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NOTICE OF PROPOSED RULEMAKING (NPRM)

OST • FAA • FHWA • FTA

NPRM DBE Public Meeting – Overview Session

July 29, 2022

Docket #: DOT-OST-2022-0051

Contents

Comments.....	2
Transcript.....	3
List of Attendees.....	26



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The Department held an NPRM public meeting on July 29, 2022 to give an overview of the proposed changes to 49 CFR parts 23 and 26. The Department will consider the following comments received during the meeting as a part of the rulemaking process.

Comments

Docket #: DOT-OST-2022-0051

1. Lilliette Rivera
WMATA

Comment: The onsite report should be the same for all agencies, so all agencies feel comfortable with the interstate certification process.

2. Julie D'Agostino
JMD Building Products LLC

Comment: So, I had the question or comment about the regular dealer. I don't know if it makes a difference, but I'm in the building construction supply business. We have a lot of issues that are different than other, other copies, other distributions. But I understand why they are giving 60 percent, and then if you don't you drop ship it, it is 40. I think what needs to be considered, too, in my industry many industries, there's not an option. You just it gets shipped. So you have to either come shipped directly to me, and I have to ship it again, and there's a double shipping charge, but my question is, if we ensure I know a lot of states other than New York State, if we insure the material from the time it leaves the manufacturer to the time it gets accepted by the contractor or purchaser, whoever that is, to me, that is in keeping with the risk and exposure, the cuff and realities of my business. So, I would ask that there be a consideration of the 60 percent, either you deliver it yourself, or if you insure the materials?



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DEPARTMENT OF TRANSPORTATION
NPRM OVERVIEW SESSION
FRIDAY, JULY 29, 2022

Transcript

Docket #: DOT-OST-2022-0051

>> OPERATOR: Recording in progress.

>> IRENE MARION: Good afternoon, everyone, we know that folks are still coming into the space. We'll give one more minute for everyone to join the room.

All right. Well, good afternoon, everyone. Thank you so much for joining us today. And good morning or good afternoon depending on your location. My name is Irene Marion. I use she/her pronouns. I'm proud to serve as Director of the Department of Office of Civil Rights in the Office of the Secretary. I'm excited to partner with colleagues at Federal Aviation Administration, Federal Highway Administration, and Federal Transit Association to host today's administration session about the notice for proposed rulemaking for U.S. Department of Transportation disadvantaged business enterprise and airport concessioner DBE programs. Over the last 18 months, the Biden/Harris administration identified equity as a priority.

Under the leadership of Secretary Buttigieg, I'm excited to partner with the Office of Transportation policy to collate all of the activities. In May, DOT joined 90 Federal partners announcing agency level equity action plans. At DOT we have prioritized our focus on wealth creation. With this focus, we are advancing the President's commitment to ensure that we are opening all opportunities for small and disadvantaged businesses to engage with various types of procurement opportunities, that flow from the Department of Transportation.

This is an especially important time, as we are working to implement the Bipartisan Infrastructure Law.

Today, we're here to talk about a rulemaking that will be critical for our wealth creation focus. Our DBE and ACDBE teams have worked tirelessly for the last two years to develop these recommendations that we hope respond to the feedback that you have provided over the years and to truly modernize these programs.

On behalf of Secretary Buttigieg, we want to thank all stakeholders who continue to be important partners for these programs and invite your feedback on the proposals introduced today. The President stated addressing the cost of racism has been core to every part of the economic agenda and priority for this administration. This includes an agenda to close the racial wealth gap, and to invest in minority entrepreneurs and communities of color.

He has pledged to remove barriers to participation in our economy, expand access to opportunity and fully enforce policies and laws that we already have. DBE program makes this an historic commitment to ensure equity in infrastructure investments.

Today is one in a series of stakeholder sessions to communicate how you and your colleagues may share your thoughts in the NPRM process during the open public comment period. Our partners from our operating administrations, today's speakers will include Monica McCallum from Federal Transit Administration, Martha Kenley from Federal Highway Administration, Alex Horton and Nicholas Giles with FAA, and Marc Pentino, Aarathi Haig, Babette Salmon, and Sam Brooks and Lakwame Anyane-Yeboa will walk us through the NPRM proposals. And I want to thank you again for joining us today. With that, I will turn it over to Aarathi to open up our session.

>> AARATHI HAIG: Can the host turn on my video, please? Hi, everyone. Good morning, or good afternoon depending on where you are, my name is Aarathi Haig, and I am a specialist in the DBE division in the Departmental Office of Civil Rights. I am going to cover some ground rules before we get into the presentation. This entire session is being recorded, and transcribed. It is going to be available in the for public viewing in the docket, along with the full list of attendees. And that's going to be on regulations.gov.

Since we are in the comment period, which ends September 19, we will not be able to provide any substantive nonpublic information to you today. However, we can listen, answer clarifying questions, and answer any factual questions about the documents. If you have a comment, please write it in the chat box at any time during the presentation, or at the end, when we open it up, if you could please raise your Zoom hand, and we will unmute you if you would like to ask a question or share a comment that way. Again, everything will be recorded, and posted to the NPRM docket on regulations.gov. So, the DBE and ACDBE programs have been in existence for nearly 40

years, and they exist to meet the objective of preventing discrimination and remedying the ongoing effects of past discrimination, in DOT assisted contracting projects. There's nearly 47,000 DBEs and ACDBEs collectively today, and that's the figure that rose every year. And we know that the increasing numbers of certified firms, along with the pandemic's effects, along with every growing economic changes, all of that together, elevates the importance of regressing ongoing barriers to form growth and success. So, the program rules have not been outdated since 2014 and 2012. So, that's why, in 2020, DOCR, along with your civil rights colleagues at the Federal Aviation Administration, the Federal Highway Administration and Federal Transit Administration, began amending both the ACDBE and DBE program regulations. We know that we have to keep the programs current. Because we have to keep meeting what the stated objectives about remedying and preventing discrimination,

So, keeping the programs current benefits all entities involved, the disadvantaged firms, of course, the prime contractor, the state agencies that hire them, and ultimately, the entire American general public. And my colleagues now are going to review some of the top line proposals. And first, I believe we're going to hear from Babette Salmon.

