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KLEINBERG ELECTRIC INC. D/M/WBE POLICY

Kleinberg Electric, Inc. "KEI" is committed to a policy of nondiscrimination in the conduct of its business, including the procurement of goods and services. Kleinberg recognizes its responsibilities and reaffirms that commitment through adoption of this Disadvantaged Business Enterprise "DBE" Policy Statement. Kleinberg has established a DBE Program in accordance with the regulations of the U.S. Department of Transportation "DOT", 49 CFR Part 26. The DBE Program applies to all DOT-assisted projects.

KEI's policy is to encourage disadvantaged business enterprises, including both minority-owned and women-owned businesses, to fully participate in KEI's procurement process. The D/M/WBE Program goals are as follows:

To create a level playing field on which D/M/WBEs can compete fairly and participate fully in the performance of all DOT-assisted, State and City contracts and subcontracts;

To ensure nondiscrimination on the basis of race, color, national origin or sex in the award and administration of D/M/WBE contracts and subcontracts;

To ensure that the D/M/WBE Program is narrowly tailored in accordance with applicable laws; To assist the development of firms that can compete successfully in the marketplace outside the D/M/WBE Program;

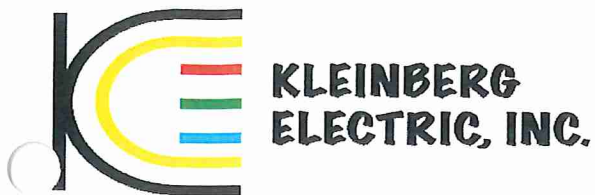
To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

Ensure that only D/M/WBEs meeting the eligibility requirements are allowed to participate as D/M/WBEs;

Identify business enterprises that are qualified as D/M/WBEs and are qualified to provide KEI with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;

Develop communications programs and procedures, which will acquaint prospective D/M/WBEs with KEI's contract procedures, activities and requirements and allow D/M/WBEs to provide KEI with feedback on existing barriers to participation and effective procedures to eliminate those barriers;

Administer the Program within KEI in collaboration with the various government agencies for whom KEI performs work and to facilitate the successful implementation of this Program;



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The responsibility for carrying out KEI's commitment to this program is delegated by its President, Carol Kleinberg to the program Compliance Officer "CO", Selena Luke.

The CO is responsible for adherence to this policy. The CO is responsible for the development, implementation and monitoring of this program. It is the expectation of Kleinberg that all KEI personnel adhere to the provisions and the spirit of this program;

However, all Department Managers, Project Managers and other employees share in the responsibility for executing KEI's D/M/WBE Program. Implementation of the D/M/WBE Program is accorded the same priority as compliance with all other legal obligations incurred by KEI in its contracting procurement agreements; and

Copies of this policy statement shall be circulated to all KEI managers and KEI employees, posted in locations visible to the general public visiting KEI, and distributed to the D/M/WBE and non-D/M/WBE business communities that perform work for Kleinberg.

Executed this 28th day of February 2018

A handwritten signature in blue ink, appearing to read 'Carol Kleinberg', is written over a horizontal line.

Carol Kleinberg, President

Kleinberg D/M/WBE Compliance Procedures:

Preliminary Requirements:

- Understand US DOT 49CFR26, New York State & New York City Rules, review and retain copies
- Review how US DOT Recipient Agencies, NYS & NYC counts their D/M/WBE participation on various types of work including subcontracts involving installation of materials, material suppliers, truckers, joint ventures, etc.
- Know your DBE rules on “commercially useful function” (CUF). Attached hereto as Appendix A are Kleinberg’s DBE provisions as guidance on what constitutes a commercially useful function.
- Program officials: It is important to know the contracting agency officials responsible for administering your D/M/WBE Requirements. They can assist you in understanding what they require concerning their D/M/WBE program and how you can follow the requirements.
- Review your D/M/WBE rules on demonstrating good faith efforts towards meeting goals. Attached hereto as Appendix B are Kleinberg’s Provisions for meeting Good Faith Requirements.
- Review, understand and retain copies of your contracting agency requirements for accurately reporting D/M/WBE participation and payments.

Key Staff Compliance Responsibilities:

Key staff responsible for D/M/WBE Compliance:

- D/M/WBE Compliance Officer:

The D/M/WBE Compliance Officer will assist and coordinate their activities with other Kleinberg management, estimators, account managers and project managers in the development and implementation of Kleinberg’s D/M/WBE Program; ensuring attainment of the D/M/WBE goals; monitor contract compliance and ensure timely and accurate reporting as required for federal, state and local projects. The D/M/WBE Compliance Officer shall report to the President.

Essential Job Functions:

The Compliance Officer will be responsible to keep track of the D/M/WBE companies to see that they provide a Commercially Useful Function.

This will be determined through:

- a. Requests for updated and current Certificates
- b. Supervise and coordinate site visits to D/M/WBE places of business and interviews with owners
- c. Confirm the DBE is actually providing the services they were contracted for

All KEI purchase orders provided to contracting D/M/WBE vendors shall contain KEI's D/M/WBE Compliance Provisions

Additional responsibilities:

- Plan, develop, coordinate and administer Kleinberg's D/M/WBE program to ensure compliance with Federal, State, and/or Local programs and related requirements.
- Monitor company-wide uniform procedures for D/M/WBE program and implement improvements as required.
- Formulate and implement procedures for contract compliance with D/M/WBE goal commitments.
- Standardize and implement procedures and methods for determining legitimacy of Disadvantaged, Minority, and/or Women owned business enterprises.
- In connection with various D/M/WBE Directories, maintain a data base of qualified D/M/WBE Vendors.
- Plan outreach efforts to identify and attract certifiable D/M/WBEs in order to meet Kleinberg's compliance objectives.
- Participate in the solicitation and award of contracts to D/M/WBE Vendors.
- Generate timely and accurate D/M/WBE Compliance reports.
- Respond to inquiries from Kleinberg staff, contract participants, D/M/WBE Program Administrators and other interested parties.
- Coordinate and participate in D/M/WBE program audits of contract information to ensure compliance with 49CFR part 26 of the Federal regulations and all State & City regulations.
- Coordinate and participate in gathering and compiling information for program; preparing associated reports and analyses involving D/M/WBE Compliance.
- Serve as liaison between D/M/WBE agency program managers.
- Manage records created and received in compliance with the Kleinberg's D/M/WBE Policy and Procedures.

Kleinberg Estimator D/M/WBE Responsibilities:

- 1 All new projects will be reviewed by our Chief Estimator to determine scope as well as any D/M/WBE requirements. This position is currently being held by Alan Lieberman. All new projects contemplating third tier D/M/WBE participation will immediately be brought to the attention of the Compliance Officer.
- 2 On all new projects to be bid by Kleinberg, price requests will be solicited from D/M/WBEs on the contracting agency's list and also from Non-D/M/WBE suppliers, vendors and contractors (to ascertain fair market value of goods and services).
- 3 Proposals will be sent out to requesting General Contractors listing our dollar value or percentage of D/M/WBE participation as well as how we propose to attain that goal.
- 4 If we are successful and an award or intent to award is issued to Kleinberg Electric Inc., Chief Estimator will fill out the necessary agency required paperwork (example Form 15-A, attached) for all D/M/WBE firms KEI intends to use and will have the D/M/WBE firm fill out their corresponding paperwork and confirm they still have an active agency approval certificate.
- 5 After contract award, all new projects containing D/M/WBE goals will be set up with a DEX prefix to signify to purchasing and project management that this project has specific goals with respect to D/M/WBE participation. All previously submitted paperwork related to our D/M/WBE intent will be forwarded to both purchasing and project management for their use in attaining these goals.
- 6 No D/M/WBE third tier vendor will be retained by Kleinberg for a project who has not been solicited in the manner detailed above, and who does not personally respond to such solicitation with its own, personally prepared quotation.
- 7 The Chief Estimator will either personally scan and/or make sure that all bid documents, regardless of whether Kleinberg is awarded a contract, including, but not limited to, solicitations, requests to bid, quotations, etc. are scanned into the computer system of Kleinberg

