



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CONTRACT COMPLIANCE MONITORING

DBE PROGRAM OVERVIEW

It is the policy of the Columbus Regional Airport Authority (CRAA), in compliance with federal law (49 CFR 26), to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the maximum opportunity to participate in the performance of the services requested by this project.

DBE PROGRAM OBJECTIVES:

- * To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- * To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- * To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's.
- * To help remove barriers to the participation of DBE's in DOT-assisted contracts.
- * To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

WHY IS CONTRACT COMPLIANCE IMPORTANT?

The CRAA, like many local and state jurisdictions, requires participation—whether as a contractor, sub-contractor, supplier, or vendor—by Disadvantaged Business Enterprises (DBEs), i.e., firms that are majority-owned or controlled by minorities or women. These DBE regulatory mandates arise from Title VI of the Civil Rights Act of 1964, and were intended to serve a dual purpose: to forbid gender or racial discrimination in government contracting and to open greater opportunities for participation in government-funded contracts by women and minorities.

Over the years, however, many DBE programs have become susceptible to fraudulent practices. One common abuse has featured non-DBE firms who partner with, and sometimes create, sham firms who meet DBE eligibility criteria on paper but who perform no actual work—or, in the words of DBE regulations, perform no “commercially useful function”.

Contract compliance monitoring is important because it is a way to verify who is performing the work on the CRAA’s federally-funded and large business contracts. Additionally, it allows the CRAA to verify whether the subcontractor(s) are actually performing the work that they have been committed to and that they are certified to perform the work.

WHO IS IMPACTED BY CONTRACT COMPLIANCE?

As a recipient of U.S. Department of Transportation funding, the CRAA has made assurances that the CRAA will administer its Disadvantaged Business Enterprise (DBE) program in good faith, taking all necessary measures to minimize the potential for fraud in its program.

- * Prime Contractors / Consultants
- * Subcontractors/ Sub-consultants
- * Material Suppliers
- * Trucking Operators

HOW DOES CONTRACT COMPLIANCE WORK?

When the CRAA awards a contract that has a goal and/or target for DBE/SBE, the CRAA has to perform contract compliance. During the contract compliance stage, the CRAA is monitoring whether the prime contractor is fulfilling his/her contractual obligations for DBE/SBE participation. Contract compliance is a verification tool that is necessary in monitoring not only contract performance, but investigating whether the DBE/SBE subcontractor actually performed any work on the project.

Compliance monitoring includes but is not limited to the following seven evaluation methods:

- (1) Site visits
- (2) Interviews of personnel on job site
- (3) Verification of certified payroll
- (4) Review of company policies
- (5) Evaluation of "good faith efforts"
- (6) Verification of DBE/SBE certifications
- (7) Review of cancelled checks paid to the subcontractors, sub-consultants and suppliers

DBE FRAUD:

Definition: Under this scheme, a contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of DBEs.

- **False Eligibility.** The DBE owner does not belong to one of the recognized socially or economically disadvantaged groups. The DBE provides false information concerning its size or financial status. There are often hidden assets or false statements concerning the origination of capital.
- **Use of the DBE Certification List.** A prime contractor uses the name of a DBE firm off a MBE/DBE list. The DBE has no knowledge that their company is listed on the project.
- **Front Companies.** The DBE falsely represents its ownership and control. The company is owned and controlled by a disadvantaged person on paper only. The disadvantaged person is usually paid money to allow this scheme to be used.
- **Conduit or "Pass-Through" Companies.** The DBE does not complete any of the contracted work itself. Conversely, the DBE sells its status to another company who completes the work. The DBE usually allows the use of its name on invoices, trucks, and equipment. The prime pays the DBE a fee and no work is performed by the subcontractor.
- **"Bait and Switch".** The prime gets a quote from a DBE and lists the DBE in its bid documents. After being awarded the contract, the prime never uses the DBE listed.

DISADVANTAGED BUSINESS ENTERPRISE FRAUD "RED FLAG" INDICATORS

The US DOT OIG has identified the following "Red Flag" indicators include but are not limited to:

- * DBE owner lacks background, expertise, or equipment to perform subcontract work
- * Employees shuttle back and forth between prime contractor and minority-owned business payrolls
- * Business names on equipment and vehicles are covered with paint or magnetic signs
- * Orders and payment for necessary supplies are made by individuals not employed by DBE-owned business
- * Prime contractor facilitated purchase of DBE
- * DBE owner never present at job site
- * Prime contractor always uses the same DBE

There are numerous other fraudulent methods that could be used to circumvent the inclusion of DBEs on CRAA projects. The focus of CRAA's compliance program will include identifying and investigating any indications that DBE fraud could be occurring on CRAA projects and taking appropriate action to remedy and prevent.

KEY CONTRACT COMPLIANCE PROGRAM FOCUS AREAS:

The U.S. Department of Transportation has identified three primary areas of focus for compliance:

1. Commercially Useful Function
2. Prompt Payment
3. DBE Replacement

COMMERCIALLY USEFUL FUNCTION:

The CRAA counts DBE expenditures toward the DBE goal **only if** the DBE is performing a **"commercially useful function."**

What constitutes a "commercially useful function?"

The DBE must carry out its contract responsibilities by *actually performing, managing, and supervising* the work involved. A DBE firm is not performing a commercially useful function if their role in the project is that of an extra party in a transaction, by which funds are passed through to another firm, thus giving the appearance of DBE participation.

Described below are the responsibilities of the DBE and the RED FLAGS field personnel should report if observed.

