

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CONSTRUCTION DIVISION MEMORANDUM**

GENERAL SUBJECT: FEDERAL & STATE DBE PROGRAMS **NUMBER:** CD-2002-2
SPECIFIC SUBJECT: FUNCTIONS AND RESPONSIBILITIES OF
THE CONSTRUCTION INDUSTRY, FHWA,
AND VARIOUS STATE AGENCIES **DATE:** January 9, 2002

Original w/Signature on file in Construction Division

**C. F. GEE
CONSTRUCTION ENGINEER**

DIRECTED TO - DISTRICT ADMINISTRATORS

The Virginia Department of Transportation (VDOT) is deeply committed to the success of the state and federal Disadvantaged Business Enterprise (DBE) programs. Because these programs involve the efforts and resources of the Construction Industry, the Federal Highway Administration (FHWA), and various state agencies similarly committed to the achievement of these programs, it is imperative that the duties, responsibilities, and expertise of all affected parties are clearly identified and defined.

CONSTRUCTION INDUSTRY

PRIME CONTRACTORS

- Comply with the Road and Bridge Specifications, all terms of the Contract, and 49 Code of Federal Regulations (CFR), parts 23 and 26 in the award and administration of Contracts.
- Take necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform work on Contracts awarded by VDOT.
- Do not discriminate on the basis of race, color, sex, or national origin in the award or performance of any Contract.
- Certify by signing the bid that on work proposed to be sublet, the bidder has taken, or will take, affirmative action, and has made, or will make, good faith efforts to seek out and consider DBEs as potential subcontractors.
- Contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively; and retain on file proper documentation to substantiate good faith efforts.
- Solicit through all reasonable and available means, such as but not limited to: attendance at pre-bid meetings, and advertising and written notices to all certified DBEs who have the capability to perform the work on the contract.
- Select portions of the work to be performed by DBEs, including breaking out Contract work items into economically feasible work units in order to increase the likelihood that the DBE goals will be achieved, even when the Contractor might otherwise prefer to perform these items with his own forces.
- Provide interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist the DBEs in responding to a solicitation.
- Follow up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs are interested.

- Negotiate and enter into contractual agreements in good faith with prospective DBEs to be utilized as subcontractors.
- Maintain records and documents relative to the project.
- Require each DBE subcontractor to furnish information relative to all DBE involvement on the project for each month during the life of the Contract in which participation occurs and verification is available, and report the aforementioned information on Form C-63, with payment to DBEs being certified on Form C-63A, or by copies of cancelled checks with proper identifying notations.
- Submit necessary documentation to cover the work of certified DBE firms which has not been previously documented, including work on projects with no requirements established, prior to the DBE beginning such work.
- Provide information regarding DBEs used on projects, even if not reported for credit, to the Department.
- Do not enter into any agreement with a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders, unless it is associated with an appropriately arranged joint venture agreement approved by VDOT.
- Designate, and make known to the Engineer, a liaison officer who is assigned the responsibility of administering and promoting an active program for the use of DBEs.
- Be encouraged to use the services of banks owned or controlled by disadvantaged individuals.
- Provide assistance to DBEs in obtaining bonding, lines of credit, or insurance as required.
- Provide assistance to DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, in accordance with the requirements of Special Provision for Section 110.04 of the Specifications and 49 CFR Part 26.
- Effectively use the services of appropriate personnel in VDOT and the Virginia Department of Minority Business Enterprise (VDMBE), available minority/women community or minority organizations, Contractors' groups, local, state, and Federal minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- Submit a fully completed Form G111 and evidence of a binding agreement on Form C-112 (Certification of Binding Agreement) for each DBE for which the Contractor is seeking credit within 28 days of the bid opening.
- Submit a schedule of DBE participation that will occur during the prosecution of the Contract to the Department for approval within 30 days after the notice to proceed and prior to the first estimate.
- Submit, prior to commencement of work, copies of the actual subcontract agreement and associated documentation for each DBE firm being used.
- Immediately notify the Engineer and provide documentation of all relevant circumstances if a DBE, through no fault of the Contractor, is unable or unwilling to perform as indicated on Form C-111, or materially defaults in the performance of obligations, and immediately make good faith efforts to obtain another currently certified DBE to perform an equal or greater dollar value of allowable credit.
- Make compensation in full to the subcontractor within 7 days, or as allowed under Title 11 of the Code of Virginia (Code), upon the Department's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work.
- Work closely and cooperatively with VDOT and VDMBE to recommend policies and specifications that encourage increased opportunities for and usage of DBE firms, and to successfully achieve the goals of the DBE Program.
- Consider utilizing the Mentor/Protégé Program to assist DBE firms in gaining the ability to compete successfully in the marketplace.