Kleinberg's PROJECT MANAGEMENT/PURCHASING Responsibilities:

- 1 Once the project has been set up, the Project Manager, Estimator and Compliance Officer will discuss the D/M/WBE requirements.
- 2 The Project Manager will be responsible to notify the Compliance Officer of any contract changes that may affect the D/M/WBE goals.
- 3 If any changes to the plan are required it will be brought to the attention of the Compliance Officer who will report them to KEL's President.
- 4 The Project Manager will be responsible to notify the Compliance Officer of any D/M/WBE field issues and bring to the attention of the Compliance Officer who will contact the D/M/WBE to resolve. If these issues cannot be resolved with the D/M/WBE, the Compliance Officer will bring them to the attention of the President and Vice President, as well as the Prime Contractor and/or Owner/Agency. Any dollar amount associated with these Issues will not be reported for attainment of contract goals unless they are satisfactorily resolved as determined by the President and Vice President.
- 5 Through the use of our accounting/project management software, Timberline, we will tag all D/M/WBE vendors and suppliers and be able to generate payable/receivable reports to aid in tracking the amount of dollars paid to each of these entities on a project by project basis. In addition, through a feature in the software, "My Assistant," an automatic reminder will be sent to the Project Manager and Compliance Officer 30 days prior to when the D/M/WBE's certificate is about to expire.

Solicitation and Demonstration of Good of Good Faith Efforts:

The procurement team (D/M/WBE Compliance Officer/Estimator/Account Manager) in conjunction with other identified key Kleinberg management will identify opportunities for D/M/WBE participation on contracts.

Step 1: D/M/WBE Identification: (Responsible Kleinberg Staff: D/M/WBE Compliance Officer, Estimator, Account Manager & Vetting Coordinator)

- Access the current DBE Directory (Uniform Certification Program Directory: DBE) & M/WBE Directories for State and City contracts for certified vendors. The Directory listing will include the vendor's address, phone number and the type of work the firm has been certified to perform (use NAIC Codes for verification). The DBE Directory must be your primary source of firms included in preparation of your solicitation.

The following is a list of types of actions which you should consider as part of Kleinberg's good faith efforts to obtain DBE and other participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. Kleinberg must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. Kleinberg must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when Kleinberg might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs must be done solely through the DBE's themselves, not any non-DBE representative. It is Kleinberg's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) Kleinberg using good business judgment includes considering a number of factors in negotiating with subcontractors, including DBE subcontractors, and takes a firm's price and capabilities, as well as the contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not, in itself, sufficient reason for Kleinberg's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of Kleinberg to perform the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts. Kleinberg is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Investigate D/M/WBE Capabilities to Perform Work

(Responsible Kleinberg Staff: D/M/WBE Compliance Officer, Estimator, Account Manager & Vetting Coordinator)

Kleinberg must determine whether interested D/M/WBEs are capable of performing the work they are interested in quoting. All DBEs must perform a "commercially useful function," as defined in 49

CFR 55 (c) and your contracting agencies DBE Special Provision. During the project period, Kleinberg should always verify and document that the DBE is performing a "commercially useful function" D/M/WBE Vetting:

A list of qualified D/M/WBE vendors should be forwarded to Kleinberg Vetting Staff (Head of Purchasing and/or Field

Supervisor). Vetting Process:

- Determine if the D/M/WBE is capable of performing a CUF: (See: Kleinberg Questionnaire, Appendix "A")
- Inquiries must include:
 - (i) Is the work to be perform the DBE's usual type of work?
 - (ii) Will the DBE estimate the work itself, receive all material and sub quotes, and negotiate and write purchase orders and subcontracts?
 - (iii) Is there a clean split between what Kleinberg is performing and what the DBE will perform?
 - (iv) Will the DBE manage and supervise the work with its own managers and supervisors?
 - (v) Will the DBE perform the work with its own labor forces?
 - (vi) Will the DBE be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, installing (where applicable) and paying for the materials itself?
 - (vii) Does the DBE intend to subcontract and is that amount consistent with industry

practice? Work that a DBE subcontracts to a non-DBE does not count towards the DBE contract goal.

