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In Focus

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Doing Business with DBEs

DBE Railcar Subcontracting: Intentions Versus Reality

Special to *Passenger Transport*

By Bob Nixon
DBE Coordinator
Transit Systems Division
Morrison Knudsen Corporation
Hornell, N.Y.

The purpose of a transit authority's Disadvantaged Business Enterprise program is to provide opportunities for legitimate minority- and women-owned businesses to compete for and win subcontracting opportunities. Unfortunately, most railcar bid specifications actually decrease DBE subcontracting opportunities because they force transit vehicle manufacturers and their non-DBE major system suppliers to "lock in" their DBE subcontractors prior to contract award.

The practice of concluding contracts with DBE firms prior to bid submission has been advocated in other business sectors, especially construction. In a situation such as a fixed-price construction bid (when the design is substantially or totally defined and the contractor is dealing with first tier subcontractors whose scope of work can be determined based on that complete design), such a "lock-in" may make sense in order to assure achievement of a goal.

This practice is not the only way to assure compliance, however, and the nature of railcar material procurement is different in that functional engineering and equipment/supply definitions are not finalized until several months after contract award.

According to Sandy Llano, DBE director for Metra in Chicago, "... since design configurations, first article inspections, and engineering change notices are not concluded for several months after award, many DBE firms (on railcar building contracts) cannot possibly be considered until those decisions are finalized." Furthermore, Llano recommends "... that TAs who wish to maximize DBE content levels allow their railcar builders the ability to adjust their DBE plan (allocation) throughout the contract in order to serve the best interests of all parties concerned."

In order to look at how transit vehicle manufacturers and their non-DBE suppliers can increase quality subcontracting opportunities with DBEs, we must first address the challenges that DBEs face and the administrative issues they encounter in the railcar industry. Major problem areas include the DBE certification application process and the inconsistent methodologies used by various transit authorities to

establish, implement, and evaluate DBE programs.

Federal Regulation 49 CFR Part 23 allows transit vehicle manufacturers to include their second-tier DBE subcontractors' dollar value toward their DBE goals. In many cases, transit vehicle manufacturers (See *Railcar Subs*, page 11)

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ers are actually railcar assemblers who purchase most of their material dollars in major system components from other large non-DBE firms. In order for a transit vehicle manufacturer to meet its DBE goal, it passes along the same DBE content requirements to these non-DBE major subcontractors.

The required paperwork for successful railcar bids is staggering for transit vehicle manufacturers, their prime contractors, and DBEs themselves (not to mention the transit authorities who must process it). Some typical DBE documentation required by the bid due date includes: Letters of intent between DBEs and prime contractors, copies of executed subcontract agreements, DBE affidavits declaring no change in ownership/ management structure, and DBE utilization forms that list exact workscopes, dollar amounts, and schedules. It's unreasonable to expect a transit vehicle manufacturer (or its non-DBE prime contractor) to execute a subcontract until it has been awarded a contract itself.

Another DBE roadblock involves the timeliness of each transit authority's acceptable DBE certification. Many railcar bid specifications require that all DBEs listed by a transit vehicle manufacturer proposer be certified by that particular transit authority prior to the bid due date. Although the intent of this pre-award DBE certificate may be to avoid bid shopping, it essentially shuts out all DBE subcontracting opportunities during the entire lifetime of a multi-year project for those firms that weren't certified prior to the bid due date.

For example, suppose a new railcar bid is issued March 1, 1995, requiring that all DBEs be certified by the June 1, 1995, bid due date. During this three-month period, that particular transit authority is so inundated with the new DBE applications that it cannot possibly process them all. Therefore, those potential DBEs not certified prior to June 1, 1995, must be dropped from the transit vehicle manufacturer's DBE plan (even though that DBE may offer the best quality, price, and reliability to a transit vehicle manufacturer wishing to offer a subcontract).

On Aug. 1, 1995, the transit vehicle manufacturer wins a railcar building contract through 1998, but cannot use or even consider any DBEs not certified by June 1, 1995. As a result, older established, pre-certified DBEs, that already have a significant share of the pie, continue to get the subcontracts instead of the up-and-coming DBEs that really need the business.