SUBCONTRACTORS (INCLUDING DBEs)

- Comply with the Road and Bridge Specifications, all terms of the Contract, and 49 CFR, parts 23 and 26 in the award and administration of Contracts.
- Contact Contractors to solicit their interest and submit prices in sufficient time to allow them to respond effectively.

- Solicit through all reasonable and available means, such as but not limited to: attendance at pre-bid meetings, telephone solicitations, and written notices to all Contractors who have taken out plans from VDOT, and may require services from DBE firms having the capability to perform them on the Contract.
- Request adequate information about the plans, specifications, and requirements of the Contract in a timely manner from interested Contractors to assist the DBEs in responding to a solicitation.
- Follow up initial solicitations of interest by contacting Contractors to determine with certainty whether they are interested.
- Negotiate and enter into contractual agreements in good faith with prospective prime Contractors in order that they, the DBEs, can be utilized as subcontractors.
- Maintain records and documents relative to the project, and furnish information relative to all DBE involvement on the project for each month during the life of the Contract in which participation occurs and verification is available to the prime Contractor, on Form G63, with payment to DBEs being certified on promptly signed Form C-63A, or by copies of cancelled checks with proper identifying notations.
- Do not enter into any agreement with a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders, unless it is associated with an appropriately arranged joint venture agreement approved by VDOT.
- Be encouraged to use the services of banks owned or controlled by disadvantaged individuals.
- Provide assistance to other DBEs in obtaining bonding, lines of credit, or insurance as required.
- Provide assistance to other DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively use the services of appropriate personnel in VDOT and VDMBE, available minority/women community or minority organizations, Contractors' groups, local, state, and Federal minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- Promptly sign Form C-112, the actual subcontract agreement, and associated documentation, and return to the prime Contractor in order for him/her to submit it within 28 days after the bid opening.
- Promptly furnish all information to the Contractor required for him/her to submit a schedule of DBE participation that will occur during the prosecution of the Contract to the Department for approval within 30 days after the notice to proceed and prior to the first estimate.
- Promptly contact the Engineer and the Contractor's bonding company in writing if the Contractor has not made compensation in full to the subcontractor within 7 days upon the Department's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, or as allowed under Title 11 of the Code.
- Work closely and cooperatively with the prime Contractor, VDOT, and VDMBE to successfully achieve the goals of the DBE Program.
- Consider utilizing the Mentor/Protégé Program with a larger, established non-DBE prime Contractor to assist DBE firms in gaining the ability to compete successfully in the marketplace.

FEDERAL HIGHWAY ADMINISTRATION

- Provide interpretation and clarification of provisions of the DBE Regulations, 49 CFR parts 23 and 26, and other related instruments.
- Monitor the implementation of program objectives and requirements.
- Review and approve the annual overall Statewide DBE goal and methodology for setting it.
- Monitor, on a quarterly basis, activities toward accomplishing VDOT's DBE goal, including Race Neutral and Race Conscious accomplishments.
- Review quarterly reports on DBE awards and commitments for accuracy and completeness.
- Participate in on-site reviews of selected federal-aid projects to determine DBE program compliance on the part of the DBE prime and/or subcontractors, and non-DBE prime Contractors.
- Monitor DBE hearings and certification appeals held on Contractors.

- Perform program review and/or evaluation of a selected program element.
- Provide technical assistance, training, guidance, information, best practices, and other resources on the DBE program.
- Investigate or participate in investigations of allegations of discrimination and/or fraud.
- Participate in DBE activities pertaining to major projects.
- Review and approve Supportive Services detailed work statements (per 23 CFR Part 230.204©).
- Evaluate the impact of supportive services on DBEs in terms of work activity, success/failure, and proficiency.
- Review progress reports on Supportive Services; offer constructive comments and feedback when necessary.

