

NCHRP

SYNTHESIS 416

**NATIONAL
COOPERATIVE
HIGHWAY
RESEARCH
PROGRAM**

Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs

A Synthesis of Highway Practice

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FOREWORD

Highway administrators, engineers, and researchers often face problems for which information already exists, either in documented form or as undocumented experience and practice. This information may be fragmented, scattered, and unevaluated. As a consequence, full knowledge of what has been learned about a problem may not be brought to bear on its solution. Costly research findings may go unused, valuable experience may be overlooked, and due consideration may not be given to recommended practices for solving or alleviating the problem.

There is information on nearly every subject of concern to highway administrators and engineers. Much of it derives from research or from the work of practitioners faced with problems in their day-to-day work. To provide a systematic means for assembling and evaluating such useful information and to make it available to the entire highway community, the American Association of State Highway and Transportation Officials—through the mechanism of the National Cooperative Highway Research Program—authorized the Transportation Research Board to undertake a continuing study. This study, NCHRP Project 20-05, “Synthesis of Information Related to Highways Problem,” searches out and synthesizes useful knowledge from all available sources and prepares concise, documented reports on specific topics. Reports from this endeavor constitute an NCHRP report series, *Synthesis of Highway Practice*.

This synthesis series reports on current knowledge and practice, in a compact format, without the detailed directions usually found in handbooks or design manuals. Each report in the series provides a compendium of the best knowledge available on those measures found to be the most successful in resolving specific problems

PREFACE

By Jo Allen Gause
Senior Program Officer
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As state departments of transportation (DOTs) carry out their highway construction programs, they are required to direct a portion of their federal-aid fund expenditures toward small businesses called Disadvantaged Business Enterprises (DBEs). A DBE is defined as a small, for-profit business concern that is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals. States are required to meet the maximum feasible portion of their DBE participation goals using race-neutral means designed to remove barriers and enhance opportunities for all small businesses, not just DBEs.

This synthesis compiles and documents race-neutral strategies being used effectively by state DOTs to meet their DBE participation goals. It also reviews and synthesizes problems faced by state DOTs in the administration of their DBE programs and identifies race-neutral remedies used to overcome these challenges.

Information used in this study was acquired through a review of the literature and a survey of state DOTs. Follow-up interviews were conducted with three states as case examples.

Patrick Casey and Andrea Thomas, CTC & Associates LLC, and James S. Thiel, attorney at law, Madison, Wisconsin, collected and synthesized the information and wrote the report. The members of the topic panel are acknowledged on the preceding page. This synthesis is an immediately useful document that records the practices that were acceptable with the limitations of the knowledge available at the time of its preparation. As progress in research and practice continues, new knowledge will be added to that now at hand.

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IMPLEMENTING RACE-NEUTRAL MEASURES IN STATE DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

SUMMARY As state departments of transportation (DOTs) carry out their highway construction programs, they are required by the U.S.DOT to direct a portion of their federal-aid fund expenditures toward small businesses called Disadvantaged Business Enterprises (DBEs). A DBE is defined as a small, for-profit business concern that is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals.

States are required to meet the maximum feasible portion of their DBE participation goals using race-neutral means designed to remove barriers and enhance opportunities for all small businesses, not just DBEs. (The term “race-neutral” is understood to include gender-neutrality as well.) States’ responses to the survey conducted for this project revealed differences in their interpretations of which strategies constitute race-neutral measures, and a measure viewed as race-neutral by one state may not be considered race-neutral in another. (For example, some states may provide advantages to prime contractors that frequently and proactively use DBE subcontractors, whereas other states do not view this practice as race-neutral.)

The objective of this synthesis is to identify race-neutral strategies being used effectively by state DOTs across the country, with a goal of assisting DBE program managers and others in selecting and implementing race-neutral measures in their own agencies. State DOTs can use this synthesis report to explore strategies they may not have previously used, and to learn from other states’ experiences to tailor the implementation of the strategies that they use to be as effective as possible.

Race-neutral measures vary from state to state, and the same measure may be implemented differently at different agencies. This synthesis reports on state DOTs’ assessments of which measures are most effective and what details make the difference in a successful implementation. This report also reviews and synthesizes problems faced by state DOTs in the administration of their DBE programs and identifies race-neutral remedies used to overcome these challenges. Finally, three case examples provide an in-depth look at how a state DOT has implemented a race-neutral strategy that has been effective in helping the department meet its DBE participation goals.

To gather information for this synthesis, an online survey was sent to the membership of the AASHTO Subcommittee on Civil Rights. The survey achieved a 94% response rate, with participation from 47 of the 50 states; most respondents were from state DOT offices of Civil Rights or Equal Opportunity. Follow-up interviews were conducted with three states as case examples.

Respondents were asked to rate the effectiveness of 22 race-neutral measures in four categories: supportive services and training, administrative support, marketing and outreach, and financial assistance. Supportive services refers to training, assistance, and other services provided by states to DBE firms using federal funding “to further the development of DBEs, . . . assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program.”

As a group, supportive services and training measures ranked among the most effective in the survey. The strategy ranking the very highest, however, was an administrative support strategy—“limiting certain small contracts to proposals by small firms only,” which was rated effective by 91% of those who had used it.

Of the 22 strategies discussed in the survey, no strategy was rated negatively (receiving ratings of 1 or 2—not at all effective or somewhat effective) by more than half of those who had used it. The strategy rated least effective, assisting DBEs with bonding and financing, was rated a 1 or 2 by 43% of those who had used it. (States that use 100% race-neutral measures ranked this strategy more highly, however—60% of race-neutral states rated it very or extremely effective.)

Respondents had more experience with some of the strategies named in the survey than others. Supportive services and training measures were widely used among respondents, as were several of the marketing and outreach strategies. Fewer respondents had used the strategies related to financial assistance or administrative support. The strategy “branding, marketing, and publicizing the state’s DBE programs” was used by 100% of respondents, whereas at the other end of the spectrum only 24% of respondents had used the strategy “limiting certain small contracts to proposals by small firms only.”

In addition to the 22 strategies listed in the survey, states identified several other race-neutral strategies in their answers to open-ended survey questions.

The challenges states identified as the most significant obstacles to meeting their DBE goals for highway contracting spanned multiple areas. Financial challenges were significant, including external factors (the economy, fuel costs), DBEs’ cash flow issues and lack of access to capital, and DBEs’ inability to obtain bonding. Challenges relating to DBEs’ lack of experience or equipment were cited as problems as well.

The survey responses from a subset of 14 states that use or have used 100% race-neutral measures in meeting their DBE participation goals were also analyzed separately. These 14 included the 9 states under the jurisdiction of the Ninth Circuit Court of Appeals, which have all used 100% race-neutral measures as mandated by a 2005 court decision, plus 5 additional states that reported using 100% race-neutral measures for other reasons, often voluntarily. These states have a unique perspective on the use of race-neutral measures that other states may be able to learn from.

States using 100% race-neutral measures were similar to states overall in their assessment of which challenges are most significant and which race-neutral strategies are the most and least effective. The 100% race-neutral states were somewhat more likely to identify the issue of DBEs obtaining bonding as a problem than other states; in addition, in rating the effectiveness of the strategy “assisting DBEs with bonding and financing”; 60% of race-neutral states rated this strategy as very or extremely effective, whereas just 17% of other states did.

Based on quantitative analysis of the survey data on the most significant challenges and the most effective race-neutral strategies, three strategies were selected as the subjects of case examples: (1) a Florida DOT program that reserves small contracts for small businesses, (2) a Rhode Island DOT loan program for underutilized DBEs, and (3) the Colorado DOT’s practice of providing one-on-one assessments to selected firms and tailoring training to their needs.

The results of this synthesis project point to several key findings. The strategies that were rated most effective by survey respondents were not always the most commonly used, and states that are less familiar with these highly rated strategies may wish to evaluate their potential for success. Two of these strategies—reserving small contracts for small businesses and using loan mobilization programs—can have high payoffs, but are challenging to implement.

They may require a state DOT to seek enabling legislation or approval from the FHWA or to identify funding sources or umbrella programs (e.g., finding a place for contracting innovations within an agency's alternative contracting program).

Survey respondents wrote more comments about communication and networking than about any other topic. Facilitating and improving communication between DBEs and prime contractors is seen as critical in establishing new relationships, in helping DBEs effectively solicit work, and in maintaining successful partnerships between contractors and subcontractors on existing projects. States have helped facilitate communication using strategies such as holding networking events, helping prime contractors identify DBE subcontractors in specific lines of work, and proactively monitoring projects as they progress.

States have mitigated the challenges they face with measures that help individual DBEs in a direct, immediately tangible way, such as by assisting a limited number of DBEs in obtaining loans, bonding, or insurance, and with longer-term measures that help a larger group of DBEs grow, such as networking opportunities and training classes. States that use targeted measures stressed the importance of selecting the right firms to receive these benefits. Some states have found that evaluating the ways in which different DBE firms make use of the measures that benefit all firms can help them assess which firms are good candidates for those measures that need to be divided among fewer recipients.

The literature review conducted as part of this project concluded that there is little to no published peer-reviewed research on this topic.

Four potential avenues for further research in this area were identified. First, this synthesis considered the effectiveness of race-neutral measures from the perspective of state DOTs. A follow-up project that examines the perspective of DBE firms on similar issues would provide valuable insight for state DOTs on which measures DBEs see as most helpful. Feedback from Supportive Services staff would provide a useful perspective as well.

Second, follow-up research that identifies trends in states' use of race-neutral measures according to regional differences, agency size, or state and federal funding levels would allow states to further tailor their implementation of these measures to those that are best suited to their circumstances and resources.

In addition, more research into how states implement race-neutral programs such as reserving contracts for small businesses would be valuable. Because programs such as these require more levels of approval than some other strategies, compiling templates for legislation and successful practices for implementation would allow more agencies to explore these programs.

Finally, data on the extent to which states have met the race-neutral portion of their annual DBE participation goals would be beneficial in assessing the effectiveness of implementing race-neutral measures as a group.

INTRODUCTION

As highway construction programs are carried out by state departments of transportation (DOTs), they are required by the U.S.DOT to direct a portion of their federal-aid funds expenditures toward small businesses known as Disadvantaged Business Enterprises (DBEs), which are defined as small, for-profit business concerns that are at least 51% owned and controlled by one or more socially and economically disadvantaged individuals.

State DOTs are required to establish an overall DBE participation goal for federal-aid highway contracts and a methodology for arriving at the goal. Until March 2010, goals were required to be set annually; a new rule now requires them to be set every three years (*Federal Register* 2010). State DOTs are further required to meet the maximum feasible portion of their goals using race-neutral means—methods designed to remove barriers and enhance opportunities for all small businesses, not just DBEs.

PURPOSE OF REPORT

Race-neutral measures vary from state to state. This synthesis was initiated to identify tools and practices to help state DOTs effectively use race-neutral measures as they administer DBE programs that comply with federal requirements. To meet that need, the NCHRP funded this project to review and synthesize problems faced by state DOTs in the administration of their DBE programs and identify remedies used by states to overcome problems involving race-neutral efforts.

BACKGROUND

The current FHWA Disadvantaged Business Enterprise program is authorized by Section 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59. The FHWA implements the program through U.S.DOT regulations in 49 Code of Federal Regulations (CFR) Part 26. (For more information, see the U.S.DOT website: <http://osdbuweb.dot.gov/DBEProgram/index.cfm>.) The regulations include the following definitions:

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

It is important to note that states differ in their interpretation of which strategies constitute race-neutral measures, and that a measure viewed as race-neutral by one state may not be considered race-neutral in another.

Section 26.51 of Part 26 of the regulations contains a nonexhaustive list of race-neutral means, including providing supportive services targeted at DBEs and activities such as publishing a DBE directory. Despite the program's focus on DBE firms, U.S.DOT has stated that these measures are considered race-neutral (U.S.DOT 2009) (see <http://www.osdbu.dot.gov/DBEProgram/dbeqna.cfm>).

States provide supportive services to DBE firms through FHWA's Disadvantaged Business Enterprise Supportive Services (DBE/SS) program, which operates as an adjunct to the federal DBE program. The DBE/SS program provides funding to states to support training, assistance, and other services provided to DBE firms "to further the development of DBEs . . . assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program."

Since 1982, the U.S. Congress has authorized up to \$10 million annually to accomplish these objectives; the FHWA awards these funds to the states. In 2010, FHWA awarded \$9.9 million in grants to 33 states, ranging from \$30,000 to \$880,000. This is a discretionary grant program; states are not required to apply for the grants every year. The FHWA reports that it receives 35 to 40 grant proposals each year—not every state applies for funding. In their applications, states must describe their plans for using the grants, including the purpose and objectives, the target audience, and the period of performance. (For more information about the DBE/SS program, see <http://www.fhwa.dot.gov/civilrights/programs/dbe.htm>.)

In addition to providing supportive services, states also facilitate DBE participation through administrative support measures, such as reserving smaller contracts for small businesses, unbundling contracts to separate a larger project into smaller pieces that DBEs can more easily bid on, and requiring pre-bid registration for prime contractors so that DBE firms know whom to submit quotes to. Some states provide financial assistance as well, such as helping DBEs obtain bonding or loans to allow them to compete for contracts with larger firms.

States publicize the services of their DBE programs through marketing and outreach to DBEs and prime contractors. Many states publish DBE newsletters and notify DBEs of contract opportunities by e-mail. States also commonly facilitate networking and communication between DBEs and prime contractors by hosting events that bring the two groups together, in addition to outreach events that increase DBEs' awareness of contracting opportunities with DOTs.

In addition, although race-conscious measures include setting contract goals for DBE participation on specific construction contracts, race-neutral DBE participation includes, but is not limited to, any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

In implementing their DBE programs, nine states in the western United States must abide by the outcome of a 2005 decision by the Ninth Circuit Court of Appeals [*Western States Paving Co. Inc. v. Washington State Department of Transportation*, 407 F. 3d 983 (2005)]. The court held that a state DOT must limit its application of the race and gender preference elements of the U.S.DOT/FHWA DBE program to situations where those preferences are demonstrably needed. These nine DOTs must use 100% race-neutral means in their efforts to meet their DBE participation goals, and may employ race-conscious methods with only those groups for which disparities have been recently demonstrated.

STUDY APPROACH

This synthesis project included the following tasks:

- Literature review of state and local practices.
- Survey of members of the AASHTO Subcommittee on Civil Rights.
- Interviews with selected state DOT DBE program managers.
- Review of sample documents provided by interviewees and survey respondents.

The literature review focused on relevant state practices for implementing race-neutral measures in DBE programs. The literature review concluded that there is little to no published peer-reviewed research on this topic, which confirmed the need for this synthesis study. As part of this step, the results of a 2008 survey of DBE program managers conducted by the TRB DBE Committee, which asked states to describe the race-neutral measures they use, were reviewed. The 74 measures identified by respondents to that survey helped inform the list of strategies included in the survey for the current synthesis project. A bibliography of relevant research is provided at the end of this synthesis report.

The online survey for this synthesis was sent to all members of the AASHTO Subcommittee on Civil Rights. To facilitate a high response rate, it was important that the survey be completed in a reasonable amount of time. Toward that end, the survey was designed to minimize the number of open-ended questions, while allowing respondents the option of providing greater detail on how the states' most significant challenges were addressed using race-neutral methods. A copy of the survey is presented as Appendix A to this report.

States were allowed one month to complete the survey. Once the deadline had passed, follow-up contact was made through e-mails and phone calls to ensure that the target response rate of 80% (40 states) was reached. To ensure a high response rate among the states under the jurisdiction of the Ninth Circuit Court of Appeals, extra effort was made to encourage those states to complete the survey. Ultimately, staff from 47 of the 50 states participated, a 94% response rate. Most respondents were from state DOT offices of Civil Rights or Equal Opportunity.

The results of the survey form the basis for chapters two and three of this report. The survey results were analyzed using a combined approach that incorporated both quantitative and qualitative analysis:

- **Quantitative analysis:** The survey responses were tallied and the resulting data were analyzed to determine the race-neutral strategies that respondents found most and least effective, the strategies they used most commonly, and the most effective strategies by category. These data are displayed graphically in chapter two. Responses from the subset of states that use or have used 100% race-neutral measures, including those under the jurisdiction of the Ninth Circuit Court of Appeals, were also analyzed.
- **Qualitative analysis:** States' responses to the survey's open-ended questions were analyzed to identify patterns in the way states described the challenges they face and the race-neutral measures they use. Some topics provoked very little response, whereas others inspired lengthy descriptions. Respondents' comments were grouped by topic, and the challenges they described were linked where possible with states' efforts to overcome them.

Based on this analysis, interviews were conducted with staff at state DOTs that are using especially effective or innovative strategies, especially those strategies that are less commonly used. This process provided an in-depth look at how one state has implemented each strategy, including the choices each agency made that were successful and those that they would advise other agencies not to repeat.

The survey included four questions about fraud and compliance among DBEs and prime contractors. When the responses

to these questions were analyzed, it was determined that these topics were outside the scope of this synthesis project, and discussion of these survey results was omitted from this final report. However, respondents' answers to these questions are included in Appendix B.

REPORT ORGANIZATION

Following this introductory chapter, this synthesis report is organized as follows:

- Chapter two analyzes survey respondents' numerical ratings of the effectiveness of 22 race-neutral measures and the significance of 19 challenges they face
- Chapter three summarizes survey respondents' open-ended comments about the race-neutral strategies they have used, including the characteristics of successful and unsuccessful implementations.
- Chapter four discusses the challenges state DOTs face in meeting their goals for DBE participation, and provides survey respondents' descriptions of how they use race-neutral measures to address these challenges.
- Chapter five consists of three case examples that detail how three states have effectively implemented specific race-neutral measures.
- Chapter six summarizes the key findings of this synthesis project and describes conclusions about these findings.

SUMMARY OF SURVEY RESPONSES

This chapter provides a summary of the results of the survey and interviews, and provides analysis of key data regarding states' use of race-neutral measures. It includes a separate analysis of data from the subset of states that use or have used 100% race-neutral measures in their DBE programs.

SURVEY RESULTS

The survey was sent to representatives of all 50 states and the District of Columbia. Responses were received from 47 states, or 94%—a high response rate that ensured that states of all sizes and geographic areas were represented.

Survey respondents were asked to evaluate 22 race-neutral measures in four categories:

1. Supportive services and training
2. Administrative support
3. Marketing and outreach
4. Financial assistance.

Respondents used a five-point scale to rank these strategies:

- 1 = Not at all effective
- 2 = Somewhat effective
- 3 = Effective
- 4 = Very effective
- 5 = Extremely effective.

All of the 22 race-neutral strategies were rated “effective” (receiving a rating of 3, 4, or 5) by at least 50% of the respondents who had used them. A summary of patterns in states' assessment of the strategies is provided in chapter three.

Most Commonly Used Race-Neutral Measures

Respondents had more experience with some of the 22 strategies named in the survey than others. Six strategies were used by more than 90% of respondents, whereas at the other end of the spectrum only 24% of respondents had used the strategy “limiting certain small contracts to proposals by small firms only.”

Respondents had the most experience with supportive services and training measures; of the five measures in that grouping, four had been used by more than 90% of respon-

dents. They were also very experienced with several of the marketing and outreach strategies, including “branding, marketing, and publicizing the state's DBE programs,” which had been used by 100% of respondents.

Fewer respondents had used the strategies related to financial assistance. Administrative support strategies (measures that states take to facilitate DBE participation by adjusting their policies or by establishing initiatives such as mentor/protégé programs) were also less frequently used. Figure 1 shows the eight strategies most commonly used by respondents.

Most and Least Effective Race-Neutral Measures

Supportive services and training measures ranked among the highest in terms of effectiveness, with four of the five measures in this category ranking among the most effective in the survey (among respondents who had used them). The strategy ranking the highest in the survey, however, was an administrative support strategy—“limiting certain small contracts to proposals by small firms only,” which was rated effective by 91% of those who had used it. Figure 2 shows how respondents rated the effectiveness of the 22 strategies named in the survey.

The strategies receiving the highest percentage of 4 and 5 ratings (“very effective” or “extremely effective”) among those who had used them were also identified. These strategies were the same as those that received the highest percentage of ratings of 3, 4, and 5, with one exception: The strategy “participating in loan mobilization programs (assisting banks in providing loans to DBEs)” tended to divide respondents. It received no ratings of 3 (“effective”), and it appears in both the list of strategies that received the highest percentage of ratings of 4 and 5 (see Figure 3) and those that received the highest percentage of ratings of 1 and 2.

This strategy, along with the two other strategies that received the highest percentages of ratings of 4 and 5 (see Figure 3), is the subject of a case example in chapter five.

Least Effective Strategies

Of the 22 strategies discussed in the survey, no strategy was rated ineffective (receiving ratings of 1 or 2—“not at all effective” or “somewhat effective”) by more than half of those who

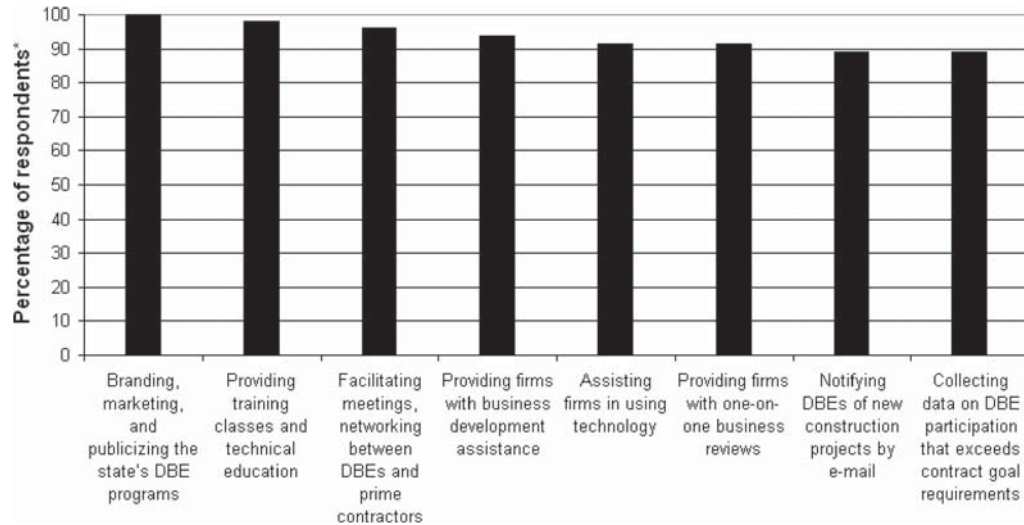


FIGURE 1 Race-neutral strategies most commonly used by survey respondents. (*Respondents who provided a 1 to 5 rating for a strategy rather than selecting “Have not used” were counted as having used the strategy.)

had used it. The strategy rated least effective, “assisting DBEs with bonding and financing,” was rated a 1 or 2 by 43% of those who had used it.

Eight strategies were rated less effective (receiving ratings of 1 or 2) by between 38% and 43% of respondents who had used them. These strategies fell under the categories of administrative support, marketing and outreach, and financial assistance. See Figure 2 (bottom chart) for the strategies respondents rated least effective.

Most Significant Challenges

The challenges states identified as most significant in meeting their DBE goals for highway contracting spanned multiple areas. Financial challenges were significant, including external factors (the economy, fuel costs), DBEs’ cash flow issues and lack of access to capital, and DBEs’ inability to obtain bonding. Challenges relating to DBEs’ lack of skills, experience, or equipment were cited as well.

Figure 4 shows the 19 challenges listed in the survey in order of how significant they were rated by survey respondents who had experienced them.

Patterns in States’ Use of Race-Neutral Measures

States’ responses to the survey questions about the effectiveness of 22 race-neutral strategies and the significance of 19 challenges in meeting their DBE participation goals were evaluated across all respondents and among states using 100% race-neutral measures. Of the measures most commonly used by respondents’ agencies, the following four were also among those rated most effective:

- Branding, marketing, and publicizing the states’ DBE programs
- Assisting firms in using technology
- Providing firms with one-on-one business reviews and/or technical assistance
- Providing training classes and technical education.

There were no strategies that were commonly used but rated ineffective. Of the strategies rated least effective, only one was used by more than 70% of respondents: “publishing newsletters reaching out to DBEs,” which was used by 85% of respondents and rated effective by 62% of those.

Additional observations about strategies’ effectiveness include:

- The strategy “facilitating meetings and networking between DBEs and prime contractors” was the third most commonly used strategy, but tied for 13th place in the effectiveness rankings at 69%. This strategy relates more closely to fostering communication and connections between DBEs and prime contractors than any other strategy listed in the survey, and respondents wrote more about that topic than any other topic in the survey. The overarching theme among their comments was how critically important communication between DBEs and prime contractors is, both in establishing new relationships and in maintaining successful partnerships.
- In respondents’ open-ended comments, the only strategy labeled ineffective was advertising contracting opportunities in trade papers or regular newspapers. Those who mentioned this stated that DBE firms do not read these publications for job opportunities.
- A few respondents mentioned that using state DOT staff to provide support services, training, and outreach was

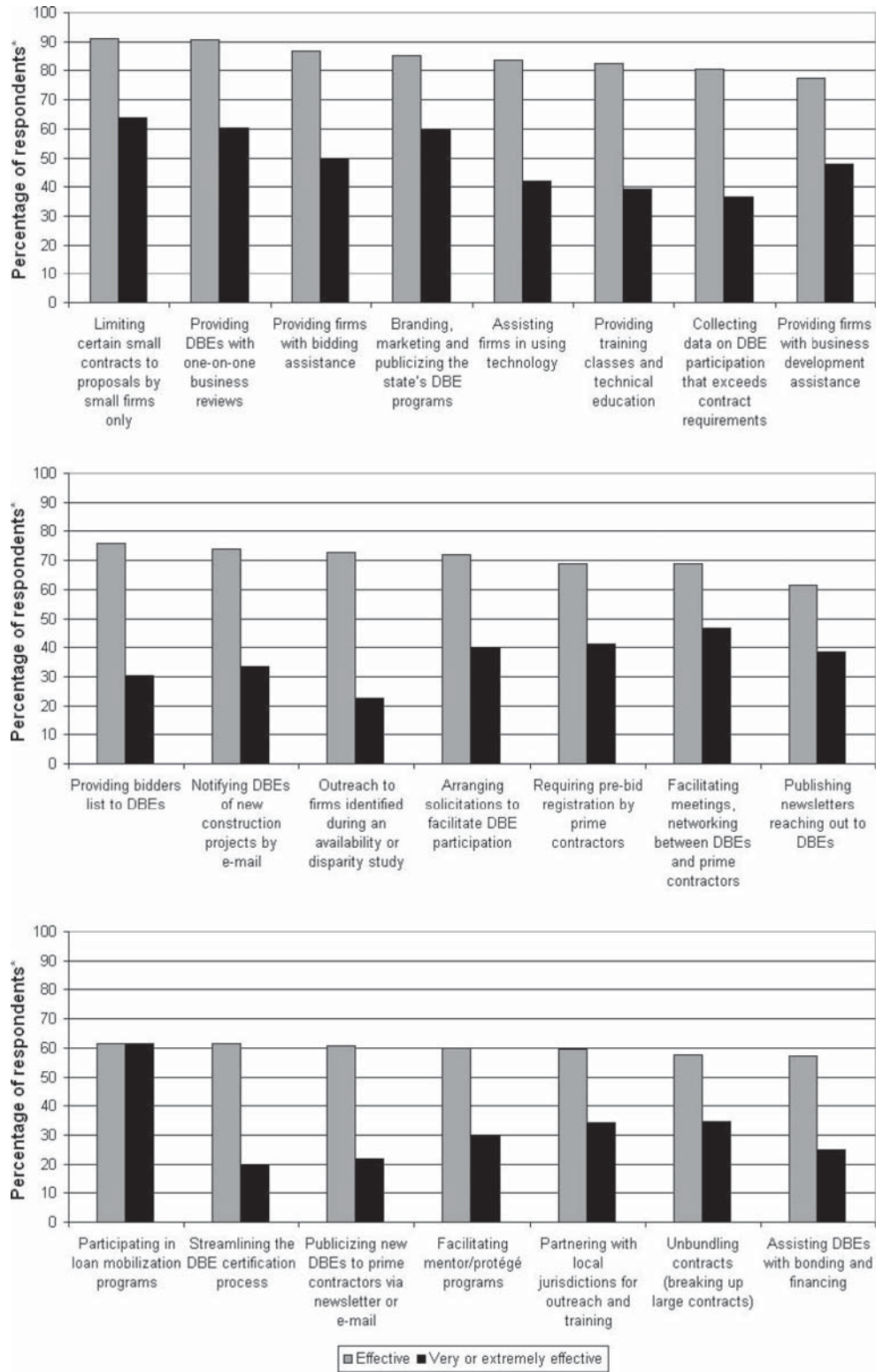


FIGURE 2 The 22 race-neutral strategies, and the percentage of survey respondents that gave each strategy a rating of 3, 4, or 5 (“effective,” “very effective,” and “extremely effective”).
 *Among those who had used these strategies.

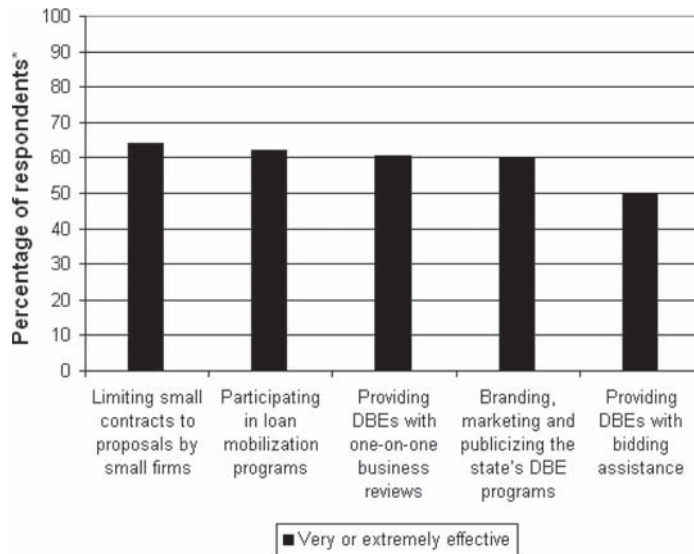


FIGURE 3 Race-neutral strategies receiving the highest percentage of 4 and 5 ratings (“very effective” and “extremely effective”) from survey respondents. *Among those who had used these strategies.

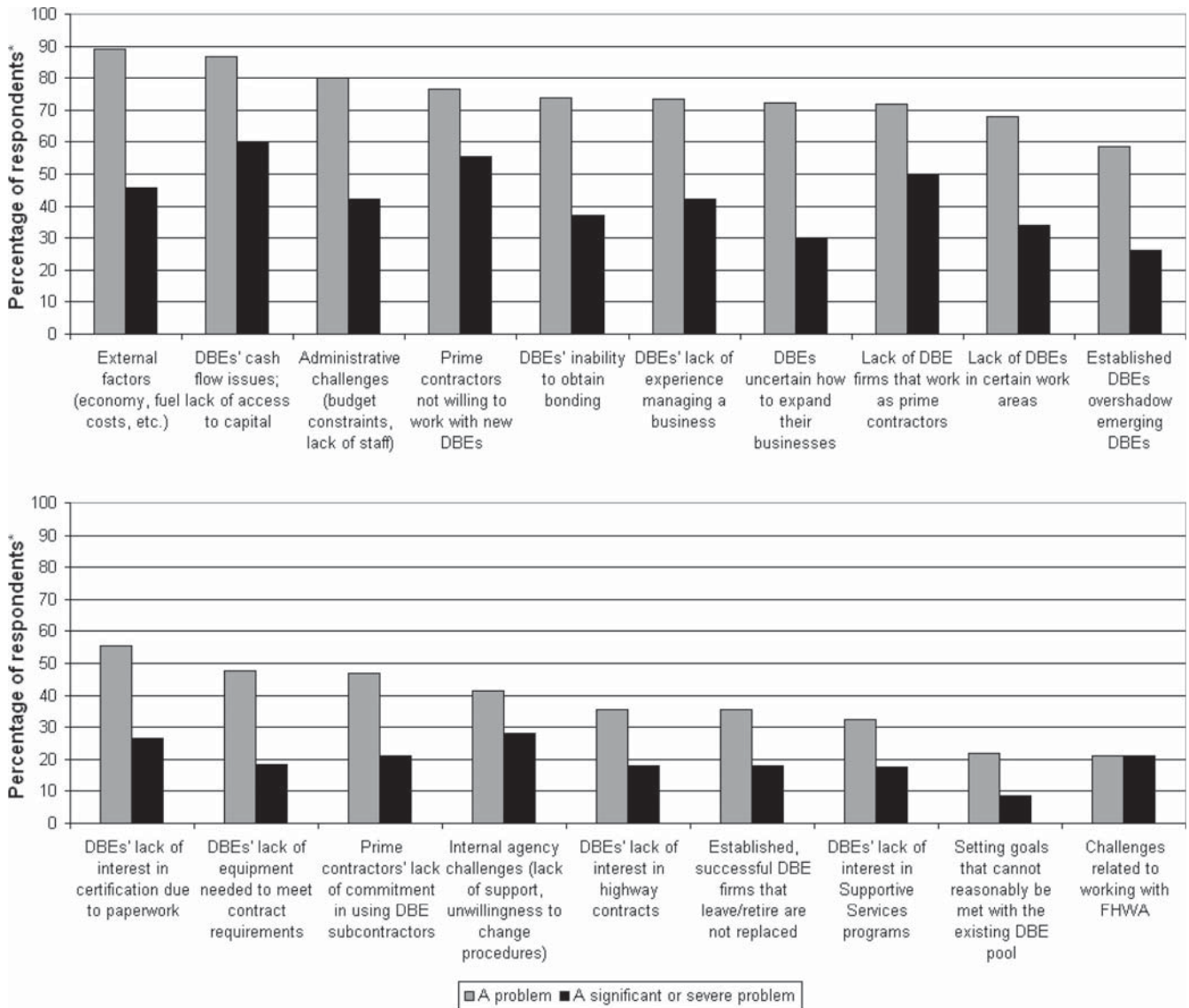


FIGURE 4 Respondents' ratings of the significance of 19 challenges that impact states' ability to meet their DBE goals. *Among those who had experienced these challenges.

more effective than using consultants. However, other respondents described positive relationships with consultants, in some cases citing their close oversight of consultants and strong working relationships during their contract.

RESPONSES FROM THE SUBSET OF STATES THAT HAVE USED 100% RACE-NEUTRAL MEASURES

Following a 2005 court decision, each DOT in the nine states under the jurisdiction of the Ninth Circuit Court of Appeals either must use 100% race-neutral measures to meet its DBE participation goals or must receive a waiver from the FHWA allowing the agency to use race-conscious measures to target certain subgroups (based on statistical evidence of discrimination within the state DOT’s contracting market).

The states in the Ninth Circuit are Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. All have used 100% race-neutral measures for some period of time since 2005. In addition to these states, five other states reported in the survey that they currently use 100% race-neutral measures to meet their DBE goals: Florida, Maine, Maryland, Vermont, and Wyoming. In general, discussion of survey responses in this section refers to this subset of 14 states.

Most and Least Effective Measures Among States Using 100% Race-Neutral Means

States using 100% race-neutral measures were relatively similar to other states in their assessment of which race-neutral strategies are most effective (see Figures 5 and 6).

- Of the top 10 strategies that each group identified as most effective, seven strategies were shared between the two groups.
- In comparing which strategies were rated very or extremely effective by the highest percentages of each group, respondents using 100% race-neutral measures fell within 20 percentage points of those in the other states in their ratings of nearly all measures.
 - Of the 22 strategies, 10 were rated more highly by race-neutral states and 12 were rated more highly by the other states. In general, neither group tended to provide markedly higher ratings than the other.
 - The biggest difference between the two groups was in rating the strategy “assisting DBEs with bonding and financing.” Sixty percent of race-neutral states rated this very or extremely effective, whereas just 17% of other states did (see Figure 7).

States using 100% race-neutral measures were also similar to other states in their assessment of which race-neutral strategies are least effective.

- Of the 10 strategies that each group identified as least effective, nine of these were shared between the two groups.
- In comparing which strategies were rated a 4 or 5 (very or extremely effective) by the lowest percentages of each group, respondents using 100% race-neutral measures again fell within 20 percentage points of those in the other states in their ratings of nearly all measures.
- Among strategies that were rated a 4 or 5 less often by 100% race-neutral states than by other states, the biggest differences between the two groups were in rating two strategies. “Providing firms with one-on-one business

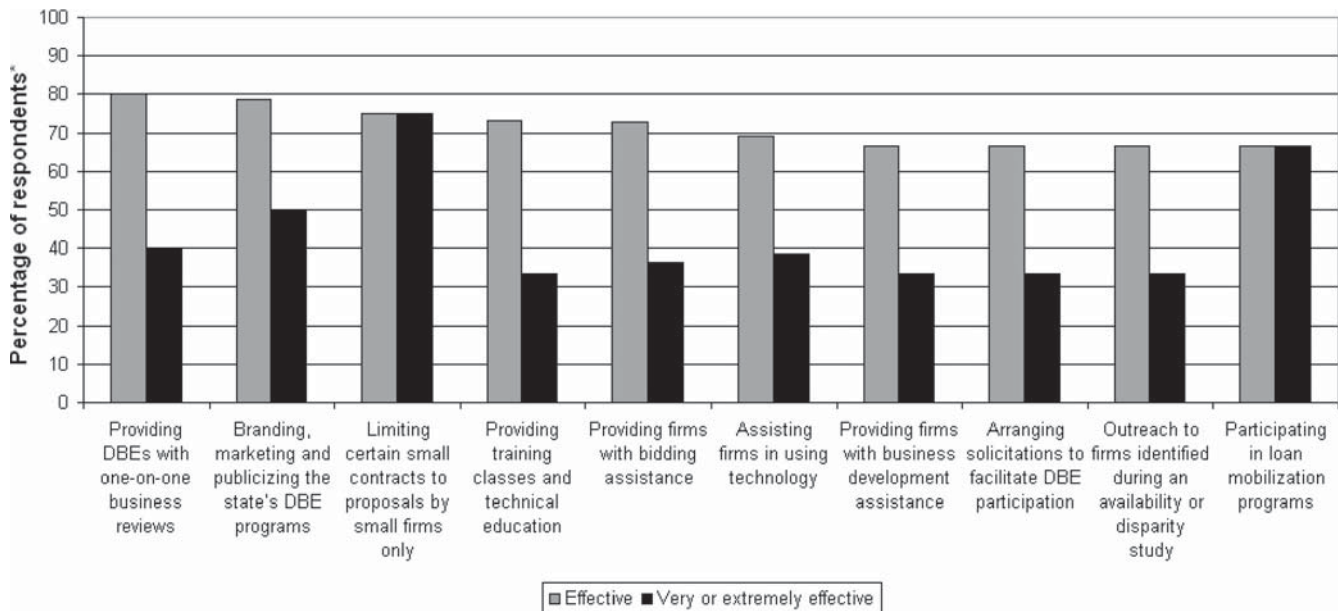


FIGURE 5 These 10 strategies were rated most effective by respondents who had used 100% race-neutral measures. *Among respondents who had used these strategies.

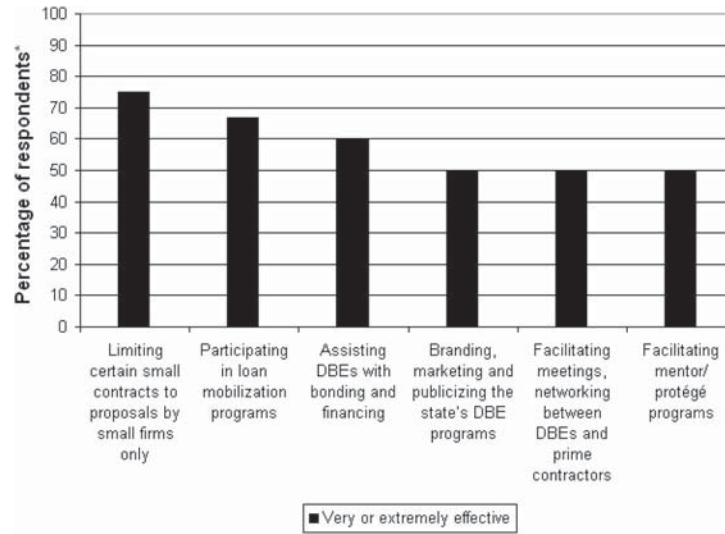


FIGURE 6 These six strategies were rated most often as very or extremely effective by respondents who had used 100% race-neutral measures. *Among respondents who had used these strategies.

reviews and/or technical assistance” was rated a 4 or 5 by 43% of race-neutral states that had used it versus 69% of other states that had. “Requiring pre-bid registration by prime contractors” was rated a 4 or 5 by 27% of race-neutral states that had used it compared with 50% of other states that had (see Figure 8).

Challenges Involved in Using 100% Race-Neutral Measures

States using 100% race-neutral measures were similar to states nationwide in their assessment of which challenges are the

most significant obstacles to meeting their DBE participation goals (see Figure 9).

- Of the top eight challenges that each group identified as most significant, seven were shared between the two groups.
- Respondents using 100% race-neutral measures tended to identify certain issues as problems more than states in general did. For example, 100% of race-neutral states identified a DBEs’ inability to obtain bonding as a problem, whereas 74% of states in general did.

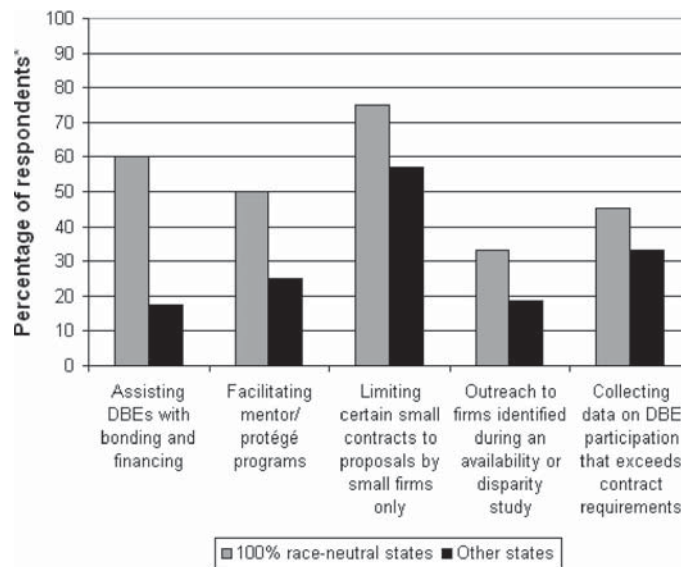


FIGURE 7 These strategies were rated a 4 or 5 (very or extremely effective) more often by respondents from 100% race-neutral states than by respondents from other states. *Among respondents who had used these strategies.

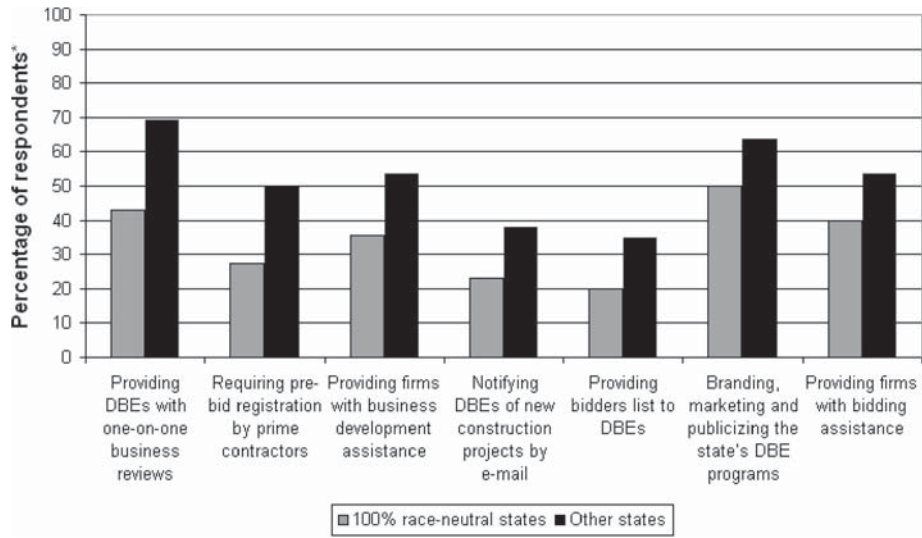


FIGURE 8 These strategies were rated a 4 or 5 (very or extremely effective) less often by respondents from 100% race-neutral states than by respondents from other states. *Among respondents who had used these strategies.

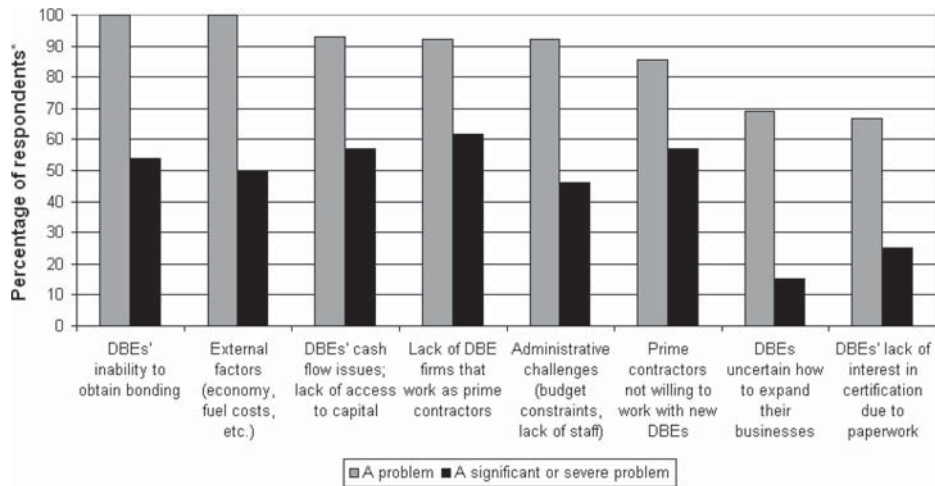


FIGURE 9 These challenges were rated most significant by survey respondents who had used 100% race-neutral measures. *Among respondents who had experienced these challenges.

STATE STRATEGIES FOR IMPLEMENTING RACE-NEUTRAL MEASURES

This chapter synthesizes states' responses to the open-ended survey questions about their experiences with implementing race-neutral strategies. As described in chapter one, survey respondents were asked to rate the effectiveness of 22 race-neutral strategies on a 1 to 5 scale, and they were given the opportunity to provide more detail about how they implemented these strategies and to describe other strategies in addition to the 22 listed in the survey. Respondents provided detail about their implementation of 17 of the 22 listed strategies, and these open-ended responses are summarized in this chapter. Details of respondents' numerical ratings of the 17 strategies' effectiveness, as well as what percentage of states had used each strategy, accompany these summaries to provide additional perspective.

Respondents' ratings of the effectiveness of the other five strategies are shown in Figure 2 (see chapter two), and detailed ratings of all 22 strategies are available in Appendix B. The full text of all open-ended survey responses is also available in Appendix B, and program materials that states provided as part of their responses are listed in Appendix C.

The 22 strategies in the survey were grouped into four categories: supportive services and training, administrative support, marketing and outreach, and financial assistance. In this chapter, the additional strategies mentioned by survey respondents in their open-ended comments are listed under these four categories as well.

As noted earlier, states differ in their interpretation of what constitutes a race-neutral measure. (For example, some states may provide advantages to prime contractors that frequently and proactively use DBE subcontractors, whereas other states do not view this practice as race-neutral.) Readers are advised to consult their agencies' legal counsel as appropriate before implementing a new strategy.

The descriptions of many strategies in this report refer to DBE firms and prime contractors as two discrete categories, which reflect that these strategies focus on assisting DBEs in bidding as subcontractors to non-DBE prime contractors. However, it is recognized that DBE firms can serve as prime contractors as well and, wherever possible, this is acknowledged in the language of this report.

This chapter also includes respondents' open-ended comments on related topics, such as partnerships with other agen-

cies and advice for states transitioning to the use of 100% race-neutral measures.

SUPPORTIVE SERVICES AND TRAINING MEASURES

Survey respondents rated their familiarity and experience with five components of supportive services and training programs: business development assistance, bidding assistance, technology assistance, one-on-one business reviews, and training classes. Respondents were very familiar with most of these program elements.

Respondents identified their supportive services programs as key components of their efforts to meet their goals for DBE participation, and a respondent from one state that uses 100% race-neutral measures noted the importance of supportive services in advice to other states that are facing the transition to 100% race-neutral measures.

