

10 Ways to Lose Your Money in the DBE Program



Pamela M. Kordenbrock
Division Administrator
FHWA Tennessee

Commercial Useful Function

- DBEs Must Perform a Commercially Useful Function (CUF) for Their Contracted Activities
- DBE is Independently Playing a Necessary Role in the Project (49 CFR 26.55)
- CUF Determinations Involve a Review of the Following Areas:
 - Materials/Supplies
 - Performance
 - Workforce
 - Equipment
 - Management/Supervision

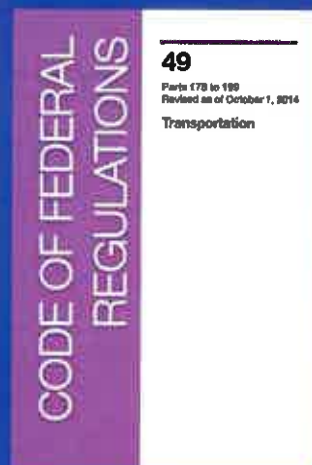


10 Ways You Could Lose Your Money on a Federal-Aid Contract



1. Failure to Comply with 49 CFR Part 26

- 49 CFR Part 26 Is the Overall DBE Regulation
 - Commercially Useful Function
 - DBE Certification
 - State DOT's DBE Program Plan
 - Administration of the DBE Program
 - Compliance and Enforcement Actions



2. Subcontracting All or Part of Your DBE Contract to a Non-DBE

- DBE Must Independently Perform the Work Specified Under Its Contract
- Subcontracting Your Contract to a Non-DBE Can't Be Counted Toward DBE Goal Attainment
- There Are Limitations on Subcontracting Your Work to Other DBE's



3. Using the Prime Contractors Work Force/Employees as Your Work Force

- DBEs Must Have Their Own Employees
- Using the Prime Contractors Work Force to Perform Your Work Is Not Permitted
- Sharing Employees Is Not Permitted
- Employees Must Be on the DBEs Certified Payroll



4. Using the Prime Contractors Equipment as Your Equipment

- DBE Must Own the Equipment Needed or Lease the Equipment From a Licensed Dealer
- Leases From the Prime Contractor Are Permitted But Can Not Be Counted Toward the DBE Goal
 - Occasional and Limited Short-Term or Emergency Circumstances When Using a Prime Contractor's Equipment, Supplies, etc.



5. DBE Work May Not Be Performed by the Prime or Another Non-DBE Company

- Work Designated Under the DBE's Contract Should Not Be Performed by the Prime or Another Non-DBE Company
- Only DBE Contract Work Can Be Used to Meet the Project DBE Goal Credit



6. Not Following DBE Specifications Outlined in TDOT Special Provision 1247

- TDOT Special Provision 1247 Outlines Many Things Pertaining to the DBE Program
 - DBE Program Policies
 - Prompt Payment
 - Counting DBE Participation
 - Contractor Compliance



7. Terminating or Substituting a DBE with a Non-DBE Without Approval from TDOT

- TDOT Civil Rights Office Must Give Approval Prior to Removal or Substitution of a DBE
- TDOT Special Provision 1247 Identifies the Process for DBE Termination or Substitution
 - TDOT Special Provision 1247 Lists the Reasons and Timeframes for DBE Termination and Substitution



8. Falsifying Documents Such As Prompt Payment and Certified Payroll

- Prompt Payment Applies to Everyone
- All Contractors Are Supposed to Pay Within 30 Days for Completed Work
- Submitting a Certified Payroll Stating You Paid an Individual and You Did Not Is a False Claim
- Listing a Person on Your Certified Payroll That Is also on Another Companies' Payroll for the Same Period for the Same Hours Is a False Claim



9. Failure to Submit a CC-3 at the Completion of the Project

- TDOT CC-3 Attests to the Amount of Money Paid to the DBE
- Signed by Both the Prime Contractor and the DBE
- TDOT CC-3 Should Be Submitted at the Completion of the DBE Contract or at the End of the Project



10. Submitting Credit for Work Items DBE Not Approved to Perform

- All DBEs certified in specified work item(s) i.e. NAICS codes (North American Industry Classification System)
- DBE not certified to perform in a specific NAICS code can not performing that work for DBE goal credit



If You Have Questions?



FHWA Division Contact Information:

Joi Hamilton Jones
Civil Rights Specialist
615-781-5790

Pamela M. Kordenbrock
Division Administrator
615-781-5770