- (viii) Request a list of the DBE's staff and their availability.
- (ix) Request a list of equipment D/M/WBE Intends to use on the job.
- (x) Verify all information against relevant data sources (D/M/WBE Directory, past work history, etc.).
- (xi) Judgment & tax lien search
- (xii) Require production of the following: (a) most recent 3 months certified payrolls; (b) most recent 3 months cancelled payroll checks, (c) list of personnel, other information deemed appropriate.
- (xiii) Does the DBE have lines of credit?
- (xiv) Information on DBE's bonding capacity (if, appropriate).
- (xv) KEI's prior experience working with the DBE.
- (xvi) Verify DBE references working with other prime contractors.
- (xvii) For Regular Dealers: conduct site visit, where appropriate: (a) confirm location of retail store or warehouse, (b) copy of current lease or ownership document, (c) confirm whether the material, supplies, articles or equipment of the general character described by your bid 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. (Kleinberg should not insist that every single item the DBE firm supplies be physically present in the firm's store, warehouse, etc. before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location. For example, a mere showroom, the existence of a hard-copy or on-line catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract, are generally not sufficient to demonstrate that a firm regularly deals in the items). Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers. (49 CFR 26.55 (e) (iii) & (iv), (d) confirm that the stock or material is purchased in the name of the D/M/WBE by requesting current invoices/POs, etc., and (f) for bulk items, confirm ownership or lease of distribution equipment.
- (xviii) For Truckers: require the production of: (a) registration and insurance cards for each truck to be used, (b) copy of driver's license of each truck driver (c) leasing agreement for any leased vehicles, and (d) copy of NYC Business Integrity Commission registration.

Counting DBE Participation: (Responsible Kleinberg Staff: D/M/WBE Compliance Officer, Estimator, Account Manager & Vetting Coordinator)

When a D/M/WBE participates in a contract, you may count only the value of the work actually performed by the D/M/WBE toward the D/M/WBE goals. A DBE and M/WBE participation is counted toward the D/M/WBE goals only if the DBE is performing a

“commercially useful function”. (See 49 CFR 26.55 (c) and Local, State, and/or City Special Provision Requirements). Contracting Agencies has made it clear that it is Kleinberg and other prime contractor’s responsibility to make sure that DBEs are performing a commercially useful function.

DBE Manufacturer- Count 100 % of the value paid for materials furnished which become a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product by the contract and purchased by Kleinberg. A manufacturer creates or alters a product.

DBE Supplier- Count 60% of the value paid for materials furnished which becomes a permanent part of the project. A supplier buys goods, sells goods to the general public and maintains an inventory at an owned or leased warehouse or store as its principal place of business.

A supplier of bulk items must own and operate distribution equipment for the bulk item and need not warehouse the items. Bulk items include steel, rock, sand and asphalt.

DBE Broker- Count 100% of fees or commission received by the DBE Broker for the materials purchased and resold to the contractor which becomes a permanent part of the project. A broker does not manufacture or supply on a regular basis. A broker arranges or expedites transactions but does not necessarily warehouse or transport.

DBE Contractor- Count 100% of the amount paid to DBE contractor for labor and material provided to perform a defined and clearly measurable portion of the contract.

The work must be performed by the DBE’s own employees and the DBE must order and pay all supplies and materials utilized in construction.

HOW DOES THE USE OF JOINT CHECKS AFFECT COUNTING OF CREDIT FOR DBE PARTICIPATION AND THE ELIGIBILITY OF DBE FIRMS FOR CERTIFICATION?