>> BABETTE SALMON: Hello, everyone, my name is Babette Salmon, I'm an equal opportunity specialist at the office of civil rights, the DBE division. As you know we sought a clearer picture on the impact of the program. Two are proposed for expansion. The MAP21 state directories and uniform award reports commitments and payment for MAP21 we propose that state DOTs add details of the ethnicity of firm owners and how many firms were denied, decertified or suspended in the year. For the uniform report, we currently collect contract awards by ethnicity and gender and we

propose amending this to include owner information, the work category or trade performed, dollar values of contracts, and which firms are replaced after commitment. Lastly, as some of you are aware, all recipients collect bidders lists yet this is not reported to the operating administrations. We propose expanding the types of data to be collected in bidders lists to include details like owner characteristics, NAICS code, and bidder and winner information. We also propose creating a central database at DOT for recipients to provide this bidders list information.

I will now turn it over to Marc.

>> MARC PENTINO: Hello, I'm Marc Pentino with the Departmental Office of Civil Rights. The second item listed here is a proposal to expand state DBE directories, allowing firms to enter information about their availability, capacity, licensure, bonding, et cetera. We hear that primes find it difficult to locate DBE firms and DBEs sometimes express they need ways to connect with primes. We hope this achieves both things connecting the two parties together.

Monica?

>> MONICA McCALLUM: Thank you. So, I'm Monica McCallum from the Federal Transit Administration. The third item here is FTA proposed to simplify the DBE program and reporting requirements for recipients who spend less than 670,000 in FTA fund. Our economic analysis showed the majority of these recipients award smaller contract without subcontracting opportunities. We've retained basic requirements to have a small business element, outreach, and annual reporting for DBE participation. We propose reducing the requirements and administrative burden for smaller recipients that

are associated with race and gender conscious subcontracting activities on more complex projects than these smaller recipients typically manage.

And I'll pass it to Alex.

>> ALEXANDER HORTON: Thank you. I'm Alex Horton with the Federal Aviation Administration. The next item here you'll see is replicating the DBE small business element for the ACDBE program. This is an interest to require airports to proactively remove obstacles to participation by small businesses, including ACDBEs at FAA assisted airports. There's the proposal in the NPRM that would require recipients of FAA funding, who are subject to part 23 to create a small business element as part of their airport concession DBE program. This element would essentially mirror what is already required in the DBE program but this would be specific to airport concessions. And we're additionally proposing that airports then submit annual reports on their small business elements. And with that, I'll pass it to Martha from FHWA

>> MARTHA KENLEY: Thank you, Alex. We're proposing design build contracts that would change traditional requirements for commitment to the goal. As you know, traditionally, the bidder in a design bid build context or low bid context must name specific DBEs any submit to as subcontractor, description of the work that specific DBEs perform and specific dollar amount of the percentage of the contract they will perform. And for negotiated procurements that information must be submitted prior to contract award. We have known for the DBE participation and design build contract, that becomes very difficult to do. At the time of a request for proposals, issued by the project owner, there are many unknowns. The design details are unknown, quantities are unknown, materials, and scheduling are all unknown, so it becomes very difficult for

proposers to name specific DBEs, the contract amount, the type of work and when that will be performed. Again, most design build contracts are multiyear, so, it's very difficult to create a contract with a small business years out. So, contractors have said that goals cannot be achieved because the DBEs will not necessarily commit without subcontracting details and for a second that is so far out. So, the result often documented good faith efforts much why the goal can't be met rather than actual subcontracting to DBE has become common when the owner applies traditional commitments under 49 CFR 26 .53. So, we are proposing in the context of design build, to require instead of a business of the specific DBEs, except for perhaps those that may be known through consulting, those participating early on in the contract, that the proposal will submit a DBE performance plan, and that is their commitment to the goal on a design build project that lists the anticipated work types that the proposer will solicit DBEs to perform. The estimated value of that work type and the anticipated time frame that the subcontracts will actually be signed with DBEs in the future.

So, that is works much better than the traditional commitment to the goal and we are now changing it from a proposing to change it from a best practice into a requirement in the context of design build contract. These plans can be modified over time for various reasons, with agreements by the party, and as long as the total dollar value on the schedule remains the same and good faith efforts becomes then the recipient or owner, project owner, overseeing the design builder's commitment and fulfillment of its plan, and timing of the schedule. So, that is what we are proposing in the context specifically for design build projects and DBE commitments.

We're also proposing to clarify, or, I should say, expand the monitoring of prompt payment requirements. Right now, the guidance we have issued, in 2016, from the department, has said that the all recipients need to have a proactive monitoring system mechanism and not rely on subcontractor complaints in order to be compliant with the prompt payment and return of retainage regulations in 26.29. So, we are planning to codify that. In proposing to codify that in regulations to require recipients to have a proactive monitoring system to ensure that all subcontractors are paid promptly, either within 30 days of receipt from payment to the prime contractor, or in fewer days, depending on the state specific program.

