

Op-Ed

Editor's note: The following article is penned in response to a report issued by the Inspector General on the **U.S. Department of Transportation's** disadvantaged business enterprise (DBE) program issued in April of 2013. A full copy of the report may be found at <http://www.oig.dot.gov/node/6101>.

The Office of the Inspector General's (OIG) audit of the Department of Transportation's (DoT) disadvantaged business enterprise (DBE) program accurately highlights the major problems concerning ineffective federal program implementation. Among the accurate criticisms to which the report draws attention: no single line of accountability, lack of on-site project oversight, Recipients' (i.e., transit agencies receiving DoT funding to procure public transportation vehicles, equipment, facilities and construction projects) overemphasis on certification, over assistance and lack of incentive for DBEs to grow beyond the program.

The report, however, could have included more about areas for the DoT's DBE program to improve.

To begin, inconsistency regarding interpretation and administration of the Code of Federal Regulation 49 part 26 (the statute governing the DoT's DBE program) directly correlates to inconsistent Recipients and prime contractor practices. Government officials at federal, state and local levels should spend more time helping primes find successful DBE firms and less time burdening primes

and DBEs with bureaucratic roadblocks to DBE participation.

The biggest area of fraud and abuse, however—which has not improved over the past 20 years—is the reporting of accurate DBE “counting values” in both awards and payments. DBE “Brokers” (whose legal DBE counting value should only be fees and commissions) are counted as DBE “regular dealers” (worth 60 percent counting value) and DBE “regular dealers” are counted

of work and all foreign subcontract values. The goal set on any given DoT project for DBE is based upon domestic subcontracted dollars (which is the only cost-effective source for DBE participation).

On Federal Transit Administration (FTA)-funded contracts with project-specific DBE goals (e.g., railcar or bus overhaul), DoT Recipients establish a contract goal that is typically based upon Total Contract Price. This goal is often a percentage significantly higher than actual industry participation and based on local political concerns and/or some internal standard dollar value policy (e.g., 18 percent DBE spend on all contracts exceeding \$1 million)—instead of Recipients following DoT's DBE FY goal setting methodology of actually determining

the “number of ready, willing, and able” DBEs vs. all firms.

Individually, each of the top ten TVMs (in terms of overall spend) provide more DBE participation than each of the bottom 75 percent of individual DoT Recipients.

In order to accurately assess DBE participation performance, the DoT should change the TVM semi-annual “DOORS” (DBE Office Online Reporting System) DBE report from

DOORs Reporting Cycle	Payment to all Primes	Payment to DBE Primes only	Actual % DBE Payments	DOT's current required % DBE Payments
10/1/12-3/31/13	\$500,000	\$40,000	8.0%	0.0%
4/1/13-9/30/13	\$600,000	\$70,000	11.7%	0.0%
10/1/13-3/31/14	\$700,000	\$80,000	11.4%	0.0%
4/1/14-9/30/14	\$800,000	\$70,000	8.8%	0.0%
10/1/14-3/31/15	\$900,000	\$70,000	7.8%	0.0%
4/1/15-9/30/15	\$400,000	\$50,000	12.5%	0.0%
10/1/15-3/31/16	\$300,000	\$30,000	10.0%	0.0%
4/1/16-9/30/16	\$200,000	\$30,000	15.0%	0.0%
10/1/16-3/31/17	\$200,000	\$10,000	5.0%	0.0%
4/1/17-9/30/17	\$400,000	\$50,000	12.5%	125.0%
Award Value	\$5,000,000	\$500,000	10.0%	

This chart demonstrates how significantly skewed actual DBE participation percentages can be under current DoT reporting policy.

as “manufacturers” (worth 100 percent counting value). Although Primes are the most frequent offenders in overcounting true DBE participation, Recipients and DBEs also take advantage of lax oversight practices.

Under the prime's annual Transit Vehicle Manufacturer (TVM) DBE Fiscal Year (FY) goal requirement, the prime contractor cumulatively reports all of their DoT-funded contracts combined, but subtracts their own in-house scope

the current policy of reporting only those contracts completed (i.e., paid in full) back to the past practice of TVMs reporting actual payments to date (i.e., all payments to all suppliers including partial/progress payments). This is because the current practice of reporting significantly skews the visibility and accuracy of DBE participation percentages reported by TVMs.

It's very common for TVMs to award prime contracts that span the entire lifetime of their TVM contract. For example, if a TVM delivers 10 railcars per month during a DoT Recipient's 5-year contract agreement, the TVM would then issue 60 separate monthly progress payments to its subcontractors.

DoT Recipients have limited communication with prime bidders/contractors because they prioritize policing over assistance. Although DBE program credibility requires strict enforcement, many Recipients offer little assistance in helping primes find potential DBE suppliers. Since DoT Recipients often publicize a list of "approved suppliers"

for major components in their bid specs, those same Recipients should also publish a list of DBEs that have performed on similar past contracts.

On FTA-funded new vehicle bids and contracts, DoT Recipients have even less incentive to help Bidders/Contractors because primes report their DBE participation on "TVM" contracts directly to the FTA. In other words, this process bypasses the DoT Recipient. Even if a Recipient requires a prime to notify the Recipient when using any DBEs on a contract, Recipients cannot "count" that DBE participation in the Recipient's DBE participation goal to FTA.

DBEs submitting a completed certification application should receive an approval decision within DoT's prescribed 90 calendar days, including DBEs applying out-of-state. DoT Recipients nationwide should be willing to help each other verify on-site DBE workscopes.

TVMs are too often left to fend for themselves with no support from DoT

Recipients or FTA when trying to source and develop DBEs. The DoT, FTA and Recipients should shift their focus from policing primes to partnering with them to improve DBE subcontracting opportunities.

If you consider the ultimate customer base (people riding public transportation), minorities and women represent a significant majority of that base. Therefore, minorities and women should and must become a meaningful portion of the supplier base. Responsible Prime contractors and consultants must be included. Let's work together to make it happen. ♦

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