
CHAPTER 11

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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11.1 OVERVIEW

USDOT regulations at [49 CFR 26](#) require recipients of FAHP and other funding to participate in the DBE program. The program is intended to remedy past discrimination and remove barriers to competition among disadvantaged businesses in Federal-aid contracting. All LAs and their contractors and consultants must take steps to make sure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid, or other benefits.

11.1.1 Contract Assurances

Under **49 CFR 26.13**, LAs are required to have a signed policy statement expressing their commitment to DBE participation. An example is included in the comprehensive template in [Attachment D](#) of the [Nondiscrimination Handbook for Local Agencies](#). All FAHP related grant agreements executed with the Department include the Federally required (DBE participation) assurance language provided at **49 CFR 26.13(a)**. In addition, each LA Federal-aid contract signed with prime contractors, prime consultants and all related Federal-aid contracts signed with subcontractors and subconsultants must also include the assurance language provided at **49 CFR 26.13(b)**.

For *construction* contracts, this assurance is included as part of the [FHWA 1273](#). The LA RCS is responsible for ensuring the prime contractor incorporates **FHWA 1273** in all Federal-aid construction subcontracts.

For *professional services* contracts, the assurance is included as part of the Department [LAP Terms for Federal-Aid Professional Services Contracts \(FDOT Form No. 375-040-84\)](#) and is available for LAs' incorporation into professional services or other non-construction contracts and subcontracts. The LA project manager or designated responsible charge is responsible for ensuring prime consultants incorporate the *LAP Terms for Federal-Aid Contracts* in all Federal-aid subconsultant contracts.

11.2 STATEWIDE GOVERNING DBE PROGRAM

The only approved DBE Program in the State of Florida for application on FAHP projects is the Department's [DBE Program Plan](#) and related [FDOT DBE Goal for FHWA Federal Fiscal Years 2021-2023](#).

LAs delivering FAHP projects may not use alternate DBE programs or goals on FHWA funded projects without USDOT approval, even if the program is approved by another modal or Federal agency. DBE programs approved by the Federal Transit Administration (FTA) are not applicable to FHWA assisted contracts and cannot be implemented in lieu of the FDOT DBE Program. A LA may track other programs and/or goals for informational purposes on FAHP projects, BUT they may not set contract goals for the use of these businesses and are prohibited from providing a preference for local, small, minority, or disadvantaged business use.

Under the Federal requirements and the direction of FHWA, the Department performs the following key actions on behalf of Federal-aid subrecipients:

- Establishes a [DBE certification program](#) which registers and certifies businesses.
- Provides a [DBE directory](#) listing of all eligible firms statewide and each firm's certified work type listed in association with their contact information.
- Reporting DBE awards or commitments and payments biannually by utilizing the [EOC](#) web-based application for payment data collection.
- Reporting bidder opportunity lists for all Federal-aid projects utilizing data collected in **EOC**.

11.2.1 Race Neutral Program

[49 CFR 26.51](#) requires the Department to meet the maximum feasible portion of its overall goal through race neutral means without setting DBE goals on individual projects. Further, because the Department has met and achieved its overall DBE goal for two or more consecutive years, it is not permitted to set race-conscious project goals until or unless it can no longer achieve its overall goal through normal, race-neutral competitive procurement processes.

If the Department does not meet the DBE program goal, it may be required to return to a race-conscious program. In a race-conscious program, goals are imposed on individual contracts, both construction and consultant. The same requirement would also be imposed on subrecipient delivered FAHP projects.

11.2.2 Overall DBE Goal

The Department is required to set overall DBE goals every three (3) Federal Fiscal Years (FFY). The current overall FDOT DBE goal of **10.65%** is in effect October 1, 2021 through September 30, 2023. The Department aspires to spend 10.65% of FHWA funds on projects with Certified DBEs as prime contractors/subcontractors and prime consultants/subconsultants. The goal is not a contractual requirement and neither the Department nor LAs delivering FAHP projects may take sanctions or other punitive actions for failure of contractor(s) to meet the 10.65% goal. However, the Department strongly encourages contractors to seek out, solicit bids/quotes and use DBEs wherever possible, and it expects subrecipients do likewise.

11.2.3 Training and Supportive Services

LAs requiring assistance with DBE program implementation contacts the District LP Administrator, who will arrange the necessary training with the Department's EOO. In addition, FHWA and the Department fund several supportive services for DBEs and firms/LAs seeking to use them. For information on how supportive services can assist LAs in meeting the overall goal or on the Department's overall Business Development Program services, visit the [EOO webpage](#).