So, that will, we think, help ensure that all subcontractors are paid promptly and receive their retainage promptly.

We also are proposing to clarify and change materials supplied credit allocation. If you look in the NPRM, you will see some proposed changes to the regular dealer requirements. One of the changes is that we are proposing to permit drop shipping from manufacturers for suppliers with distributorship agreements and allowing 40 percent credit for the cost of materials in that situation. We're also proposing to limit the total DBE allowable credit for expenditures with DBE suppliers, meaning manufacturers, regular dealers, distributorships transaction facilitators to know more than 50 percent of the contract goal, so that the rest of the contract can be met with DBE subcontractors.

Next? That's it for me.

>> SAMUEL BROOKS: Hello, everyone, I'm Sam Brooks at the Departmental Office of Civil Rights and I'm taking it from here. We adopted response to the pandemic and June 28th ended the expiration date for the guidance. Flexibilities are incorporated directly

into the rule. For example we proposed allowing virtual on site reviews and virtual hearings with staff time resources confirmed and certifying agencies and proposed the same flexibilities for summary suspension hearings. Item 9, personal net worth limit is used to find economic disadvantage. The current 1.23 million ceiling was last updated in 2011. We proposed raising the cap to 1.6 million and excluding retirement assets from the calculation. We also build in a method for adjusting the cap every five years without further rulemaking.

Can we advance the slide, please? All right. Items 10 through 18, as you can see here, reflect the modernization that Irene mentioned and they amount to a rebuild of eligibility requirements, and to streamline certification procedures. We'll dive deeper into these during the August 4th session, but, for today, suffice it to say that our overall goal was modernize and simplify the rules and make them more flexible and reasonable. We removed overly burdensome and effective rules. The proposal makes it much easier, this is item 11, for DBEs to become certified in other states. We eliminate virtually all impediments, minimize filing requirements, and require states to share information. The new procedures make interstate certification all but automatic. We propose the leading appendix E guidance for making individual determinations of social and economic disadvantaged in favor of simpler, more flexible and less prescriptive rules that are in the regulation itself.

Alex?

>> ALEXANDER HORTON: Thank you, Sam, I will need to move to the next slide so I can cover these two items on accounting before I pass it to my colleague. So, the first one here is clarifying how to count DBE participation after decertification, or some other

loss of eligibility. As you may be aware, the current part 26, 26.87(j) provides a DBE that loses its certification after the contract work is already under way, can continue to be counted toward the DBE contract goal until the end of the contract, but it cannot be counted toward the recipient's overall goal. So, as currently written, counting toward contract goals, would continue regardless of the reason the DBE was certified. The NPRM proposes modifying this language so if a DBE is decertified because it is purchased by or merges with a nonDBE firm, its participation cannot continue to be counted toward any DBE goals. The proposed rule also includes language to clarify what the count the counting approach in 26.87(j), including the proposed exclusion, applies regardless of whether the DBE is performing as a subcontractor, or as a DBE prime contractor. And the next item, about counting, is ACDBE participation, for similar circumstances, where firms are decertified during the contract performance period, because they exceeded the size standard or PNW limitations. So, the again, current rule provides that count continue counting for ACDBEs, the certification is removed because of P and W or size standard concerns during the term of the agreement can be counted for the remainder of the agreement if they remain in all other respects an eligible ACDBE after decertification. It does not clarify how to monitor this, that eligibility status, so, the NPRM establishes procedures for counting ACDBE participation for firms that are decertified during the contract performance period due to exceeding the business size standard or the disadvantaged owner exceeding the PNW limit. This would include requiring firms decertified during the term of the agreement to continue to submit no change declarations, or report changes with respect to their eligibility to continue to meet

ownership and control requirements. So, those are the two I was going to address. I'll pass it over to my colleague at FAA, Nicholas Giles.

>> NICHOLAS GILES: Thanks, Alex, for the update. What I'm going to talk about, the next topic, NPRM has burden reducing changes that address goal setting overall for specific ACDBE goals. For example, the NPRM proposes eliminating case opportunities where no opportunity is available during the setting period. The NPRM also sets changes to clarify ACDBE procedures in rare cases where the concession opportunity may only be available through goods and services purchases. With regard to reporting, the proposal is to set the shortfall analysis deadline at 30 days after the annual report of the ACDBE participation is due. For those who are familiar with long-term exclusive agreements, you know that 49 CFR 23.75 prohibits recipients from entering into long term exclusive agreements for concessions unless certain requirements are met to warrant FAA approval. Of the NPRM addresses several changes to LTE requirements and regulatory definitions. First it proposes to incorporate several concepts from the FAA's long-term exclusive guidance into the regulation. For example, it adds the definition of exclusive agreement to the regulation, and it also incorporates contract options into the definition of long-term agreement.

Second, the NPRM amends the specific documentation necessary for FAA approval of long-term exclusive agreements so as to reduce burdens for recipients by eliminating impractical and infeasible document requirements. In addition the NPRM six comment on how best should the regulation deal with holdover tendencies of short term agreements becoming long term without FAA oversight. Also seeks comment whether to extend the existing five-year period to a longer period.

That said, I'll pass it on. Aarathi?

>> AARATHI HAIG: Okay. Thank you to all of my colleagues who presented all of that information. At this time, I see that we do have questions in the chat box. And I can't quite tell if people have raised their hands to comment or not. I can go through some of the questions we've received but we cannot provide any substantive responses or any information that is not already public.

