



DEPARTMENT OF
TRANSPORTATION

DBE, Labor Law Compliance & Civil Rights Compliance

Contractor Webinar

April 2, 2024

Overview of Webinar

- DBE Reminders
- Labor Compliance Updates
- Civil Rights Information
 - On-the-Job Training
 - EEO Compliance
 - ADA Updates
 - TERO/TECRO Compliance



Disadvantaged Business Enterprise (DBE)

DBE Goals

DBE Solicitation

DBE Good Faith Effort Package Requirements

Increase Number of DBE Firms

DBE Special Provision Update

DBE – DOT-289 (Certification of DBE Payments)


DBE Supportive Services: Project Solutions Inc.

DBE Goals & Solicitation

- Increased number of projects with goals due to shortfall
- Goals on R/C (Race Conscious) projects may be increased
- Good Faith Effort (GFE) documentation if goals aren't met
- DBE Utilization on R/N (Race Neutral) Projects
- Work with AGC on ways to increase DBE utilization on R/N projects
 - Creating a work group comprised of Contractors, Sub-contractors, DBE's, SDDOT personnel, and our consultant (Project Solutions Inc.)



Good Faith Efforts (GFE)

- A. Submit a contact log of all solicitation efforts
 - B. Submit documentation that shows GFE
 1. Select work items to encourage DBE participation
 2. Solicit all DBEs listed in the work classification and geographic area
 3. Solicit all DBEs on the plan holders list in a timely manor
 4. Follow up with all DBEs if there was no positive contact.
 5. Answer any questions that DBEs have about the project.
 6. If you reject a DBEs quote, include a detailed explanation.
 - C. Consider qualified DBEs whose quotes are reasonably competitive.
 - D. Explain why goal couldn't be met.
 - E. Note additional efforts made to secure DBE participation.
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GFE Solicitation Log for DBEs

- Timeframe for contacting DBEs
 - **DBEs on plan holders list:**
 - 7 calendar days prior to letting
 - **Contacting by mail:**
 - 6 calendar days prior to letting
 - **Contacting by email, phone, fax**
 - 5 calendar days prior to letting
- If there is no positive contact, a second solicitation must be made by phone, fax or email 2 business days prior to letting.

This spreadsheet is being provided as one example of how a solicitation log may be formatted. The information required within this spreadsheet is the minimum documentation that is required to show a Good Faith Effort. The below is a example of how the spreadsheet could be utilized if so desired. A blank spreadsheet that may be used is provided on sheet 2. Although submitting a hardcopy of your GFE documentation in a format similar to the following is an acceptable practice, bidders are encouraged to submit their GFE documentation by utilizing the SDEBS software.

Prime Contractor: Roadbuilders Construction, Inc.						
Project: P 0050(10)250 - PCN 1111 - Item #1 - January 12th Letting						
Company, phone #	Contact Name	Attempt # (1, 2, 3, etc)	Date / Time	Method of Contact	Quoting (Y/N)	Comments / Result
Traffic Control, Inc, 605-333-3333	NA	1	12/28/08 / 1:00PM	Fax		No response
Traffic Control, Inc, 605-333-3333	NA	2	01/02/09 / 1:00PM	Phone		Left Message
Traffic Control, Inc, 605-333-3333	Joe	3	01/08/09 / 1:00PM	Phone	Y	Received Quote

Adding DBE's & DBE Special Provisions

- Working with our consultant to increase number of DBE's
 - Interstate Certification
 - Reach out to eligible companies in the construction field
- Looking at ways to help DBE's expand work types
 - Advertise training courses put on by DOT
- Additions and edits to the DBE Special Provision
 - Clarification when DOT-289B is needed
 - Clarification on wording



DBE – DOT 289

(Certification of DBE Payments)

- When is the DOT-289 Form needed?
 - If any of the Contractors or Subcontractors are DBEs.
- When should the DOT-289 Form be submitted?
 - Report payments **twice** a year.
 - Each reporting period, submit a DOT-289 with DBEs that participated, payments to DBEs that reporting period, and total amount paid to the DBE.
 - **Reporting Period:**
 - October 1 to March 31, **Reporting Deadline:** April 30
 - April 1 to September 30, **Reporting Deadline:** October 31
 - Send completed form to the Project Engineer by reporting deadline.