On the following pages, supportive services measures are listed in order from most to least effective (as rated by survey respondents). (See Appendix B for full details on respondents' ratings of each measure.)

Strategy #1: Providing firms with one-on-one business reviews and/or technical assistance

A total of 91% of responding states had used this strategy, and this was the supportive services measure that respondents gave the highest marks. Of the states that had used it, 91% rated it effective, with 60% rating it a 4 or 5 (very or extremely effective). In addition, of all the measures listed in the survey, this measure was rated a 5 (extremely effective) by more respondents than any other strategy.

This measure may include efforts such as developing individualized technical assistance tailored to specific companies based on information gathered in one-on-one reviews and working one-on-one with specific DBEs over time. Survey respondents described the advantages of working one-on-one with firms, including using one-on-one reviews to approach topics that DBEs may feel uncomfortable discussing in a group.

One respondent described an ineffective implementation involving hiring a consultant to provide one-on-one

assistance to DBE firms; this respondent believed that not enough firms were helped, or helped sufficiently, to justify the expense.

In some states, this type of one-on-one support is provided as part of a small business development program, and one respondent reported that both large and small DBE firms have emphasized the program's value in helping them grow their businesses. In this state, one-on-one training and business assistance is seen as key to the program's success. See Case Study #3 in chapter five for details on Colorado DOT's implementation of this strategy.

Strategy #2: Providing firms with bidding assistance, such as holding mock workshops on the bidding process or providing assistance with plan reading, bidding and estimating, job costing, and writing/designing statements of qualifications

Eighty-one percent of states had used this strategy; of those states, 87% said it was effective, with 50% rating it a 4 or 5 (very or extremely effective). One respondent described a particularly successful implementation of this strategy—a hands-on, interactive training course taught by a vendor, with a focus on technology. Course content included determining overhead and markup, searching electronically for bidding opportunities, and bidding electronically, and all participants received a free electronic bidding license for one year. This state saw a marked increase in DBEs bidding and receiving work following the training, and the respondent recommended this interactive approach to training rather than more academic, lecture-style accounting courses.

Another respondent recommended that states that are transitioning to using 100% race-neutral measures educate DBEs on how to use state bidding information to solicit subcontract work with prime contractors that have submitted proposals for projects.

Strategy #3: Assisting firms in using technology, such as electronic bidding, website development, and conducting business over the Internet

Ninety-one percent of states had used this strategy; of those states, 84% said it was effective, with 49% rating it a 4 or 5 (very or extremely effective). In addition to the successful hands-on, interactive classroom training mentioned in Strategy #2, one respondent described success with conducting on-site training visits. This state works with a “DBE temp,” who has 40 years of experience with the department's construction program, to conduct the training. The trainer discusses various topics, including the certification process, orientation upon certification, how to develop a quote, how to connect with large subcontractors or prime contractors, and how to submit quotes electronically.

Strategy #4: Providing training classes and technical education

Ninety-eight percent of states had used this strategy; of those states, 83% said it was effective, with 39% rating it a 4 or 5 (very or extremely effective). Respondents described several examples of effective implementations, including:

- Tailoring training to meet the needs of different DBE subgroups;
- Involving members of the industry in training programs as coaches or instructors; and
- Team-oriented training that brings participants together from around the state. The respondent noted that having the training class stay in a hotel fosters camaraderie that lasts beyond the training and may lead to joint efforts on contracts. This state takes advantage of the hotel setting in assigning evening homework; teams work on projects and presentations to be given the next day. Team exercises include submitting a DOT bid.

Two survey respondents reported that reimbursing DBEs for participation in training classes in their line of work was less effective—they reported that few or no firms took advantage of this benefit. One respondent also cautioned against providing one-size-fits-all DBE training, noting that DBEs come in a wide range of sizes, ethnicities, and levels of expertise. “Some are challenged technologically and others in business management or safety and risk management or working capital,” this respondent noted. “State DOTs should offer different types of training and assistance to various DBE subgroups, developed to meet each group's particular needs.”

Another respondent pointed to the lack of privacy in group training as a challenge; feedback from that state's DBE firms has indicated that some DBEs view their problems as confidential and do not wish to discuss them in a group setting. This respondent also noted the difficulty in serving DBE firms that need varying levels of assistance through a group training class.

Strategy #5: Providing firms with business development assistance, such as marketing and training assistance or help with business management, business plans, or financial statements

Ninety-four percent of states had used this strategy; of those states, 77% found it to be effective, with 48% rating it a 4 or 5 (very or extremely effective). Working one-on-one with specific DBE firms over a period of time was mentioned as a successful strategy, as was providing scholarships to business management classes. One respondent mentioned conducting executive management training as a way to increase DBEs' entrepreneurial skills, noting that this type of training indi-

rectly identifies firms that are committed to business growth and development.

Several respondents recommended establishing a small or emerging business development program that complements a state's DBE program. These programs can include financial incentives, restricted projects, and other strategies, because any small company can benefit. In one state, a respondent described a two-phase program, in which Phase 1 identifies firms' strengths and weaknesses and Phase 2 works with the firm on the areas that need improvement. It was noted that use of this program was an effective strategy after the Ninth Circuit Court decision was handed down.

ADMINISTRATIVE SUPPORT STRATEGIES

Administrative support strategies include measures that states take to facilitate DBE participation by adjusting their policies (such as by reserving small contracts for smaller firms) or by establishing initiatives such as mentor/protégé programs.

In this section, administrative support strategies are listed in order from most to least effective (as rated by survey respondents). (See Appendix B for full details on respondents' ratings of each strategy.)

Strategy #6: Limiting certain small contracts to proposals by small firms only

This race-neutral strategy was unique among the 22 strategies in the survey in that most states did not have experience with it, but those that did gave it very high marks. Indeed, this strategy received both the highest percentage of ratings of effective (3, 4, or 5) and the highest percentage of ratings of very or extremely effective (4 or 5) of all the strategies in the survey. Although only one-quarter of states had used this strategy, 91% of those that had used it found it to be effective, with 64% rating it a 4 or 5 (very or extremely effective).

The Florida DOT (FDOT), which rated this strategy highly, was contacted to discuss how that agency has used this strategy successfully. FDOT staff noted that the FHWA has allowed the use of federal money on contracts reserved for small businesses, and that Florida's initiative is funded as part of the state's alternative contracting program, allowing it to comply with the state's contracting regulations. See Case Example #1 in chapter five for more details.

Strategy #7: Collecting data on DBE participation that exceeds contract goal requirements or that is achieved on contracts with no DBE participation goals

Collecting this type of data is a regulatory requirement, and a high percentage of states reported experience with this. Of those states, 80% found it to be an effective process, but only

37% rated it a 4 or 5 (very or extremely effective). Respondents provided other examples of collecting data and documentation as well.

- One state that has a 100% race-neutral program continues to collect good faith effort documentation at the time of the bid to provide a barometer of expected DBE participation.

Strategy #8: Facilitating mentor/protégé programs (in which established contractors assist smaller, developing firms)

Mentor/protégé programs pair a DBE firm with an established DBE or non-DBE firm, and the established firm provides business development assistance to the protégé DBE firm. For example, the two firms may meet regularly, with the mentor firm assessing the protégé's strengths, weaknesses, and opportunities; recommending training options; and monitoring progress (Smith 2005). Forty-three percent of states had used this strategy; of those states, 60% found it to be effective, with 30% rating it a 4 or 5 (very or extremely effective).

Several respondents described effective implementations of mentor/protégé programs, including:

- Mentor/protégé agreements of limited scope and duration, focused on a specific work area.
- A job shadowing program that pairs a DBE firm that wants to expand into a new area of work with an established firm from another state that performs that type of work. Working with firms from another state minimizes competition between mentor firms and those they are assisting.
- Establishing two mentor/protégé programs for different purposes: a long-term program and a project-specific program.

Elements of ineffective implementations include:

- Programs in which mentors are not allowed to subcontract with protégés because of concerns about ethical conflicts.
- Mentor/protégé agreements that extend over multiple years and are too all-encompassing; these may require attorney assistance.
- Job shadowing programs in which established firms are expected to provide assistance to smaller firms that will then become their competitors.

Strategy #9: Unbundling contracts (breaking large contracts into multiple smaller contracts) to allow and encourage DBEs to bid as prime contractors or quote on subcontracts

Fifty-five percent of the states had used this strategy; of those, 58% found it to be effective, with 35% rating it a 4 or 5 (very or extremely effective).

Respondents did not provide detail on how they implemented this strategy. However, in interviews for Case Example #1 (see chapter five) on reserving small contracts for small businesses, an FDOT manager noted that unbundling contracts creates additional work for procurement and engineering staff, who may then have to process and execute several small contracts instead of one larger one. He noted that using this strategy involves striking a balance between meeting the needs of the DBE program and being sensitive to the workloads of other areas of the department.

Respondents mentioned several other administrative support strategies. Strategies targeting DBE firms are listed first, followed by strategies targeting prime contractors.

Establishing a Small Business Certification

One state described implementing an Emerging Small Business Enterprise (ESBE) certification to ensure that the maximum feasible portion of its overall DBE goal is met by using race-neutral means. “ESBE contract goals are established so that, over the period to which the overall DBE goal applies, they will cumulatively result in meeting the overall goal through the use of race-neutral means,” the respondent wrote. All DBEs are considered to be ESBEs for the purposes of goal setting, and the use of the ESBE certification has allowed this state to be very aggressive in terms of goal setting on individual contracts.

Making Efforts to Bring DBE Firms into the Full Range of Highway Contracting

The survey asked respondents about this issue in an open-ended question; they were not asked to rate this strategy’s effectiveness. Fifty-four percent of respondents said they had taken race-neutral measures in this area; one respondent’s agency invites a wide range of DBE firms to its classroom-based training and encourages prime contractors to expand their use of DBEs beyond traffic control, landscaping, and trucking.

Monitoring Design-Build Contracts for DBE Opportunities

This strategy involves aggressively monitoring design-build contracts to take maximum advantage of new DBE opportunities at each stage of the project.

Commissioning a Capacity Analysis Study

A capacity analysis study aims to quantify the capacity of DBE firms to perform in different areas of highway construction. The difficulty of quantifying capacity in a consistent manner was noted as a challenge in implementing this strategy.

Encouraging Prime Contractors to Accommodate Non-union DBE Firms

This strategy was mentioned by one state that has experienced problems with prime contractors that are unionized being reluctant to hire DBE firms that are not. This state encourages contractors to negotiate project-specific labor agreements for non-union DBEs to enable them to work on the projects without violating the prime’s union agreement. This respondent also noted that federal DBE regulations do not allow contractors to refuse to hire DBEs based on their non-union status; this state makes this clear to both prime contractors and DBE firms.

MARKETING AND OUTREACH STRATEGIES

Marketing and outreach strategies include efforts that a state takes to market, brand, and publicize its DBE programs, and other efforts to reach out to DBE firms throughout the state, including qualified firms that are not yet certified.

In this section, marketing and outreach strategies are listed in order from most to least effective (as rated by survey respondents). (See Appendix B for full details on respondents’ ratings of each strategy.)

Many strategies in this section are interrelated, and in some cases respondents commented on which marketing strategies were most effective. Although notifying DBEs of contract opportunities by fax or e-mail was described as effective, publishing contract opportunities in newspapers and trade papers was not. One respondent noted that feedback from DBEs indicated that firms do not have time to search for opportunities in newspapers.

Branding, Marketing, and Publicizing the State’s DBE Programs; Creating a DBE Directory; and/or Providing Information Through Outreach Events, Publications, Websites, and Other Vehicles

All of the states had used this strategy; 85% found it to be effective, with 60% rating it a 4 or 5 (very or extremely effective). Federal DBE regulations require all states to maintain a DBE directory. Many states also have DBE newsletters, and several respondents mentioned their state’s newsletters in their responses. The respondent from Vermont provided the following link to that state’s electronic archive of DBE newsletters: <http://www.aot.state.vt.us/CivilRights/DBE%20Newsletter.htm>.

Examples of effective implementations include:

- Holding panels of successful DBEs to share their experiences and inspire others.
- Attending marketplace/trade show events and networking outreach events.

- Hosting construction conferences geared to prime contractors and DBEs that discuss the general direction of the construction industry, with upper management from the state DOT, FHWA, and other government agencies attending to discuss the importance of DBE participation.

Strategy #10: Notifying DBEs of new construction projects by e-mail

Eighty-nine percent of states had used this strategy; of those, 74% found it to be effective, but only 33% rated it a 4 or 5 (very or extremely effective). Examples of effective implementations included:

- Creating a listserv to aid in getting information out to all bidders and subcontractor candidates efficiently.
- Weekly electronic notification of all new bidding opportunities and bid results.

Strategy #11: Facilitating meetings and networking between DBEs and prime contractors and technical assistance partners

Ninety-six percent of states had used this strategy; of those, 69% found it to be effective, with 47% rating it a 4 or 5 (very or extremely effective). Respondents wrote more comments about this strategy than about any other. Respondents' comments on this strategy are divided into two categories: establishing new relationships and maintaining successful partnerships on existing projects.

Establishing New Relationships

Introducing DBE Firms to Prime Contractors

Facilitating one-on-one interactions between prime contractors and DBE firms, and between DBE firms and DOT staff, is a commonly used strategy. Small states may be able to make introductions directly through DBE program staff, and many states host meet-and-greet sessions that can take a variety of formats. Examples include:

- Contractor speed dating: Prime contractors are given booths and DBE firms rotate through them every 10 min.
- An annual "Meet the Primes" event held in conjunction with a monthly meeting of the state road builders association.
- Project-specific matchmaker events that are geared to DBEs, but are open to other small businesses as well.
- An annual workshop focused on expansion and partnering opportunities.

Other examples of successful implementations include:

- Encouraging and facilitating partnerships among DBE firms.
- Targeting prime contractors with assistance in fulfilling DBE participation commitments.
- Holding pre-bid or pre-letting meetings.

One state cautioned against holding meet-and-greet events that are solely for DBEs and do not involve department project delivery staff or the prime contracting community, noting that giving DBEs opportunities to network and build relationships with prime contractors is key to the success of these events.

Encouraging and Facilitating Partnerships Among DBE Firms

Assisting DBE firms in forming partnerships with one another is a common strategy as well. Examples of successful implementations include:

- Assisting several independent truck owner/operator DBE firms in forming a consortium to bid projects together, with each DBE acting as consortium prime contractor in rotation. The state assisted these firms in marketing the newly formed consortium.
- Encouraging DBE firms to form project partnerships with firms that perform work in complementary areas.
- Encouraging graduating DBE firms to actively mentor or form joint ventures with other DBE firms.

Targeting and Assisting Prime Contractors

Some states perform outreach to prime contractors to encourage use of DBE firms. One respondent mentioned that being a small state allows the DBE program staff to work with each prime contractor directly, whereas another state sends letters to all contractors and subcontractors explaining their obligations toward meeting DBE program goals. This state tracks DBE participation by project to identify contractors and projects with below-average DBE usage, which allows the DBE coordinator to work proactively with the firms involved to address any problems. The state stressed the importance of providing prime contractors with the means to identify DBEs for each project, including providing a clear database, cross-reference information, and suggestions when needed.

Holding Pre-bid or Pre-letting Meetings

Several states hold these meetings, which allow prime contractors and DBEs interested in a particular project to meet. Examples of successful implementations include:

- Design-build pre-bid meetings in which DBE firms are given a few minutes each to introduce themselves and their businesses to the short-listed prime contractors.

- Mandatory pre-bid meetings linked to mandatory networking sessions.
- Pre-letting meetings in which DOT staff review the contracts that will be let, and prime contractors and DBE firms identify which projects they are interested in bidding or subcontracting on.

Maintaining Successful Partnerships

States identified several ways in which DOTs can help prime contractors and DBE firms maintain strong partnerships once a working relationship is established, such as proactive project monitoring by DOT staff and early intervention when issues arise. This prevents relationships from deteriorating over disagreements and allows problems to be addressed before they adversely affect the project. Examples of ways in which states have facilitated strong partnerships include:

- Co-locating DBE subcontractors and prime contractors on large construction projects to give DBEs access to information about schedule and scope changes.
- Partnering meetings in which partnership agreements are formed between the DOT and the prime contractor and subcontractors. In these agreements, the partners come together to agree on common objectives at the initiation of a project.

Strategy #15: Publishing newsletters reaching out to DBEs (e.g., publicizing contracting or subcontracting opportunities, small business programs, benefits, and training; outlining laws and regulations affecting small businesses)

Eighty-five percent of states had used this strategy; of those, 62% found it to be effective, with 38% rating it a 4 or 5 (very or extremely effective). Examples of effective implementations include:

- Developing a calendar of events to inform DBEs of upcoming training classes.
- Including a “request for sub-bids” section in the monthly DBE newsletter where contractors can advertise for quotes.

Other Marketing and Outreach Strategies

Outreach to Infrequent Bidders

One state contacts DBE firms that have submitted only one or two bids during the previous year to encourage them to participate more. DBE program staff work with these firms to identify the reasons they did not bid more often and to provide solutions to help them become more active.

FINANCIAL ASSISTANCE STRATEGIES

In this section, financial assistance strategies are listed in order from most to least effective (as rated by survey respondents). (See Appendix B for full details on respondents’ ratings of each strategy.)

Strategy #16: Participating in loan mobilization programs (assisting banks in providing loans to DBEs)

Just 28% of the states had used this strategy; however, of those that had, 62% found it to be very or extremely effective (rating it a 4 or 5). This strategy tended to divide respondents—it received no ratings of 3 (effective), and it appears in both the list of strategies that received the highest percentage of ratings of 4 and 5 (see Figure 3 in chapter two) and the list of those that received the highest percentage of ratings of 1 and 2.

Case Example #2 describes how the Rhode Island DOT (RIDOT) effectively administers its DBE loan program. RIDOT obtained an FHWA waiver allowing the agency to provide loans only to underutilized DBEs. See Case Example #2 in chapter five for details.

Strategy #17: Assisting DBEs with bonding and financing

Sixty percent of the states had used this strategy. Of those, 57% of the states found it to be effective, with 25% rating it a 4 or 5 (very or extremely effective). In addition, this strategy was ranked highly by 100% race-neutral states, with 60% of those rating it very or extremely effective. Two respondents mentioned that they are exploring this strategy.

- One state has a bond guarantee program in which the department would guarantee 80% or 90% of a DBE firm’s bond, but has been unable to get a surety company to participate in the program.
- Another DOT is evaluating the practice of reimbursing DBE firms for bonding fees if they are required to carry their own bond for a project. This respondent noted that prime contractors in the state have traditionally carried subcontractors under their own bond, but that this practice is beginning to diminish.

Additional Financial Strategies

Elimination of Retainage Requirements

Retainage is money held back from contractors or subcontractors until the work is completed; it is meant to ensure that the job is completed satisfactorily. One respondent described a strategy involving elimination of up-front retainage on prime contractors and subcontractors, which allows firms to spend

this money on other items, such as purchasing bonding and insurance.

ADDITIONAL RACE-NEUTRAL STRATEGIES

One state has had success using community organizing strategies, especially in rural parts of the state. DBE program staff asked community leaders, teachers, and ministers to invite highway construction business owners they know to a meeting in a church, school, or restaurant. This strategy has helped the state DOT recruit potential DBE firms in areas of the state where none are certified in highway construction, although there are experienced firms that would be eligible for certification.

SURVEY RESPONSES ON OTHER TOPICS

To augment the information on using race-neutral measures and address challenges, the survey included questions on several related topics, including partnerships, collecting feedback from DBEs on the value of different program elements, transitioning to using 100% race-neutral measures, and using waivers to target subgroups with race-conscious measures.

Interagency Partnerships

As agencies across the country face budget constraints, forming partnerships with other entities can help leverage limited resources. Survey respondents were asked about two types of partnerships—with other governmental agencies and with the private sector.

- Sixty-three percent of respondents reported having partnerships with other state DOTs or other agencies within their state to encourage or promote expansion of DBEs on government contracts.
- Seventy-nine percent of respondents reported having partnerships with industry (contractors and consultants) to encourage the growth of DBEs.

A few respondents mentioned these partnerships in their survey responses. As an effective or innovative strategy, one respondent mentioned partnering with the Associated General Contractors organization to help educate prime contractors and DBEs on the DBE program and its contractual requirements. Another respondent described bringing partners from other state and federal agencies and technical assistance providers to meet with DBEs and brainstorm strategies for building capacity.

Collecting Feedback from Disadvantaged Business Enterprises on Effective Measures

Many states survey DBE firms or collect feedback informally about which aspects of their DBE programs are most valuable.

Among survey respondents, 53% of states had gathered this type of feedback. States mentioned several successful methods of collecting feedback:

- Conducting formal Internet- or fax-based surveys, including needs assessment surveys.
- Reviewing results of surveys conducted by supportive services providers.
- Gathering feedback informally during staff interactions with DBE firms, including over lunch during training classes.
- Having DBE program staff attend DBEs' monthly association meetings to solicit feedback.
- Holding a brainstorming session with DBEs.

Transitioning to Using 100% Race-Neutral Measures

The survey asked states which strategies had the greatest immediate impact on helping them meet their DBE participation goals after the Ninth Circuit Court's decision was handed down. Six states answered this question; of these, two indicated that they had not met their goals, and one reported that none of the methods had helped. The other three states listed specific strategies, with one naming its supportive services program; the second listing a business development program, partnering meetings, and contracting special notices; and the third highlighting the use of DBEs as prime contractors.

Considering that similar court decisions might occur in other areas of the country in the future, the survey also asked respondents what advice they would give to states that are just beginning to use solely race-neutral measures as the result of such a decision. Four respondents answered the question; they advised states to:

- Involve industry representatives as coaches or instructors.
- Ensure that reliable systems are in place for collecting contract and payment data, and prepare and organize the necessary data in advance of a disparity study.
- Ensure that the supportive services program uses a variety of strategies to help DBEs grow their businesses in a race-neutral environment.
- Facilitate upper management support of the DBE program.

Finally, the survey asked states whether eliminating race-conscious measures affected their state's ability to meet its goals for DBE participation and, if so, whether the level of DBE participation increased or decreased after race-conscious measures were eliminated.

Seven respondents answered this question; six answered "no" and one indicated that DBE participation did not change. However, in answer to another question, one of these respondents indicated that the state had not met its goals, and noted

that use of DBEs fell off dramatically once contract goals were eliminated.

Waivers Allowing the Use of Race-Conscious Measures

The survey asked states whether they had requested a waiver from the FHWA allowing them to target specific subgroups with race-conscious measures. Seven states (15% of those responding) reported that they had requested such a waiver.

- Four of these states are under the jurisdiction of the Ninth Circuit Court; two of these waiver requests were approved and approval is pending on the other two.
- One other state—not one that uses 100% race-neutral measures—gave an example of requesting and receiving a project-specific waiver allowing separate goals for minorities and for Caucasian women. The seventh state mentioned requesting a waiver to establish a financing program.

STATE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CHALLENGES AND SOLUTIONS

This chapter discusses the challenges that survey respondents identified in meeting their goals for DBE participation and pairs them with solutions—both race-neutral strategies that states have found to be effective and additional solutions that respondents described in their open-ended comments. This chapter provides insight into how states have used race-neutral measures to address common challenges.

The survey asked respondents to rate the severity of 19 challenges in terms of their impact on meeting goals for DBE participation in highway contracting. These included challenges related to working with DBE firms and non-DBE prime contractors, and challenges related to external factors. Solutions that states have used to mitigate 11 of these challenges were identified, and these 11 challenges are described in this chapter. Details of respondents' numerical ratings of the 11 challenges' impacts on DBE participation accompany these summaries to provide additional perspective.

Respondents' ratings of the impacts of the other 8 challenges are shown in Figure 4 (see chapter two), and detailed ratings of all 19 challenges are available in Appendix B. The full text of all open-ended survey responses is also available in Appendix B.

FINANCIAL CHALLENGES

Survey respondents viewed financial obstacles as the greatest challenge to states in meeting their goals for DBE participation. Lack of access to capital and cash flow issues was viewed as the most severe problem, with 60% of those responding rating it a significant or severe problem (a 4 or 5 on a five-point scale). External factors such as the economy and rising fuel costs were also a significant concern, with 89% of those responding identifying these issues as a problem.

