



# MoDOT General Provision Update: DBE Program

Missouri Department  
of Transportation  
September 25, 2024

# DBE Final Rule



- Notice of Proposed Rulemaking (NPRM): July 21, 2022
- NPRM Comments accepted until: October 31, 2022
- Final Rule Published: April 9, 2024
- Final Rule Effective Date: May 9, 2024 (with exceptions)
- MoDOT Timeline for Contract Changes:
  - MoDOT Let: October 2024 letting date
  - LPA: January 2025 letting date

# DBE Suppliers – 26.55(e)



- Types of DBE Suppliers & Credit Allowed:
  - Manufacturer: 100% - owns/leases & operates facility where products are assembled through raw material modification or component assembly to create a product.
  - Regular Dealer: 60% - owns/leases and operates warehouse where products are delivered from or, for bulk items, owns/leases distribution equipment and delivers to project.
  - **Distributor: 40% - drop ships materials and assumes responsibility from point of origin to destination.**
  - Broker: 100% of Fees & Commissions – transaction facilitator, assumes no responsibility





# DBE Manufacturers: 100%

- Owns/leases & operates factory/establishment.
  
- Produces products
  
- Manufacturing includes:
  - Blending/modifying raw materials
  - Assembling components to create a product
    - Minor modifications do not count. “Minor” = additional changes to a manufactured product, small in scope, minimal value to final product.



# Regular Dealer: 60%

- Owns/leases & operates a store, warehouse, etc. where materials, supplies, etc. are bought, kept in stock, sold to public.
- Firm must be established in purchase and sale or lease of products as specified in the contract.
- Credit is counted when all or most items in purchase order are from a DBE's inventory and only minor quantities are delivered by other sources.



# Regular Dealer (Bulk Items): 60%

- Bulk Items:
  - Petroleum products
  - Steel
  - Concrete/concrete products
  - Gravel, stone, asphalt
  
- DO NOT need to own/operate place of business IF:
  - Owns & operates distribution equipment for product delivery.
  - Supplementing of distributions equipment must be by long-term operating lease. No ad-hoc or contract by contract basis.



# Distributor: 40%

- Engages in regular sale or lease of items
- Purchases materials/supplies
- Does not maintain sufficient inventory
- Does not use own distribution equipment
- Assumes responsibility for items from origin to destination.
  - Risk of loss/damage during transportation
  - Evidence needed by P.O. or BOL with FOB
- Bottom line: Drop ships but assumes risk



# Broker: Fees & Commissions

- Not a manufacturer, regular dealer, or distributor.
- Does not manufacture or purchase any materials.
- Transaction facilitator.
- Only fees & commissions charged by DBE can be counted.



# DBE Regular Dealer/Distributor Affirmation form



- Supplier performance:
  - Can change from one contract to another
  - DBE may perform in different capacities on same contract.
- Determination of supplier performance prior to award.
  - Ensures proper DBE credit counting – no surprises
- Form required for all DBE's listed as Regular Dealer (60%) or Distributor (40%) at time of DBE Identification Submittal (within 3 business days of letting).

# DBE Suppliers – Bidding & Best Practices



- MoDOT Let Contracts: Applicable on projects let in October 2024 and later.
- LPA Contracts: Projects let in January 2025 and later.
- Prime Contractors: request Affirmation form from DBE regular dealers/distributors with their quote.
- DBE Regular Dealers/Distributors: provide contractors with Affirmation form when submitting a quote.

# DBE Removal of Eligibility: Effect on Contracts



- Previous Rule
  - DBE removed from program (withdraws, graduates, decertified), work on project can be counted as long as subcontract executed prior to removal date.
  
- Final Rule - same as previous EXCEPT:
  - Extensions/additions of work for DBE goal credit after removal date only allowed with MoDOT's prior written consent.
  - Removal due to DBE firm being acquired or merged with a non-DBE: work remaining after removal date is not eligible for DBE credit. Contractor must seek additional DBE participation needed to meet DBE goal or demonstrate good faith efforts to do so.

# Questions?