So, first question I see here is from somebody who says they are a regular dealer. There's a regular dealer webinar coming up. Should she wait to make her comments regarding the changes should she wait to make her comments then? She did submit them in writing yesterday, but she thinks it would be helpful for attendee on the call to hear some of her comments. So, Julie, since you did respond in writing already, you don't need to also make them here. I'm going to first see if there's anybody who hasn't responded in writing or else yet. And at the end, if we have time for you to make your comment, we will certainly try to do that. That's great that you made it in writing already.

So, we have a question here that says, does the \$670,000 threshold include, or exclude bus purchases? So, that's a question purely of a factual nature, can my colleagues who presented on that, give a simple yes or no answer?

>> MONICA McCALLUM: This is Monica from FTA. The 670,000 excludes bus purchases. Those bus purchases with Federal funds do need to be completed with a DBE certified transit vehicle manufacturer, and those are listed on FTA's Website.

>> AARATHI HAIG: Terrific. Thank you, Monica. Next question, would information related to certified firm bonding limit capacity, et cetera, that submitted by a DBE to UCT on a voluntary basis I'm not sure on a voluntary basis or required reporting?

>> MARC PENTINO: I can answer that. It's Marc. That would be voluntary on the DBE as NPRM mentioned we envisioned standardized fields that all UCP directories would contain and those are, I believe two of them that would be there. It's no requirement that firms enter that information. They as envisioned in the NPRM could, if they wish.

>> AARATHI HAIG: Thank you, Marc. Can we go back up to slide 5, please? Okay. There's a question regarding point 8 and it says, please clarify flexibility regarding notary services. I can speak to that a bit. So, in the pre pandemic days, notary services were performed in person. And in person is what was required in our rule and elsewhere. Then, with the pandemic, things became, you know, virtual including online notary services. So, that's what we mean by that when we say flexibility regarding notary services. Yes. It doesn't have to be in person necessarily. Let's see. The next question, all of these proposed changes are good, but holds the agencies accountable. That's not something we can speak to in this session. Will official DBE questions and answers also be updated along with the new proposed rule changes? We keep our materials as current as we can, and as is practicable. So, certainly the rules obviously are going to be updated. We'll we're always looking, taking a look at our other materials, too, to see what needs to be updated. So, stay tuned. And if you follow along with us, if you sign up for the gov delivery emails from us, you will be among the first to find out when the guidance also becomes updated.

And then will PNW continue to exclude the value of the primary residence of the owner? Yes. Will the recording of today's presentation be made available? Yes. Let's see here. Gary, your question which was who will hold the agencies accountable for violating the rules, you say that I did not answer your question, and can I tell you which session will. That question won't be addressed in the NPRM sessions. What is covered in the NPRM sessions is an never view of what is in the rule itself. And since we're in a comment period, the only information that we are able to share and the only questions we are able to answer are those that are purely factual in nature about the documents here themselves. And clarifying questions regarding those. We can't engage in any dialogue beyond that. We're not permitted to.

Okay. And then so let's there's many questions, which is exciting to see, so bear with me as I navigate here.

Okay. Please can one of my colleagues please put the gov delivery link in the chat, please? To sign up for that? There's some folks asking for that. Would we be able to speak further on items made to specialty made to spec/specialty items. For instance, we often see specialty lighting on construction project, but can only take broker credit. That is not something we can speak to today. I do invite you to read the full preamble to the NPRM. When you follow the links to see where the full document is, the preamble is that full narrative in the beginning. That's where you will read our explanation of why we propose certain things, propose whatever it is that we did. But for the purposes and scope of this session, we can't expand on that.

Let's see, will the 40 percent distributor category clearly define what the distributor agreement language must contain to pass a cuff. Can my colleagues who presented on that, can you answer that in a very simple yes or no manner?

>> MARTHA KENLEY: This is Martha. I am not sure we can answer that at this point.

>> AARATHI HAIG: Okay. It says will agencies be required to collect the new information required for bidders lists, in order to provide them a copy of the bid documents? I'm not quite sure what that's asking, I refer you to the preamble of the NPRM. That will give more detail what we are proposing and what that encompasses. It says will more clarification be submitted between race conscious and race neutral measures in the final rules? I'm not entirely sure what that question is asking, so I can't answer it. I'm not quite sure what that is asking. Will it demander to for interstate certification to be accepted by each state? Not each use deciding to accept certification without asking for all documents. This is an excellent question. So, if you read what we are proposing, it's you first have to take a step back, is what we are proposing says that first the applicant firm has to submit proof of their certification in state A, or their home state. And, you know, they have to make a written request for certification in the new state. So, once they do that, then that new state, once they, you know, verify that information has been provided, then, yes, they have to accept the certification. Afterwards they can move to decertify if they wish.

Are we able to elaborate further on the stream lining of intrastate application process? It's essentially kind of what I just said. The other streamlining portion is that applicants no longer have to submit the entire application package to state B that they

have sent to state A. That reduces the burden. They no longer have to transmit all of that information.

>> And more information about the streamline process will be discussed during the certification session.

>> AARATHI HAIG: Yes, that's right. Thank you, Lakwame for reminding me of that. There is an upcoming session just to deal with certification issues.

Could you clarify, once these new rules are put into place, will the required 12hour training be updated and be required for all recipients? I'm not automobile to answer that right now. Okay. You mention that the recording of today's presentation will be made available. Will the slide deck used today also be available? Are any of my colleagues ready to answer that?

>> LAKWAME ANYANE-YEBOA: The recording will be available by close of business. There are no plans to make the slide decks available. However, a transcript of this session will be made available sometime next week as well. If you want the slide deck, you can reach out to us directly, or we may post it as well, since it's been raised. It hasn't been raised in other sessions, but we can certainly post the slide decks.

