




VIRGINIA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION DIVISION (CD)

INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM (IIM)

GENERAL SUBJECT: DBE AND SWAM CREDIT	NUMBER: IIM-CD-2023-01.01
SPECIFIC SUBJECTS: DBE AND SWAM CREDIT ON FEDERAL AID PROJECTS	DATE: April 27, 2023
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DBE AND SWAM CREDIT ON FEDERAL PROJECTS

Follow these procedures to determine how to allocate credit toward goals for participation by Disadvantaged Business Enterprises (DBE) and/or Small, Women- and Minority-owned businesses (SWaM) on projects receiving financial assistance from the Federal-Aid Highway Program.

A. Background

VDOT did not previously include SWaM goals on the majority of Federal-Aid contracts based on guidance from the Federal Highway Administration (FHWA), which prohibited States from establishing Woman and Minority-owned Business Enterprise participation goals required under State or local programs on contracts utilizing federal funds. FHWA clarified that VDOT's inclusion of SWaM participation goals on Federal-Aid contracts would not violate FHWA requirements or policy because of the Fostering Small Business Participation element of the DBE program (49 CFR § 26.39), which encourages small business participation. Therefore, to comply with EO 35, VDOT will include SWaM participation goals on Federal-Aid contracts.

B. Federal Requirements

The FHWA requires VDOT to comply with the requirements of the federal DBE program. One of the objectives of the program is to promote the use of DBEs on Federal-Aid projects. On a Federal-Aid project, participation by subcontractors certified as DBEs shall be counted toward the DBE goal and incorporated into VDOT's overall tally of DBE participation as required by Federal regulations, applicable contract provisions, and VDOT policies.

C. State Requirements

In accordance with Executive Order 35 (EO 35) (2019) the Commonwealth of Virginia implemented the SWaM Program to encourage the participation of a diverse group of small businesses, including those owned by women, minorities, and service disabled veterans, in State contractual work. EO 35, in part, directed State agencies, including VDOT, to advance the Commonwealth's procurement goal of at least 42% of discretionary spending with small businesses certified by the Department of Small Business & Supplier Diversity.

D. SWaM and DBE on Federal-Aid Projects

In order to comply with the Federal DBE program and the Commonwealth of Virginia's SWaM program, Federal-Aid Contracts shall include both a DBE and a SWaM goal. Since DBE participation is a Federal requirement and SWaM participation is a State requirement, a subcontractor certified as both DBE and SWaM can receive credit under both programs for the same work. Therefore, if a subcontractor is certified as a DBE and a SWaM, report the subcontractor's participation to both programs, including for the same contract item (a/k/a work activity).

For construction contracts, participation by subcontractors certified as DBEs should be reported on the C-63 form, and participation by subcontractors certified as SWaM should be reported on the C-61 form. If a subcontractor is certified as both a DBE and a SWaM, report the DBE participation on the C-63 form and the SWaM participation on the C-61 form. The same contract item (a/k/a work activity) should be included on both the C-63 form and the C-61 form if the subcontractor is certified as both a DBE and a SWaM for that contract item. For consultant contracts, participation by subcontractors certified as DBE's and/or SWaM will be tracked internally by the agency for both programs based on expenses reported on monthly invoices.