

MEMORANDUM

**FROM: Jamir Davis, Esq., Executive Director
Office for Civil Rights and Small Business Development**

DATE: April 19, 2019

**SUBJECT: Guidance for Prime Contractors Utilizing Disadvantaged
Business Enterprise (DBE) Regular Dealers**

The Kentucky Transportation Cabinet's (KYTC) Office for Civil Rights and Small Business Development (OCRSBD) has been issued guidance by the Federal Highway Administration (FHWA) regarding the utilization of DBE regular dealers (suppliers) of bulk items such as liquid asphalt and petroleum on federally funded projects.

A DBE regular dealers providing bulk items listed under CFR 26.55(e), which include liquid asphalt and petroleum, must satisfy all of the guidelines below in order to be counted towards a DBE goal at a rate of 60%.

- Regular dealer (*Supplier*) cannot lease trucks with drivers. (*otherwise only fees and commissions apply toward the DBE goal*)
- Regular dealer must have a long term lease agreement for every truck (*not owned by the DBE*) used to deliver products/materials under its subcontract or PO.
- Regular dealer must have exclusive control of the leased vehicle at all times. This is inherent due the fact that it's a traditional lease. It cannot be an ad-hoc borrowing this includes instances where the DBE considers it to be a long term lease and borrows the equipment from a third party when needed. In other words, long-term lease implies that the DBE has possession of the equipment during the time of the lease.
- Regular dealer cannot apply the 1 for 1 ratio for leasing trucks mention under trucking.
- Regular dealer of bulk items cannot sub contract the delivery of any of its bulk items. Note: If it does, only fees and commissions would apply.
- Regular dealer of bulk petroleum (*fuel and liquid asphalt*) who only owns fuel trucks can supplement its distribution equipment with a long term lease of a liquid

asphalt truck as long as it provides the driver. FHWA believes that the fact that a DBE already has an investment in owning distribution equipment that falls within the “petroleum” category the KYTC should be flexible by allowing the DBE to lease the tanker truck for the liquid asphalt without having to buy it.

Unless a DBE is in compliance with all of the guidelines above they cannot be counted at a rate of 60% for the purpose of meeting a DBE goal on any future DBE plan.

The above guidance does not apply to any contract that a DBE was awarded prior to today. Therefore, per FHWA guidance DBEs currently operating in a manner contrary to the above guidance may proceed to meet all DBE contractual obligations using the methods they were prior to the guidance being issued.

If you have any questions or concerns regarding this guidance please contact ORCSBD at:

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