By a joint check, we mean a check issued by a prime contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. (This Q&A does not discuss checks issued by a recipient to two or more parties.)

* The text of the DBE rule does not mention the use of joint checks. Consequently, the rule does not prohibit prime contractors and subcontractors from using joint checks.

* The preamble to the Department’s 1999 DBE final rule had the following to say about this subject:

A commenter suggested that the use of two-party checks by a DBE and another firm should not automatically preclude there being a CUF. While we do not believe it is necessary to include rule text language on this point, we agree with the commenter. As long as the other party acts solely as a guarantor, and the funds do not come from the other party, we do not object to this practice where it is a commonly-recognized way of doing business. Recipients who accept this practice should monitor its use closely to avoid abuse. (64 FR 5116, February 2, 1999)

* The Department understands that prime contractors, subcontractors and suppliers may wish to use joint check arrangements for a variety of legitimate reasons, such as assuring that timely payment will be made for the supplier's items or dealing with situations in which it is difficult for a subcontractor to obtain bonding at a competitive rate. Consequently, recipients and UCPs should not assume that the use of joint checks is illegitimate.

* However, the Department also understands that the use of joint checks can raise questions about whether it is proper to count DBE credit for the items purchased using the joint check and about whether the DBE firm's relationship with the prime contractor compromises the independence required for certification as a DBE. Consequently, recipients and UCPs may properly view the use of joint checks as a "red flag" calling for further scrutiny.

* As with other parts of the relationship among prime contractors and DBEs, openness and transparency are keys to using joint checks in an appropriate way. Historically, what has led to problems is not so much the use of joint checks in itself, but concealment or a lack of honesty concerning their use.

COUNTING DBE CREDIT IN JOINT CHECK SITUATIONS

To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself" (emphasis added; 49 CFR 26.55(c)(1)). Only when a DBE meets all requirements of this provision should DBE credit be counted for the procurement of items by the DBE.

By paying for the material itself, the regulation means that the DBE's own funds are used to pay for the material. As the preamble passage quoted above notes, it is not appropriate for the funds to come "from the other party" (e.g., the prime contractor). The use of joint checks can raise the question of whether the DBE's own funds, as distinct from those of the prime contractor, are really being used to pay for the material.

To answer this question, Kleinberg and DBE should provide documentation to the DBE Contracting agency showing that the funds used to pay a supplier in fact came from the DBE's own funds. Accounts receivable to the DBE from Kleinberg for the costs of items procured by the DBE from the supplier generally may be regarded as representing the DBE's own funds. If a DBE which has received a joint check from Kleinberg documents that it has been in control of the funds provided in the check and has determined when the supplier or other third party has fulfilled its responsibilities under the contract, the recipient may conclude, absent evidence to the contrary, that the DBE is paying the third party with its own funds. DBE Contract Administrator should review this documentation before deciding whether to give DBE credit for the items in question.

As part of the recipient's oversight of contracts on which joint checks are used, it is important to determine whether the requirements of 26.55(c) (1) other than payment from the DBE's own

funds are being met. If the other requirements of 26.55(c) (1) are not met, then it is not appropriate to award DBE credit for the use of the items in question.

Insistence by a prime contractor that a DBE must use a particular supplier or pay a specific price for an item is likely to be inconsistent with these requirements.

If there is a significant disparity with respect to quantity or cost of items a DBE procures using a joint check arrangement, compared to the size of the contract and the expected ability of the DBE to obtain the items, the recipient should look carefully to ensure that commercially useful function requirements for counting DBE credit are being met.

A DBE obtaining items for a construction contract normally should install them as well. If the DBE obtains the items but the prime contractor or another party installs them, the DBE credit awarded may be limited to the fee or commission obtained by the DBE (see 26.55(e)(3)).

