



Ohio Rail Development Commission

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Memo Re: DBE Requirements for ARRA Projects

Updated: September 11, 2009

The ORDC process through which DBE goals (if assigned) will be met is outlined below.

1. ODOT will assist ORDC in setting goals on any rail projects that may be eligible for DBE goals. To date, four projects have been identified as requiring DBE goals:
 - a. City of Jackson – 4% DBE Goal
 - b. WESTCO – 4% DBE Goal
 - c. Camp Chase Railroad/W. Broad – 6% DBE Goal
 - d. State-owned Panhandle Line – 3% DBE Goal

Other projects may or may not be considered for DBE goals. These other projects, in the event that they be deemed appropriate for DBE goals, will follow this process as well.

2. ORDC and ODOT will create a list of DBE-certified contractors to give to each project owner. So far this process has yielded three contractors that are DBE-certified and who perform the work required at the listed projects. These contractors are:
 - a. CurdCo, L.L.C., from Virginia
 - b. N&J Railroad Contractors, from St. Louis
 - c. Pro Construction, Inc., from Richmond Heights, Ohio

These are the only three currently certified DBE entities that build and/or repair railroad tracks. If other DBE-certified entities are brought to the attention of ORDC, these entities will be added to this list.

3. Once the list has been distributed to the project owners, ORDC will inform the project owners that there has been a DBE goal set on their project. ORDC will require all project owners to include the following language in their bid documents:
 - a. “This project has been funded in whole or in part with funds from the American Recovery and Reinvestment Act (ARRA). The ARRA requires that the provisions of section 1101(b) of Public Law 109-59 apply to this project. Under the authority of this Law, a Disadvantaged Business Enterprise (DBE) goal has been set on this project of x%, as measured by total project cost. This goal may be met through soliciting bids from prime contractors who are certified as DBE entities, or it may be met by requiring the prime contractors to solicit DBE-certified entities in their subcontracts. Any and all DBE-certified prime or sub- contractors must have proper documentation, which shall be provided to ORDC along with bid packages. Should the DBE goal be unreasonable or unreachable, it must be shown that a “good-faith” effort be made to meet the goals, as outlined in Appendix A of 49 C.F.R. 26. More information on these requirements can be found at the following link: <http://www.fhwa.dot.gov/HEP/49cfr26.htm> . ORDC reserves the right to inspect any bid package for DBE goal compliance prior to the awarding of bids.”

4. Once bid packages have been received, ORDC will review the packages to ensure compliance with the DBE goal as stated above. ORDC will require that all bid packages include proper documentation as required in 49 C.F.R. 26.53(a)(1). In the event that the DBE goal has not been satisfactorily met, ORDC will require any non-complying project owner to fulfill the requirements of 49 C.F.R. 26.53(a)(2) and related material in Appendix A, imposing a “good-faith” requirement upon any entity that has been selected to receive a DBE goal. .
5. Should any of the project owners not meet their DBE goals, (either through their solicitation of bids or through the selected prime contractor’s bid package), and in addition not meet the good-faith requirements of 49 C.F.R. 26.53(a)(2), 25% of the total project cost will be withheld until the prime contractor can properly document either the meeting of the DBE goal in full or an acceptable good-faith effort. Once this showing has been made, the funds will be released to the project owner or prime contractor. Should the project owner or prime contractor continue to fail to meet either the DBE goal or the good-faith effort clause, the 25% of the project cost will be withheld indefinitely.

ORDC expects that all projects will comply with the DBE requirements as listed in section 1101(b) of Public Law 109-59.