11.3 BID OPPORTUNITY DATA COLLECTION

In order to ensure that the DBE program is narrowly tailored in compliance with **49 CFR 26.45** and applicable [Supreme Court decision\(s\)](#), the Department must maintain a statewide database of all firms that are participating or attempting to participate in FHWA-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FHWA-assisted projects, including both DBEs and non-DBEs. The *Bid Opportunity List* is used to record bidders' information for all subcontractors or subconsultants who submitted bids to primes. All bidders must submit their Bid Opportunity List in **EOC** within 3 days of bid submission to the LA.

The submission window for the Bid Opportunity List in **EOC** closes after six (6) months or 180 days from the grant agreement execution date between the Department and the LA. This means that **EOC** will not allow consultants or contractors to submit their bidder opportunity information greater than 180 days from the date the grant agreement was executed. LAs are required to advertise within thirty (30) days from the date of the NTP from the Department. Usually, Department NTPs coincide with the date of the grant agreement execution. If the 180 day submission window has expired, contractors and consultants must contact EOO Help in **EOC** to reopen the contract for bidder opportunity reporting.

Professional services contracts and continuing services contracts may be advertised before the LA enters into a grant agreement with the Department. In these cases, the bidder opportunity information is collected outside of the **EOC** database and the LA must report the information to the EOO by October 1 annually for inclusion in the annual data report submitted to FHWA.

LAP and MPO projects appear in **EOC** referenced by the assigned five (5) digit FDOT contract number for bid opportunity reporting. This would be the five (5) digit number beginning with 'G' found at the top of your grant agreement. This reporting function is separate from actual DBE commitment and payment reporting and does not require the LA to create a contract screen in **GAP** as described in **Section 11.5.1**.

11.3.1 Local Agency Responsibilities

LAs are required to notify their bidders of the requirement to report bidder opportunity information in **EOC** in their construction bid packages and professional services requests for proposals (RFPs). As part of the notification, the LA will need to provide the five (5) digit number beginning with 'G' found at the top of your grant agreement to all bidders and consultants.

Bid opportunity instructions to contractors are included in [FDOT Form # 275-030-11](#) and are required to be included in FAHP project solicitations. Best practices LAs may use to increase compliance with the bidder opportunity reporting include:

- Require bid opportunity reporting as a condition of responsiveness to the project solicitation.
- Remind potential bidders at the project information, pre-bid, and bid opening meetings to submit the information.

Note: Contractors and consultants must apply for an [EOC User ID and Password](#) to access the system.

11.3.2 Department Responsibilities

Prior to providing concurrence to award a construction or consultant contract, the District LP Administrator shall verify the bid opportunity information was reported in the **EOC** system. At a minimum, the recommended contractor or consultant for contract award must demonstrate compliance with bid opportunity reporting requirements. District LP Administrator's will access **EOC** to verify information as needed for concurrence. The example provided in **Table 1** is acceptable for concurrence of recommendation to award the contract.

TABLE 1: Bid Opportunity List Report

Sub Vendor ID	Sub Vendor Name	Specialty Area
F592027389	WINTER GARDEN GRASSING INC	561730 - LANDSCAPING SERVICES

Prime Vendor: F161617641 - BARRACUDA BUILDING CORPORATION
Proposal ID: AQU66-43119613801
Bidder Opportunity List Submitted on: 5/20/2014

11.4 REPORTING DBE COMMITMENTS, ACTUAL PAYMENTS

USDOT regulations identify DBE Commitments as the measure for goal achievement. However, the regulations at [49 CFR 26.37\(c\)](#) also require that the Department maintain a 'running tally' in order to compare the actual payments to commitments reported. The Department complies with these requirements through the **EOC** system.

All subcontractors/subconsultants must be approved by the LA before performing work since Federal and State laws require LAs to verify vendor eligibility information including suspension debarment status; therefore, a LA will have documentation of each sub approved to perform work on the project which can then be verified against commitment and subsequent payment information reported in **EOC**.

11.4.1 GAP and Equal Opportunity Compliance System Interface

For a subrecipient delivered FAHP project to appear in **EOC**, a "Local Agency Contract" screen must first be created for the project in **GAP**. Contract screens are created by the LA for both professional services and construction contracts at the time of contract award. Contract screens shall be updated if the total cost of the contract changes during the

project. GAP exports the contract information to **EOC** in a data load that occurs nightly. Instructions on how to successfully create a contract screen in **GAP** are provided in the *Help Guide* posted in **GAP**.