DBE management of subcontract work appears to commercially useful and suggests DBE's participation should count towards the contract goal when the DBE:

- Schedules the work operations
- Receives quotes and orders equipment and materials
- Prepares and submits certified payrolls
- Hires and fires employees
- Makes all operational and managerial decisions
- Supervises daily operations, either personally or with a full time, skilled, and knowledgeable superintendent who is under the DBE owner's direct supervision

Management Red Flags, suggesting that potentially no commercially useful function is being provided by the DBE, include:

- Supervision of DBE employees by another contractor
- DBE provides little or no supervision of work
- DBE's superintendent is not a regular employee of the DBE
- Supervision is performed by personnel associated with the prime contractor or any other firm or business
- DBE firm's owner is not aware of the status of the work or the performance of the business

DBE equipment on the project site suggests the DBE is performing a commercially useful function and suggests DBE's participation should count towards the contract goal when:

- The DBE has a valid lease for equipment consistent with industry practices and at competitive rates
- The lease agreement is on a long term basis

- A DBE firm may lease equipment on an ad hoc basis from another contractor, **excluding the prime contractor or subsidiary of the prime.** This type of lease is allowed only for specialized equipment and circumstances.
- Operation of the equipment is under the full control of the DBE
- DBE provides the operator for the equipment and is responsible for all payroll and labor compliance requirements

Equipment Red Flags, suggesting that potentially no commercially useful function is being provided by the DBE, include:

- Equipment leased and used by the DBE firm with payment deducted from the prime contractor's payment(s) to the DBE
- Equipment used by DBE firm belongs to the prime contractor or another contractor with no formal long term lease agreement
- Equipment signs and markings cover another owner's identity, usually through the use of magnetic signs
- A DBE trucking business utilizes trucks owned by the prime contractor

DBE workforce participating in subcontract work appears to be commercially useful and suggests DBE participation should count towards the contract goal when:

- DBE firm keeps a regular workforce
- DBE firm is not "sharing" employees with non-DBE contractors, particularly the prime contractor or subsidiary
- DBE firm is responsible for all payroll and labor compliance requirements for all employees within the control of the company

Workforce Red Flags, suggesting that potentially no commercially useful function is being provided by the DBE, include:

- Movement of employees between contractors
- Employee paid by DBE and prime
- Employee working for prime in morning and DBE in afternoon

DBE Materials provided to the project appears to be commercially useful and suggests DBE participation should count towards the contract goal when:

- DBE negotiates the cost, arranges delivery, takes ownership and pays for the materials and supplies for the project
- DBE prepares the estimate, determines the quantity of material, and is responsible for the quality of materials

Material Red Flags, suggesting that potentially no commercially useful function is being provided by the DBE, include:

- Materials for the DBE ordered, or paid for, by the prime contractor
- Two-Party checks from the prime to DBE subcontractor and supplier or manufacturer
- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to, or paid by another business.

DBE Performance, when taking all of the above factors into account, is counted when:

- The DBE is responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice.

Performance Red Flags, suggesting that potentially no commercially useful function is being provided by the DBE, include:

- Work is being done jointly by DBE firm and another contractor.
- The work to be performed is outside of the DBE's known experience or capability
- Any portion of the work is performed by the prime contractor or any other firm
- The DBE firm is working without a subcontract agreement
- A DBE prime contractor subcontracts more than customary or standard industry practice
- Agreement between the prime and DBE artificially inflates the DBE participation
- Agreement that erodes the ownership, control or independence of the DBE subcontractor
- DBE works for only one prime contractor or a large portion of the firm's contracts are with one contractor
- The volume of work is beyond the capacity of the DBE firm

PROMPT PAYMENT TO SUBCONTRACTORS:

- Within 10 days after a prime contractor receives payment from CRAA on account of a subcontractor's work, the contractor is required to pay that subcontractor the amount to which the subcontractor is entitled less retainage attributable to the amount due the subcontractor. The contractor is required to make sure that this same requirement is contained in all subcontracts and sub-subcontracts.
 - Payments are required to be recorded on the Monthly DBE Payment Certification/ Utilization Report Form and submitted along with the Contractor's request for payment.

DBE REPLACEMENT:

The CRAA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without The CRAA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to the CRAA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to the CRAA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the CRAA of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity (e.g., safety.)

In those instances where "good cause" exists to terminate a DBE's contract, the CRAA will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The CRAA will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the CRAA will require the prime contractor to obtain the CRAA's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, CRAA may exercise its right to issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

If the contractor desires to change a subcontractor or add an additional subcontractor, the contractor shall submit in writing to the CRAA:

- 1) The name of the new or additional subcontractor,
- 2) A description of the work to be performed by the new or additional subcontractor,
and
- 3) A statement concerning why it is necessary to change or add subcontractors.

In the event that the contractor is replacing a DBE subcontractor, the contractor shall also submit in writing a documented explanation of the contractor's good-faith efforts to find a replacement DBE subcontractor.

Failure by a contractor to adhere to the DBE requirements contained in the contract, and the supporting DBE program regulations, may result in one or more of the following actions by the CRAA:

- Show cause meeting
- Immediate suspension of work
- Cessation or withholding of project payments
- Require appropriate reimbursements to the DBE firm for work performed by the prime or another non-DBE subcontractor
- Investigation by the U.S. DOT Office of the Inspector General and/or the U.S. Attorney
- Revocation of DBE certification; and/or
- Pursuance of debarment of the DBE firm, prime contractor and/or subcontractor.