>> AARATHI HAIG: Lakwame, could you please put in the chat who folks can contact to find out where it is posted or programs that's something that will be shared in one of the gov delivery messages.

Okay. Somebody is asking, can you provide more clarification between suspension and decertification? During this session, no. However, if you go back to the NPRM, you

will see clearly what we are proposing and what the differences are between those actions.

Okay. Will there be a compliance and enforcement segment of the NPRM? There are inherent to the rule, there is compliance and enforcement. If you take a look at the summary fact sheet, the summary sheet that we put together, you will see a top line overview, and summary of all of the topics that are covered, so that will show you what is addressed where. And then, of course, we would encourage you to read the NPRM in its entirety. And then you'll see exactly everywhere the compliance and enforcement are addressed.

Let me see here. This is great. There's so many questions. Bear with me. I'm trying not to I'm trying to make sure I get to see all of these. Okay. Can someone clarify the prompt payment requirements regarding prompt payment mentoring and enforcement. What exactly is required from the recipient? That is beyond the scope of what we are permitted to discuss right now during this session. I would encourage you to read our explanations in the preamble to the NPRM. And if you have questions beyond that, I would pose them in your written comment, and then we could take them under consideration, but we can't discuss them now during this session. If agencies are required to report bidders list information such as code and other characteristics can we require them to submit all of the data in order for them to receive bid Docs. So, you were clarifying the question you asked previously. That, too, is something we are not able to answer, again, during this session, since we are in the commenting period. We are very limited, and the types of questions that we are able to answer, and we can't provide any substantive explanations.

Will DOT consider having a national certification? Okay. This is a single Federal regulation, so, why impose administrative burden to DBEs to get certified in multiple states? So, that also is a substantive question that's beyond the scope of what we are permitted to say today. If that is something that you have an opinion on, and it sound like you do. We would encourage you to submit a written comment, formally, to the docket so we can take your thoughts under consideration.

>> LAKWAME ANYANE-YEBOA: Aarathi, we have a question. Can we unmute her to submit her comment?

>> AARATHI HAIG: I don't know how to do that.

>> I'm sorry, that was a mistake. I'm sorry.

>> AARATHI HAIG: No problem.

So, the next question, the onsite report should be the same for all agencies, so all agencies feel comfortable with the interstate certification process. Okay. That's a comment, not a question. Okay. Somebody is asking, will any of the new rules be applied only to the newly awarded projects and will not be retro active to active projects? Not entirely sure which rules which of these rules were that person is asking about. It also does sound outside the scope of what we are permitted to offer here today, though.

Will there be classification about ACDBE and DBEs that only supply products can participate as subs. Their there are a lot of revisions and proposals that we have that speak to that in general because there's a lot of that when could apply to a lot of different things of how I'm reading it. So I would encourage you to read the full text. Please show the time line again.

Could we go to the last slide again, please? So, the comment period is open until September 19th. And and we have let's see, we have five more sessions coming up. Are we able to provide more clarity under the certification eligibility section discussed regarding simplify ability to accumulate substantial well factors is this addressed in the preamble? Yes, it is. Yes. It definitely is. If you go to the preamble, you will see why we are proposing what we are.

Do we anticipate Federal audits and reviews over the next year, too? That's beyond the scope of today's session. Okay. Someone else wanted the time line. There it is. Okay.

Is there a plan to use a single software system on a national level, to have synchronized data for the UCPs? Again, because of the scope of this session, I can't speak to that. However, if there's information or thoughts that you have about that, and would like to submit them in writing, by September 19th, we would certainly encourage you to do that. Feedback from stake holders, and hearing from all of you, is critical for us, to in finalizing this rule that's going to make the rules as beneficial as they possibly can be, while keeping the program's integrity in tact and full tilling all of its objectives. So, we really value all of your questions and comments. I apologize that I can't answer all of them today and thank you for understanding the rein that I can't, which, again, is that we are in the commenting period and as such, we are very limited in the types of questions that we are able to answer and the information that we are able to provide. Again, we can only provide clarifying information, on a very high level factual basis.

>> LAKWAME ANYANE-YEBOA: Aarathi, I think we can take one last question. We see a hand raised from Kimberly Wilson. Kimberly, you can unmute yourself and submit your comment. Hopefully you have a comment.

>> Yes, hi, Lakwame and everyone else. Thank you for taking my question. I am curious about process. How are the comments being weighed in determining when the proposed changes or our comments are to be adopted?

>> AARATHI HAIG: Well, certainly, we read through every single comment that is submitted to us. And we take everything under consideration there's not an official weighing process as such, and I'm not able to provide you any details other than just to assure you that we read every single comment and take everyone's feedback very seriously. So, we really appreciate all of you taking the time to provide any comments, any questions, any feedback whatsoever that you have.

I don't think I see any oh new questions. So, Julie, I can offer you a quick minute if you want to make your comment about regular dealer now, or if you want to wait until the regular dealer session. It's up to you, but we can unmute you if you would like to share that now. Okay. Okay. You asked, if we submit a comment, would we be contacted for clarification if need be? So much of the nuances need to be explained. Thank you for taking my question. You're welcome, Kimberly.

Will the DOT are you asking for industrywide comments from yes, we are asking for comments, yes, industrywide. There's so many interested parties, in what we are proposing, and, yes, agencies like the AGC, yes, absolutely.