VIRGINIA DEPARTMENT OF MINORITY BUSINESS ENTERPRISE (VDMBE)

- Evaluate the marketplace for opportunities for DBE firms, and market VDOT's DBE program.
- Make contacts with minority and majority firms to expand DBE participation in Virginia's construction programs.
- Attend project showings and pre-construction conferences involving DBE firms.
- Serve as a liaison between majority and minority firms to assist prime Contractors in identifying and utilizing DBE firms eligible for bidding on work items on a subcontractual basis, and to encourage cooperation in the marketplace.
- Work closely with VDOT and the construction industry to recommend policies and specifications that encourage increased opportunities for and usage of DBE firms.
- Provide assistance/guidance to DBE firms in bidding, marketing services, and actual work functions as needed.
- Provide assistance to DBE firms in preparing VDOT applications for Prequalification/Certification, and bonding and loan applications
- Provide and coordinate business management and technical assistance to DBE firms.
- Provide assistance to DBE firms in obtaining financial assistance.
- Solicit, from project personnel, areas in which DBE firms require technical and/or management assistance.
- Assess DBE firms and determine services needed, including the DBE Accounting Training Program and the DBE Legal Services Program.
- Provide assistance to DBE firms in analyzing and reviewing highway projects.
- Provide assistance to DBE firms in the interpretation of plans, specifications, standards, subcontract agreements, and other contract documents.
- Organize and sponsor group/individual training sessions, i.e., estimating, bidding, project planning/scheduling, sub-contractual agreements, etc. to ensure that DBE firms perform work within VDOT guidelines.
- Provide weekly mailings, such as advertisements, quantity surveys, bid results, special notices, workshops, and seminars.
- Respond promptly to requests from DEOMs to provide assistance to individual DBE firms, and to prime Contractors needing help in locating DBE firms.
- Request additional supportive services activities for DBE firms.
- Perform reviews and inspections of projects involving DBE firms.
- Assist prime Contractors in achieving compliance with DBE and Equal Opportunity Division (EO) programs.
- Monitor pre and post bid activities.
- Perform follow-up to formal assessments of DBE services required and provided.

VIRGINIA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION DIVISION

- Develop the governing specifications, technical guidelines, and procedures used in managing, monitoring, and making compliance determinations in the DBE Program in accordance with federal and state regulations on all construction contracts.
- Review and provide appropriate comments on all compliance reports in which a noncompliance determination has been rendered.
- Notify VDMBE and/or the District Equal Opportunity Managers (DEOMs) of any compliance or technical problems involving any DBE/MBE/WBE firms observed during the Construction Division's routine project reviews and administration.
- Provide guidance and interpretation of specifications, policies and procedures, technical training, and other program requirements to the Districts, Residency Staff, the EO Division, and the construction industry on CD Memoranda (CD) and other guidelines relating to the DBE Program and compliance determinations; provide seminars for same.
- Recommend the establishment of the overall statewide goal based on participation in the marketplace, and regulate the adherence thereto by setting individual contract goals on a race/gender neutral and project specific basis, in accordance with 49 CFR Parts 23 and 26.
- Provide assistance in resolving complaints and ensuring compliance.
- Investigate and resolve labor related issues in accordance with CD-98-1.
- Enforce panel decisions regarding the DBE Program as allowed by contract provisions.
- Maintain statistical records on the progress and overall accomplishments of the DBE program, and recommend changes, as required, to maximize performance.
- Share in the responsibility of managing the DBE program with the EO Division.
- Develop and monitor Mentor-Protégé relationships, which will provide advice, counsel, training, and assistance to DBE firms, resulting in their development as firms that can independently and competitively participate in VDOT's transportation program, and will increase their number and capacity in the areas of highway construction.
- Notify VDMBE, through inspectors and engineers, of DBE firms requiring assistance on projects, and of prime Contractors needing assistance in locating DBE firms.

EQUAL OPPORTUNITY DIVISION (EO)

- Share in the responsibility of managing the DBE program with the Construction Division.
- Work with the State Construction Engineer in the development of construction policies and procedures affecting the DBE Program.
- Provide assistance to the Construction Division in monitoring the Mentor-Protégé relationship.
- Implement policies and procedures that will enable the Department to achieve its compliance program objectives.
- Supervise the audit functions of the DBE program compliance through District Equal Opportunity Managers (DEOMs).
- Manage the DBE compliance program, evaluating whether or not firms are in compliance with DBE regulations.
- Provide assistance to DEOMs in conducting reviews, gathering data, and in other compliance activities, on an as needed basis.
- Provide training and assistance to District and Residency staff regarding the execution of all policies and procedures established for conducting compliance reviews.
- Provide the final review and signature on all compliance reviews by the Division Administrator.
- Establish and implement policies, and ensure proper processing of the certification of DBE firms, the DBE Accounting Training Program, the DBE Legal Services Program, and the Marketing Program.
- Provide information to VDMBE with respect to areas of concentration of work activities, so that the program can expand and prosper.

