

The Louisiana Department of Transportation
“2013 DBE Summit Questions”

Summit Questions/Answers

1. What procedures have been established to ensure prime contractors are complying with the DBE Program Requirements?
LDOTD has hired a contract employee to perform Commercially Useful Function Reviews on all the projects that have federal dollars. This contract employee ensures that the DBE is using their own equipment and employees, and not the equipment or employees of the prime contractor. Additionally, LDOTD has implemented an on-line process for the prime contractor to submit the CS6AAA (DBE commitment) document to ensure that the prime contractor will meet or exceed the goal. The prime contractor is required to submit, on a monthly basis, the CPIA document which reflects the payments the prime makes to the DBEs.
2. Do prime contractors have the authority to dictate Workman’s Compensation Insurance requirements for DBEs?
LDOTD requires the prime contractor to have Workman’s Compensation Insurance so yes, the prime can require their subcontractors to also have Workman’s Compensation Insurance. It is important to note however, that DOTD’s contract is with the prime and not the subcontractor. In all cases we would highly recommend that any subcontractor read their contract fully before signing, and if needed, consult your own legal representative for advice.
3. Are there incentives for prime contractors to use underutilized DBEs? Are there any tax credits?
Currently there are no LDOTD incentives or tax credits for Prime Contractors who opt to use underutilized certified DBEs. In May 2000, on a trial basis, the Department received approval for an innovative 25% goal credit provision to the DBE Program to encourage the use of firms identified by LDOTD as underutilized. The program was evaluated in Federal Fiscal Year 2005 - 2006 and though the program provided some positive results, the negative aspects outweighed any benefit that was reported. Based on the evaluation, the incentive program negatively impacted the Department’s ability to meet its annual DBE goal and the program provided a mechanism for large well established DBE firms to use the underutilized designation, thereby defeating the intended purpose. The program was suspended shortly after. There are current discussions being held by FHWA officials to design a national program of this type that would benefit all parties involved.
4. Can someone explain the process regarding joint checks issued between Prime and Subs?
The contractor will not receive credit if the contractor makes direct payment to the material supplier. However, it may be permissible for a material supplier to invoice the contractor and DBE jointly, and be paid by the contractor making remittance to the DBE firm and material supplier jointly. The DBE firm would be required to endorse the payment (check) over to the material supplier. Prior approval by LDOTD Compliance is required.

5. What are the rules for 3rd tier subcontracting?

Section 108.01 of the 2006 DOTD Standard Specifications Book for Roads and Bridges states “A subcontractor shall not further subcontract to a third party any portion of this authorized work, excluding material, without written consent, including work sublet to an authorized Disadvantaged Business Enterprise.” However, since DBEs are expected to perform a commercially useful function, they are not allowed to 3rd tier subcontract.

6. What can cause a DBE to lose their certification?

There are several ways a DBE can lose their certification; however, each has to be determined on case by case basis. The most common cause is for a DBE firm not to provide the Annual Affidavit with all supporting documents when required. A DBE may also exceed the Personal Net Worth (PNW) or Business Size Cap allowable by the federal regulations. Other situations may arise when the disadvantage owner’s ownership or control has changed, and they no longer meet the criteria for ownership or control, and then decertification procedures can be initiated.

7. Are there any rules regarding holding retainage on subcontractors?

The LDOTD has information in the contract document between the prime and the Department. The prime contractor should not hold retainage on the DBE subcontractor.

8. What advise does DOTD have for DBEs when they are withdrawing from a project?

a-We can inform the DBEs of what federal regulations states

b-We can inform the DBEs of what the DOTD contract states.

c-We cannot advise the DBEs on what to do or what action they should take.

9. Can you explain the supplier goal credit (60%), the trucker goal credit, and the fact that an OMF-1A is not required but a supplier/trucker agreement from the Prime for signatures should still be received?

A supplier (regular dealer) receives 60% goal credit for the materials they supply. A manufacturer receives 100% goal credit. *Please note that the 60% supplier credit is under review by USDOT, however, no official increase has been issued.*

A DBE trucker will receive goal credit for each truck the DBE owns. If that DBE needs to lease additional trucks to perform the contract, he must lease trucks from another certified DBE in order for the prime to receive goal credit for the additional trucks. Any trucks leased by a DBE that are not owned by a DBE certified trucker will not be counted toward the DBE goal.

An OMF-1A (sublet request) is not required on supplier/truckers. Instead, they must provide to Compliance a supplier/trucker agreement with both the Prime and sub’s signatures.