

COUNTING DBE PARTICIPATION: DBE MANUFACTURERS, SUPPLIERS AND BROKERS

Over the past few years, primes bidding on NCDOT contracts are increasingly relying on DBE manufacturers, suppliers and brokers to meet its DBE participation contract goals. However, there are specific federal guidelines that govern these areas of participation. Further, the type of participation is based on a case-by-case determination.

Under federal guidelines, the rules and amount of DBE participation credited are different for each type of participation depending on whether the DBE is used as a manufacturer, supplier/regular dealer, broker or subcontractor. For each category, the DBE must itself perform a “commercially useful function.” (See Chart Below) Therefore, when a DBE participates in a contract, count only the value of work actually performed by the DBE towards the contractor’s DBE goal.

For these participation categories, the issues that arise with regard to determining the type of DBE participation and whether the DBE performed a commercially useful function are less problematic with manufacturers and subcontractors than with suppliers/regular dealers and brokers. Therefore, the following summary will focus on clarifying how to determine whether a DBE firm, is in fact, performing as a “supplier/regular dealer” or simply as a “broker” on a contract.

Under the guidance provided by USDOT, a firm qualified as a supplier on one contract would not necessarily qualify as a supplier on another contract. Therefore, although a firm is listed as a certified supplier/dealer, it is still necessary to determine the actual procurements (product type / materials supplied) on a contract-by-contract basis. The distinction is important because under federal guidelines, a prime contractor receives DBE participation credit equal to 60 percent of the value of the goods supplied from a “supplier/regular dealer” while it only receives DBE participation credit equal to the fees or commissions that a “broker” charges to “arrange or expedite transactions” on behalf of the prime contractor.

Case Study: DBE Firm X is certified as a Manufacturer of Product A and as a Supplier/Regular Dealer of Product B (Review Product Type). Prime submits DBE Firm X as a committed DBE Firm towards its DBE goals as a Supplier/Regular Dealer of Product C (Product similar to Product B – but not the same) for \$60,000 (\$100,000 is Total Cost of Materials & Fees). The bid paperwork is submitted to and approved by STA – State Transportation Agency. DBE Firm X is then listed in the back of the contract as a Supplier/Regular Dealer (under Certification Type) of Product C (under Item Description) for \$60,000 (60% of \$100,000) (under Amount). DBE Firm X supplies Product C to the project and invoices Prime for \$100,000. Subsequently, Prime pays DBE Firm X and enters \$100,000 (Total Amount Paid to DBE Firm X) in the STA’s Payment Tracking System.

Identify the Issue(s):

(1) Here, DBE Firm X is not performing a commercially useful function because it is not certified as a Supplier/Regular Dealer of Product C. Therefore, the most the Prime should have listed for DBE participation credit is the amount equal to *fees or commissions*, as DBE Firm X performed as a “Broker” of Product C on this contract – likely an estimated \$3,000 for transaction fees. (2) STA should have flagged the bid paperwork and contacted Prime to make necessary corrections prior to award of contract. (3) If DBE Firm X supplies Product B (for which it is certified) to the project and invoices Prime for \$100,000 (Total Cost of Materials & Fees), DBE Firm X is performing a commercially useful function. Prime would pay DBE Firm X the total \$100,000 based on invoices but enter only \$60,000 (60% of 100,000 for Cost of Materials & Fees) in the STA’s Payment Tracking System.

Type of DBE Participation	"Commercially Useful Function" Description	Participation Credit
Manufacturer	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 the general character described by the specifications.	100%
Supplier	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 of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.	60%
Broker	Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers/suppliers. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.	Fees & Commissions

Source: 49 CFR 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs