



DBE/ACDBE Notice of Proposed Rulemaking issued by USDOT

Missouri Department of Transportation
External Civil Rights
August 9, 2022



NPRM Overview

- Modernize DBE & ACDBE program regulations
- USDOT, FAA, FHWA, & FTA crafted proposed changes as a result of feedback and internal research following the latest DBE rule changes in 2014.
- Proposed rules are open for comment until 9/19/2022
 - Link includes: summary table, full NPRM text, public meetings, link to send comments to USDOT on proposed changes.
- This presentation is specific to proposed DBE changes relevant to FHWA assisted contracts.



Reporting Requirements (pg. 43623)

- Updates reporting requirements for recipients of federal funding
 - Uniform Report – data on DBE attainment & participation
 - Bidders Lists – data on subcontractors bidding on projects
 - MAP-21 data reports – data on DBE directory



DBE Directory (pg. 43627)

- Proposed rulemaking seeks to add additional data fields within recipient DBE directories (bolded items currently in MoDOT's DBE directory):
 - **Physical Location**
 - **Work description keyword search**
 - Pre-qualifications
 - Equipment type & quantity
 - Dollar value of largest completed project
 - Licenses held by firm
 - Bonding capacity & limit
 - Ability, availability, & capacity to perform work
 - Link to firm's website
- Fields voluntarily supplied & updated by each DBE firm.
- Recipients not required to vouch for DBE's work.
- Proposed implementation of enhanced directory: January 1, 2024 or within 180 days of final rule

Monitoring Requirements

(pg.43627)



- Not a new requirement; one that USDOT is emphasizing.
- Enhances regulation language to specify recipients must collect “running tally” of DBE participation on federally assisted contracts.
- Requires recipients to keep accounting of each contractor’s progress toward contract goal through tracking progressive payments



Prompt Payment & Retainage

(pg. 43628)

- Codifies USDOT guidance on prompt payment and return of retainage monitoring.
- Recipients must create a mechanism to affirmatively monitor a contractor's compliance with subcontractor prompt payment and return of retainage requirements.
- Does not mandate a specific type of monitoring for prompt payment.

GFE Procedures (pg. 43630)



- Specific to DBE goals for Design-Build (DB) contracts.
 - Issue of identifying DBE's for goal attainment with minimal information (unknown future subcontracting opportunities)

- Rule proposes to require design builders to submit a DBE Performance Plan (DPP) with its proposal. This plan must include:
 - Types of work & projected dollar amount contractor will solicit DBE's to perform.
 - Estimated time frame for DBE subcontracts to be executed.
 - Once awarded, recipient monitors efforts to comply with DPP and schedule
 - DPP may be revised through life of project in order to continue to meet the goal.

PROPOSED RULES BY USDOT – CURRENT ENFORCEABLE REGULATIONS FOUND IN 49 CFR 26

DBE Supplier Credit (pg. 436631)



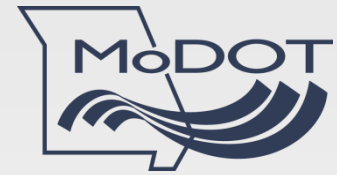
- Limits DBE Supplier Credit to 50% of contract goal
 - Includes manufacturers, regular dealers, distributors, & transaction facilitators.
 - Ex: On a \$1M contract with a 10% DBE goal, the creditable portion of the DBE commitment to meet the contract goal from DBE suppliers cannot exceed \$50,000 (5% of the overall contract goal).
 - For suppliers, this would mean a maximum of $\$83,333.34 \times 60\% = \$50,000.00$.
 - Manufacturers would still be eligible at 100%, but credit is only allowed up to 50% of contract DBE goal (\$50,000.00)
- Requires recipients to establish a pre-award system that determines whether a DBE supplier meets characteristics of a “regular dealer” in order to ensure proper 60% counting.

DBE Supplier Credit – Drop Shipping

(pg. 43633)



- Adds classification of DBE distributor
 - Defined as established business that engages in regular sale or lease of items under a valid distributorship agreement.
 - Entitled to 40% credit (cost of materials & transportation) as long as the distributor performs a CUF when:
 - It operates in accordance with the terms of its distributorship agreement.
 - Assumes the risk for lost or damaged goods with respect to shipping.



Certification Standards (pg. 43634)

- Revisions to DBE Certification Standards
 - Clarifies DBE ownership through parent holding company
 - DBE Gross receipts evaluation changed to 5 years per NAICS code & overall cap still under 3 year review
 - Personal Net Worth (PNW) cap adjusted from \$1.32M to \$1.6M & excludes retirement investments. Makes adjustments to how PNW is calculated. Reasonable person standard for ability to accumulate substantial wealth.
 - Providing flexible, less prescriptive rules for individuals determinations of social & economic disadvantage.
 - Changes to ownership & control requirements streamlined.

PROPOSED RULES BY USDOT – CURRENT ENFORCEABLE REGULATIONS FOUND IN [49 CFR 26](#)



Interstate Certification (pg. 43647)

- Once certified in their home state, DBE's may apply in other states by simply submitting: a cover letter, copy of their home state's DBE directory showing certification, and a declaration of eligibility.
 - Recipients required to certify out of state firms within 10 business days of receiving all information & verifying home-state certification.
 - After initial certification, recipients may move to decertify out of state firms if information is obtained indicating ineligibility.
 - Multiple states may participate in decertification of a DBE.
 - If a decertification decision is appealed to USDOT & the decision is supported by USDOT, firm is automatically decertified in all states.



Public Meetings discussing NPRM

- Link to all information sessions: [NPRM Public Meetings | US Department of Transportation](#). Recordings available shortly after sessions conclude.

- Upcoming sessions:
 - Regular Dealer – Aug. 11, 2022 @ Noon
 - Design Build & Performance Plans – Aug. 19, 2022 @ Noon
 - Final Public Meeting – Aug. 26, 2022 @ Noon

- Previous sessions:
 - Overview
 - Certification