Challenge #1: Challenges related to external factors, such as economic conditions or rising fuel costs

A higher percentage of respondents viewed this issue as a problem than any other challenge, with 46% viewing it as a significant or severe problem. One respondent noted that in difficult economic times contractors are keeping their workforces employed by performing tasks themselves that they might once have subcontracted to DBE firms. Another respon-

dent mentioned that economic difficulties have led to a rise in contractor payment issues, noting that prompt payment claims in this state have doubled.

None of the respondents proposed a direct solution to this problem; however, the solutions mentioned in the next two sections are designed to address financial challenges in general.

Challenge #2: DBE firms' lack of access to capital and/or cash flow issues

Respondents viewed this as a significant challenge; 87% of respondents identified this issue as a problem, with 60% viewing it as a significant or severe problem. One strategy that some DOTs have used to improve DBEs' access to capital is to participate in loan mobilization programs (assisting banks in providing loans to DBEs). Just 28% of states had used this strategy, but of those that had, 62% found it to be very or extremely effective (rating it a 4 or 5). (For more detail on this strategy see Case Example #2 in chapter five.)

Another respondent suggested elimination of up-front cost retainage on prime contractors and subcontractors to allow firms to use this money for other purposes.

Challenge #3: DBEs' inability to obtain bonding

Most respondents believed this issue was a challenge, with 74% of respondents identifying it as a problem and 37% viewing it as a significant or severe problem. "Bonding is a significant barrier," one respondent noted. In addition, all of the states that use 100% race-neutral measures identified this issue as a problem.

Sixty percent of states had used measures to assist DBEs with bonding and financing; of those, 57% found this strategy to be effective, with 25% rating it a 4 or 5 (very or extremely effective). In addition, 60% of the states that use entirely race-neutral measures rated this strategy a 4 or 5.

Respondents described two types of bonding assistance—a bond guarantee program and a bonding fee reimbursement program. Another respondent mentioned a third strategy that relieves financial pressure on both prime contractors and DBEs—elimination of up-front cost retainage.

DISADVANTAGED BUSINESS ENTERPRISES' LACK OF EXPERIENCE OR EQUIPMENT

Challenge #4: DBE firms' lack of experience/skill at managing a business

Many respondents believed this issue was a challenge, with 73% of respondents identifying it as a problem and 42% viewing it as a significant or severe problem. One respondent noted that less sophisticated DBEs may assume that getting certified is all that is required to get DOT work.

Providing firms with business development assistance is one method states have used to mitigate this challenge. Ninety-four percent of states had used this strategy, and of those states 77% found it to be effective, with 48% rating it a 4 or 5 (very or extremely effective). Some states also use the related strategy of establishing business development programs. States were not asked to rate this strategy's effectiveness, but many respondents wrote positive comments on these programs.

In addition, the mentor firms participating in mentor/protégé programs provide business development assistance to developing firms. Forty-three percent of the states had used this strategy and of those 60% found it to be effective, with 30% rating it a 4 or 5 (very or extremely effective).

Challenge #5: Uncertainty among DBEs in how to expand their businesses

Many respondents believed this issue was a challenge, with 72% of respondents identifying it as a problem and 30% viewing it as a significant or severe problem. One respondent reported that DBE program staff work closely with DBE firms to help them expand their capacity and their areas of expertise and to become prequalified to bid as prime contractors. It was noted that bonding is a significant barrier for DBE firms, but that this state's business development program has been helpful, and that working one-on-one with DBEs over time has produced positive outcomes.

Challenge #6: Lack of DBEs certified or experienced in certain work areas (such as Intelligent Transportation Systems or the full spectrum of construction work)

Many respondents believed this issue was a challenge, with 68% of respondents identifying it as a problem and 34% viewing it as a significant or severe problem. States' experiences with this problem included:

- Overconcentration of DBEs in areas such as trucking, where prime contractors hire truck brokers who in turn charge DBE truckers unreasonable hourly broker fees.
- Difficulty moving firms into new areas such as landscaping, guardrails, pavement marking, and lighting because of the cost of entering these work areas.

Respondents were asked directly about their efforts to address this challenge. All but one state responded, and of those states 54% had made specific efforts and 46% had not. States' strategies for addressing this problem included:

- Unbundling large highway construction contracts to encourage smaller firms to bid as prime contractors.
- Working with organizations that target small businesses; outreach to these firms through workshops and expositions to educate them about transportation opportunities.
- Conducting one-on-one assessments of selected DBE firms and tailoring technical assistance to their needs.
- Focusing supportive services on areas with no certified DBEs.

Challenge #7: DBE firms' lack of equipment necessary to meet contract/subcontract requirements

About half of respondents (48%) believed this issue was a challenge, but only 18% viewed it as a significant or severe problem. To help DBE firms expand the types of equipment they own, RIDOT has had success with providing low-interest loans to DBE firms for the purchase of trucks and other heavy equipment needed to participate in DOT contracts. See Case Example #2 in chapter five for more details.

ISSUES WITH PRIME CONTRACTORS

Challenge #8: Prime contractors not willing to work with new DBE firms (for example, because prime contractors have existing relationships with certain DBE firms or because of uncertainty about new firms' skills)

Seventy-seven percent of respondents believed this issue was a challenge, and 55% viewed it as a significant or severe problem. Although respondents did not address this specific issue in their open-ended comments, this challenge relates to relationship building in general. The strategies that relate to establishing new relationships between prime contractors and DBEs may have some application toward this issue, including hosting networking events and meet-and-greets, and holding pre-bid or pre-letting meetings.

Challenge #9: Lack of commitment, cooperation, or follow-through on the part of prime contractors in using DBE subcontractors

Forty-seven percent of respondents believed this issue was a challenge, but only 21% viewed it as a significant or severe problem. Examples of states' efforts to address this issue included:

- Issuing an anonymous survey about which prime contractors provide a meaningful work and training experience for the DBE firm and which contractors meet the

minimum requirements and release the DBE once the goal is met. Prime contractors that are identified as problematic are brought before the DOT's Prequalification Committee, which has the authority to decrease or eliminate a firm's ability to work with the DOT.

- If contractors fall behind on their DBE utilization, the DOT's compliance review officers identify these shortfalls and work proactively to assist the contractor with bringing more DBEs to the project.

Other relationship-building strategies may be useful in addressing this problem as well, especially those designed to foster communication and maintain successful partnerships between existing partners. These include proactive project monitoring by DOT staff and early intervention when issues arise, and co-locating DBE subcontractors and prime contractors on large construction sites.

One survey respondent raised an additional challenge: dealing with union contracts that require prime contractors to refuse to hire non-union DBE subcontractors. The state has responded by encouraging these contractors to negotiate project-specific labor agreements for non-union DBEs.

CHALLENGES RELATED TO DISADVANTAGED BUSINESS ENTERPRISE DEVELOPMENT

Challenge #10: Lack of DBE firms that work as prime contractors

Seventy-two percent of respondents believed this issue was a challenge and 50% viewed it as a significant or severe problem. In general, any supportive services initiative that helps DBE firms grow and develop may indirectly address this issue, because larger, more established firms are more likely to win contracts as prime contractors.

Challenge #11: Larger, more established DBEs overshadow newly emerging DBEs, making it difficult for new firms to grow

Fifty-nine percent of respondents believed this issue was a challenge and 26% viewed it as a significant or severe problem. Programs targeted at underutilized and emerging DBEs can help level the playing field for these smaller firms. For example, RIDOT offers low-interest loans to underutilized DBE firms, which helps them bid competitively against larger firms. See Case Example #2 in chapter five for details.

CASE EXAMPLES

This chapter provides case examples of three race-neutral measures currently being used by state DOTs. These strategies were selected because they were ranked highly by survey respondents. Case Examples #1 and #2 are strategies that have been used by fewer states but rated highly effective by those that do use them, whereas Case Example #3 describes how one state has been successful in implementing a more common measure that was also rated highly effective.

This section is based on survey responses and detail provided in follow-up interviews. During these interviews, the DOT staff emphasized what made these strategies successful and provided suggestions to other state DOTs that are interested in implementing these measures in their own agencies. This chapter includes:

- Case Example #1: Florida Department of Transportation: Reserving Small Contracts for Small Businesses
- Case Example #2: Rhode Island Department of Transportation: Loan Program for Underutilized Disadvantaged Business Enterprise Firms
- Case Example #3: Colorado Department of Transportation: One-on-one Assessments and Customized Training

CASE EXAMPLE #1: FLORIDA DEPARTMENT OF TRANSPORTATION: RESERVING SMALL CONTRACTS FOR SMALL BUSINESSES

FDOT has had success with a program that can be challenging for states to obtain authority to implement: a Business Development Initiative that reserves some small contracts (under \$500,000 each) solely for small businesses.

The program began in 2006, when Florida along with other states had been experiencing a decline in bidding on its contracts, and contract costs that were steadily rising. FDOT was looking for ways to increase competition among construction firms and to foster the growth of smaller businesses, and this program was one solution: Give smaller firms working in the private sector the opportunity to learn the ropes of working on government projects and increase their ability to bid on FDOT projects in the future.

The department implemented the Business Development Initiative through statutory authority that already existed for innovative contracting. The innovative contracting authority, which is also used for various other project innovations, has

set a maximum amount not to exceed \$120 million in construction contracts annually. That program is authorized by the state legislature, and that statutory authority is key.

What Works, What Does Not

Staff at FDOT's district offices decides which contracts to reserve as part of the Business Development Initiative. They make sure there are DBEs available to bid on the projects, and they have not yet had a project in the program that received no bids.

A key challenge in administering the program is in finding opportunities to unbundle larger contracts into smaller pieces. In addition, staff must weigh the benefits of breaking contracts apart against the benefits of bundling smaller contracts together, which allows engineering and procurement staff to optimize the use of their own limited resources on one larger contract instead of several smaller ones.

Another challenge is finding contracts in highway construction that are appropriate for the program; in general, road-building contracts exceed the program's \$500,000 cap. Instead, projects in the Business Development Initiative tend to be along the lines of drainage improvements, sidewalk projects, and landscaping. The department hopes that some DBE firms will expand their businesses into these areas to take advantage of the reserved contracts.

FDOT encountered some procedural challenges in establishing its Business Development Initiative. Because Florida was at the forefront nationally of exploring this type of initiative, it took years to get approval from the FHWA to use the procedure on federally funded contracts. Also, the department had to move away from including preference points for professional services consulting contracts in the program. Professional services contracts are now reserved for small businesses on state-funded contracts, but are limited by the FHWA to \$100,000 on federally funded contracts.

Effectiveness

The Business Development Initiative is designed to benefit all small businesses and it has been successful in doing that while helping FDOT achieve its DBE participation goal. The firms winning contracts under the program have been a good mix of

DBEs and non-DBEs. The following are statistics on the program through July 2009:

- Sixty-seven contracts had been funded, totaling \$51 million
 - Forty-five contracts were prime contracts, and 23 went to DBEs.
 - On 22 contracts, preference points were awarded to professional services firms that subcontracted to small businesses; 58 small businesses were used as subcontractors and 43 firms, or 74%, were DBEs.
- Fifty-six different firms were awarded one or more of these 67 contracts
 - Nineteen of these different firms, or 34%, were DBEs.
 - Six firms were first-time contractors with the department.
- All contracts were graded upon completion, and the average grade was a 90 out of 98 possible points (not including bonus points). (Contracts are graded in nine areas, including timely completion, mitigating cost and time overruns, minimizing impacts to the traveling public, and environmental compliance.)

The department has received informal feedback from DBEs that they appreciate the program and would like to see it expanded, with more contracts reserved.

Looking Ahead

States initiating a program such as the Business Development Initiative today would not face the hurdles in obtaining federal approval that FDOT did when the practice was newer; indeed, the FHWA now encourages other states to explore this type of program.

More information on FDOT's Business Development Initiative is available at: <http://www.dot.state.fl.us/equaloppportunityoffice/GeneralBDI.shtm>.

CASE EXAMPLE #2: RHODE ISLAND DEPARTMENT OF TRANSPORTATION: LOAN PROGRAM FOR UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE FIRMS

RIDOT's low-interest loan program for underutilized DBE firms grew out of RIDOT's efforts to level the playing field for DBE firms headed by minorities. In Rhode Island, the use of DBEs on highway contracts has traditionally been skewed toward firms owned by Caucasian women, according to RIDOT's Office of Business and Community Resources.

Those firms tend to have greater access to capital, which allows them advantages such as the ability to pay for supplies up front rather than paying higher prices to finance them. This in turn allows them to consistently underbid DBE firms with less capital and to win more RIDOT contracts.

RIDOT's loan program gives underutilized DBE firms—which in Rhode Island typically have African-American, Hispanic, Native American, or Asian owners—the advantage that they need to bid competitively. RIDOT applied for and received a waiver from the FHWA that allows the department to target underutilized DBEs from certain groups with its loan program rather than making loans available to all DBEs. The program is administered as part of RIDOT's supportive services offerings.

The program offers two types of loans: those for equipment purchases and contract financing that is tied to a specific RIDOT project. Equipment loans are most often used to purchase construction equipment such as heavy trucks, whereas contract financing helps firms pay for insurance, supplies, and other expenses associated with a specific RIDOT contract. Contract loans must be repaid as the project progresses and be paid off by the time the project finishes, but equipment loans may have longer terms, often about six or seven years for truck loans.

All loans are low-interest, about 2% to 3%, and for many years the financing aspect was handled through an investment corporation that provided loans to small businesses, which has since closed. When RIDOT first began the program, the financing was handled in-house, with the department's finance division processing the DBE firm's loan payments. Staff quickly realized that the department was not set up to track and process multiple loans, and the department sent out a Request for Proposals seeking a bank or financial group to take over the program.

RIDOT's original loan fund had contained approximately \$4 million, and on average the department has about \$1.5 million in loans outstanding at any given time. There is no set cap on the amount of any individual loan; this is left up to staff judgment based on the size of the contract a DBE is working on.

What Works, What Does Not

Other states that wish to initiate a similar loan program are advised to select the firms they loan to judiciously, applying the same due diligence that a bank does in qualifying loan applicants. RIDOT puts less emphasis on a firm's credit history or credit rating than a bank might, and the department understands that a DBE firm may not have a large quantity of assets to use as collateral.

Instead, RIDOT places more emphasis on a firm's background and experience, and looks for firms to have commitment letters from prime contractors who pledge to subcontract with them, for example, or contracts on which they intend to use the equipment they plan to purchase. The character of the loan applicant is also important, whether the firm's owner is hard-working and committed to wanting to do well.

Effectiveness

RIDOT began its loan program in 2003 with a single equipment loan, and in the years since then the program has taken off. The department now has about a dozen loans outstanding at any given time.

Although Rhode Island's traditionally underutilized DBE firms are not yet at parity with the more established DBE firms, the loan program has made a difference. The program has also been successful in recruiting new firms in areas where Rhode Island traditionally has not had any DBE firms certified, such as catch basin cleaning. RIDOT has been able to assist DBE firms in purchasing the equipment needed for new types of work.

CASE EXAMPLE #3: COLORADO DEPARTMENT OF TRANSPORTATION: ONE-ON-ONE ASSESSMENTS AND CUSTOMIZED TRAINING

The Colorado DOT (CDOT) began using this strategy as part of the Business Opportunity and Workforce Development (BOWD) program, which started in the state in 2007. Colorado was chosen by the FHWA as one of several states to pilot the BOWD program, which combined workforce development and business management assistance.

The key to the BOWD program was that CDOT targeted just a few of the state's 300 DBE firms, with resources tailored to their needs rather than providing classroom training that may be more useful for some DBEs than others. CDOT initially selected 20 DBE firms to participate in the BOWD program, and added companies in the program's second year.

Once the BOWD program was no longer federally funded, CDOT decided to continue those aspects of the program that staff believed was particularly valuable.

Effectiveness

CDOT points to successes with individual clients in gauging the effectiveness of this program. One participant in the program came to CDOT as a very small concrete company that had had small successes and was looking to move to the next level. Through the BOWD program, CDOT consultants performed an in-depth assessment of the company's strengths and the areas where the owners could benefit from training, and then tailored assistance to meet those needs.

CDOT encouraged the company owners to take advantage of resources available through the Hispanic Contractors Association and the Colorado Contractors Association, and encouraged them to create partnerships with other firms. At

first the company began quoting as a subcontractor on smaller contracts. With CDOT's help, the company grew from quoting on \$50,000 jobs to quoting on \$200,000 contracts, and recently competitively won a \$2 million concrete project as a prime contractor.

What Works, What Does Not

Selecting which firms receive the assessment and targeted assistance is key to the program's success. The BOWD program had an application process, and DBE firms had to meet requirements such as having been in business for a certain number of years and actively bidding on CDOT projects.

CDOT's current program relies more on the judgment of staff members. It was noted that business-savvy owners are more likely to be successful in the program; some firms selected in the past where the owners lacked that quality were not successful.

Today, CDOT staff reaches out to DBE firms with this type of assistance at several different points. Staff works with newly certified firms that are enthusiastic about bidding and have strong applications, helping these emerging firms understand the bidding process and ensuring that, for example, the firms are building profit into their bids. In addition, they help DBE firms that have been successful as small contractors move to the next level.

CDOT staff also monitor bids on current construction projects and reach out to firms at critical points, such as when a firm wins a bid as a subcontractor for the first time, wins a larger bid than usual, wins a bid after struggling on a previous project, or when a firm has bid repeatedly but has not won a contract. At these points, CDOT may decide to initiate an assessment if a firm has not yet had one. DBE firms also contact CDOT for assistance if they encounter difficulties once a project has begun.

To provide the technical assistance these firms need, CDOT contracts with several consulting firms that have expertise in areas such as business management, bidding/estimating and proposal writing, financial and bonding issues, and marketing. Each consulting firm is qualified to perform the assessments and CDOT oversees these firms closely.

A key part of this technical assistance is getting DBE firms acclimated to the elements involved in a CDOT project, such as the paperwork required for a federal-aid highway project. Although there are other small business resources that may be able to help a firm with business development in general, it was pointed out that the ability to help firms succeed on CDOT projects specifically is a service unique to the department itself—

and therefore a valuable way for the department to spend its supportive services dollars.

It was noted that the current assessment process is less formal than the one used under the BOWD program, which was a very detailed written assessment that could take a full day or more. The current assessment process allows CDOT to get to the root of a firm's needs quickly and then mobilize the state's resources to address them.

Looking Ahead

CDOT staff is pleased with the program's results. In the future they may explore tracking the program's successes more quantitatively, such as by analyzing the achievements of firms that have been through the program and noting increases in how often they bid, how many contracts they win, and the size of those contracts.

CONCLUSIONS

The results of this synthesis project point to several key findings. First, supportive services and training measures were widely used among respondents, as were several marketing and outreach strategies. Supportive services and training measures also ranked among the highest in terms of effectiveness.

However, the strategies that were rated most effective by survey respondents were not always the most commonly used, and states that are less familiar with these highly rated strategies may wish to evaluate their potential for success. Two of these strategies—reserving small contracts for small businesses and using targeted loan mobilization programs—can have high payoffs, but are challenging to implement. They may require a state department of transportation (DOT) to seek enabling legislation or FHWA approval, or to identify funding sources or umbrella programs (e.g., finding a place for contracting innovations within an agency’s alternative contracting program).

Respondents wrote more comments about communication and networking than about any other topic. Facilitating and improving communication between Disadvantaged Business Enterprises (DBEs) and prime contractors is seen as critical both in establishing new relationships and in maintaining successful partnerships between contractors and subcontractors on existing projects.

When states identified barriers to meeting their DBE participation goals, financial challenges such as a weak economy, high fuel costs, and DBEs’ lack of access to capital were high on the list, as were DBEs’ lack of experience and equipment related to specific work areas. States have mitigated these challenges with measures that help individual DBEs in a direct, immediately tangible way, such as by assisting a limited number of DBEs in obtaining loans, bonding, or insurance, and with longer-term measures that help a larger

group of DBEs grow, such as networking opportunities and training classes.

States that use targeted measures stressed the importance of selecting the right firms to receive these benefits. Some states have found that evaluating the ways in which different DBE firms make use of the measures that benefit all firms is helpful in assessing which firms are good candidates for those benefits that need to be divided among fewer recipients.

This synthesis considered the effectiveness of race-neutral measures from the perspective of state DOTs. A follow-up project that examines the perspective of DBE firms on similar issues would provide valuable insight for state DOTs on which measures DBEs see as most helpful. Feedback from supportive services staff could provide a useful perspective as well.

Second, follow-up research that identifies trends in states’ use of race-neutral measures according to regional differences, agency size, or state and federal funding levels would allow states to further tailor their implementation of these measures to those that are best suited to their circumstances and resources.

In addition, more research into how states implement more complex race-neutral programs, such as reserving contracts for small businesses, would be valuable. Because programs such as these require more levels of approval than some other strategies, compiling model legislation and successful practices for implementation would allow more agencies to explore these programs.

Finally, data on the extent to which states have met the race-neutral portion of their annual DBE participation goals would be beneficial in assessing the effectiveness of implementing race-neutral measures as a group.

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APPENDIX A

Survey Questions

This appendix shows the text of the online survey as it appeared to respondents, including the survey title and introductory text.

NCHRP PROJECT 20-05, TOPIC 41-08: IMPLEMENTING RACE-NEUTRAL MEASURES IN STATE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAMS

Thank you for participating in this survey, which is being conducted as part of NCHRP Synthesis Topic 41-08, **“Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise (DBE) Programs.”** The project’s goal is to gather and synthesize information from state departments of transportation on problems encountered in meeting DBE goals and on successful race-neutral strategies.

For the purposes of this survey, the definition of “race-neutral” from 49 CFR §26.5 is: “Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.”

From 49 CFR § 26.51(a), the regulation also states: “You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation.”

This project’s final report will be available in late 2010 for state DOTs and other agencies to use as a tool in implementing and improving their DBE programs. This online survey is a key component of the project.

This survey focuses only on annual DBE goals for federal-aid highway contracts (NOT for federal transit and aviation contracts) and only on race-neutral means, which are aimed at removing barriers and enhancing opportunities for all small businesses, both DBEs and non-DBEs. There are a few questions directed specifically at the states in the western United States that are under the jurisdiction of the Ninth Circuit Court of Appeals.

Much of the survey consists of questions that ask you to rate on a 1 to 5 scale a particular problem or remedy in terms of your agency’s experience. A few questions ask for additional details, and this information will greatly improve the quality of the final report, which will benefit all state DOTs. We hope that you will spend a few moments to provide brief comments in these sections if you are able to do so.

The survey begins on the next page. You can view a PDF of the entire survey at [https://app.sgizmo.com/users/64484/NCHRP Project 20-05, Topic 41-08 print version.pdf](https://app.sgizmo.com/users/64484/NCHRP%20Project%2020-05,%20Topic%2041-08%20print%20version.pdf). To save your answers to the survey and complete it at a later time, click the **Save and continue survey later link** in the upper right corner of the survey. You can also use this link to invite a colleague in your agency to answer parts of the survey—simply click the link and enter your colleague’s e-mail address. Once you have clicked “Submit” on the last page of the survey, your responses will be received by the project investigators.

Your survey responses will be kept confidential. Your responses will be aggregated with those of other responding agencies in the final report, but your response will not be associated with your name or state.

Please complete this survey by **Monday, March 22, 2010**. If you have any questions about the survey, please contact investigators Andrea Thomas (andrea.thomas@ctcandassociates.com) or Pat Casey (pat.casey@ctcandassociates.com).

1. Please provide your name and contact information. This information is required, but will be kept confidential and will not be associated with your survey responses in this project’s final report. We may use this information to contact you if we have questions about your responses.

First Name _____
 Last Name _____
 Title _____
 Agency/Organization _____
 Street Address _____
 City _____
 State _____
 Zip _____
 E-mail Address _____
 Phone Number _____

SUPPORTIVE SERVICES AND TRAINING

2. Following are some common supportive services and training strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used (1 = Not at all effective, 2 = Somewhat effective, 3 = Effective, 4 = Very effective, 5 = Extremely effective) or click the “Have not used” button.

Providing firms with **business development assistance**, such as marketing and training assistance or help with business management, business plans, or financial statements.

Providing firms with **bidding assistance**, such as holding mock workshops on the bidding process or providing assistance with plan reading, bidding and estimating, job costing, and writing/designing statements of qualifications (SOQs).

Assisting firms in **using technology**, such as electronic bidding, Web site development, and conducting business over the Internet.

