Notice to Industry

Materials and Supplies: Counting Expenditures with DBE Materials and Supplies Vendors (MSVs) toward DBE Goals

March 9, 2018

Changes take effect September 1, 2018

- ODOT will refer to DBEs that are materials and supplies vendors as DBE MSVs.
- ODOT will be assigning descriptors to DBE MSVs that have been used on ODOT projects, and upon request. A DBE MSV must have the correct NAICS code and descriptor in order for an item vended by that DBE MSV to be counted toward DBE goals. An exception will be made to the descriptor requirement if a firm has not yet received descriptors from ODOT for its manufacturing/wholesale/retail NAICS codes.
- ODOT will make available a listing of all DBE MSVs, the items they vend, and the potential amount of credit available for each.
- In the past, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would usually be counted toward DBE goals. Effective September 1:
  - Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form will be modified to accommodate this information.
  - To be eligible to receive 100% credit toward DBE goals for a materials and supplies subcontract:
    - The DBE MSV must be certified with the correct (manufacturer) NAICS code for the item
    - The DBE MSV must be certified with the correct descriptor for the item
    - The role the DBE MSV will play on the specific procurement in question must be consistent with the manufacture of the item, as indicated by the information provided by the DBE MSV
  - To be eligible to receive 60% credit toward DBE goals for a materials and supplies subcontract:
    - The DBE MSV must be certified with the correct (wholesale or retail) NAICS code for the item
    - The DBE MSV must be certified with the correct descriptor for the item
    - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
    - The item must not be drop-shipped
The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and non-bulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive 60% credit toward DBE goals for a bulk item materials and supplies subcontract:

- The DBE MSV must be certified with the correct (wholesale or retail and trucking) NAICS codes for the item
- The DBE MSV must be certified with the correct descriptor for the item
- The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
- The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns (or for which it has a long-term (1 year or more) lease) and operates with its regular (not ad hoc) employees.

If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the fee or commission the DBE MSV receives for its services, and only if the following additional criteria are met:

- The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
- The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.

- The usual good faith efforts process applies.
- All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.
- The above changes will require edits to ODOT’s DBE Program Plan.

**Industry-Specific Manufacturing Guidance**

**Aggregate/Asphalt/Concrete:** In order for 100% of the value of a DBE’s contract to count toward DBE goals, the DBE MSV must own or have a long-term lease for the exclusive operation and control of the production of a quarry, an asphalt mixing plant or a concrete mixing plant. The plants must be approved by ODOT’s Office of Materials Management.

**Miscellaneous Steel Fabrication/Reinforcing Steel Fabrication/Structural Steel Fabrication:** In order for 100% of the value of a DBE’s contract to count toward DBE goals, the DBE MSV must alter the reinforcement bars (such as cutting and bending and/or coating with epoxy) to the requirements of the construction project at a facility owned and/or operated under the exclusive control of the DBE firm.

**Precast Concrete Pipe (Drainage & Sewer):** In order for 100% of the value of a DBE’s contract to count toward DBE goals, the DBE MSV must manufacture precast concrete products according to ODOT approved specifications.