of the DBE's work and DBE participation. This effort is accomplished in conjunction with the Project Administrator and Inspector who have daily contact with the contractor and subcontractors, monitoring monthly payments, and payroll documents, interviews with DBE subcontractors, employees, and observations by the Project Administrator and Inspector. The RCS will be able to determine if the prime is utilizing an identified DBE and if the DBE subcontractor is providing a commercially useful function as required by the DBE Standard Specifications and Section 26.55 Code of Federal Regulations. The RCS will utilize **Form No. 275-021-18, Commercially Useful Function DBE Monitoring Report (CUF Report)**, to document this process. If problems are identified, the RCS should discuss the problems with the Resident Engineer and the DCCM.

The RCS is responsible for the following:

1. Ensuring that a **CUF Report** is completed once every month for each DBE within the first three active months. If a DBE subcontractor (excluding trucking companies) has not performed at least 30% of the total value of the contract at the end of the first three active months, a final CUF report must be conducted at the end of the project to assess performance.
2. Working in conjunction with the inspector or other qualified personnel to ensure that an observation of the DBE's work and workforce is completed.

3. Sending the completed **CUF Report** to the District Contract Compliance Manager and the Project Administrator for review and signature. Assisting the Project Administrator and/or DCCM with any follow-up research or additional reviews.
4. Verifying that all subcontractors reported into EOC as DBE Commitments are performing work in the area for which they have an active certification. If DBEs are performing work in an area they are not certified in, the prime contractor will not receive credit for DBE participation.
5. Ensuring that the **DBE Trucking Certification Form 275-030-14** is completed to assess performance for trucking companies. The DBE Trucking Certification should be completed monthly for every month that DBE trucking subcontractors are active on the project.
6. Ensuring Prompt Payment and Retainage Return for ALL Subcontractors. See Section 4.6.5.

The RCS will review FDOT's EOC System to determine if the contractor has supplied the required subcontractor payment data and report any discrepancies to the District Contract Compliance Office. The RCS should notify the prime contractor in writing if payments have not been posted. The District Contract Compliance Office will advise the DCE and the EOO of any contractor refusing to report subcontractor payments as required by the contract.

Contractors should be contacted for verification that the DBE commitment reported in EOC is accurate. Each District must review in EOC the final DBE commitments for the end of the Federal Fiscal Year by September 30<sup>th</sup> for inclusion in FDOT's annual report regarding DBE utilization on Federal and State funded highway construction contracts.

### **2.7.3 Counting the Value of Work**

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted as DBE participation.

Only the portion of a construction contract that is performed by the DBE's workforce is counted. Also included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

The entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a FDOT-assisted contract, can be counted toward a DBE goal if the fees are reasonable and not excessive when compared with fees customarily allowed for similar services.



---

### **2.7.4 Considerations in Determining Commercially Useful Function**

Expenditures to a DBE contractor can be counted toward DBE goals only if the DBE is performing a CUF on that contract. Considerations in determining CUFs include the following:

1. A DBE performs a CUF when the DBE is responsible for execution of the work and is actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a DBE is performing a CUF, FDOT must evaluate the amount of work subcontracted, industry practices, whether the amount the DBE is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

2. FDOT must presume a DBE is not performing a CUF if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to create the appearance of DBE participation. In determining whether a DBE is such an extra participant, FDOT must examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of the DBE's contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, FDOT must presume that the DBE is not performing a CUF. The 30% requirement does not apply to DBE trucking.
4. When a DBE is presumed not to be performing a CUF as stated in paragraphs 2 and 3, the DBE may present evidence to rebut this presumption. FDOT may determine that the DBE is performing a CUF given the type of work involved and normal industry practices.

### **2.7.5 DBEs Subcontracting Work to Others, Joint Ventures, and Use of Joint Checks**

When a DBE subcontracts part of the DBE's work to another firm, the value of the subcontracted work is counted only if the work is subcontracted to another DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, DBE credit will be counted only for work that is clearly defined in the contract that the DBE performs with the DBE's own workforce.