Providing firms with one-on-one business reviews and/or technical assistance.

Providing training classes and technical education.

ADMINISTRATIVE SUPPORT

3. Following are some common administrative support strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used (1 = Not at all effective, 2 = Somewhat effective, 3 = Effective, 4 = Very effective, 5 = Extremely effective) or click the “Have not used” button.

Unbundling contracts (breaking large contracts into multiple smaller contracts) to allow and encourage DBEs to bid as prime contractors or quote on subcontracts.

Requiring **pre-bid registration** by prime contractors so that DBE subcontractors and suppliers know to whom to submit their quotes.

Facilitating **mentor/protégé programs** (in which established contractors assist smaller, developing firms).

Arranging **solicitations, quantities and specifications, presentation times, and/or delivery schedules** to facilitate DBE and small business participation.

Collecting data on DBE participation that **exceeds contract goal requirements** or that is achieved on contracts with no DBE participation goals.

Streamlining the DBE certification process.

Limiting certain small contracts to proposals by small firms only.

MARKETING/OUTREACH

4. Following are some common marketing and outreach strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used (1 = Not at all effective, 2 = Somewhat effective, 3 = Effective, 4 = Very effective, 5 = Extremely effective) or click the “Have not used” button.

Branding, marketing, and publicizing the state’s DBE programs; creating a DBE directory; and/or providing information through outreach events, publications, Web sites and other vehicles.

Publishing newsletters reaching out to DBEs (for example, publicizing contracting or subcontracting opportunities, small business programs, benefits, and training; outlining laws and regulations affecting small businesses).

Facilitating meetings and networking between DBEs and prime contractors and technical assistance partners.

Notifying DBEs of new construction projects by e-mail.

Providing bidders list to DBEs so they can seek subcontracting opportunities.

Publicizing new DBE firms to prime contractors via newsletter or e-mail.

Partnering with local jurisdictions (such as counties and cities) for outreach and training efforts.

Conducting outreach to firms identified during an availability or disparity study.

FINANCIAL ASSISTANCE

5. Following are some common financial assistance strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used (1 = Not at all effective, 2 = Somewhat effective, 3 = Effective, 4 = Very effective, 5 = Extremely effective) or click the “Have not used” button.

Assisting DBEs with bonding and financing.

Participating in loan mobilization programs (assisting banks in providing loans to DBEs).

ADDITIONAL MEASURES

6. (Optional) Please list any additional race-neutral strategies that your agency has used that are **innovative or have been very effective**—those that you would rate a 4 or 5 on a five-point scale of effectiveness. (Per federal regulations, a race-neutral measure or program is one that is or can be used to assist all small businesses. For the purposes of this definition, race-neutral includes gender-neutrality.)
-
-

7. (Optional) Please list any additional race-neutral strategies that your agency has used that have been **ineffective**—those that you would rate a 1 or 2 on a five-point scale of effectiveness.
-
-

8. (Optional) For one or two strategies that your agency has used, please briefly list the characteristics that made the strategy **successful or unsuccessful**, and/or the challenges you encountered in implementing the strategy.
-
-

PROBLEMS AND CHALLENGES IN MEETING DBE GOALS

9. Following are some common problems or challenges faced by states in meeting their goals for DBE participation in highway contracting. Please rate on a scale of 1 to 5 the degree to which each problem or challenge has affected your state’s DBE efforts (1 = Not a problem at all, 2 = A minor problem, 3 = A problem, 4 = A significant problem, 5 = A severe problem) or click the “Don’t know” button.

DBEs’ inability to obtain bonding.

DBE firms’ lack of access to capital and/or cash flow issues.

DBE firms’ lack of experience/skill at managing a business.

Lack of DBEs certified or experienced in certain work areas (such as ITS or the full spectrum of construction work).

DBE firms’ lack of equipment necessary to meet contract/subcontract requirements.

Lack of interest among DBE firms in participation in highway contracts.

Lack of interest among DBE firms in becoming certified due to required paperwork.

Lack of interest among DBE firms in participating in Supportive Services programs.

Lack of DBE firms that work as prime contractors.

Goals are set at levels that cannot reasonably be met with the existing DBE pool.

Established, successful DBE firms that are leaving the program or retiring are not being replaced by an equal number of newer firms.

Larger, more established DBEs overshadow newly emerging DBEs, making it difficult for new firms to grow.

Lack of commitment, cooperation, or follow-through on the part of prime contractors in using DBE subcontractors.

Prime contractors not willing to work with new DBE firms (for example, because primes have existing relationships with certain DBE firms or because of uncertainty about new firms’ skills).

Uncertainty among DBEs in how to expand their businesses.

Challenges related to external factors, such as economic conditions or rising fuel costs.

Administrative challenges (budget constraints, lack of staff).

Internal agency challenges (lack of support or attention from upper management, bureaucracy, agency reluctance to alter method of procuring contracts or to unbundle contracts planned in advance).

Challenges related to working with FHWA.

ADDITIONAL PROBLEMS AND CHALLENGES

10. (Optional) Please list any additional problems or challenges (not listed above) that your agency has encountered.

11. (Optional) For one or two of the challenges listed on this page, please briefly describe what ideas you have tried or considered for overcoming these problems.

IMPLEMENTING RACE-NEUTRAL STRATEGIES

12. Has your agency surveyed DBE firms (either through a formal survey or by informally gathering feedback) about which race-neutral strategies have been most helpful to them?

No

Yes (optional: please describe your efforts) _____

13. Has your state requested a waiver from FHWA that allows you to use race-conscious measures to target certain subgroups?

No

Yes (optional: please describe your request) _____

14. Did FHWA approve your waiver(s)?

Yes

No

Approval pending

15. Does your agency have partnerships with other state DOTs or other agencies within your state to encourage or promote expansion of DBEs on government contracts?

Yes

No

16. Does your agency have partnerships with industry (contractors and consultants) to encourage the growth of DBEs?

Yes

No

17. Have you taken race-neutral measures to bring DBEs into the full range of highway contracting activities (as opposed to just certain areas, such as traffic control or landscaping)?

No

Yes (optional: please describe your efforts) _____

18. Have you had compliance issues with contractors?
 No
 Yes (optional: please describe these issues) _____

19. Have you had fraud problems with contractors?
 No
 Yes (optional: please describe these issues) _____

20. Have you had compliance issues with DBE firms?
 No
 Yes (optional: please describe these issues) _____

21. Have you had fraud problems with DBE firms?
 No
 Yes (optional: please describe these issues) _____

USING 100% RACE-NEUTRAL MEASURES

22. Does your state use 100% race-neutral measures to meet DBE goals, either because you are subject to the Ninth Circuit Court of Appeals decision or because your state has independently decided to do so? *[If a respondent answered No, they were skipped to Question 28.]*
 Yes
 No

23. What prompted your state to use 100% race-neutral measures to meet its goals for DBE participation?
 Ninth Circuit Court of Appeals decision
 Other (please describe) _____

24. Has your state completed an availability or disparity study?
 No
 Yes (please give year of completion) _____

If your state is affected by the Ninth Circuit Court of Appeals decision, please answer the remaining questions on this page (questions 25–27). Otherwise, please scroll to the bottom of the page and press “Click to Next Page.”

25. After the court’s decision was handed down and your state began using solely race-neutral strategies, which strategies had the greatest immediate impact on helping your state meet its DBE participation goals?

26. Did eliminating all race-conscious measures affect your state’s ability to meet its goals for DBE participation? If so, did the level of DBE participation increase or decrease after you eliminated race-conscious measures?
 DBE participation increased
 DBE participation decreased
 DBE participation did not change

27. If similar court decisions occur in other areas of the country in the future, what advice would you give to states that are just beginning to use solely race-neutral measures?

ADDITIONAL COMMENTS AND MATERIALS

28. If you have any additional comments on any aspect of implementing race-neutral measures in a DBE program, please use this space to enter them.

If you believe your agency has successful practices that would benefit other agencies or could serve as a case study for inclusion in this project’s final report, please indicate that and we’ll contact you.

If you have documents or materials (forms, brochures, newsletters, manuals, etc.) that might be useful to other states in implementing new strategies, please e-mail them to andrea.thomas@ctcandassociates.com or provide links to the resources online in the space below. If you prefer, you may upload files using the “Browse” button below.

Thank you for taking this survey. Your response will aid other DOTs in their efforts to implement race-neutral measures, and will help advance the state of the practice nationwide.

APPENDIX B

Survey Responses

To preserve anonymity among respondents, individual state names and agencies have been replaced with [state] or [DOT] throughout this appendix.

Note: After the survey was closed and data analysis was complete, one agency requested a correction to its initial survey response, which erroneously indicated that the state used 100% race-neutral measures. All references to these data were corrected in the body of the report, but the state's original survey response is preserved below.

SUPPORTIVE SERVICES AND TRAINING

2. Following are some common supportive services and training strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used or click the "Have not used" button.

Item	1 Not at all effective	2 Somewhat effective	3 Effective	4 Very effective	5 Extremely effective	Have not used	Total
Providing firms with business development assistance, such as marketing and training assistance or help with business management, business plans or financial statements.		21.3% 10	27.7% 13	25.5% 12	19.1% 9	6.4% 3	47
Providing firms with bidding assistance, such as holding mock workshops on the bidding process or providing assistance with plan reading, bidding and estimating, job costing, and writing/designing statements of qualifications (SOQs).		10.6% 5	29.8% 14	17.0% 8	23.4% 11	19.1% 9	47
Assisting firms in using technology, such as electronic bidding, Web site development, and conducting business over the Internet.	2.1% 1	12.8% 6	38.3% 18	23.4% 11	14.9% 7	8.5% 4	47
Providing firms with one-on-one business reviews and/or technical assistance.		8.5% 4	27.7% 13	21.3% 10	34.0% 16	8.5% 4	47
Providing training classes and technical education.	4.3% 2	12.8% 6	42.6% 20	14.9% 7	23.4% 11	2.1% 1	47

ADMINISTRATIVE SUPPORT

3. Following are some common administrative support strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used or click the "Have not used" button.

Item	1 Not at all effective	2 Somewhat effective	3 Effective	4 Very effective	5 Extremely effective	Have not used	Total
Unbundling contracts (breaking large contracts into multiple smaller contracts) to allow and encourage DBEs to bid as prime contractors or quote on subcontracts.	6.4% 3	17.0% 8	12.8% 6	12.8% 6	6.4% 3	44.7% 21	47
Requiring pre-bid registration by prime contractors so that DBE subcontractors and suppliers know to whom to submit their quotes.	4.3% 2	14.9% 7	17.0% 8	21.3% 10	4.3% 2	38.3% 18	47
Facilitating mentor/protégé programs (in which established contractors assist smaller, developing firms).	2.1% 1	14.9% 7	12.8% 6	10.6% 5	2.1% 1	57.4% 27	47

Item	1 Not at all effective	2 Somewhat effective	3 Effective	4 Very effective	5 Extremely effective	Have not used	Total
Arranging solicitations, quantities and specifications, presentation times, and/or delivery schedules to facilitate DBE and small business participation.	2.1% 1	12.8% 6	17.0% 8	14.9% 7	6.4% 3	46.8% 22	47
Collecting data on DBE participation that exceeds contract goal requirements or that is achieved on contracts with no DBE participation goals.	2.2% 1	15.2% 7	39.1% 18	15.2% 7	17.4% 8	10.9% 5	46
Streamlining the DBE certification process	2.1% 1	23.4% 11	27.7% 13	6.4% 3	6.4% 3	34.0% 16	47
Limiting certain small contracts to proposals by small firms only	2.2% 1		6.5% 3	6.5% 3	8.7% 4	76.1% 35	46

MARKETING/OUTREACH

4. Following are some common marketing and outreach strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used or click the "Have not used" button.

Item	1 Not at all effective	2 Somewhat effective	3 Effective	4 Very effective	5 Extremely effective	Have not used	Total
Branding, marketing, and publicizing the state's DBE programs; creating a DBE directory; and/or providing information through outreach events, publications, Web sites and other vehicles.		14.9% 7	25.5% 12	36.2% 17	23.4% 11		47
Publishing newsletters reaching out to DBEs (for example, publicizing contracting or subcontracting opportunities, small business programs, benefits, and training; outlining laws and regulations affecting small businesses).	2.2% 1	30.4% 14	19.6% 9	23.9% 11	8.7% 4	15.2% 7	46
Facilitating meetings and networking between DBEs and prime contractors and technical assistance partners.	2.1% 1	27.7% 13	21.3% 10	17.0% 8	27.7% 13	4.3% 2	47
Notifying DBEs of new construction projects by e-mail.	2.1% 1	21.3% 10	36.2% 17	14.9% 7	14.9% 7	10.6% 5	47
Providing bidders list to DBEs so they can seek subcontracting opportunities.	2.1% 1	14.9% 7	31.9% 15	10.6% 5	10.6% 5	29.8% 14	47
Publicizing new DBE firms to prime contractors via newsletter or e-mail.	2.2% 1	17.4% 8	19.6% 9	4.3% 2	6.5% 3	50.0% 23	46
Partnering with local jurisdictions (such as counties and cities) for outreach and training efforts.	4.3% 2	23.4% 11	17.0% 8	8.5% 4	14.9% 7	31.9% 15	47
Conducting outreach to firms identified during an availability or disparity study.	2.1% 1	10.6% 5	23.4% 11	6.4% 3	4.3% 2	53.2% 25	47

FINANCIAL ASSISTANCE

5. Following are some common financial assistance strategies used to encourage DBE participation in highway contracting and meet federal DBE participation goals. Please rate on a scale of 1 to 5 the effectiveness of each strategy that your agency has used or click the “Have not used” button.

Item	1 Not at all effective	2 Somewhat effective	3 Effective	4 Very effective	5 Extremely effective	Have not used	Total
Assisting DBEs with bonding and financing.	2.1% 1	23.4% 11	19.1% 9	12.8% 6	2.1% 1	40.4% 19	47
Participating in loan mobilization programs (assisting banks in providing loans to DBEs).	2.1% 1	8.5% 4		8.5% 4	8.5% 4	72.3% 34	47

ADDITIONAL MEASURES

6. (Optional) Please list any additional race-neutral strategies that your agency has used that are **innovative or have been very effective**—those that you would rate a 4 or 5 on a five-point scale of effectiveness. (Per federal regulations, a race-neutral measure or program is one that is or can be used to assist all small businesses. For the purposes of this definition, race-neutral includes gender-neutrality.)

Response
Attending marketplace/tradeshows and networking outreach events.
Business Development Initiative (small business program that reserves small contract (under \$500,000) for small businesses only).
Construction Development Management Program—state funded program that provides classroom and one-on-one training to small businesses interested in road and bridge contracts.
Project specific Match Makers that are geared to DBEs, but also allow other small businesses to attend.
The Department has also used numerous other strategies that are not defined specifically as race-neutral because they are geared just for DBEs, such as grading our prime contractors/consultants on their DBE utilization. For a full list of these types of measures, send me an e-mail request.
Conducting Executive Management training to DBEs to increase entrepreneurial skills.
Contractor Speed Dating—we set up booths for prime contractors and rotate DBE firms every 10 minutes.
Meet the Primes—once a year we host this event at a [State] Road Builders Association’s monthly meeting.
Request of Sub-bids—we have created a section in our monthly DBE newsletter for contractors to advertise for quotes.
Pre-letting meetings—The Monday before our lettings we host a meeting for Primes and DBEs to go over the jobs that will be let and give everyone an opportunity to tell what job they are bidding as prime or sub.
Created a listserv to aid in getting information out to all bidders and quoters effectively, efficiently, and quickly.
[DOT]’s DBE Program has been race-neutral since the regulations went into effect in October 1999. Our entire industry asked to have it that way, and this let them show [DOT] that they used these firms anyway because they were good firms. With the industry’s cooperation, we have met or exceeded our aspirational goal every year except one when several of our big DBE firm owners retired—something that was beyond the control of [DOT] or the industry.
Elimination of upfront cost retainage on Primes and Subs.
Established meet-and-greet sessions for prime contractors and small businesses (DBE firms). Small businesses have a chance to interact with prime contractors.
Establishing a small or emerging business program that complements the DBE program. These programs can include financial incentives, restricted projects, and other strategies because any small company can benefit. It is then important to encourage DBEs to participate in the program to gain assistance not allowed in the DBE program.
Holding mandatory pre-bid meetings linked to mandatory networking sessions. These events not only provide an opportunity for primes and DBEs to meet one another, but also provide primes with a clear understanding of the ready, willing, and able DBEs interested in bidding. This has helped our state prevent primes from coming to the state with statements like “there are no DBEs available that can do that work.”

Response
We have recently implemented strategies normally thought of as community organizing, especially in rural parts of our state. These strategies were used very effectively in the last Presidential race. We have been contacting community leaders, teachers, and ministers and asking them to invite highway construction business owners they know to a meeting in a church, school, or restaurant. We are finding success in recruiting potential DBEs in areas of our state where none are certified in highway construction, although many of these businesses have been in concrete and asphalt for years.
Giving consideration to prime contractors who utilize DBE firms on projects without DBE contract goals to encourage consistent use of DBE firms and not just when there is a DBE goal on the project.
Hosting construction conferences geared to primes and DBEs that discuss the general direction of construction industry. Have high level people from state DOT, FHWA, and government discuss the importance of DMWBE participation.
Map to Success—business development program. Phase 1 looks at the whole business and identifies what they do well and where they need to improve. Phase 2 works with the DBE to develop the improvement in skills for their business.
Matchmaker and government contracting conferences, facilitating one-on-one “meet-and-greet” sessions with state DOT staff; encouraging DBEs to partner or team on RFPs and bid proposals, weekly electronic notification of all new bidding opportunities and bid results; bringing program partners (from other state and federal agencies, technical assistance providers) to meet with DBEs and brainstorm strategies for building capacity, etc.; panels of successful DBEs to inspire and share their experiences.
Partner with AGC to help educate Primes and DBEs on the DBE Program and its contractual requirements.
[State] has over 100 initiatives in place to encourage greater DBE participation. The economy and the extremely low bid environment have hampered DBEs from obtaining small contracts. Large prime contractors are pursuing small contracts, under \$500,000 that normally DBEs pursue as primes.
Technical assistance, marketing, and development of DBEs is of little value unless there are teeth in the process of awarding contracts let without DBE goals (race-neutral). Our system has teeth. On contracts let without a numerical DBE goal, the DBE commitment of the low bidder is compared to the average DBE participation of all other bidders. If the low bidder's DBE commitment is less than 80% of the average of all other bidders, we request documentation of their solicitation efforts. There is a committee that reviews their documentation to determine if they made a good faith effort to solicit a secure DBE participation. If the low bidder has not followed the DBE special provision pertaining to DBE solicitation, the bid is considered non-responsive and award will go to the next lowest bidder with a responsive bid, or all bids will be rejected.
The [DOT] has established an Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its Disadvantaged Business Enterprise (DBE) goal through race-neutral means in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26.51.
To ensure that the maximum feasible portion of the overall DBE goal is met by using race-neutral means of facilitating DBE participation, [DOT] will establish ESBE goals on its contracts. All DBEs are considered to be ESBEs for the purposes of goal setting. ESBE certification exists solely for the benefit of the DBE program. [DOT] will monitor the effect of ESBE certification on DBE utilization. If it is determined that ESBE certification has a negative impact on DBE utilization, then [DOT] reserves the right to limit, discontinue, or eliminate ESBE certification.
To be eligible for ESBE certification the firm must be a for-profit business located in [state], meet the SBA size standards in its industry as defined in 13 CFR Part 121.201 and be 51% owned and controlled by one or more economically disadvantaged individuals who are citizens of the United States or lawfully admitted permanent residents whose personal net worth does not exceed \$750,000.
The majority of professional and non-professional Request for Proposals have language in the proposals that state the Department believes these services support 10% (varies upon scope of proposal) DBE participation. It is not a hard goal, but an aspirational one.
The only strategy not already mentioned is one we are currently exploring but have not implemented. We are looking at reimbursing DBE companies for bonding fees if they have to carry their own bond for a project. Most primes in [state] carry subcontractors under their own bond. We are seeing that practice begin to diminish.
We inform all contractors who requested bids of their obligations toward overall DBE program goals. Annual letter sent to contractors/subs with overview of DBE program results and statement requesting cooperation to meet this year's annual goals with race-neutral measures or risk race-conscious goals on all projects. DBE percentage tracking on all federally funded projects to ensure common goals are met. Be proactive with contractors who perform below goals to identify problems and implement solutions.

7. (Optional) Please list any additional race-neutral strategies that your agency has used that have been **ineffective**—those that you would rate a 1 or 2 on a five-point scale of effectiveness.

Response
Business development and management advice. Most DBEs offered this service through a previous supportive services contract were receptive at first, but didn't like the additional work and oversight that came with the program.
De-centralizing the Civil Rights functions throughout the agency.
Electronic bidding subscriptions for DBE firms.
Group training sessions have proven to be very disappointing. One-on-one technical assistance is much more productive. Our DBEs have indicated in surveys that they are embarrassed to discuss their difficulties in a group setting and that the level of help needed varies too much. There is very little interest in attending training sessions because they see their needs to be of a confidential nature.
Marketing. Mentor/Protégé tied to one firm.
Providing plan room services for contractors to access project plans and proposals.
Publishing contract opportunities in trade and general circulation papers. DBEs have told us they do not have time to purchase and peruse newspapers for contract opportunities. They prefer being notified by fax or e-mail.
Partnership with government agencies (SBA, MBDC, MBEC, OSDBU, etc.) that should be providing assistance to DBEs and providing DBE referrals to prime contractors are ineffective. The listed agencies are "procurement" focused agencies, in which their clients are suppliers, manufacturers, consultants. The DBE program is focused on major construction and the above agencies do not know transportation contracting or DBE Program requirements. Therefore, they can't help DBEs and their referral listing to prime, are not certified DBE, and the referrals are for business services/items of work not related to highway construction.
Some of the strategies already discussed in this survey need explanation. We provide training reimbursements in all the areas you have listed, yet have very few firms taking advantage of them. We conduct outreach and other meetings and trainings, however, DBEs rarely take advantage of them. Meetings are published and reminders are sent out, however, we may have only 2 or 3 companies attend in a region of the state. It is very disheartening that we can't find a way to get DBEs involved and interested in their own program. What we see most is extreme apathy.
The ability for DBE firms to get loans from firms who say they lend to DBE firms has been not been successful.
Tuition reimbursement—We offered to reimburse firms for tuition, training materials, registration fees, etc., for classes related to business or in their line of work; however, no one took advantage of that benefit.
We had a construction Mentor/Protégé program that was not effective because the rules did not allow a mentor to subcontract with a protégé. This really defeated the purpose. The rule was put in place because primes were concerned that there would be ethical questions raised. The program no longer exists.
We hired a firm to provide one-on-one assistance to DBE firms. Not enough firms were helped and those that were helped were not helped enough to justify the expense.

8. (Optional) For one or two strategies that your agency has used, please briefly list the characteristics that made the strategy **successful or unsuccessful**, and/or the challenges you encountered in implementing the strategy.

Response
[DOT] has developed and implemented an Emerging Small Business Enterprise (ESBE) certification to ensure that the maximum feasible portion of its overall DBE goal is met by using race- and gender-neutral means. ESBE contract goals are established so that, over the period to which the overall DBE goal applies, they will cumulatively result in meeting the overall goal through the use of race-neutral means. All DBEs are considered to be ESBEs for the purposes of goal setting. The use of the ESBE certification has allowed [DOT] to be very aggressive in terms of goal setting on individual contracts.
Even though we have a race-neutral program, [DOT] collects GFE documentation at the time of bid. This gives the industry the opportunity to document their willingness to continue a race-neutral program, and gives [DOT] a barometer of what we can anticipate for actual participation (subcontracts and payments to DBEs) as we go forward. This GFE documentation is a matter of public record as well, so everyone knows who is and who is not "playing nice in the sandbox." The [state] industry can then police itself, and keep everyone in the game and following the rules.
Executive Management Training has been successful because it indirectly identifies firms that are committed to business growth and development, and then provides training to assist the firm in reaching their growth and development goals.
In question 6, my last strategy talked about recruitment of potential DBEs, especially in the rural parts of our state. A reason that this has not worked in the past, I think, is because we have hired consultants to help us instead of doing the work ourselves. This is making a difference because business owners are seeing staff instead of consultants.
It appears that business development initiatives play a strong role in the success of DBEs.