DBE DOT-289 Form continued

DOT-289 Form Location

- <https://dot.sd.gov/>
 - Forms and Publications
 - Contractor Certification of DBE Payments (DOT-289)
 - *The form also allows you to type in information if able.*

SD DOT DOT-289: Certification of DBE Performance and Payments
Operations Support
South Dakota Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501
(605) 773-4906

Project Number PCN

DOT AREA Select a DOT Area County Select a county

Reporting Period: Oct. 1-March 31 April 1-Sept. 30

DBE Company	Payments made this reporting period	Payments made to date
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Are these payments ongoing or final ?

Company Name

Name of Company Official (please print)

Signature

Date

Certification

I have monitored the work of this contract and certify that the above DBE firm(s) did perform a commercially useful function for this work indicated on the DBE 289R/C or 289R/N form with their own employees and equipment, and the payment indicated by the contractor is reasonable for the scope of work performed.

Project Engineer (please print) Date

Project Engineer signature

DOT-289 11/2023

DBE Supportive Services: Project Solutions Inc.

- Project Solutions assists interested firms and new DBEs in many areas.
 - Application Assistance for DBE Certification
 - One-on-One Business Consulting
 - New DBE Orientation
 - Understanding DBE Program Guidelines
 - Self-Guided Training Videos
 - Business Development Program for new DBEs
- Learn more at: <https://sddb.com>



DOT-202 Request to Sublet Form

- Any time a prime contractor or subcontractor plans to sublet a portion of work on a SDDOT highway project, a **Request to Sublet Work** form must be completed
- The completed form must be signed by the **Prime Contractor** and sent to and approved by the Operations Construction Engineer **PRIOR** to the sublet work being performed.
- **Location of Request to Sublet Form**
 - <https://dot.sd.gov/>
 - Forms & Publications
 - Request to Sublet Work

DOT - 202
10/2019

DATE _____

RE: Project No. _____ PCN _____ County _____

Type of Work _____

Request to sublet work to:
Firm Name _____
Firm ID No. _____
(Federal S.S. number used on Employer's quarterly federal tax return)

Address _____
Phone _____ Proposed Start Date _____ Completion Date _____

List the contract items to be sublet when completing this form. Use contract bid unit prices and quantities for each sublet item. Show portions of a sublet item as a partial quantity or an adjusted unit price amount, then state which portion of the partial line item is being sublet. Examples: crushing, hauling, sawing and sealing.

Contract Item No.	Contract Quantity	Description	Contract Unit Price	Amount

TOTAL \$ _____

I certify that I have contacted all potential minority subcontractors and did not discriminate in selection and retention of the subcontractor. In accordance with provisions of the specifications, I certify that the subcontract agreement is in writing and that the subcontract agreement contains all the requirements and pertinent provisions of the prime contract.

(Prime Contractor) COMPANY ADDRESS _____

By _____ (Signature) Email Address _____
Phone No. _____

Print this form, sign it and convert it to a PDF, then email it as an attachment to:
DOTOperationsSupport@state.sd.us or send by regular mail to:
OPERATIONS CONSTRUCTION ENGINEER
SD DEPARTMENT OF TRANSPORTATION
700 E. BROADWAY AVE.
PIERRE, SD 57501-2566

Labor Law Compliance

- Common Issues with Certified Payroll Submission
- Ensuring Compliance with Davis-Bacon Wages
- Proposed Updates to Wage Classification Definitions
- Davis-Bacon Changes under USDOL Final Rule
- Wage Survey Updates

Common Issues with Payrolls

- Entering employee under wrong work classification
- Calculation errors
- Entering information in wrong column or omitting data
- Other deductions / no details
- Paying overtime when more than one work classification is worked
- Fringe Benefits



Ensuring Compliance with Davis-Bacon Wages

- Flags on Certified Payroll Report's (CPRs)
 - Flagged (triangle), Comp Alert (light bulb), Doc Reminder (yellow circle)
 - Draft Mode (yellow arrow), Rejected (red x), Green Arrow (approved)
- Notifying sub of Davis-Bacon Wage Requirements / CPR Reports
 - Special Provisions/Pink Sheet, Form 1273
 - Elation Systems Registration –
<https://elationsys.com/elationsys/> use promotion code SDDOT-19
- Using the correct wage decision
 - **Purple - effective on projects let BEFORE April 5, 2023**
 - **Tan - effective on projects let on or AFTER April 5, 2023**


Elations / EPSS Support

Elation Systems – Webinar / Training Videos


- [? Help / Get Started](#)
- Elation Systems Help Desk 925-924-0340 x 100
- Support@elationsystems.com
- [Labor Compliance EPSS Webinar](#)
 - <https://dot.sd.gov/doing-business/contractors/labor-compliance>
- Dail.mollard@state.sd.us or call (605)773-3795



