

The Massachusetts Department of Transportation Highway Division DBE Program

October 27, 2011
MassDOT Board Retreat

DBE Program Requirements Overview

- Objectives
- Features
- Determining Factors For Contract-Specific Goal Setting
- Assessment of Good Faith Efforts
- Pre-Award Considerations
- Post Award Compliance Monitoring and Reporting

OBJECTIVES

Nature

- As recipient of federal funds, MassDOT must have a DBE program
- Includes contracts funded wholly or in part with any amount of federal dollars
- Administered under 49 CFR part 26
- Set-asides are prohibited

Objectives

- Remedy discrimination in contracting
- Create a level playing field for fair competition
- Help firms to eventually compete outside program
- Assist in facilitating the development of DBEs

FEATURES

The main features of the program include the following:

- DBE Program Plan
- Overall DBE Goal development
- Setting contract-specific goals
- Assessment of Good Faith Efforts
- Monitoring & Reporting
- Providing ongoing services to DBEs

DETERMINING FACTORS FOR CONTRACT GOAL SETTING:

- Goals are not required for all contracts.
- Contract goals must be set so that they cumulatively result in meeting the overall goal.
- Contract goals are allowed only on contracts that have subcontracting possibilities and availability of DBEs.

DETERMINING FACTORS FOR CONTRACT GOAL SETTING (continued):

- The type of work involved in contract
- The location of the work
- The overall dollar value of the contract
- Subcontractable scopes
- The availability of DBEs to perform the work of the particular contract
- Progress on the overall goal attainment

GOOD FAITH EFFORTS (GFEs)

- Responses to bids with a DBE goal requirement are measured using a “good faith efforts” standards.
- The low bidder must show that he or she took all necessary and reasonable steps to achieve the DBE goal before an award is made.
- If the commitment to achieve the numerical percentage goal established for the project is not met, the MassDOT’s Office of Civil Rights will evaluate whether the GFEs presented meet the standards by assessing the quality, quantity and intensity of efforts.

PRE-AWARD CONSIDERATIONS

1. Office of Civil Rights receives the weekly advertising list from Construction Contracts Office
2. Office of Civil Rights reviews the list and identifies federally-aided projects and state funded projects
3. Office of Civil Rights determines and assigns % DBE (federal) goal or M/WBE (state) goal to the project.

Pre-award considerations (continued)

4. The advertising list is returned to Construction Contracts with the required % to be included in Bid documents.
5. Construction Contracts receives DBE or M/WBE documents – Schedule of Participation and Letters of Intent 3 days after the bid opening.
6. Schedule and Letters of Intent are forwarded to the Office of Civil Rights for evaluation and approval.

Pre-award considerations (continued)

7. Office of Civil Rights evaluates the documents by:
 - Reviewing the Schedule and Letters of Intent are in compliance and the goal has been met. If the goal has not been met, the low bidder must provide documentation of good faith efforts.
 - Verifying that all DBEs or M/WBEs on the Schedule of Participation are currently certified by the Supplier Diversity Office (the certification agent) for the type of activity being proposed for the particular project.

Pre-award considerations (continued)

- Upon approval, the documents are returned to the Construction Contract Office for inclusion with the Award package.
- Once the award has been made and the notice to proceed has been issued, the contract information is added to the our web-based contract compliance tracking system EBO. EBO stands for The Equitable Business Opportunity Solution.

POST-AWARD COMPLIANCE MONITORING AND REPORTING

- Upon award, the contract is assigned to the compliance officer (s) for the district. Each district is assigned at least one compliance officer.
- The compliance officer discusses the DBE provisions with the prime contractor and the resident engineer at the preconstruction conference.
- Contract monitoring begins with Resident Engineer in conjunction with the Compliance Officer ensuring that contract provisions are followed and DBE performs the work.

POST-AWARD COMPLIANCE MONITORING AND REPORTING (continued)

- Compliance Officer reviews request for subcontractor approval before approval is granted by the District.
- DBE firm begins to perform its activities.
- Resident Engineer monitors work being performed on site.
- Compliance Officer conducts periodical on site visits and addresses apparent non compliance issues.
- Compliance Officer may recommend pay estimates be withheld until acceptable resolution has been achieved.
- Non-compliance issues that can not be resolved in the field are elevated to Contractor Compliance Director.

POST-AWARD COMPLIANCE MONITORING AND REPORTING (continued)

- Payments to DBEs and all subcontractors are tracked using the contract compliance reporting system EBO.
- Prime contractor enters payments made to subcontractors.
- Subcontractors acknowledge payments received by entering the amount and date using the EBO system.
- Compliance Officer monitors the system for compliance.
- Reports are generate from the system.

POST-AWARD COMPLIANCE MONITORING AND REPORTING (continued)

- Summary of DBE goal and attainment:
 - Overall goal – FY2011 – FY2013 : 11.68%
 - Achieved First Year: FY2011: 15.9%