>> This is Julie, I finally figured out there was something on the screen I was supposed to click on. I didn't get that. So, I had the question or comment about the

regular dealer. I don't know if it makes a difference, but I'm in the building construction supply business. We have a lot of issues that are different than other, other copies, other distributions. But I understand why they are giving 60 percent, and then if you don't you drop ship it, it is 40. I think what needs to be considered, too, in my industry many industries, there's not an option. You just it gets shipped. So you have to either come shipped directly to me, and I have to ship it again, and there's a double shipping charge, but my question is, if we ensure I know a lot of states other than New York State, if we insure the material from the time it leaves the manufacturer to the time it gets accepted by the contractor or purchaser, whoever that is, to me, that is in keeping with the risk and exposure, the cuff and realities of my business. So, I would ask that there be a consideration of the 60 percent, either you deliver it yourself, or if you insure the materials?

>> AARATHI HAIG: Okay. Thank you, Julie. So, are there any other raised hands? If not, then I will I guess we can go ahead and close out. Or, actually, there's more questions here, actually. Some of them involve elaboration about the changes to require firms to have operations in the type of businesses it seeks to perform before it applies, how does this relieve certifiers from evaluating firms that have no ability to bid. Fortunately, that is out much the scope of what I am able to answer here today. Because that is a substantive question. And a professional services contract, if a DBE is suspended but not decertified on the proposal due date. Can their participation count toward a DBE goal as long as they resolve a suspension before the contract execution? I would invite you to read what we have explained in the preamble about

that issue. If it's been addressed, and following what you read, what is there, we would invite you to then pose comments or questions through regulations.gov.

>> Aarathi, if you believe something is left out of consideration, it's a good idea to note that.

>> AARATHI HAIG: 100 percent, yes. Thank you.

Please add more clarity to the following, under the heading certification eligibility. No. 14. Simplify ability to accumulate substantial wealth for rebutting economic disadvantaged. I think I answered that earlier. These are somehow a little out of order. So, yes, we will be having the certification session upcoming. You can also read about that in the preamble.

Okay. Thank you. Thank you, all. I believe yeah, I don't see any more raised hands. I believe we answered the questions that we were able to answer. So, thank you so much, everybody, for your time today, in your interest in providing such thoughtful feedback and attention and comments. This is how we are able to put Fort revised rules and regulations that best serve everybody's needs. So, again, we invite you to register and attend future sessions, you know, submit your comments by September 19th. Thank you is much, everybody.

>> Irene?

>> LAKWAME ANYANE-YEBOA: I do think we do have one more hand up from Robert.

>> AARATHI HAIG: Oh, okay. Can we unmute that person?

>> Hi. Can you guys #me?

>> AARATHI HAIG: Yes.

>> Hi. Thanks for taking my question. About the new uniform report, reporting award for payment, I didn't see any of the specifics in the NPRM. Will that form itself go out for comment, or will it just be issued as a result of all of the other comments? Thank you.

>> AARATHI HAIG: So, what's up for comment is the new fields that we are proposing to add to the uniform report. If there is a specific way that you think the form should look, you are welcome to propose that in your comments, and we will certainly take that under consideration.

>> LAKWAME ANYANE-YEBOA: Irene, you need to

>> IRENE MARION: Close us out. Thank you very much for joining us here today. Yet really important to the Secretary that we open these spaces to both provide information to ensure that this process is accessible to you, but also that we are starting to collect your comments and questions. We really appreciate all of the thoughtful comments and questions that came forward today. We definitely look forward to receiving your comments in the Federal Register process and look forward to you joining future session as well. We parked some links in the chats but hopefully you can sign up for the Website to sign up for emails to get links to the fed register process and other information on the DBE and ACDBE programs. Have a great afternoon and evening and weekend.

* * *



DBE/ACDBE

NOTICE OF PROPOSED RULEMAKING (NPRM)

OST • FAA • FHWA • FTA

**NPRM DBE Public Meeting – Overview Session
July 29, 2022**

List of Attendees

(total 272):

Docket #: DOT-OST-2022-0051

1 Franklin Adams
Michigan Department of
Transportation

2 Lorraine Aldridge
SCRRA

3 Faith Allen
Reno-Tahoe Airport
Authority

4 Mica Anderson
Denver International
Airport

5 brian ansari
BrianAnsari & Associates
Inc.