Response
Our state has a BOWD program that has been successful. I believe it is the one-on-one training and business assistance that has made the program successful. DBE firms, no matter how large or small, have stressed how important this program has been in providing much needed information to assist in growing their business.
Programs must be tailored to address current day realities. There is the much used practice of relying on old methods to achieve new results. This does not work. Methods must adapt to the times. Commitment to DBEs must come from the top.
Successful: training DBE firms how to quote electronically either via e-mail or fax, have been very successful, just difficult to get everyone together to learn. So we have been sending out our DBE temp (40 years with our department's construction program) to help firms with the certification process, orientation upon certification, and to answer any construction-related questions either regarding performance on the job, how to develop a quote, market and connect with large subs or primes, and to actually submit quotes electronically.
The difficulties center around getting DBE companies to participate in training for marketing, business management, writing business plans, and growing their businesses. We continue to hear requests to bring back project goals, and few companies are willing to do the work necessary to make themselves competitive in a neutral environment.
The elimination of retainage allows for money to stay in the hands of the contractors and subs for other items or to purchase bonding and insurance.
We commissioned a Capacity Analysis study to identify the ability of small businesses to perform on [DOT] contracts, but because capacity is so hard to quantify in a consistent way, the information was not very helpful. We have supported scholarships to Business Management classes conducted at our Small Business Development Centers across the state, and have two Mentor/Protégé programs (general long-term and project-specific) that seem to be very successful.
We have arranged for DBEs to "job shadow" an established company that performs a type of work the DBE is interested in expanding into. In order for the established firm to agree, we worked with a colleague in a neighboring state to locate a company to provide the training. We cannot expect a firm to help develop a company that may well become a competitor.
We have found the classroom style/teamwork training with one-on-one assistance to be the most effective. We found that by having the EDI class stay in a hotel, those from around the state find camaraderie that lasts beyond the training and results many times in the joining of efforts on contracts. The hotel setting is also conducive to evening homework and gives teams the opportunity to work on projects and presentations to be given the next day. We have had the teams do practical exercises such as breaking into teams to submit a [DOT] bid.
We identify the DBE program's overall goals with each contractor and request that each contractor work to include DBE on each project sufficient to meet them. We maintain a database with all federally funded projects and track DBE participation for each. This helps identify contractors and projects with below-average DBE usage and allows the DBE coordinator to take proactive steps to correct the deficiency.
What made it successful was the chance small businesses (DBE firms) were given to interact one-on-one.

PROBLEMS AND CHALLENGES IN MEETING DBE GOALS

9. Following are some common problems or challenges faced by states in meeting their goals for DBE participation in highway contracting. Please rate on a scale of 1 to 5 the degree to which each problem or challenge has affected your state's DBE efforts or click the "Don't know" button.

Item	1 Not a problem at all	2 A minor problem	3 A problem	4 A significant problem	5 A severe problem	Don't know	Total
DBEs' inability to obtain bonding	8.7% 4	17.4% 8	37.0% 17	15.2% 7	21.7% 10		46
DBE firms' lack of access to capital and/or cash flow issues	2.2% 1	10.9% 5	26.1% 12	39.1% 18	19.6% 9	2.2% 1	46
DBE firms' lack of experience/skill at managing a business	4.3% 2	21.3% 10	29.8% 14	36.2% 17	4.3% 2	4.3% 2	47
Lack of DBEs certified or experienced in certain work areas (such as ITS, or the full spectrum of construction work)	14.9% 7	17.0% 8	34.0% 16	25.5% 12	8.5% 4		47
DBE firms' lack of equipment necessary to meet contract/subcontract requirements	10.6% 5	38.3% 18	27.7% 13	14.9% 7	2.1% 1	6.4% 3	47
Lack of interest among DBE firms in participation in highway contracts	30.4% 14	32.6% 15	17.4% 8	13.0% 6	4.3% 2	2.2% 1	46
Lack of interest among DBE firms in becoming certified due to required paperwork	15.2% 7	28.3% 13	28.3% 13	10.9% 5	15.2% 7	2.2% 1	46

Item	1 Not a problem at all	2 A minor problem	3 A problem	4 A significant problem	5 A severe problem	Don't know	Total
Lack of interest among DBE firms in participating in Supportive Services programs	27.7% 13	38.3% 18	14.9% 7	6.4% 3	10.6% 5	2.1% 1	47
Lack of DBE firms that work as prime contractors	4.3% 2	23.4% 11	21.3% 10	23.4% 11	25.5% 12	2.1% 1	47
Goals are set at levels that cannot reasonably be met with the existing DBE pool	63.8% 30	12.8% 6	12.8% 6	4.3% 2	4.3% 2	2.1% 1	47
Established, successful DBE firms that are leaving the program or retiring are not being replaced by an equal number of newer firms	34.0% 16	27.7% 13	17.0% 8	12.8% 6	4.3% 2	4.3% 2	47
Larger, more established DBEs overshadow newly emerging DBEs, making it difficult for new firms to grow	8.5% 4	31.9% 15	31.9% 15	17.0% 8	8.5% 4	2.1% 1	47
Lack of commitment, cooperation or follow-through on the part of prime contractors in using DBE subcontractors	14.9% 7	38.3% 18	25.5% 12	12.8% 6	8.5% 4		47
Prime contractors not willing to work with new DBE firms (for example, because primes have existing relationships with certain DBE firms, or because of uncertainty about new firms' skills)	4.3% 2	19.1% 9	21.3% 10	27.7% 13	27.7% 13		47
Uncertainty among DBEs in how to expand their businesses	2.1% 1	23.4% 11	38.3% 18	23.4% 11	4.3% 2	8.5% 4	47
Challenges related to external factors, such as economic conditions or rising fuel costs	6.4% 3	4.3% 2	42.6% 20	23.4% 11	21.3% 10	2.1% 1	47
Administrative challenges (budget constraints, lack of staff)	8.5% 4	10.6% 5	36.2% 17	29.8% 14	10.6% 5	4.3% 2	47
Internal agency challenges (lack of support or attention from upper management, bureaucracy, agency reluctance to alter method of procuring contracts or to unbundle contracts planned in advance)	29.8% 14	27.7% 13	12.8% 6	14.9% 7	12.8% 6	2.1% 1	47
Challenges related to working with FHWA	48.9% 23	29.8% 14		10.6% 5	10.6% 5		47

ADDITIONAL PROBLEMS AND CHALLENGES

10. (Optional) Please list any additional problems or challenges (not listed above) that your agency has encountered.

Response
DBE goal not approved.
[DOT]'s overall DBE and market area goals continue to be met. However, several of the items identified above are of concern to DBE and the Department but do not prevent meeting the goals.
Funding through FHWA should increase to allow additional Supportive Services to DBEs. Not nearly enough funding for this program.
Lack of computer skills.
Lack of public and political awareness.
Leadership support is not visible and that can be interpreted as a lack of commitment. Lack of commitment from leadership leads to a lack of commitment from prime contractors in utilizing DBEs.
Most paving contracts have little opportunities for DBE participation and find it difficult to achieve DBE participation. The lack of participation on these projects lowers our overall DBE average.
None.

Response
Prequalification requirements.
Economy—contractors are self-performing more of the work to keep their workforce employed.
The extra strain/burden/stress put upon STA because FTA, FAA, FHWA don't administer their DBE programs the same way. Instead of meeting the needs of the lead agency we spend a lot of extra time trying to do the different wrinkles in the other two DBE programs.
The regulations are outdated and need to be revised with an approach to be more flexible. For instance, Appendix A, the good faith effort, suggests that primes advertise in various publications for DBE participation. DBEs do not read newspapers for contracting opportunities. The personal net worth is outdated and should be indexed to the state's commercial index ratings. The DBE regulations should encourage the DOT to operate a SB Program along with its DBE Program. The challenge here is that the regulation on implementing a SB Program requires the state DOT to meet all 7 conditions, which are strict and are barriers to implementing a SB Program.

11. (Optional) For one or two of the challenges listed on this page, please briefly describe what ideas you have tried or considered for overcoming these problems.

Response
DBE/SS is great and it works to improve DBE involvement. The challenge is the funds we request from FHWA and the funds we are granted are a lot less than the request. [State] is a large state with 800 local governments that also have a DBE program and the DBEs are everywhere in the 58,000 miles we manage. The FHWA grant is too small to be effective for [state] reach to minority/women and DBEs.
[DOT] has a Bond Guarantee Program where the Department would guarantee 80% or 90% of the bond, but we have been unable to get a surety company to participate in the program.
Have the Secretary of the Department of Transportation call his modals together and require them to administer the DBE program in the same fashion so the process is seamless both for the DBEs and for the STAs. STAs could get a LOT more done, with the decreasing staff, if that concept were to be implemented fully.
Provided an annual workshop that addresses Potential Expansion & Partnering Opportunities.
Encourage graduating DBE firms to actively mentor or JV with DBE firms.
Skills training workshops.
Invitation to information meetings.
Upper management (state and federal) is encouraged to participate and show their support at all events involving the DBE program.
We have begun to contact firms with only one or two bids during the previous year to encourage them to participate more. We are trying to identify reasons these firms did not bid more often and help provide solutions to enable them to become more active.
With respect to follow-through on the part of primes, we are issuing a survey that may be completed anonymously about which primes provide a meaningful work and training experience for the DBE and which primes do the minimum and release the DBE once the goal is met. Our intent is to give awards to primes that provide a positive experience. If primes are consistently identified as problematic, we bring them before the Prequalification Committee, which has the authority to decrease or eliminate a firm's ability to work with [DOT].

IMPLEMENTING RACE-NEUTRAL STRATEGIES

12. Has your agency surveyed DBE firms (either through a formal survey or by informally gathering feedback) about which race-neutral strategies have been most helpful to them?

Item	Count	Percent
Yes	25	53.23%
No	22	46.81%
(Optional: if yes, please describe your efforts)		
Annual assessment by Primes, DBEs, internal staff, etc., about what is working, what they need, etc.		
Annual DBE survey as DBE Supportive Services funds are available.		

Item
As a small state we are able to work with each prime contractor and encourage use of DBEs on all projects. We are able to provide introductions of DBEs to primes when requested. We help identify projects with work they can provide and encourage them to bid or contact the prime contractor.
Formal survey.
Formal surveys have been conducted by DBE/SS providers. Feedback has also been obtained through informal gatherings.
Have conducted Internet-based and fax surveys, along with collecting information from DBEs on an individual basis.
Most of the EDI participants are very satisfied that the classes have helped them get prequalified and even participate on [DOT] projects. The classes have also opened up their minds to diversifying their businesses and being a value-added company as opposed to being there just to meet a goal.
Needs assessment reports.
The disparity study completed in 2007 has 120 pages of what race-neutral activities work and do not work. Additionally, we have a monthly Small Business Council and a separate AGC Council that meet with [DOT]. The 34 member organizations tell us what works and advise us on what we can improve or implement to increase DBE participation.
Survey.
Very little return. We have tried to provide training for the most commonly identified needs.
We are holding a brainstorming session this week (March 19th) and there is significant interest on the part of DBEs to attend.
We attempted to implement a race-neutral program two years ago. During this process we had considerable discussion with DBE firms. They did not want a race-neutral program. Rather than compete for work on all contracts they wanted to keep contract goals so they knew prime contractors had to use them on individual projects.
We conduct needs assessment surveys on a regular basis, and we specifically ask which of our supportive services have been most helpful. We get a fairly good rate of return.
We have developed a calendar of events that informs them on upcoming training.

13. Has your state requested a waiver from FHWA that allows you to use race-conscious measures to target certain subgroups?

Item	Count	Percent
Yes	6	13.02%
No	40	86.96%
(Optional: if yes, please describe your request)		
Caucasian women working on highway construction in [State] Central Region.		
Dual goal request (one goal for minorities and one for Caucasian women) for [a bridge project] between [two neighboring states].		
Loan program for underutilized DBEs.		
Our Disparity Study showed that race-conscious goals should only be set for African-American, Asian Pacific, and Subcontinent Asian DBE firms. It was 9 months before our waiver was approved, and it took several attempts before FHWA was satisfied with the information we provided.		
Our disparity study from 2007 indicated Hispanic and Subcontinent Asian firms are at parity. Based on the study findings, the [DOT] waiver was to identify African Americans, women, Native American, and Asian Pacific Islanders as race-conscious and Hispanics and Subcontinent Asians as race-neutral participation.		

14. Did FHWA approve your waiver(s)?

Item	Count	Percent
Yes	4	18.18%
No	14	63.64%
Approval pending	4	18.18%

15. Does your agency have partnerships with other state DOTs or other agencies within your state to encourage or promote expansion of DBEs on government contracts?

Item	Count	Percent
Yes	29	63.04%
No	17	36.96%

16. Does your agency have partnerships with industry (contractors and consultants) to encourage the growth of DBEs?

Item	Count	Percent
Yes	37	78.72%
No	10	21.28%

17. Have you taken race-neutral measures to bring DBEs into the full range of highway contracting activities (as opposed to just certain areas, such as traffic control or landscaping)?

Item	Count	Percent
Yes	25	54.3%
No	21	45.65%
(Optional: if yes, please describe your efforts)		
Assistance programs.		
[DOT]'s DBE Program has been 100% race neutral since October 1999.		
[DOT]'s Small Business Initiative—unbundling of large highway construction contracts to encourage smaller firms to bid as prime contractors.		
Encourage DBEs to add more work types to the original certification.		
However, not much success in moving firms into new areas such as landscaping, guardrail, pavement marking, and lighting due to higher barriers to entry (cost).		
One-on-one assessments have been conducted for selected DBEs and technical assistance is then developed for that DBE that includes training, marketing, and networking.		
Our DBEs can offer a full range of highway construction related services and we promote these services to prime contractors as a way to achieve their goals.		
Stakeholder meetings; joint conferences of prime and DBE firms; networking activities at all pre-bid meetings; creation of practical guide for Good Faith Effort including DBE and prime input.		
Support services focusing on areas with no certified DBEs.		
We invite a wide range of firms to our EDIs and encourage primes to expand their use of DBEs beyond traffic control, landscaping, and trucking.		
We set goals on contracts with various work types to encourage DBEs to broaden the type of work they perform.		
We work closely with our DBEs to help them expand their capacity, their areas of expertise, and to get pre-qualified to bid as primes. Bonding is a significant barrier. We have seen some success since launching our business development program in 2009. Working one-on-one with DBEs over a period of time has produced some positive outcomes.		
We work with a number of organizations that target small businesses. We participate in various workshops and expositions to inform businesses of the vast transportation opportunities.		

18. Have you had compliance issues with contractors?

Item	Count	Percent
Yes	31	67.33%
No	15	32.61%
(Optional: if yes, please describe these issues)		
Although our waiver was approved 18 months ago, Primes still submit ineligible DBE firms as their commitment to a targeted goal.		
At times contractors may fall behind with their DBE utilization. Our compliance review officers identify DBE shortfalls and we work proactively to assist the contractor with bringing more DBEs on the project.		
Issues with compliance on OJT programs and EEC reporting.		
Minor, usually lack of required paperwork.		
Most of our compliance issues are prevailing wage-related. Our Good Faith Effort guidance and Good Faith Waiver scrutiny has addressed and alleviated contracting compliance issues.		
Most of our problems center on prompt payment, retainage, and miscommunication between prime and subcontractors.		
Not following the regulations on replacing certified committed DBEs.		
Problems exist with contractor self-performing work items.		
Problems with prompt payment and DBE utilization once a subcontract is signed.		
Prompt pay issues.		
Prompt pay. Underruns on work sub-contracted to DBEs where the contractor knew or should have known the potential for an underrun existed before submitting DBE participation plan. Not submitting DBE payments timely.		
Race-neutral program has not been meeting the annual goal. Primes have not utilized DBEs.		
Reporting DBE participation throughout the contract. Anecdotally, DBEs indicate the compliance issue is prompt payment.		
Some commercially useful function issues such as primes working with a DBE firm to complete a job. Slow payments to DBEs are also a concern. Primes asking a DBE to leave as soon as the monetary goal is reached instead of being allowed to complete an entire contract item.		
These difficult times have seen a rise in contractor payment issues. Prompt payment claims have doubled.		
Utilizing DBE firms as required. Utilizing minorities and females in the workforce as required.		

19. Have you had fraud problems with contractors?

Item	Count	Percent
Yes	16	34.76%
No	30	65.22%
(Optional: if yes, please describe these issues)		
A contractor made false material and labor statements about work performed by a DBE firm. The contractor was charged in a one-count felony indictment and entered into a deferred prosecution agreement. The DBE firm was decertified.		
During certification, firms have been found to be untruthful and when challenged have withdrawn the application.		
There are rumors that subconsultant DBEs on professional service contracts are not asked to perform the committed services but are paid just to meet the DBE goal.		
There have been a high number of attempted fronts for certification. Mostly non-minority female.		
Yes, very few, but we have encountered false reporting.		

20. Have you had compliance issues with DBE firms?

Item	Count	Percent
Yes	29	64.42%
No	16	35.56%
(Optional: if yes, please describe these issues)		
DBEs sign a blank quarterly report form.		
Many firms lease equipment with operator that may not be standard industry practice; this leads to Commercially Useful Function (CUF) questions. DBE truckers not paying prevailing wage/fringes.		
Minor, usually paperwork issues.		
Not completing paperwork properly, such as certified payrolls, not submitting payments received from prime contractors timely, not having proper/sufficient wage bonds.		
One problem 6 years ago—DBE fronted for a prime.		
Supply firm was found to be actually a broker and not in line with CUF guidelines.		
The bulk of problems have existed on very large design build projects and centered on commercially useful function issues.		
There have been some cases where participation credit has been denied because of use of primes equipment or cases where the DBE has not managed their own work forces.		
We have had some occasions where DBE firms quote too much work and then pick and choose the work they want to complete.		
We occasionally have a commercially useful function issue with DBEs.		
Yes generally related to Commercially Useful Function.		

21. Have you had fraud problems with DBE firms?

Item	Count	Percent
Yes	19	42.21%
No	26	57.78%
(Optional: if yes, please describe these issues)		
As stated above and also during certification application process.		
Please refer to Question 19, and a firm was decertified recently because at the time of applying for DBE certification they were not a lawfully permanent resident of the United States.		
Some DBEs have been decertified because we come to find out after issuing the certification that a non-DBE is managing and controlling the day-to-day operations.		
Truckers not being on the jobsite, but operating as brokers from home.		
Yes, generally certification fraud.		

USING 100% RACE-NEUTRAL MEASURES

22. Does your state use 100% race-neutral measures to meet DBE goals, either because you are subject to the Ninth Circuit Court of Appeals decision or because your state has independently decided to do so?

Item	Count	Percent
Yes	12	26.09%
No	34	73.91%

23. What prompted your state to use 100% race-neutral measures to meet its goals for DBE participation?

Item	Count	Percent
Yes	5	41.67%
Other	7	58.31%
(If other, please describe)		
9th Circuit decision first, then due to disparity study conclusions.		
An independent and unsolicited opinion from the past conservative State Attorney General, determined the course in [state].		
[State] has been race-neutral since 1/1/2000. The Transportation Industry and the Department wanted to see if the goal could be achieved without having specific contract goals.		
[State] uses 100% race-neutral because we have managed to meet our goals without imposing contract goals under the race-conscious effort.		
Since the regulations were revised in 1999 we have been successful meeting our overall annual DBE goals without resorting to project specific goal setting.		
The industry requested it when the new regulations came out in October 1999.		

24. Has your state completed an availability or disparity study?

Item	Count	Percent
Yes	8	66.65%
No	4	33.33%
(If yes, please give year of completion)		
1999		
2000 and 2005. one is being considered for 2010 funding is an issue		
2005		
2007		
2008		
2008		
2009		

If your state is affected by the Ninth Circuit Court of Appeals decision, please answer the remaining questions on this page (questions 25–27). Otherwise, please scroll to the bottom of the page and press “Click to Next Page.”

25. After the court’s decision was handed down and your state began using solely race-neutral strategies, which strategies had the greatest immediate impact on helping your state meet its DBE participation goals?

Response
Business development program, partnering meetings, contracting special notices.
Encouraging the use of DBEs on projects and having DBEs serve as prime contractors.
None of the methods we have used have had any impact on our state in meeting our DBE participation goal.
Our strong supportive services program has probably had the biggest positive impact on working towards meeting our annual goal.
We have been unable to meet our annual goal. We need to review our strategies and see what else would benefit the DBEs for participation.
We have not met our goals. Prime contractors saw no goal on a contract and DBE utilization fell off dramatically.

26. Did eliminating all race-conscious measures affect your state's ability to meet its goals for DBE participation? If so, did the level of DBE participation increase or decrease after you eliminated race-conscious measures?

Item	Count	Percent
DBE participation increased	0	0.00%
DBE participation decreased	6	85.71%
DBE participation did not change	1	14.29%

27. If similar court decisions occur in other areas of the country in the future, what advice would you give to states that are just beginning to use solely race-neutral measures?

Response
Be aggressive and get buy-in from the industry. Involve them in the race-neutral measures as coaches or instructors.
Do a disparity study to justify using or not using race-neutral measures.
Ensure reliable systems are in place for collecting contract/agreement and payment data. Ensure that the supportive services program uses a variety of strategies to support those DBE companies willing to work at growing their business in a neutral environment. Find ways to ensure top management support of the DBE Program.
Get your data sorted out and orderly for a rigorous disparity study.

ADDITIONAL COMMENTS AND MATERIALS

28. If you have any additional comments on any aspect of implementing race-neutral measures in a DBE program, please use this space to enter them.

If you believe your agency has successful practices that would benefit other agencies or could serve as a case study for inclusion in this project's final report, please indicate that and we'll contact you.

If you have documents or materials (forms, brochures, newsletters, manuals, etc.) that might be useful to other states in implementing new strategies, please e-mail them to andrea.thomas@ctcandassociates.com or provide links to the resources online in the space below. If you prefer, you may upload files using the "Browse" button below.

Response
[DOT] has been engaged with a stakeholder DBE and Workforce Group Collaborative that has 11 project teams working on some issues. Would be willing to share the success and issues of this group.
Florida has had a race-neutral program for 10 years. This success is due to the support and advocacy of top management including the Secretary of the Department, Assistance Secretaries, and the District Secretaries.
The attachment is a document that was completed in 2008.
http://itd.idaho.gov/civil/external.htm
The above website contains a link to a list of all DBE/SS benefits being offered currently. Also, there are a variety of other helpful documents, forms and brochures listed there.
I have e-mailed you our Special Provision regarding #6, where we compare the DBE commitment of the low bidder to the other bidders. If the low bidder's commitment is not within 80% of the average of the other bidders, their solicitation efforts are reviewed. If the low bidder did not follow the special provision their bid is rejected and award goes to the next lowest responsive bidder, or all bids are rejected.
Our prime contractors were willing to attempt to implement a race-neutral DBE program even if it meant more effort for them and potentially requiring them to use more DBE firms. However, our DBE firms were unwilling to give up the comforts of having contracts with specific DBE goals. My observation is that our DBE firms like to have some work reserved for them rather than compete in a race-neutral environment even if there is potentially more work available for them in the race-neutral environment.
Outreach and communication are key factors in continuing to keep the lines open between the Primes and subs.

Response

Prime contractors must be informed up front of their obligations to meet overall DBE goals on federally funded projects.

You need to be able to track DBE commitments and actual DBE participation throughout the life of the project and take action when a problem is identified.

You need to be proactive before the start of a project to ensure the prime contractors include DBEs in the subcontracting process. If you wait until the project is started, the opportunity to find other work for DBEs is limited.

You need to assist prime contractors by providing them with the means to find DBEs suitable for their project, providing a clear database, cross reference information, and suggestions when needed.

You need to educate the DBEs how to use the state bidding information to solicit business from primes that have taken out proposals for projects.

You need to provide introductions to primes on behalf of the DBEs looking to bid for work on a project.

Overall, be proactive to ensure DBE use and develop a tracking tool to identify any issues before they become too large or late in a project to correct.

The whole compliance versus support is a balancing act that is sometimes difficult. There is reluctance on the part of some DBEs to be open about the areas for which they need assistance for fear of being found in noncompliance or worse being accused of doing something fraudulent.