Wage Classification Definitions

- New Wage Groups
 - Ironworkers: I01 Steel Rebar; I02 Structural Steel
 - Painters: P01 Pavement Marking Installer/Applicator; P02 Bridge Painter
 - Other Significant Changes
 - GL1 Blue Top Checker removed; GL2 Special Surface Finish Applicator was moved to a GL1, G01 Concrete Paving Cure Machine and Concrete Paving Joint Sealers were moved to a G02, etc.
 - Updated definitions with current terminology
 - G03 Euclid or Dumpster now reads Off-Highway Haul Trucks and added "Ensuring proper placement rate of asphalt", etc.
 - Need USDOL approval to implement
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Davis-Bacon Changes

- Prevailing Wage Rates 3-Step Process
 - Majority (over 50%) of wage rates in a class are the same
 - If no majority, then the rate earned by the greatest number of workers provided at least 30% earn said rate
 - If no wage rate is earned by 30% in a class, use weighted average
 - Site of Work
 - Material Suppliers, Truck Drivers
 - Fringe Benefits
 - Annualization
 - Surveyors
 - USDOL Final Rule Webinar <https://youtu.be/gJtYuqH8JIQ?si=RypegeXgAJfyIBEC>
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Wage Survey Updates

- Working with Elation Systems to Streamline the Process
 - Ability to use current years data
 - Frequency of survey's
- Based on data submitted by contractors
 - Important to ensure all data entered is accurate; fringe benefits, hours worked, classifications
- 100% Participation



Civil Rights Compliance

Update OJT Manual / Forms

Increase opportunities for OJT

OJT Supportive Services / CDL Funding

EEO Requirements of Contracts

ADA PROWAG Adoption

TERO/TECRO Compliance

On-the-Job Training

- On-the-Job Training not Apprenticeship
- Updating the OJT Program Manual
 - Wage Classification Changes
 - Update Electronic Registrations/Monthly Status Reports
 - Other Clarifications/Updates
- Electronic Forms (in progress)
- OJT Payments – Based on OJT Pay Letter
- OJT/SS – AGC CDL Training



EEO Compliance

- EEO Officer
- FHWA 1273 (pink sheets) in all subcontracts & EEO Federal Aid Provision (Executive Order 11246)
- EEO Policy
- Actively recruit to attract minority/females/underserved applicants
- Meetings with Supervisory Staff & Project Staff
- Limited English Proficiency (protected class)
 - Flaggers-- Speaking English is bonafide occupational qualification
 - Use translation apps or telephonic services
- Job Site Posters (EEO 7 – September 2022 Version only)



ADA – PROWAG Adoption

- PROWAG Adopted September 2023
- USDOT & USDOJ need to adopt to be enforceable
- Changes between the 2011 version & final version
- DOT working on training on changes



ADA – PROWAG Adoption

- Notable Changes:
 - 2.1% cross slope vs. 2.0% (DOT designs to 1.5%)
 - Detectible Warning Devices Required at driveways controlled with stop devices or traffic signals
 - Turning Spaces now called Landings
 - Visual contrast on stairs
 - Leading edge of each step tread & top landing marked with stripe
 - Strip 1 inches wide / contrast visually (Light on dark or dark on light)
 - Vertical Clearance entire sidewalk/path not just PAR (Pedestrian Access Route)



TERO / TECRO Compliance

- Notification Letters
- Employment Main Objective
- TERO/TECRO Compliance Plans
 - Submit at least 2 weeks prior to starting work
 - All Subcontractors and in some cases Suppliers must complete
- Some Tribes have additional fees or business licenses
- Payment of TERO / TECRO Fee (Prime only)
 - Lump Sum (required if under certain dollar amount – varies by Tribe)
 - Installments
 - Progress Payments
- Importance of Communication



Key Links to Online Information

- DBE: <https://dot.sd.gov/doing-business/contractors/dbe>
- DBE Supportive Services: <https://sddb.com/>
- DBE Directory: https://dot.sd.gov/doing-business/contractors/dbe#listItemLink_1269
- Labor Compliance: <https://dot.sd.gov/doing-business/contractors/labor-compliance>
- Bulletin Board Requirements: <https://dot.sd.gov/doing-business/contractors/labor-compliance/bulletin-board-requirements>
- OJT: <https://dot.sd.gov/programs-services/civil-rights/on-the-job-training-ojt>
- EEO: <https://dot.sd.gov/programs-services/civil-rights/equal-employment-opportunity-eeo>
- TERO/TECRO: https://dot.sd.gov/programs-services/civil-rights/tribal-relations-tero#listItemLink_1406



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THANK YOU