Kleinberg's SAFEGUARDS involving Joint Checks (Responsible Kleinberg Staff: Upper Management, D/M/WBE Compliance Officer, Estimator, Account Manager & Vetting Coordinator):

Recommended safeguards include the following steps by recipients:

- Require prime contractors and DBEs wishing to use joint check arrangements to obtain prior approval from MTA and other agencies/authorities responsible for compliance.
- Require a written joint check agreement among the parties (including the suppliers concerned) providing full and prompt disclosure of the expected use of joint checks. The agreement should contain all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.

Make sure there is a well-established monitoring process having oversight mechanisms such as review of invoices, cancelled checks and/or certification statements of payment.

Examine related financial transactions in which an alternative to the use of a joint check is used that may indicate a similar relationship between the prime contractor and a DBE subcontractor, such as the use of a cashier's check or bank check presented to the supplier by the DBE. In this type of situation, recipients should examine whether it was the prime contractor, and not the DBE subcontractor, that funded the transaction.

Caution: Kleinberg and DBE subcontractors should avoid exclusive relationships concerning the use of joint checks. If Kleinberg makes joint checks available to one (e.g., a DBE) subcontractor, the service should be made available to all subcontractors (DBEs and non-DBEs).

- Emphasize to Kleinberg / Supplier (Manufacturer) and DBE subcontractors that the use of joint checks should be focused on accomplishing the procurement of materials needed for a particular purpose at a particular time. Long-term or open-ended joint checking arrangements can

suggest a lack of independence for the DBE involved, and are a basis for further scrutiny by the MTA and other DBE Contract Administrators. FYI: MTA and other DBE Contract Administrators may establish reasonable durational limits on joint checking arrangements that are subject to periodic review and renewal to ensure that the arrangement is not operating in a way that compromises the independence of the DBE.

- Ensure the DBE has retained final decision-making responsibility concerning the procurement of materials and supplies, even when joint checks are involved. That is, the relationship between the DBE and its suppliers should be established independently of and without interference by Kleinberg. The rights of parties to a joint check arrangement to terminate the arrangement should be consistent: for example, if the prime contractor has the right to terminate the arrangement unilaterally, so should a DBE subcontractor.

Ensure that joint checks issued by Kleinberg be delivered or mailed to the DBE for presentment and payment to the DBE's suppliers. Kleinberg should not make payment directly to the supplier

WHAT SHOULD A KLEINBERG EMPLOYEE DO IN THE CASE OF A DBE MANUFACTURER WHO, PARTWAY THROUGH A MULTI-YEAR CONTRACT, BECOMES A BROKER?

Under 49 CFR Part 26 counting rules, 100 percent of the cost of the goods provided by a DBE manufacturer counts toward DBE goals. For "brokers," only the DBE's fee or commission, and no part of the cost of the goods, count toward DBE goals.

Suppose that a prime contractor relied on goods from a DBE manufacturer to meet a portion of its contract goal. Halfway through the contract, the DBE ceases manufacturing the goods and begins to act as a broker who procures the goods from a non-DBE manufacturer and passes them on to the prime contractor. (For purposes of this hypothetical, we will assume that the DBE is not acting as a regular dealer.)

From the point where the DBE's role changed from that of a manufacturer to that of a broker, DBE credit that the recipient and prime contractor can claim is much reduced, since only its fees or commissions, rather than 100 percent of the cost of the goods, could count from that point forward. Kleinberg should further notify the general contractor and agency/authority at that time.

Kleinberg may be required to make good faith efforts to obtain DBE participation to make up for the "lost" participation from the former manufacturer, to the extent needed to continue meeting the contract goal (see 26.53(f)(2)).

THE COUNTING RULES SAY THAT TO BE A REGULAR DEALER, A SUPPLIER OF BULK GOODS WHO SUPPLEMENTS ITS OWN DISTRIBUTION EQUIPMENT MUST DO SO BY A LONG-TERM LEASE. HOW LONG IS LONG-TERM?

The key point is that a lease for trucks or other distribution equipment cannot be on an *ad hoc* basis and deal specifically to a single, particular contract or distribution task.