VTrans DBE webpage: <http://www.aot.state.vt.us/CivilRights/Dbe.htm>

VTrans DBE Electronic Newsletter archive: <http://www.aot.state.vt.us/CivilRights/DBE%20Newsletter.htm>

VTrans Prompt Pay Compliance webpage: <http://www.aot.state.vt.us/CivilRights/DBEpromptpay.htm>

We have guides to facilitate: project specific events, mandatory pre-bids, procurement fairs, A&E fairs, Mentor/Protégé program.

APPENDIX C

Sample Collateral Materials from State DBE Programs

These five agencies provided collateral materials associated with their individual DBE programs. These materials appear on the following pages and at the links provided below.

Florida Department of Transportation

“Disadvantaged Business Enterprise Program: Race Neutral Outreach Strategies”

FDOT’s Business Development Initiative:

<http://www.dot.state.fl.us/equalopportunityoffice/GeneralBDI.shtm>.

Idaho Transportation Department

“Support Services Benefits for Idaho-Certified Disadvantaged Business Enterprises,” from the state

External EEO website: <http://itd.idaho.gov/civil/external.htm>

New Jersey Department of Transportation

“Emerging Small Business Enterprise Policy Statement”

South Dakota Department of Transportation

“Special Provision for Disadvantaged Business Enterprise”

Vermont Agency of Transportation

Disadvantaged Business Enterprise Program website: <http://www.aot.state.vt.us/CivilRights/DBE.htm>

Electronic archive of DBE newsletters: <http://www.aot.state.vt.us/CivilRights/DBE%20Newsletter.htm>

VTrans Prompt Pay Compliance webpage: <http://www.aot.state.vt.us/CivilRights/DBEpromptpay.htm>

FLORIDA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Race Neutral Outreach Strategies

Race Neutral Methods

Implementing a race-neutral DBE Program has been a learning experience and a realization that new methods and strategies must be initiated to achieve success. The Department has initiated new strategies over the past seven years and is continuing to develop and implement other new strategies. Some of the strategies that have been implemented in these years have taken time to mature and show results, but the efforts are beginning to be productive. Some of the significant strategies that have been implemented include:

1. Presenting a DBE Report in the monthly Executive Board meetings. The Board is comprised of the Secretary, Assistant Secretaries and District Secretaries. Other attendees include those who report to the Secretary and the Assistant Secretaries and the Division Administrator for the FHWA. Board members are frequently enlisted to continue encouraging contractors and consultants to utilize DBEs.
2. Publishing DBE Reports on the Internet that further breakdown DBE achievement by work category (construction and professional services) and by district. This information is shown for federal-funded projects, state-funded projects, and for all projects combined.
3. Publishing the DBE achievements for each contractor and consultant. For each contractor and consultant, this report shows the number of contracts awarded, the total dollars awarded, and the percent of DBE participation.
4. Presenting and discussing the DBE reports at the annual Construction Conference, quarterly committee meetings that include members of the Florida Institute of Consulting Engineers and Department staff, and other Department meetings.
5. Incorporating into the Department's Contract Grading System bonus points for contractors who achieve the estimated DBE availability percentage on a contract.
6. Creating a new position in the Equal Opportunity Office entitled "DBE Program Specialist". This position is responsible for marketing the DBE Program to prime contractors and consultants.
7. Revising the job duties of an existing position so that 50% of the position's time involves contacting businesses that have let their DBE certification expire and recruiting new businesses into the DBE Program.
8. Modifying the contracts with two DBE Supportive Services Providers to require them to assist prime contractors and consultants in locating ready, willing and able DBEs to participate on contracts and to recruit new businesses into the DBE Program.
9. Requiring submittal of the Anticipated DBE Participation Statement at the pre-construction conference. When the race-neutral Program was initially implemented, this Statement was optional.

10. Providing a letter grade (A-F) for all of our prime consultants and contractors.
11. Mailing thank you letters, from the Department's Secretary, to contractors and consultants who received an A+ or A for their DBE utilization during the previous fiscal year.
12. Mailing neutral letters, from the Department's Secretary, to contractors and consultants who received a B or C letter for their DBE utilization during the previous fiscal year.
13. Mailing encouragement letters, from the Department's Secretary, to contractors and consultants who received a D or F for their DBE utilization during the previous fiscal year. This letter states, "Your Company will be contacted by the Department's DBE Program Specialist to discuss your current strategies and determine if there are additional efforts we can suggest to increase your DBE utilization."
14. Conducting Title VI assessments on companies that achieved less than 2% utilization.
15. Attending all quarterly contractors meetings throughout the state to discuss the DBE Program and encourage the use of DBEs.
16. Contracting with a firm to recruit minority and female owned businesses into the DBE Program. This contract covers Dade and Broward Counties.
17. Implementing the new Internet-based Equal Opportunity Reporting System that will allow the Department to ensure accurate and prompt reporting and will also allow the Department to better analyze the details and trends in the DBE Program.
18. Working with Florida Transportation Builders Association (FTBA) to present awards to prime contractors with a high DBE utilization and successful DBEs.
19. Amended our current DBE Supportive Services contract to incorporate additional funding from the FHWA to assist DBEs in developing Strategic or Business Plans.
20. Creating a DBE Advisory Committee within the FTBA comprised of DBEs, prime contractors, and Department staff to discuss the DBE Program and improvement opportunities.
21. Creating a DBE Advisory Committee with the Florida Institute of Consulting Engineers comprised of DBEs, prime consultants, and Department staff to discuss the DBE Program and improvement opportunities.
22. Incorporating a monetary incentive clause in our DBE Supportive Services Contract for helping the underutilized DBEs get contracts on FDOT projects. If the DBE Supportive Services provider could demonstrate that they assisted a DBE in getting a prime or sub contract, they would receive a \$500 bonus.
23. Sponsoring Matchmaker meetings throughout the State designed to bring together Department staff, DBEs and prime contractors/consultants to facilitate communications.
24. Conducting Title VI assessments on consultants who achieved low DBE utilization on all their dollars awarded during the previous fiscal year.
25. State Legislation passed that would allow the Department to waive bonds up to \$250,000 and to raise the prequalification limit to \$500,000 in certain circumstances. The Department is still in the process of implementing these changes.

Additional strategies that are being considered for the 2008 fiscal year include:

1. A pilot Business Development Initiative (BDI) for small businesses was implemented on state funded projects in July 2006. The Department originally submitted a request to apply this Initiative on federally funded contracts as a race neutral method in our DBE goal calculation methodology in our submittal to the FHWA on July 26, 2006. After much delay, the Department was asked to request this approval separately. On March 6, 2007 the Department submitted a proposal to the FHWA Florida Division requesting to also apply the BDI to federally funded projects. On September 25, 2007, the FHWA Florida Division forwarded the request to FHWA headquarter for approval as an SEP 14. The Department is still waiting for this approval to proceed. The districts have already identified numerous federally funded projects that could be used for the BDI, but many have missed the opportunity as we await approval.
2. Reviewing the possibility of establishing a mentor-protégé program for DBEs.
3. Monitoring DBE participation of those contractors who received a Title VI Assessment over the last two years to determine if good faith efforts are made.
4. Developing a DBE Marketing Plan.
5. Creating a plan for “One on One” sessions with DBEs and primes.
6. Develop a PowerPoint presentation targeting prime contractors and consultants to emphasize the importance of using DBEs and small businesses as subcontractors and sub consultants on Department projects.



December 17, 2010

Learn more about the National Highway Traffic Safety Administration (NHTSA).

Main Level Navigation

Information By Topic

... Please Select One ...

Meetings/Events

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Offices

... Please Select One ...

Office Level Navigation

Equal Opportunity Office

605 Suwannee Street, MS-65
Tallahassee, FL 32399

Tel: (850) 414-4747
Fax: (850) 414-4879

[Equal Opportunity Office](#)

Business Development Initiative

... Please Select One ...

Contract Compliance

... Please Select One ...

DBE Program

... Please Select One ...

Equal Opportunity Office

Arthur E. Wright, Manager

Business Development Initiative

The Business Development Initiative (BDI) is designed to support the Department's efforts to increase competition, lower prices, and increase support to meet its contracting needs over the next 10 years. The BDI is designed to provide more opportunities and support for small businesses to move from subcontracting and sub consulting to prime contracting and consulting roles.

The initial phase was implemented in fiscal years 2006-07 and 2007-08, with the first six months using District Two as the pilot, followed by the remaining districts in January 2007. During that time, different strategies were implemented to determine if there was result an increase in competition without adversely affecting the end product. Some of the strategies used that would provide an opportunity for businesses who would not typically bid on DOT contracts are:

- Reserving construction and maintenance contracts for small businesses.
- Waiving performance and bid bond requirements for contracts under \$250,000.
- Using the modified qualification process instead of our standard prequalification process for construction and maintenance projects

In March 2009, the Department received approval from Federal Highway Administration (FHWA) to use the BDI on federally funded projects, being the first of its kind, nationally, to be considered.

For a more detailed look at the BDI, please review the [Business Development Initiative Plan](#) or contact us fdot.bdi@dot.state.fl.us

[Business Development Project List](#)

[FAQs](#)

[Small Business Definitions](#)

[Reserved Projects](#)

[Brochure](#) also available in [Español](#).

Important Contact Information

DBE Supportive Services

Idaho Transportation Department, EEO Office
3311 West State Street, Room 300B
PO Box 7129, Boise, ID 83707-1129
(208) 334-4442 / Toll-Free (800) 634-7790
FAX: (208) 332-7812
TTD/TTY: (208) 334-4455
E-mail: civilrights@itd.idaho.gov
Website: www.itd.idaho.gov/civil

ITD Contractor Information Page

www.itd.idaho.gov/design/contractors/contrinfo.htm

- **Notice to Contractors** Upcoming federal-aid and state highway construction projects let through ITD, with specific details and quantities, names of resident engineers, and brief description of the work to be performed.

- **Quarterly Bidding Forecast**
- **Planholder Lists**

- **Bid Result and Bid Abstract Information**
- **Contract Award Information**

ITD Purchasing Section

www.itd.idaho.gov/business/business.htm
(choose "ITD Goods and Services")

Bid openings on maintenance buildings, rest areas, sand sheds, mowing, and other services. Notices are hyperlinked to their plans and specifications.

ITD Consultant Administration Unit

www.itd.idaho.gov/design/cau/cau.htm

- **Individual Project Solicitations**
- **Term Agreement Solicitations**



DBE Supportive Services
Equal Employment Opportunity Office
PO Box 7129
Boise, ID 83707-1129

Idaho Transportation Department




Supportive Services Benefits for Idaho-Certified Disadvantaged Business Enterprises

October 1, 2010 through
September 30, 2011



The Idaho Transportation Department's DBE Supportive Services are designed to help with the growth and eventual self-sufficiency of participating DBE firms. The ultimate goal of the benefits listed here is providing DBE firms with the tools and resources that will give them proficiency equal to that of non-disadvantaged firms in competing for contracts and subcontracts.

First Class Mail
US Postage Paid
Boise, Idaho
Permit No. 143



Training and Marketing Grants

Marketing Grants for up to \$500 for marketing expenditures. These can include design and/or hosting of websites, design and/or printing of business cards or statements of qualification, exhibitor's fees at tradeshows or professional functions, advertising and professional memberships.

DBEs will be required to apply for these grants using a short, simple form that describes what type of marketing they intend to pursue, and how it will benefit their firm.

After paying for their marketing activities, DBE submit copies of the invoices or receipts to us for reimbursement. And at the end of the year, we'll follow up with an outcome survey to see how these marketing expenditures were beneficial.

Training Grants for up to \$500 will be provided to DBEs pursuing training in business or project management skills. *(Same application procedure as described above).*

Need help locating training? DBE Supportive Services can help research and identify classes in your area or on-line.

Procurement Assistance

DBE Supportive Services offers many benefits to DBEs who are bidding on ITD highway construction or design projects and working to grow their businesses, including:

- **Free non-bidders ITD highway construction plans, specifications and addenda**

How can we help you succeed?

The services listed in this brochure are just the highlights of what DBE Supportive Services has to offer to our DBEs. There are many other benefits as well, including ongoing referrals to other important training, governmental and community organizational services, and more individualized services.

- **Virtual Plan Room Membership Reimbursements** up to \$1,500.

- **One-on-One Bidding and Estimating Assistance***

- **One-On-One Contract Clause and Documentation Assistance***

- **One-on-One Long-Term Business Planning Assistance***

- **Invitations to Bid from Prime Contractors**
These are posted at www.itd.idaho.gov/civil/invitations.htm and

forwarded to all DBE plan holders.

- **On-line DBE Non-Bidders Plan Holders List** posted at www.itd.idaho.gov/civil/lanholders.htm.
- **Weekly e-mail notification of non-ITD projects** *(by request)*
- **Bi-weekly e-mail of statewide Idaho Business Training Calendar*** We focus on short, inexpensive trainings that will benefit strapped-for-time small business owners in the areas of finance, marketing and business management.
- **Free ITD Standard Specifications for Highway Construction Book** *(limit of one per DBE firm)*

**Available to Idaho firms only*

- **USDOT Short-Term Lending Program** *(Application required)* The STLP provides short-term working capital financing for DBEs working on USDOT-funded contracts and subcontracts (any mode of transportation). This is done through revolving lines of credit, with the contracts' accounts receivable acting as collateral. These lines of credit can be extended to both primes and subcontractors with the maximum line of credit up to \$750,000

Publications

The monthly **DBE News** contains informative articles on resources available to DBEs and small businesses, outside training opportunities, DBE contracting goals, important government regulations affecting small businesses, and much more. This newsletter can either be subscribed to electronically or through the regular US mail. An archive of past newsletters can also be found on-line at www.itd.idaho.gov/civil/dbeforms.htm.

A **DBE Directory** is printed each quarter for prime contractors and consultants, other government agencies, corporations, and many other recipients. This directory, which is an excellent marketing resource for DBEs, is also updated monthly at www.itd.idaho.gov/civil/dbedir.xls.



Formal Training

Throughout the year, DBE Supportive Services will sponsor or present free trainings on various topics including bidding on ITD Highway Construction Projects, ITD Highway Contract Administration, Business Finances, and more. Watch your mail, e-mail and newsletters for further developments.

**NEW JERSEY DEPARTMENT OF TRANSPORTATION
EMERGING SMALL BUSINESS ENTERPRISE
POLICY STATEMENT**

I. PURPOSE

The New Jersey Department of Transportation (NJDOT) has established a Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its Disadvantaged Business Enterprise (DBE) goal through race-neutral means in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26.51. NJDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, NJDOT has signed an assurance that it will comply with 49 CFR Part 26.

II. IMPLEMENTATION

To ensure that the maximum feasible portion of the overall DBE goal is met by using race-neutral means, NJDOT will establish Small Business participation goals on its federally funded contracts. Prime contractors may use DBEs and ESBEs in order to satisfy these Small Business goals.

Small Business contracting goals for USDOT federally funded construction projects will be determined by the NJDOT Contractor Compliance Unit with the help of the NJDOT Bureau of Construction Services. The Contractor Compliance Unit and Bureau of Construction Services will review the construction firm's Engineer's Estimate, for a specific project, to identify the items typically subcontracted by a prime contractor on similar projects. This review will determine the subcontracting opportunities on that project and approximate percentage that will be subcontracted to ESBE and DBE firms.

In the case of professional services agreements, NJDOT will set Small Business goals at the same level as the overall goal. For example, if the overall goal is 15.61%, then NJDOT will set the Small Business goals on its professional services agreements at 15.61%, provided that there are subconsulting opportunities on those agreements.

NJDOT only counts DBE participation when reporting progress toward meeting DBE goals. ESBE participation is not counted. ESBE certification exists solely for the benefit of the DBE program. NJDOT will monitor the effect of ESBE certification on DBE utilization. If it is determined that ESBE certification has a negative impact on DBE utilization, then NJDOT reserves the right to limit, discontinue, or eliminate ESBE certification.

III. APPLICABILITY

This policy applies only to NJDOT construction and consultant contracts funded in whole or in part with federal financial assistance. This policy is not applicable to the award of NJDOT contracts for the purchase of commodities or on any 100 percent state-funded contracts.

Applications and questions regarding eligibility as a ESBE should be addressed to:

Disadvantaged and Small Business Programs Unit
Division of Civil Rights and Affirmative Action
New Jersey Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600

IV. DEFINITIONS

The NJDOT will adopt the definitions contained in 49 CFR Part 26.5 for this policy.

V. ELIGIBILITY FOR ESBE CERTIFICATION

In general, to be eligible for ESBE certification, the firm must be a small business according to SBA size standards and be 51% owned and controlled by one or more economically disadvantaged individuals whose personal net worth does not exceed \$750,000.

Eligibility Guidelines for ESBE certification:

- a. Ownership - The business must be 51% owned by an economically disadvantaged person.
- b. Business Size Determination - The business (including its affiliates) must be a small business as defined by SBA standards. It must not have annual gross receipts over \$22,410,000 in the previous three fiscal years (\$47,780,000 for airport concessionaires in general with some exceptions). Under SAFETEA-LU, this threshold will be adjusted annually for inflation by the Secretary.
- c. Personal Net Worth - Only persons having a personal net worth (PNW) of less than \$750,000 can be considered as a potential qualified ESBE. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her equity in their primary residence.

- d. Independence - The business must not be tied to another firm in such a way as to compromise its independence and control.
- e. Control – An owner seeking certification must possess the power to direct or cause the direction of the management and policies of the firm. The owner must also have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged. 49 CFR 26.71
- f. Burden of Proof Allocation - Applicants carry the initial burden of proof regarding their eligibility and must demonstrate that they meet all requirements concerning group membership or individual disadvantage, business size, ownership, and control. 49 CFR 26.61

VI. RULES GOVERNING DETERMINATIONS OF OWNERSHIP

- a. In determining whether the economically disadvantaged participants in the firm own and control the business, all the facts in the record must be viewed as a whole.
- b. The firm's ownership by economically disadvantaged individuals must be real, substantial and continuing, going beyond the pro forma ownership as reflected in its ownership documents. The economically disadvantaged owners must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- c. All securities that constitute ownership of a firm shall be held directly by economically disadvantaged individuals. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by economically disadvantaged persons in determining the ownership of the applicant business. However, securities or assets held in trust, or by any guardian for a minor, are considered as held by an economically disadvantaged individual for purposes of determining ownership under the following circumstances:
 - i. The beneficial owner of securities or assets held in trust is an economically disadvantaged individual, and the trustee is the same or another such individual; or
 - ii. The beneficial owner of a trust is an economically

disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the applicant business. Assets held in a revocable living trust may be counted only in the situation where the same economically disadvantaged individual is the sole grantor, beneficiary, and trustee.

- d. The contributions of capital or expertise by the economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note or mere participation in the firm's activities as an employee.
- e. The following requirements apply to situations in which expertise is relied upon as part of an economically disadvantaged owner's contribution to acquire ownership:
 - i. The owner's expertise must be:
 - 1. In a specialized field;
 - 2. Of outstanding quality;
 - 3. In areas critical to the business' operations;
 - 4. Indispensable to the business' potential success;
 - 5. Specific to the type of work the business performs; and
 - 6. Documented in the records of the business. The records must clearly show the contribution of expertise and its value to the business.
 - ii. The individual whose expertise is relied upon must have a significant financial investment in the business.
- f. For purposes of determining ownership, the Department shall deem as being held by an economically disadvantaged individual, all interests in a business or other assets obtained by the individual:
 - i. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - ii. Through inheritance, or otherwise because of the death of the former owner.
- g. All interests in a business, or other assets obtained by the economically disadvantaged owner as a result of a gift or transfer

without adequate consideration, from any non-economically disadvantaged individual or non-ESBE firm will be presumed not to be held by the economically disadvantaged owner if the non-economically disadvantaged individual or non-ESBE firm is:

- i. Involved in the same business for which the individual is seeking certification, or an affiliate of the business;
 - ii. Involved in the same or similar line of business; or
 - iii. Engaged in an ongoing business relationship with the applicant business, as an affiliate of the applicant business.
- h. To overcome the presumption and permit the interests or assets to be counted, the economically disadvantaged individual must demonstrate by clear and convincing evidence, that:
- i. The gift or transfer was made for reasons other than obtaining ESBE certification, and
 - ii. The economically disadvantaged individual actually controls the management, policy and operations of the business, notwithstanding the continuing participation of the non-economically disadvantaged individual who provided the gift or transfer.
- i. The Department will apply the following rules in situations in which marital assets form a basis for ownership of the business:

When marital assets (other than the assets of the business in question) are held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the Department shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The Department does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the economically disadvantaged owner of the applicant firm.

VII. RULES GOVERNING DETERMINATIONS OF CONTROL

- a. In determining whether economically disadvantaged owners control

a firm, the Department will consider all the facts of the record, viewed as a whole.

- b. Only an independent business may be certified as an ESBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - i. In determining whether a potential ESBE is an independent business, the Department will scrutinize its relationships with non-ESBE businesses in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - ii. The Department will consider whether present or recent employer/employee relationships between the ESBE owner of the applicant business and non-ESBE business or persons associated with non-ESBE businesses compromise the independence of the applicant business.
 - iii. The Department will examine the applicant firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential ESBE.
 - iv. In considering factors related to the independence of a potential ESBE, the Department will consider the consistency of relationships between the potential ESBE firms and non-ESBE firms with normal industry practice.
- c. The firm must not be subject to any formal or informal restrictions which limit the customary discretion of the economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g. cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-economically disadvantaged partners, conditions precedent or subsequent, executive agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the economically disadvantaged owners, without the cooperation or vote of any non-economically disadvantaged individual, from making any business decision of the business. This paragraph does not preclude a spousal co-signature on financial, real estate or banking documents as may be required.

- d. The economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - i. The economically disadvantaged owner must hold the highest officer position in the business (e.g., chief executive officer or president).
 - ii. In a corporation, the economically disadvantaged owners must control the board of directors.
 - iii. In a partnership, one or more economically disadvantaged owners must serve as general partners, with control over all partnership decisions.
- e. Individuals who are not economically disadvantaged may be involved in the applicant business as owners, managers, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the business, or be disproportionately responsible for the operations of the business.
- f. The economically disadvantaged owners of the business may delegate various areas of the management, policymaking, or daily operations of the business to other participants in the business, regardless of whether these participants are economically disadvantaged individuals. Such delegations of authority must be revocable, and the economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the economically disadvantaged owners in the business's overall affairs must be such that the Department can reasonably conclude that the economically disadvantaged owners actually exercise control over the business' operations, management, and policies.
- g. The economically disadvantaged owners must demonstrate to the Department's satisfaction that they have an overall understanding of, and managerial and technical competence and experience directly related to the type of work or service in which they are engaged. The economically disadvantaged owners are not required to have experience or expertise in every critical area of their business' operations, or to have greater experience or expertise in a given field than managers or key employees, however, the economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented

by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the business's activities will be insufficient to demonstrate control.

- h. If state or local law requires an owner to have a particular license or other credential in order to own and/or control a certain type of business, then the economically disadvantaged person(s) who owns and controls the applicant firm must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a business, the Department will not deny certification solely on the ground that the person lacks the license or credential. However, the Department may take into account the absence of the license or credential as one factor in determining whether the economically disadvantaged owner(s) actually control the business.
- i. The Department shall consider differences in remuneration between the economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as an ESBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business. The Department may determine that an applicant firm is controlled by its economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the business.

In a case where a non-economically disadvantaged individual formerly controlled the applicant business, and an economically disadvantaged individual now controls it, the Department may consider differences in salary of the former and current owner of the applicant firm as a factor in determining who controls the firm, particularly when the non-economically disadvantaged individual remains involved with the business and continues to receive greater compensation than the economically disadvantaged individual.

- j. In order to be viewed as controlling the business, an economically disadvantaged owner cannot engage in outside employment or have other business interests that conflict with the management of the business or prevent them from devoting sufficient time and attention to the affairs of the business to control its activities. For

example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and weekends, if the individual controls it all the time it is operating.

