



KD Construction Alert: DBE Trucking Credits – A Change To The Counting Rules Is Finalized

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Trucking has long been a strong option and opportunity to obtain DBE participation credits on federally funded contracts. However, the manner in which credits are provided for trucks and trucking services is often greatly scrutinized and confusing to all parties. The new DBE program regulations made effective November 3, 2014 clarify and finalize a modification to the counting rules for trucking which seeks to increase opportunities for DBE trucking credits.

It has long been established under the rules that a DBE trucking company that performs a commercially useful function and owns and operates at least one licensed, insured and operational truck, will generate DBE credits for the total value of the transportation services it provides on a contract using its own trucks and employee drivers. The DBE trucking company will also get credit when it leases trucks from another DBE for the total value of transportation services the lessee DBE provides on a contract. When the DBE leases trucks and drivers from a non-DBE the rule has stated that agencies may choose to allow credit for the value of transportation services provided by the non-DBE equal to the credit provided by the use of the DBE's owned trucks. Beyond such value/threshold, additional credit might be permitted only for the fee or commission the non-DBE receives for the lease arrangement.

The modification contained in the new DBE program rules clarifies and finalizes the understanding that trucks that are leased by a DBE from a non-DBE which are operated by the DBE's employees will be treated no differently than any other equipment a DBE would lease for its work. In other words, the credit for transportation services provided by a DBE trucking company will not be impacted because the trucks used by the DBE's employees are leased, the total value of the transportation services will be credited in such instance.

The new rule provides a good example as to how the modification would apply as follows:

DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

The contractor must be mindful, however, that each agency, such as NYS DOT and the MTA, has requirements as to what constitutes an appropriate leasing of trucks for DBE credit purposes. Additionally, note that the term "employee" under the rule is to be given its common dictionary meaning and the term "ownership" includes the purchase of a truck or trucks through conventional financing arrangements".

It is important overall to understand the DBE regulations; the implementation or interpretation of the DBE program rules by an agency (e.g. NYSDOT or MTA); and the DBE goals and requirements set forth in bid documents, before submitting a utilization plan. A careful consideration of the "finer points" and opportunities under the DBE program rules, such as those applicable to trucking services, will give the contractor a chance to submit a solid utilization plan to an agency which properly meets contract goals, provides solutions and minimizes questions and concerns.