6 Lakwame (OST)
Anyane-Yebo
OST

7 Api Appulingam
City of Philadelphia,
Division of Aviation

8 Shirley Ard
Louisiana Department of
Transportation

9 Denise Baba
PARTA

10 Elly Bacon
City and County of
Denver

11 Alexandra Baker
LA County Metro

12 Traci Baker
FHWA

13 Anthony Barnes
Airport Minority Advisory
Council

14 Mario Basurto
RTA

15 Brady Bates
Diamond Coach

16 Rebecca Bates

VDSBSD

17 Frank Begalke
B2Gnow

18 Michael Bing
Washington Metropolitan
Area Transit Authority

19 Angela Booker
ISFAC, LLC.

20 Barbara Booker
TDOT

21 Whitney Booker
SBSD

22 Lisa Booth
Highway Safety

23 Himakara Borra
Borra Consulting

24 Shaun Bouy
FAA

25 Samuel Brooks

OST	WisDOT Bureau of Aeronautics	Golden Gate Bridge, Highway & Transportation District
26 Lauren Brown Metropolitan Washington Airports Authority	40 Shirlean Clayton Milwaukee County - Community Business Development Partners	53 Denotria Davis Mbroh Engineering, Inc.
27 Ronald Brown IL Dept. of Transportation	41 Jolene Cochran COA	54 Kate DeJarnette Delta Airport Consultants, Inc.
28 Andrea Cameron RGRTA	42 Alisa Coleman A & L Quality Consulting, LLC.	55 ana iris del moral PR Highway & Transportation Authority
29 Luz Campos Metropolitan Transportation Commission	43 Camille Correa Nashua Transit System	56 Lance DeMers SDDOT
30 Terence Candell Water Emergency Transportation Authority	44 Matthew Costello Allegheny County Department of Equity and Inclusion	57 Maegan Demkowski Matthews Specialty Vehicles, Inc
31 Rick Carlyle Granite Construction Company	45 Corliss Crawford TxDOT	58 Oriana Di Fede B2Gnow
32 Sharon Carter B2Gnow	46 Monica Crusse Maryland Department of Transportation	59 Greg Diehl Colorado DOT
33 Keziah Cawthorne New Orleans Regional Transit Authority-NORTA	47 Elizabeth Cruz NC Department of Transportation	60 Danielle Dietrich Strassburger McKenna Gutnick & Gefsky
34 Media Center USDOT	48 Annette Cuevas Texas Dept of Transportation	61 Brian Dominguez LA Metro
35 Chris Cialeo USDOT	49 Chris Czarnecki Port of Portland	62 Sharon Douglas Potere Construction LLC
36 Johnny Cisneros NYSDOT	50 Julie D'Agostino JMD Building Products LLC	63 Lisa Edmonds Allegheny County
37 Mydria Clark HNTB	51 Lakisha Darby Columbia Metropolitan Airport	64 Avia Elcock Theophane Virgin Islands Port Authority
38 Tamara Clark Los Angeles County Metro	52 Artemise Davenport	65 Nick Esposito B2Gnow
39 Shannon Clary		66 Keyla Evans PennDOT

67 Philistine Ferrand Louis Armstrong New Orleans International Airport	82 Lisa Glover City of Fort Lauderdale	Ohio Department of Transportation
68 Katrina Fire Oklahoma Transportation	83 Sheree Gomes RIDOT	98 Megan Hinojosa LA Metro
69 Michael Fondacaro NYSDOT	84 Debra Goss CT Department of Transportation	99 Janelle Hinton FHWA
70 Victoria Ford OGC	85 Megan Gould-Stabile Rapid Transit System	100 Kristi Hixson Missouri Dept. of Transportation
71 Shaunette Fortson B2Gnow	86 Cherie Graham B2Gnow	101 Alvin Hopson Department of Small Business and Supplier Diversity
72 jesse Friend WisDOT	87 Deborah Green Ohio Department of Transportation	102 Carrie Horner Pace Suburban Bus
73 Wendy Gaefke PennDOT	88 tracey guilliams Berkeley County Council	103 Alexander Horton FAA
74 Shawn Gannon B2Gnow	89 Aarathi Haig OST	104 Lisa Howard C&S Engineers
75 Elizabeth L. Garcia LA Metro	90 Fatema Haji-Taki Minnesota Department of Transportation	105 Meshelle Howard Washington Metropolitan Area Transit Authority
76 Marco Garcia Los Angeles Metro	91 Joi Hamilton Jones FHWA	106 Kim Hubbard Clinton National Airport
77 Keisha Gash Austin Transit Partnership	92 Megan Handl Montana Department of Transportation	107 Joseph Huber Cincinnati/Northern Kentucky International Airport
78 Haley Gelnette Brookville Equipment Corporation	93 Sharon Harvey OMWBE	108 WANDA HUGHLEY- CULBERTSON Department of Transportation
79 ROBIN GIBSON Fraport USA	94 RENEE HAWKINS- PRESHA MDOT	109 Deanna Irvine NYS-DOT
80 Nicholas Giles FAA	95 LAVERL HENDRIX MDOT	110 Alfred Isaacs NA
81 Diane Gillam FAA	96 Jake Hesseling OKI	111 LaTosha James
	97 Sarah Hibbard	

WMATA	126 Robert Lenahan SEPTA	141 Monica (FTA) McCallum FTA
112 Cee Jay OST	127 Samantha Leslie San Diego Metropolitan Transit System	142 Deborah McElroy ACI-NA
113 Marlo Johnson WMATA	128 Mikael Levy CAD Railway Industries	143 Claire McKenna Metropolitan Washington Airports Authority
114 Rachel Johnson Nashville MTA / WeGo Public Transit	129 Romaine Lewis SRL Enterprises LLC	144 Melyssa Mdumuka Minnesota Department of Transportation
115 KATE KANABAY The Grove, Inc.	130 Stephen Lewis AGC of Missouri	145 Ofelia Medina FAA
116 Martha (FHWA) Kenley FHWA	131 Irena Lezhen NYSDOT	146 Mario Mejia City of Phoenix
117 Tiffany King SEPTA	132 Irma Licea LA County Metro	147 Jean Meyer MnDOT
118 Anna Kissel University of Wisconsin - Milwaukee	133 Michael Liebler Higher power industries	148 Ross Mitchell Alamo NEX Construction, LLC
119 Lisa Kosanovich Beaver County Transit Authority	134 Aryan Lirange FHWA	149 Dwayne Moore FDOT
120 Maria Kraska Passero Associates	135 Nicolas Lopez Talgo Inc	150 Timothy Moses State of Alaska DOTPF Civil Rights Office
121 Beverly Kuykendall AvMEDICAL	136 Francoise Lyles- Wiggins St. Louis Lambert International Airport	151 Amr Mostafa VIA METROPOLITAN TRANSIT
122 Troy Larsen New York State Department of Transportation	137 Irene Marion OST	152 Katharine Mottley American Council of Engineering Companies
123 Ayanna Lawrence B2Gnow	138 Kristina Martine Central Contra Costa Transit Authority	153 Mike Mucha VDRPT
124 thomas le BART	139 Richard Martinez VIA Metropolitan Transit	154 Diponker Mukherjee DOT
125 Debra Lee Illinois Department of Transportation	140 Aaron Matzke Nebraska Department of Transportation	155 Rosemary Nagle Skanska