The leased equipment should be used over an extended period of time to serve a variety of customers and/or contracts.

There is not a specific number of months or years that the Department believes it is useful to rely on in all cases. The scrutiny that a recipient gives a lease arrangement should become stricter the shorter the lease period.

Kleinberg must establish an in-house policy counting this as regular dealer vs. broker.

Kleinberg's Monitoring of D/M/WBE Performance as a Commercially Useful Function: It

is important to understand what DBE and M/WBE Contract Administrators consider important in determining whether DBE and M/WBEs has performed a commercially useful function.

Five categories are used to determine whether the DBE and M/WBE are performing a CUF:

- Management and Supervision
- Labor
- Equipment
- Materials and Supplies
- DBE Trucking

a. Management and Supervision: D/M/WBE Contract Administrators shall consider who performs the following on behalf of a D/M/WBE:

- Scheduling work
- Ordering equipment, materials and supplies
- Preparing and submitting payrolls
- Hiring and firing employees
- Daily supervision and control of the work by DBE's regularly employed superintendent.

"Red Flags" for Monitoring for Management and Supervision :

- Mere performance of administrative duties by DBE
- DBE provides little or no supervision of work
- Supervision is performed by personnel associated with the prime contractor or any other firm or business
- DBE firm's owner is not aware of the status of the work or the performance of the business
- Inquiries by DBE Agency Compliance staff are answered by the prime contractor

b. Labor: : D/M/WBE Contract Administrators shall likely consider:

- Workforce must be under direct supervision of the DBE firm
- Workforce should be normally employed by the DBE and not normally employed by a non-DBE
- DBE hires and fires
- Workforce must actually be doing the work.

“Red Flags” for Labor:

- Movement of employees between contractors
 - Employee paid by DBE and non-DBE
 - Employee working for non-DBE in morning and DBE in afternoon (sharing labor)
 - Employees don’t know who they work for when asked
 - Problem with DBE employees on certified payroll
 - Superintendent or foreman don’t work for DBE firm
- c. Equipment: D/M/WBE Contract Administrators shall consider:
- Whether The DBE owns or leases the equipment, has a written lease agreement and the length/term of the lease
 - No credit towards the DBE goal is counted when prime contractor leases equipment to/for the D/M/WBE

“Red Flags” for Equipment:

- Equipment used by the DBE firm belongs to the prime contractor or another contractor with no formal lease agreement
 - Equipment signs and markings cover another owner’s identity
 - A DBE trucking business utilizes trucks owned by the prime or non-DBE
 - DBE trucking business trucks are not NYC BIC approved
 - Vehicle registration not registered to DBE
 - DBE Trucking business vehicle insurance is not registered to DBE
- d. Material and Supplies and Installing by DBE: D/M/WBE Contract Administrators shall consider:
- DBE must negotiate the cost, determine quantity and quality, arrange delivery, install and pay for the materials and supplies it utilizes
 - Invoices must be sent to DBE, not to the prime contractor
 - Payments must be made by the DBE
 - Payments by joint checks must be approved in advanced by your D/M/WBE Contract Administrator
 - Do not deal directly with material suppliers on matters that are DBEs responsibilities. For instance, do not schedule, order or arrange delivery of materials for DBE.

"Red Flags" for Material and Supplies and Installing:

- Materials supplied by the DBE are ordered and/or paid for by the prime contractor or a non-DBE
- Two party checks from prime to DBE and supplier or manufacturer
- Materials or supplies are delivered to, billed to or paid by another business
- Supply and install, DBE only purchases material while performing little or no work.

e. Trucking: D/M/WBE Contract Administrators shall consider:

- DBE must be responsible for the management and supervision of the entire trucking operation
- DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract
- DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates with drivers it employs
- DBE who leases from another DBE receives credit for the total value of the transportation services the lessee provides on the contract
- DBE who leases from a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE lessees not to exceed the value of transportation provided by the DBE-owned trucks.

"Red Flags" Trucking (see: Equipment, above.)