The following needs to be created on the GAP contract screen for the project to appear in **EOC** successfully:

- LA contract number
- Prime name and federal tax ID
- LA contract execution date
- Contract dollar amount

Note: the LA award date must also be entered for the contract to appear in the Office of Construction's **CRM system (Chapter 10)**.

11.4.2 Anticipated DBE Participation or Commitments

The prime contractor or consultant is required to enter anticipated DBE utilization data in the **EOC** System at or before the preconstruction or pre-work meeting. The anticipated DBE participation is also known as "commitments". The data includes:

- DBE company name
- Specialty code/North American Industry Classification System (NAICS) code identifying work to be performed
- Total subcontract amount

For construction contracts, this information would be found on the [Certificate of Sublet Work Form No. 700-101-36](#) submitted by the prime contractor. For professional services contracts, prime consultants identify subconsultants and add or remove subconsultants per the LAs' processes specified in the solicitation and original contract.

In addition, prime contractors/consultants are required to promptly update the **EOC** system whenever DBEs are added or removed from a contract, or when utilization changes. Even when DBEs are not used on a project, the prime contractor/consultant is responsible for reporting zero (0) DBE utilization in **EOC**. Prime contractors/consultants who are certified DBEs must report the portion of the contract which will be performed directly by them with their own workforces.

11.4.3 Payments to DBEs

The prime contractor/consultant must report data on actual payments, minority status, and the type of work of *all subcontractors/subconsultants and major suppliers* **monthly** in **EOC**. Included in the reporting are monies paid from each monthly pay application to each DBE for the work performed in their certified area(s). If no payment is made to a DBE, the Prime may report a zero (0) dollar payment. The zero (0) dollar payment feature is optional. It can be used if you don't have any payments to report for the month.

*Note: If you use this selection, you will need to specify the Zero Payment reason. The Prime must continue monthly reporting in **EOC** until such time that the DBE has been 'finalized or closed out' of the project.*

11.4.4 Prompt Payment

Monthly actual payment reporting requirements for prime contractors and consultants are based on prompt payment rules and laws. The same holds true for return of retainage after the subcontractor has completed its work, not when the overall project is finished. [Florida Law](#) requires timely payment for both construction and non-construction services. Generally, invoices for construction contracts must be paid within twenty-five (25) days of receipt. Invoices for consultant contracts are payable per the contract terms, but shall not exceed Federal regulations in [49 CFR 26.29](#) that requires payment of all subcontractors for satisfactory performance within thirty (30) days of payment to the Prime.

Note: The LA cannot be reimbursed by the Department without proof of payment to all prime contractors/consultants and subcontractors/subconsultants.

LAs review and compare monthly payment applications to actual payments reported in **EOC** and use all available means to ensure prompt payment for subcontractors or subconsultants. Both the Department and FHWA have a vested interest in promoting the growth and sustainability of DBEs and other small businesses. Unjustified late or default payments by the prime contractors and consultants to subcontractors or subconsultants thwart this goal, creating delays in project delivery often exposing the prime contractor to civil or even criminal liability.

11.4.5 DBE Affirmative Action Plans

The Department will monitor contractor compliance with DBE specifications in the contract and the contractor's implementation of the **DBE Affirmative Action (AA) Plan** through formal reviews including contract compliance reviews. The **DBE AA Plan** is not a requirement for individual LAP projects; however, a LA must comply with **49 CFR Part 26. FDOT Standard Specification 7-24** is applicable to construction projects; provisions **7-24.1** and **7-24.3** that describe the **DBE AA Plan** requirements are not applicable to LAP construction projects.

11.4.6 Local Agency Responsibilities

- LA project manager inputs the LA contract information in GAP.
- For FAHP professional services contracts, the LA project manager shall verify the consultants reporting of DBE commitments and payments in **EOC**.
- For FAHP construction contracts, the role of the RCS includes the review and approval of the DBE commitments and payments entered in **EOC** by the prime contractor. If a consultant RCS is utilized by the LA, the LA must also assign a staff member to perform oversight of the RCS consultant's activities that includes **EOC** reporting.

A best practice is for the LA project manager to make a habit of reviewing **EOC** as part of their monthly invoice review process.