The following is FDOT's Joint Check provision as shown in the Standard Specifications 7-24.5(7) for FDOT's construction contracts:



---

Total non-DBE Dollars	\$9,130
DBE Commissions	\$1,010
Total DBE Dollars	\$1,920 (All DBE dollars)
Total non-DBE Dollars	\$1,920 (Non-DBE dollars permitted for matching)
Note: \$1,920 represents 21% of the OBE dollars, match cannot exceed DBE dollars ( $\$1,920 / \$9,130 = .21$ or 21 % )	
Total non-DBE Commissions	\$798 (Included for DBE credit)
Note: $\$1,010 \times .79$ or 79% =	\$798

Since 21% of the non-DBE transportation service was included in the match, 79% of the total fees and commission is counted for DBE credit, which replaces the need to count the number of trucks not used in the match.

DBE Credit Total	\$4,638
DBE Trucking Credit- this amount is the total which appears in the EOC system.	

### 2.7.7.1 DBE Trucking Certification

DBE utilization that includes off-site hauling requires the submission to the RCS of a contractual document (sublet, subcontract, rental agreement etc.) describing the scope of trucking operations and the commissions/fee rate to verify DBE utilization calculations. Project staff shall utilize the ***Trucker Observation & Verification Form 700-010-61*** to verify both the owner-operator and the DBE status of individual trucks.

FDOT requires prime contractors reporting commitments for DBE trucking to submit each month a [\*\*\*DBE Trucking Certification \(Form 275-030-14\)\*\*\*](#) reflecting actual trucking operations. The report is due beginning with the first month of the contract and ending with the last month of the contract; inactive months must be reported as such.

The DBE Trucking Certification, along with other records will provide a basis to confirm a CUF and the accurate calculation of DBE utilization as described in **Section 2.7.7**.

### 2.7.8 DBE Manufacturers and Suppliers

Considerations in determining if expenditures by a DBE for materials or supplies may be counted for DBE utilization include the following:

1. A manufacturer/fabricator produces merchandise for use or sale using labor and machines, tools, chemical and biological processing, or formulation. If the materials or supplies are obtained from a DBE manufacturer/fabricator, count 100% of the cost of the materials or supplies toward DBE participation.
2. A regular dealer is a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the [\*\*\*FDOT's Standard\*\*\*](#)

---

**Specifications** and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation.

- (a) To be a regular dealer, the DBE firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (b) A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.
- (c) Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealers.

### **2.7.9 Contractor Records for Commercially Useful Function Verification**

Project managers shall advise a contractor that the contractor is to maintain and make available to the FDOT when so requested, records substantiating the performance of a CUF by a DBE contractor and supplier as part of the contractor's compliance with **FDOT Standard Specification 3-8, "Audit of Contractor's Records"**. Contractor records which may be reviewed to substantiate CUF include, but are not limited to:

- Contracts, subcontracts, or rental agreements
- Delivery tickets
- Invoices
- Lease agreements
- Hauling tickets
- Contractor's daily trucking record
- FDOT DBE Trucking Certification
- DBE trucking certification
- Canceled checks
- Bank records
- Equipment titles of ownership
- Material/supply agreements
- Payroll records

FDOT records which will be reviewed to confirm CUF include but are not limited to:

- EOC commitments
- Daily reports and project photos

- EEO subcontractor payments
- Commercially useful function monitoring reports
- Trucker observation and verification
- FDOT DBE Trucking Certification
- DBE trucking certification
- EEO/labor interviews
- Payroll records

## NUMERICAL SEQUENCE

FDOT Form No.	Document Title	Manual Section
275-021-18	CUF DBE Monitoring Report	2.7
275-030-11	DBE Bid Package Information	2.0
275-030-11B	DBE Affirmative Action Plan	2.3
275-030-14	DBE Trucking Certification	2.7
700-010-61	Trucker Observation and Verification	2.7

- DBE Directory

In the assessment of a CUF, a district should request copies of invoices based on the following factors:

1. The DBE is a material supplier, manufacturer, or regular dealer on a project.
2. There is a concern that the DBE is not performing a CUF and invoices are needed for further verification.

## 2.8 DBE FORMS & DOCUMENTS

The forms and documents referenced in this chapter may be found on the [FDOT Website Form Library](#).