

DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND EMERGING SMALL BUSINESS ENTERPRISE (ESBE) PARTICIPATION

Disadvantaged Business Enterprise (DBE):

A federal requirement that must be addressed is the mandated Disadvantaged Business Enterprise (DBE) participation. A Disadvantaged Business Enterprise (DBE) is defined in 49 CFR Part 26 and FTA C 4716.1A, as "a small business concern (from Section 3 of the Small Business Act), which is:

1. at least 51 percent owned by one or more 'socially and economically disadvantaged' individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more 'socially and economically disadvantaged' individuals: and
2. whose management and daily business operations are controlled by one or more of the 'socially and economically disadvantaged' individuals who own it.

'Socially and economically disadvantaged' is defined as individuals who are citizens of the United States (or lawfully permanent residents) and who are:

"Black Americans," "Hispanic Americans", "Native Americans," "Asian-Pacific Americans", "Asian-Indian Americans", "Women" (regardless of race, ethnicity, or origin); or "Other" (disadvantaged pursuant to Section 8 of the Small Business Act).

Emerging Small Business Enterprise:

The Emerging Small Business Enterprise (ESBE) referred to herein is defined as a firm that has met the following criteria and obtained **small business certification as an ESBE by The State of New Jersey Department of Transportation:**

1. A firm must meet the criteria for a small business as defined by the Small Business Administration in 13 CFR Part 121, which includes annual receipts from all revenues, including affiliate receipts which equates to the annual arithmetic average over the last 3 completed tax years, or by the number of employees.
2. The small business must be owned by individuals who do not exceed the personal net worth criteria established in 49 CFR Part 26 which is \$750,000.

All appropriately certified DBEs fall into this definition due to their size.

DOCUMENTATION BY CONSULTANT:

The NJTPA has a long-standing commitment to maximize business opportunities available to disadvantaged and emerging small business enterprises (DBE/ESBE). The consultant's contract is subject to all federal, state, and local laws, rules, and regulations, including but not limited to, non-discrimination in employment and affirmative action for equal employment opportunity. The consultant's contract obligates the consultant to aggressively pursue Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBEs) for participation in the performance of contracts and subcontracts financed in whole or in part with Federal funds. The consultant cannot discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.. The prime consultant must document, in writing, all of the steps that led to any selection of the DBE/ESBE firm/(s). Prior to the award of a consultant

contract, the consultant must demonstrate sufficient reasonable efforts to utilize DBE/ESBE firms. **For studies drawing on federal funding under an NJTPA grant, the ESBE goal shall be at minimum (insert current goal) %.**

If, at any time you intend to subcontract or modify any portion of the work already under contract, or intend to purchase material or lease equipment not contemplated during the original preparation of your cost proposal, you must notify the NJTPA in writing. If, as a result of any subcontract, modification, purchase order, or lease, the actual DBE/ESBE participation rate for the consultant's contract is in danger of falling below the agreed upon DBE/ESBE participation, then a request must be made for a DBE/ESBE Goal Exemption Modification through the Program Manager.

Good Faith Efforts:

To demonstrate sufficient reasonable efforts to meet the DBE or ESBE contract goals, a contractor shall document the steps it has taken to obtain DBE or ESBE participation, including but not limited to the following:

1. Attendance at an information meeting, if any, to inform the DBEs or ESBEs of prime contracting and subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and small business publications for at least 20 days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
3. Written notification to DBEs or ESBEs that their interest in the contract is solicited;
4. Efforts made to select portions of work proposed to be performed by DBEs or ESBEs in order to increase the likelihood of achieving the stated goal;
5. Efforts made to negotiate with DBEs or ESBEs for specific proposals including at a minimum:
 - A. The names, addresses and telephone numbers of DBEs or ESBEs that were contacted;
 - B. A description of the information provided to DBEs or ESBEs regarding the scope of work for the specified solicitation; and
 - C. A statement of why additional agreements with DBEs or ESBEs were not reached;
6. Information regarding each DBE or ESBE the contractor contacted and rejected as unqualified and the reasons for the contractor's conclusion;
7. Efforts made to assist the DBE or ESBE in obtaining bonding or insurance required by the contractor.

NOTE: If the NJTPA determines that the apparent successful contractor has failed to meet the requirements of this section, the contractor will be afforded the opportunity for an administrative reconsideration of that determination prior to the award or rejection of the contract. As part of the administrative reconsideration process, the contractor will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. NJTPA will send the contractor a written decision on reconsideration, explaining the basis for the finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so.