11.4.7 Department Responsibilities

The District LP Administrator and the DCCM both monitor FAHP projects for compliance with the Department's DBE program. Responsibilities may be performed by one or both periodically throughout the project. DCCM contract compliance review schedules are provided in **Chapter 10**.

- Verify the LA input the LA contract information in **GAP** prior to or at the time of the pre-construction or pre-work meeting.
- Verify the LA contract screen in **GAP** is updated when contract changes are approved by the Department that result in changes the total cost of the project.
- Verify subconsultant/subcontractor additions and removals are entered into **EOC** throughout the project.
- Verify subconsultant/subcontractor payments are entered into **EOC** as the work is performed.

A best practice is for the Department project manager to make a habit of reviewing **GAP** and **EOC** as part of their contract change approvals, invoice reviews, or when a project progress report is received.

11.5 AGENCY COOPERATION

Both the Department and FHWA are committed to transparency and accountability in subrecipient FAHP project delivery. Further, FAHP project delivery is of interest to other USDOT, Federal and State agencies, including Offices of Inspector General (OIG), GAO, PMIT, and similar review groups. LAs should anticipate project or program reviews, particularly for DBE compliance. Wherever possible, FHWA or the Department will provide reasonable notice in advance of the review, along with the material to be inspected and staff interviewed, if any. LA cooperation is both expected and required by [USDOT](#) and [Highways regulations](#). Review teams will always make efforts to minimize burden or business impacts to the LA during the review.

11.6 SANCTIONS

In the event the LA fails or refuses to comply with the terms of the DBE Program and the terms of their LAP certification, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part.
- Refrain from extending any further FAHP assistance to the LA with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.

- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP certification termination, until compliance or remedial action has been accomplished by the LA.
- Refer the case to the USDOT for appropriate legal proceedings.

11.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum DBE Program monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
DBE Program Solicitation Package Instructions and Contract Provisions	LA project solicitations and contracts are reviewed to verify incorporation of DBE Program provisions and requirements. Forms and contract language as specified in this chapter must be incorporated into LA solicitation packages and contracts with contractors and consultants. District contract manager reviews LA solicitation packages and contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA solicitation packages and contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.
LA Contract Changes	Contract changes agreed upon between the LA and their consultant/contractor are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the contract change. Department contract manager verifies contract changes are in compliance with State and Federal requirements.	All contract changes are reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued as needed.
Bid Opportunity Reporting	Prior to providing concurrence to award a construction or consultant contract, the District grant manager verifies the bid opportunity information is reported in EOC .	All LA contract awards are reviewed by the Department and concurred with prior to LA contract execution.
Local Agency Contract Screen Creation and Updates in GAP	Verify the LA input the LA contract information in GAP prior to or at the time of the Pre-Construction or Pre-Work Meeting. Verify adjustments to the total cost of the project and/or completion dates are updated in GAP throughout the project duration.	All LA contract screens are reviewed in GAP before the consultant/contractor begins work on the project. All LA contract screens are reviewed in GAP when approving

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
		contract changes to the total cost of the project. All LA contract screens are reviewed in GAP at project close out.
DBE Commitments Reporting in EOC	Verify the DBE commitments are reported in EOC at the project start and when a sub is added or removed from the project. Verify adjustments are made in EOC if a contract change requires it.	All contract changes are reviewed and approved prior to implementation by the LA.
DBE Payments Reporting in EOC	Verify the DBE payments are reported in EOC when an invoice is received from the LA for payment. Verify adjustments are made in EOC if a contract change requires it.	Low- quarterly invoice submittals and biennial full invoice reviews. Final invoice review in full. Moderate- quarterly full invoice submittals and reviews Elevated- quarterly full invoice submittals and reviews High- monthly invoice submittals and full invoice reviews

11.8 RESOURCES

[Equal Opportunity Compliance \(EOC\) Resources Webpage](#)

[Equal Opportunity Construction Contract Compliance Manual FDOT Procedure No. 275-020-005](#)

[EOC System Login](#)

[FDOT DBE Directory](#)

[FDOT DBE Certification program](#)

[FDOT DBE Program Plan](#)

[FHWA 1273](#) required for inclusion on all construction contracts and subcontracts.

[GAP](#)

[LAP Terms for Federal Aid Professional Services Contracts FDOT Form No. 375-040-84](#) required on all consultant and subconsultant contracts.