- Recommend the overall statewide goal based on information collected.
- Provide guidance for the ON-THE-JOB TRAINING program.
- Provide educational training and networking events.

DISTRICT EQUAL OPPORTUNITY MANAGER (DEOM)

- Provide support in the administration of the DBE program.
- Assure compliance with Department DBE policies within each respective District.
- Schedule and perform compliance reviews on at least 50% of projects with DBE requirements; develop reports in the appropriate format.
- Visit each project to review DBE activities with the project inspector, assessing the work activities and related administrative features of the DBE's performance throughout the duration of the project for compliance with the DBE regulations.
- Provide support to Residency and District personnel and Contractors in interpreting and understanding DBE Program policies, procedures, and guidelines for administering the DBE Program, interacting promptly with District, Residency, VDMBE, and Central Office personnel when needed to resolve problems.
- Notify the prime Contractor immediately of any problems identified with the DBE firm, working cooperatively with the prime Contractor for possible resolutions and corrective actions.
- Identify and solicit from project personnel areas in which DBE firms require technical and/or management assistance.
- Respond promptly to requests from individual DBE firms requiring assistance, and to prime Contractors needing assistance in locating DBE firms.
- Contact VDMBE and other Supportive Service representatives to assist firms in need of such assistance.
- Discuss DBE needs with the District Supportive Services representative, coordinating activities.
- Provide information to VDMBE with respect to areas of concentration of work activities, so that the program can expand and prosper.

PROJECT INSPECTOR

- Serve as the initial and first line observer of the DBE's work activities.
- Assess whether the work is proceeding within program guidelines and, on federally funded projects, whether it is in accordance with the subcontract agreement.
- Monitor DBE compliance and other Contract requirements on construction projects, being aware of the criteria set forth in the appropriate guidelines.
- Work closely with the DEOM and, in accordance with CD-2000-4, promptly advise him/her of the commencement of work by the DBE Contractor or subcontractor, reporting any activities, through the Resident Engineer, that may suggest non-compliance, and of any problems or concerns involving the DBE firm or the prime Contractor's use of the DBE firm.
- Complete Schedule B of the DBE COMPLIANCE REVIEW REPORT (REVIEW) as soon as the DBE firm begins initial work on the project, sending a copy of same to the DEOM, retaining the original as part of the permanent project records. Initiate an additional or revised Schedule B at any time there is a significant change in work patterns, crews, equipment, etc. by the DBE firm.
- Actively participate in the compliance review process by providing any relevant information obtained in the daily monitoring of the DBE firm's activities. This information will be used in assisting the DEOM in the completion of Schedule C of the REVIEW.
- Monitor labor compliance in accordance with CD-98-1.

DBE CONSTRUCTION ENGINEER TRAINING PROGRAM (Retired Engineers)

- Coordinate with VDMBE in providing management and technical assistance to DBE firms.
- Provide direct hands-on training and development of construction trade skills to DBE firms.

- Perform reviews and inspections of projects involving DBE firms as requested by VDMBE and the DEOMs.
- Provide assistance to DBE firms in project scheduling.
- Provide assistance to DBE firms in the interpretation of plans, specifications, standards, subcontract agreements, and other contract documents.
- Provide assistance to DBE firms in contract administration.

VIRGINIA TECH DBE CONSTRUCTION MENTOR PROGRAM

- Provide advice, guidance, and on-the-job training by experienced construction managers.
- Provide training in cost accounting, contract interpretation, project planning/scheduling, estimating, negotiation techniques, personnel and equipment management, financial strategies, etc.
- Coordinate with VDMBE in providing management and technical assistance to DBE firms.

GCW\HD:gg

C: Mr. Charles D. Nottingham
Mr. Claude D. Garver, Jr.
Mr. Andrew V. Bailey II
Mr. C. F. Gee
Assistant Commissioners
Division Administrators
District Construction Engineers
District Maintenance Engineers
District Materials Engineers
District Equal Opportunity Managers
District Contract Administrators
Resident Engineers
Project Engineers
Project Inspectors
Federal Highway Administration
Virginia Department of Minority Business Enterprise
Virginia Road and Transportation Builders Association
Old Dominion Highway Contractors Association
Virginia Asphalt Association
Virginia Aggregates Association Inc.
American Concrete Pavement Association
Virginia Ready-Mixed Concrete Association
Precast Concrete Association of Virginia