156 Kimle Nailer Nail-Rite Construction Company Inc	170 Christine Pham San Diego County Regional Airport Authority	184 Robb Romeo City of Albany
157 Felila Narotski City of Redmond - Redmond Municipal Airport	171 Mark Porter Utility Consultants of Florida INC	185 Andrea Ross Virginia Department of Small Business and Supplier Diversity
158 David Neese TDOT	172 Edward Pritchard FRA	186 Chermaina Roundtree Airport Minority Advisory Council
159 Tamara Nicholson Unicorn Consulting Solutions	173 KEVIN QU CRRC SIFANG AMERICA INC.	187 Michael Russell SBSD
160 Robert Nixon Diversity Matters 2 US LLC	174 Joyce Quarles Small Business Programs Office	188 Jorge Saavedra BART
161 Brenda Nnambi Sound Transit	175 Maakor Quarmyne LA Metro	189 Edward Salcedo GCAP Services, Inc.
162 Mary Ortega-Itsell Genesis Consulting Group, LLC	176 Maria Quiroz San Diego International Airport	190 Babette Salmon OST
163 Ramon Ortiz LA Metro	177 Monica Rama NYS Department of Transporation	191 Maret Salsbury NYSDOT
164 Carol Ott Department of Transportation-PennDOT	178 Mandie Reardon Colliers Engineering & Design	192 Aldrin Sanders Florida Department of Transportation
165 Florence Parker OKI Regional Council of Governments	179 LaToya Redd Regional Transportation Authority (RTA)	193 Denise Sarchiapone B&D Environmental Consulting
166 Joann Payne Women First	180 Ken Richards Driverge Vehicle Innovations	194 Ashley Schnetzer ecoPreserve LLC
167 David Pegg City of Greensboro	181 Ana Rivas VIA Metropolitan Transit	195 Stephanie Seaton PA Department of Transportation
168 Marc Pentino OST	182 Lilliette Rivera WMATA	196 Felecia Shaw City of Austin Small & Minority Business Resources Department
169 Lisa Phair Port of Seattle	183 Alejandro Rodriguez Milwaukee County CBDP	197 Lindsay Shelton- Gross

WTS International	ARBOC Specialty Vehicles	Depart. of Small Business & Supplier Diversity
198 Jorge Sigler Garcia B2GNOW	213 Crystal Spriggs PennDOT	227 Stacie Tiongson American Public Transportation Association
199 Hoa Sin BART	214 Pragati Srivastava Memphis MPO	228 Kristal Todd KST Notary Services
200 Sanjay Singh DOT	215 Sarah Starzec State of Alaska DOT&PF Civil Rights Office	229 pam todd FHWA
201 Natalie Smalls MDOT	216 Jessica Steed Suntran City of St. George	230 Tony Tran LA County Metro
202 Bruce Smith Otak	217 Terrence Stevens New Towne Constructors LLC	231 Katherine Tsou Hanson Bridgett LLP
203 Crystal Smith Michigan Department of Transportation (MDOT)	218 Joseph Stuhlman New York State Dept of Transportation	232 Kalia Vang Metropolitan Council
204 Deanna Smith Monterey-Salinas Transit District	219 Tara Summerlin Oklahoma City Airport Trust	233 Polly Vann V-tech Environmental Services
205 Doretha Smith DOA	220 Maria Support US DOT	234 Michael Violi Midway Specialty Vehicles
206 Tashai Smith Los Angeles Metro	221 Sherod Sutton FDOT	235 Theresa Vottis NYSDOT
207 Jason Sneed ODOT	222 Dawn Sywulski Rochester Genesee Regional Transportation Authority	236 Deryck Wade US Safety Solutions, LLC
208 Cynthia Sosa Rivera Puerto Rico Highways and Transportation Authority	223 Chi Tang Pace Suburban Bus	237 Gary Wade MWDBE Training Academy
209 Margarita Soto PSTA	224 Matthew Taylor LA Metro	238 Alexander Waggoner Metrolink
210 Kiesha Speech Cardinal FDL	225 Christine Thorkildsen FHWA	239 Lauren Waldron WTS International
211 Lauren Spillers DBE Plans & Goals Preparation Services, LLC	226 Calvin Thweatt	240 David Walker

Ohio Department of
Transportation

241 Rhonda Wallace
Louisiana Department of
Transportation and
Development

242 Nick Warren,
Memphis MPO
Memphis MPO

243 Andrew Weddig
Airport Restaurant &
Retail Association

244 Keith Wiener
HOLLAND & KNIGHT

245 Daniel Williams
Texas Department of
Transportation

246 Shawna Williams
GCAC

247 Stephanie Williams
MassDOT

248 Tiffanie Williams
WYDOT

249 Tia Williams-Hayes
ODOT

250 Holly Wilson
KYTC OCRSBD

251 Kimberly Wilson
Port of Oakland

252 Marie Wilson
In2itive Architecture

253 Ryan Wilson
FHWA

254 Stevi Wilson
B2Gnow

255 Tremaine Wilson
FHWA Arizona Division

256 Eboni Wimbush
Airport Minority Advisory
Council (AMAC)

257 Stephanie
Winternheimer
Valley Metro

258 Michael Young
TDOT

259 Lisa Tompkins
New York State
Department of
Transportation

13 attendees joined the
meeting via
teleconference