- k. An economically disadvantaged individual may control a business even though one or more of the individual's immediate family members (who themselves are not economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the Department shall make a judgment about the control the economically disadvantaged owner exercises vis-à-vis other persons involved in the business, as in other situations without regard to whether or not the other persons are immediate family members.
- l. If the Department cannot determine that the economically disadvantaged owners, as distinct from the family as a whole, control the firm, then the economically disadvantaged owners have failed to carry the burden of proof concerning control, even though they may participate significantly in the business's activities.
- m. Where a business was formerly owned and/or controlled by a non-economically disadvantaged individual (whether or not an immediate family member), and ownership and/or control were transferred to an economically disadvantaged individual, and the non-economically disadvantaged individual remains involved with the business in any capacity, the economically disadvantaged individual now owning the business must demonstrate to the Department, by clear and convincing evidence, that
 - i. The transfer of ownership and/or control was made for reasons other than obtaining certification as a ESBE; and
 - ii. The economically disadvantaged individual actually controls the management, policy and operations of the business, notwithstanding the continuing participation of a non-economically disadvantaged individual who formerly owned and/or controlled the business.
- n. In determining whether a firm is controlled by its economically disadvantaged owners, the Department will consider whether the business owns the equipment necessary to perform its work. However, the Department shall not determine that a firm is not controlled by economically disadvantaged individuals solely

because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the business.

- o. The Department shall grant certification to a firm only for the specific types of work in which the economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to the Department that its economically disadvantaged owners are able to control the firm with respect to that type of work.
- p. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the Department may consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- q. In order for a partnership to be controlled by an economically disadvantaged individual, any non-disadvantaged partners must not have the power, without the specific written concurrence of the economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- r. The economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

VIII. ADDITIONAL ELIGIBILITY REQUIREMENTS

- a. Consideration of whether a firm performs a commercially useful

function or is a regular dealer pertains solely to counting toward ESBE goals the participation of firms that have already been certified as ESBEs. Except as provided in this paragraph, the Department will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a ESBE.

- b. The Department may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE Program.
- c. The Department shall evaluate the eligibility of a firm on the basis of present circumstances. A firm will not be refused certification based on historical information indicating a lack of ownership or control of the firm by economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor will the Department refuse to certify a firm solely on the basis that it is a newly formed firm.
- d. ESBE firms and firms seeking ESBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.
- e. Only firms organized for profit may be eligible for ESBE certification. Not-for-profit organizations, even though controlled by economically disadvantaged individuals, are not eligible for ESBE certification.
- f. An eligible ESBE firm must be owned by individuals who are economically disadvantaged. Except as provided in this paragraph a firm that is not owned by economically disadvantaged individuals, but instead is owned by another firm cannot be an eligible ESBE.
- g. If economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the Department may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company and must be economically disadvantaged as defined under this policy.

- h. The Department may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by economically disadvantaged individuals.
- i. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by economically disadvantaged individuals.
- j. The ESBE applicant will not be required to be prequalified as a condition for certification.

IX. CERTIFICATION PROCEDURES FOR EMERGING SMALL BUSINESS ENTERPRISES

- a. A business may apply to the Department at any time to be certified as an Emerging Small Business Enterprise. Such application must be made on the application form supplied by the Department. All firms wishing to participate on projects with ESBE goals must be certified in accordance with this policy.
- b. If a business is to be counted as an Emerging Small Business Enterprise for the purpose of meeting the ESBE goals for a specific contract, the business must be certified by the Department. In the event a business is not certified by the Department, the complete certification application must be received by the Division of Civil Rights and Affirmative Action in accordance with the following schedule:
 - i. A business that wants to be counted as an Emerging Small Business Enterprise for the purpose of meeting the established ESBE contract goals for a specific contract at the time of the award of that contract, shall submit its completed application at least 15 calendar days prior to the date for the receipt of bids for that contract.
 - ii. A business that wants to be considered as an Emerging Small Business Enterprise for the purpose of meeting established ESBE contract goals for a specific contract, either as an additional or replacement subcontractor after work on the contract has commenced, shall submit its completed application at least 15 calendar days prior to submitting a request for Approval to Sublet (Form DC-18) to the Department.
 - iii. Failure by an uncertified business to submit a completed

application for certification for a specific contract in accordance with this subsection shall result in the applicant firm not being considered for certification for that contract.

- c. All applications must be completed in their entirety before they will be considered by the Department. If an applicant knowingly supplies false or inaccurate information, the applicant shall be disqualified, and may be subject to further penalties as provided by law.
- d. The business, or any principal owner of the business, must not have been debarred or convicted of bid-related crimes or violations within the past six years in any state or federal jurisdiction, or be under notice of intent to debar in any jurisdiction.

X. APPROVAL OR DENIAL OF CERTIFICATION AS AN EMERGING SMALL BUSINESS ENTERPRISE

- a. When an applicant is approved by the Department as an Emerging Small Business Enterprise, the business will be notified in writing of such certification. The certification shall be effective as of the date of approval and shall be valid for a three year period unless revoked by the Department. ESBE firms shall be required to provide update information and complete a "No Change Affidavit" each year, if applicable, for renewal of their Emerging Small Business Enterprise certification.
- b. When an applicant is denied certification as an Emerging Small Business Enterprise, it shall be notified in writing of the reasons for that decision. The applicant may request an informal hearing by writing to the Department within 20 State business days of receipt of said denial notice. The burden of proof of eligibility shall be upon the applicant in any such proceeding. The applicant is not prohibited from contracting with the Department during the pendency of its appeal; however, it will be unable to participate on any contract as a ESBE.
- c. If an applicant requests an informal hearing on the denial of its application the Department shall schedule an informal meeting at which time the applicant may present additional information to contest the cited deficiencies and further support its application. The Commissioner, or his or her designee, shall review this additional information and the applicant shall be advised of the Department's final decision within 30 business days of the informal meeting.

- d. When the Department intends to decertify an Emerging Small Business Enterprise for failure to meet the requirements of this policy, or as the result of a third-party challenge, the business shall be notified in writing of the department's intent to decertify and the reasons why. An investigation may be conducted by the Division of Civil Rights and Affirmative Action to determine the validity of any third-party allegations. If a preliminary determination is made to decertify the firm, the firm will be given an opportunity to appeal the findings either in person at an informal hearing, and/or in writing. The business may request an informal hearing by writing to the Department within 20 business days of receipt of said notice of Intent to Decertify. The ESBE firm will be notified of the Department's decision within 30 business days following the informal hearing. The business shall be eligible to participate as an Emerging Small Business Enterprise in the ESBE goal program during the pendency of its appeal to the Department.

- e. If a firm's ESBE certification is denied or revoked by the Department, the applicant may not reapply for ESBE certification for a period of one (1) year from the final date of the denial or decertification decision letter by the NJDOT.

XI. SEVERABILITY

If any section, subsection, provision, clause or portion of this Policy is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Policy shall not be affected thereby.

XII. REVIEW

The operation of the program contained in this Policy and the need for its continuation shall be reviewed by the Commissioner annually.

XIII. AUTHORITY

49 CFR 26.1, 49 CFR 26.23

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE**

DECEMBER 16, 2010

The South Dakota Department of Transportation (Department) shall not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in the award and performance of any Federal-aid contract or in the administration of the Department's Disadvantaged Business Enterprise (DBE) program pursuant to the requirements of 49 CFR Part 26. The Department shall take all necessary and reasonable steps under 49 CFR Part 26 to prevent discrimination in the award and administration of Federal-aid contracts.

Upon notification to the Department of its failure to carry out its approved program the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.). Implementation of the DBE program is a legal obligation and a bidder's/Contractor's failure to carry out the terms of the DBE program shall be treated as a non-responsive bid or as a violation of the construction contract.

I. Definitions

- A. Specified Goal:** A DBE participation goal for a contract as indicated by a specific numerical percentage of the total dollar amount of the contract in the bidding documents.
- B. Not Specified Goal:** A project where the DBE participation goal is stated as 'Not Specified'. While no specific DBE participation percentage commitment is required of the bidder, the requirement for the bidder to submit its good faith efforts documentation will be determined by the average DBE participation commitment of all bidders for that contract, in accordance with Section II of this provision.
- C. Disadvantaged Business Enterprise (DBE):** A for-profit small business that has been certified by the Department and is listed in the DBE Directory available on the Department's web site.
- D. Good Faith Effort (GFE):** Efforts to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be

expected to meet the objective of the Department's DBE program pursuant to 49 CFR 26.1.

- E. Positive Contact:** Communication between the bidder and the DBE in which an oral or written response is received from the DBE stating the DBE's intention to quote or not quote a project.
- F. Commitment:** The dollar amount of work to be subcontracted to DBEs, according to the bidder's bid. The commitment may be compared to the dollar amount of all contract items in the bidder's bid and expressed as a percentage of the total bid amount.

II. Bidding Requirements

Bidders shall not discriminate on the basis of race, color, religion, sex, national origin, age or disability in the solicitation and/or award to subcontractors and material suppliers. Bidders who demonstrate a pattern of possible discrimination through consistent and repeated under-utilization of DBEs may be subject to investigation and/or sanctions allowed by regulation, administrative rule or law. If a complaint is made that a low bidder has failed to solicit participation from or discriminated against a DBE in the solicitation or award to a subcontractor or supplier, the Department may, at its discretion, request the low bidder to submit documentation of the low bidder's solicitation efforts.

All bidders must include their DBE commitment for the contract in the bidding files provided by the Department, regardless of whether the contract includes a specified DBE contract goal, or is shown as 'Not Specified'.

For each contract, the low bidder must submit, with the low bidder's bid files, a bidder list of all subcontractors and suppliers (DBEs and non-DBEs) the bidder received quotes from for that contract.

Bidders shall make reasonable efforts to provide opportunities for DBEs to participate on Federal-aid contracts throughout the life of the contract.

On contracts let with a specified DBE contract participation goal, where the low bidder has not met or exceeded that goal, the bidder must provide GFE documentation as indicated in Section III.

On contracts let with a 'Not Specified' DBE contract participation goal, the low bidder's commitment will be compared to the average commitment for all eligible bidders to determine whether the low bidder's commitment is at least eighty percent (80%) of the average commitment.

If the low bidder's commitment is less than eighty percent (80%) of the average commitment, the bidder must submit GFE documentation for the project as specified in Section III of this Provision.

The low bidder must submit GFE documentation, when requested by the Department, within two (2) calendar days from the date the low bidder is contacted by the Department, not including Saturdays, Sundays, or official State holidays. Section III provides information on the types of action bidders should take as part of their GFE to obtain DBE participation. The low bidder may submit documentation with the bidding files provided all pertinent information is included. The low bidder must submit any missing documentation within two (2) calendar days from the date the Department contacts the low bidder.

If the low bidder does not provide documentation showing GFE as specified by this special provision, the Department will consider that bid nonresponsive and may either award the contract to the next lowest responsible bidder with a responsive bid, or reject all bids. Subsequent to the DBE committee's decision that the low bidder's efforts do not establish GFE the low bidder will be notified that the bid is not responsive. The low bidder will have two (2) working days from the date of notification to contact the Bid Letting Engineer to arrange a meeting with the Department Secretary, or the Secretary's designee, to present documentation and arguments about why the bid should not be rejected. The Department Secretary or the Secretary's designee will make a written decision on award of the contract within two (2) working days after the meeting.

If the low bid is rejected for failure to meet the GFE or other requirements, the next low responsible bidder shall be notified, unless all bids are rejected. The next low responsible bidder's DBE solicitation will also be reviewed, and GFE documentation may be requested. Unless all bids are rejected, award of the contract will be made to the lowest bidder with a responsive bid.

The lowest responsible bidder will be required to complete Form 289B, as included in the contract documents, when the contract is sent for signature. This form requires a signature from each DBE identified in the low bidder's bid. A separate form will be supplied for each DBE, and will be included in the contract documents.

Bidders are encouraged to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or other related services.

III. Good Faith Efforts

A. Contracts let with a 'Not Specified' goal

If a GFE package is requested on a contract with a 'Not Specified' goal (shown in the bidding documents as 'Not Specified'), the low bidder must submit documentation of the low bidder's efforts to the Bid Letting Engineer.

1. The low bidder shall submit a contact log of all solicitation efforts including:
 - Name of the DBE firm
 - Name and phone number of the individual with whom contact was made
 - Date, time, and manner of each and every contact (by phone, in person, fax, mail, e-mail, etc.)
 - The DBE's response to the solicitation
 - Result of the solicitation effort

An example of a solicitation log is available on the Department's Bid Letting website. When bidding utilizing the South Dakota Electronic Bidding System (SDEBS) software, the software may be used to document the log of solicitation efforts for the project.

2. The low bidder shall also submit documentation that shows GFE in relation to the following requirements:
 - a. The bidder must select contract work items to encourage DBE participation. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
 - b. The bidder must solicit all certified DBEs in the appropriate work classifications that are in the DBE directory and have indicated they are willing to work in the project's geographic area. If any DBE meeting these requirements has not been solicited, the bidder shall provide a detailed written explanation showing why the DBE was not solicited. Without exception, all DBEs listed on the plan holders list shall be solicited. Initial solicitation must be made at least seven (7) calendar days by mail, or five (5) calendar days by phone, fax or e-mail prior to the letting date to provide adequate time for the DBE to respond with a quote in the normal course of business.
 - c. If positive contact is not received, the bidder shall follow up the initial solicitation with a second solicitation by phone, fax or e-mail to determine whether the DBE is interested in quoting. The second solicitation shall be made in sufficient time for the DBE to provide a

reasonable quote. If positive contact is not made after the second solicitation, at least one more contact by phone is required at least two (2) business days prior to the letting.

- d. The bidder shall provide interested DBEs with adequate and timely information about plans, specifications, and requirements of the contract to assist DBEs in responding to a solicitation.
- e. If a bidder rejects a DBE quote because of previous problems with a particular DBE, the bidder must prepare a detailed written explanation of the problem. Additional cost involved in finding and using DBEs is not, in itself, sufficient reason for a bidder to fail to meet the obligation of considering DBEs, as long as those costs are reasonable. Bidders must not reject DBEs as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities.
- f. Any additional information requested by the Department.

B. Contracts let with a specified goal

If a GFE package is requested on a contract with a specified goal, the low bidder must submit documentation of the low bidder's efforts to the Bid Letting Engineer.

Documentation in the GFE package shall comply with all of the requirements of Section III.A. In addition, the low bidder shall submit documentation that shows compliance with the following requirements:

1. The bidder must consider qualified DBEs whose quotes are reasonably competitive. If the bidder rejects any quote because it is considered not to be "reasonably competitive," the bidder must provide copies of all DBE and non-DBE quotes, and a work item price spreadsheet comparing DBE quotes to non-DBE quotes. The spreadsheet must show which quote was included in the bid for the work items being compared. The ability or desire of a bidder to perform the work with its own forces does not relieve the bidder of the responsibility to make GFE. In the event a bidder elects to use its own forces over a DBE, the bidder must include, on the spreadsheet, documentation of the costs of using its own forces. This can be shown in a number of ways, which may include submitting portions of the bidder's work sheets used to prepare the bid.
2. The bidder must explain why the specified goal could not be met.
3. The bidder must identify any additional efforts the bidder made to secure DBE participation.

IV. Counting DBE Participation

The contract commitment, as submitted with the bid, shall be included on Form 289R/N or 289R/C as included in the contract documents.

Only the portion of a contract that is performed by the DBE's own forces will count toward DBE participation. Included is the cost of supplies and materials obtained by the DBE for the contract, including supplies purchased or equipment leased by the DBE. Including supplies and equipment the DBE subcontractor purchased or leased from the Contractor or its affiliate is not allowed.

When a DBE performs as a participant in an approved joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE participation.

A bidder may count toward its DBE participation only that percentage of expenditures to DBEs that perform a commercially useful function (CUF) in the performance of a contract. A DBE performs a CUF when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating prices, determining quality and quantity, ordering and installing (where applicable) the materials, and paying for the material itself. To determine whether a DBE is performing a CUF, the Department will evaluate the amount of work subcontracted, industry practice, whether the amount the DBE is to be paid is commensurate with the work it is actually performing, DBE credit claimed for performance of the work, and other relevant factors.

A DBE is not performing a CUF if it performs less than 30% of the total cost of its contract with its own work force, or if its role is limited to that of an extra participant in a transaction, project, or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is simply an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

DBE participation will be counted for trucking services as follows:

The bidder/Contractor will receive credit toward DBE participation for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates which are driven by drivers the DBE employs.

A DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. When a DBE leases trucks from another DBE, the

bidder/Contractor can count the total value of the transportation services the lessee DBE provides on the contract toward DBE participation.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. When a DBE leases trucks from a non-DBE, the bidder/Contractor can count toward DBE participation only the fee or commission the DBE receives as a result of the lease arrangement. The bidder/Contractor does not receive credit toward DBE participation for the total value of the transportation services, since all services are not provided by a DBE.

The bidder may count toward DBE participation expenditures to DBE firms for materials, supplies, or services as follows:

If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials, supplies, articles, or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count only the amount of fee or commission charged for assistance in the procurement of the materials or supplies or fee or transportation charges for the delivery of materials or supplies required at the job site toward DBE participation. In order to be counted, the Department must determine the fee to be reasonable and not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves will not count toward DBE goals.

The Department will not count toward DBE participation materials or services provided by a DBE who is not currently certified.

Any intended or actual subcontracting arrangement which is contrived to artificially inflate DBE participation is not allowed. This includes, but is not limited to, DBE middlemen which serve no commercially useful function, or arrangements where a DBE is acting essentially as a broker of goods or services, but has been counted as a manufacturer, regular dealer, or subcontractor.

The Department will review and monitor projects for compliance with the bidder's intended DBE participation. Failure by the Contractor to fulfill the contract commitment constitutes a breach of contract. The Department may also investigate the form and substance of particular business arrangements between and among DBE and Contractors with regard to specific contracts. If, as a result of an investigation, the Department determines that a particular business arrangement is not allowable, the dollar amount of the unallowable DBE participation shall be subtracted from the Contractor's DBE participation on that project. The Contractor will be notified if the apparent DBE participation is not adequate to meet the DBE participation stated on the 289R/C or 289R/N Form. The Contractor will be directed to seek additional participation from other DBEs to meet the unallowable portion on that contract.

In cases where it is determined that a Contractor was a knowing and willing participant in a business arrangement determined by the Department to be unallowable, or in the event of repeated violations, falsification or misrepresentation, the Department shall provide for imposition of sanctions. Sanctions may include, but are not limited to one or more of the following:

- Assessment of liquidated damages as stated in Section V below

- Suspension of bidding privileges or debarment

- Withholding progress payments

- Securing additional DBE participation on future Federal-aid contracts sufficient to make up for the DBE participation found to be unallowable

- Referral of the matter for criminal prosecution

The Contractor shall maintain a running tally of payments to DBEs to make available to the Department. Within thirty (30) calendar days of physical completion of the project the Contractor shall submit a DOT-289 (Certification of DBE Participation) listing all DBE firms that participated in this contract, and report the total dollar amount paid (and anticipated to be paid) to each. The Contractor's final payment will not be released until receipt of the DOT-289.

V. Liquidated Damages

A. If the Contractor has failed to meet its contract commitment, the Department shall assess liquidated damages according to the following schedule:

1. For the first \$1,000 DBE deficiency, one hundred percent (100%) of the deficiency.

2. For the next \$9,000 DBE deficiency, fifty percent (50%) of the deficiency.
3. For the next \$10,000 DBE deficiency, twenty five percent (25%) of the deficiency.
4. For any remaining DBE deficiency, ten percent (10%) of the deficiency.

This liquidated damage provision shall not be applicable where actual payment to a DBE is within ninety percent (90%) of the commitment, or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, or other unexpected occurrences.

- B.** If a Contractor finds it impossible, for reasons beyond his control, to meet the contract commitment on Form 289R/C or 289R/N, the Contractor may, at any time prior to completion of the project, provide a written request to the DBE Compliance Officer for a complete or partial waiver of liquidated damages. Any request for a waiver will not be accepted after Acceptance of Field Work has been made.

VI. Contractor Utilization of Subcontractors and Suppliers

Except as otherwise provided in this provision, each DBE firm listed on Form 289R/C or 289R/N will perform the work specified (or provide materials or services as indicated), and at the dollar levels specified.

Substitutions of DBEs reported on Form 289R/C or 289R/N are not allowed, except for performance or scheduling problems on the part of the DBE, or if the DBE has requested to be removed from that particular contract. Substitution shall not take place without written approval by the DBE Compliance Officer.

The Contractor must provide timely notification to the DBE Compliance Officer of the reason(s) for the substitution. Prior to approval by the DBE Compliance Officer, the Contractor must also provide documentation showing reasonable efforts to replace the designated DBE with another DBE.

In instances where time is critical to project progress, this process may be handled verbally, with written confirmation to follow.

If the Contractor fails to make payments to DBEs as required, liquidated damages shall be assessed as specified in Section V. In addition, if the Contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, sanctions referred to in Section IV will be imposed.

All Contractors and DBEs participating in Federal-aid contracts are expected to cooperate fully and promptly with the Department in compliance reviews,

investigations, and other requests for information. Failure to do so shall be grounds for appropriate sanctions or action against the party as indicated in Section IV. The DBE Compliance Officer will enforce compliance with contract requirements regarding the use of DBE subcontractors and suppliers. The DBE Compliance Officer, or said officer's designee, may conduct compliance reviews on selected projects each year to verify compliance by Contractors. Violations will be handled in accordance with contract provisions and statutory or regulatory requirements.

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Disadvantaged Business Enterprise Program (DBE)

(Last Updated 12/07/2010 03:50 PM)

The Disadvantaged Business Enterprise (DBE) Program at the Vermont Agency of Transportation encourages and supports the participation of the companies owned and controlled by **socially and economically disadvantaged individuals** in transportation contracts.

The program is federally-funded through the Federal Highway Administration (FHWA) and administered by the Vermont Agency of Transportation (VTrans). We have the only federally-mandated certification program in the State of Vermont.

We provide a central business directory for **transportation-related** minority and women-owned businesses, provide statewide certification to eligible businesses, and provide technical assistance and training on business development and government contracting.

To participate in federally-funded contracts under the DBE Program, firms must be certified with VTrans. A DBE is a business which:

- is at least 51 percent owned by one or more **socially and/or economically disadvantaged individuals, and**
- whose management and daily business operations are controlled by one or more of the socially and/or economically disadvantaged individuals who own it.

*** For more information on DBE Certification criteria [click here](#).**

For further information contact:

Vermont Agency of Transportation
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***Disadvantaged Business Enterprise Program
Newsletter Archives***

(Last Updated 12/07/2010 03:50 PM)

Through our newsletter we hope to provide you with the latest information on VTrans contracting, networking, and training opportunities, and introduce you to some of our many successful DBEs, as well as VTrans staff and program partners who offer many supportive services and technical assistance. Our electronic format gives us the ability to provide you with immediate access to a wealth of small business resources and tools.

Each issue we will be welcoming our newest DBEs, providing links to useful websites, and offering strategies designed to help all of the Agency's contractors and consultants work smarter.

To read previous issues of the newsletter please click on the Issue:

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For further information contact:
Lori Valburn, Chief of Civil Rights & Labor Compliance
Vermont Agency of Transportation

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Prompt Pay Compliance

(Last Updated 12/07/2010 03:50 PM)

Vermont's Prompt Pay Statute requires payment from prime contractors to subcontractors within 7 days of prime contractors receiving payment. The Vermont Agency of Transportation is now tracking these payments to ensure compliance.

Prime contractors must submit, by the 10th of each month, a list of all payments made to all subcontractors and suppliers during the preceding month. This information should be entered into our e-form. **[Click here to access the E-Form.](#)**

For more information, contact Lori Valburn, or e-mail: Sonya.Boisvert@state.vt.us

To Learn more information about Prompt Pay Compliance **[click here.](#)**

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Abbreviations used without definitions in TRB publications:

AAAE	American Association of Airport Executives
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
ACI-NA	Airports Council International-North America
ACRP	Airport Cooperative Research Program
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	Air Transport Association
ATA	American Trucking Associations
CTAA	Community Transportation Association of America
CTBSSP	Commercial Truck and Bus Safety Synthesis Program
DHS	Department of Homeland Security
DOE	Department of Energy
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HMCRP	Hazardous Materials Cooperative Research Program
IEEE	Institute of Electrical and Electronics Engineers
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITE	Institute of Transportation Engineers
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NCFRP	National Cooperative Freight Research Program
NCHRP	National Cooperative Highway Research Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PHMSA	Pipeline and Hazardous Materials Safety Administration
RITA	Research and Innovative Technology Administration
SAE	Society of Automotive Engineers
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (2005)
TCRP	Transit Cooperative Research Program
TEA-21	Transportation Equity Act for the 21st Century (1998)
TRB	Transportation Research Board
TSA	Transportation Security Administration
U.S.DOT	United States Department of Transportation