

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary of Transportation**

**DOCKET NO: DOT-OST-2009-XXXX**

**Notice of Funding Availability for Disadvantaged Business Enterprise American Recovery and Reinvestment Act Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP)**

**AGENCY:** Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Transportation (DOT)

**ACTION:** Notice of Funding Availability

**SUMMARY:** The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the availability of \$20 million provided by the American Recovery and Reinvestment Act of 2009 (ARRA) for the reimbursement of bonding premiums and fees incurred by Disadvantaged Business Enterprises (DBE) competing for, or performing on, transportation infrastructure projects receiving DOT ARRA funding.

*Catalog of Federal Domestic Assistance (CFDA) Number: 20.904 Bonding Assistance Program*

*Type of Award: DBE Financial Assistance.*

*Estimated Average Size of Award: \$11,300*

*Estimated Number of Awards: 1,770*

DOT is not bound by any estimates in this notice. Awards will be made in the order of application receipt until funding is fully expended or the program closes on September 8, 2010.

*Program Authority:* Funding for the DBE ARRA BAP has been provided to DOT by ARRA (Pub. L. 111-5, Feb. 17, 2009) to be administered pursuant to 49 U.S.C. § 332(e).

DOT established its OSDBU in accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. OSDBU administers the provisions of Title 49, United States Code, Section 332.

DOT/OSDBU has posted a synopsis of this announcement on <http://www.govbenefits.gov>.

**DATES:** Applications will be available beginning August 14, 2009. Applications must be received by mail or electronically transmitted to DOT OST OSDBU on or before September 8, 2010 for bond issue dates for ARRA projects on or after the date of this notice, August --, 2009. Provided OSDBU is given an email address, applicants should receive a confirmation email. Regardless, the applicant is advised to request delivery confirmation for mail submissions or return receipt for email submissions. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications.

**ADDRESSES:**

Applications may be submitted to OSDBU electronically via email at [bap.arra@dot.gov](mailto:bap.arra@dot.gov). Mailed applications may be submitted to DOT/OSDBU, 1200 New Jersey Avenue, SE., Suite W56-497, Washington, DC 20590, Attn: DBE ARRA BAP.

**FOR FURTHER INFORMATION:** For further information concerning this notice, contact OSDBU at U.S Department of Transportation, 1200 New Jersey Ave, S.E., Room W56-497, Washington, DC 20590. Telephone: 1-800-532-1169. Email:

[bap.arra@dot.gov](mailto:bap.arra@dot.gov). Additional guidance may be found at

<http://www.dot.gov/recovery/ost/XXXXXX>

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**I. Overview**

On February 17, 2009, the President of the United States signed the American Recovery and Investment Act of 2009 (Pub. L. 111-5) (ARRA) to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. Pursuant to ARRA, DOT was appropriated a combined \$48.1 billion in funding for the purpose of stimulating the economy and investing in the nation's transportation infrastructure. ARRA also appropriated \$20

million to the Department of Transportation for Disadvantaged Business Enterprise bonding assistance.

The DOT OSDBU has established the DBE ARRA Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP) to distribute the DBE bonding assistance provided by the ARRA. The term “Disadvantaged Business Enterprise” (DBE), includes a for-profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women, and is set forth in Title 49 Code of Federal Regulation Part 26 (49 CFR 26).

The Miller Act (40 U.S.C. Section 3131 to 3134) provides that, before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the Federal government with a performance bond in an amount that the contracting officer regards as adequate for the protection of the Federal government and; a separate payment bond for the protection of suppliers of labor and materials. A bid/proposal bond may also be required. States have enacted “Little Miller Acts” that impose similar bond requirements for state and local projects.

Surety companies charge a premium fee to all contractors to ensure the surety company’s financial backing and guarantee. These premium rates vary between 2% and 3% of the contract amount. If a contractor wants to use SBA’s Surety Bond Guarantee Program (SBGP), SBA charges the contractor or small business concern (principal) a fee of .729% of the contract price to finance potential claims against the bond.

The purpose of the DBE ARRA program is to assist DBEs to participate in the ARRA investment in transportation infrastructure and to address the disproportionate effect that the increase in unemployment has had on minority-owned and women-owned businesses by assisting them to obtain transportation infrastructure contracts at the local, state and federal levels through a reduction in the cost of bonding.

The bonding assistance provided by the DBE ARRA BAP will allow DBEs with traditionally less working capital than large transportation-related contractors to perform on transportation infrastructure projects receiving ARRA funding from any DOT mode of transportation, such as Federal Highway Administration, (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the Maritime Administration (MARAD). In addition, the assistance provided to the DBE to compete for, and execute contracts for ARRA projects, will position the DBE to compete for future transportation contracts at any tier from any Federal, state, or local transportation agency.

The DBE ARRA BAP is bonding assistance in the form of a bonding fee cost reimbursement. DOT will directly reimburse DBEs the premiums paid to the surety company for performance, payment or bid/proposal bonds. In the event the DBE also obtains a bond guarantee from Small Business Administration's (SBA) Surety Bond Guarantee Program (SBGP), the DOT will also reimburse the DBE for the small business concern (principal) fee of .729% of the contract price.

## **II. Eligibility Information and Program Requirements**

### **A. General Requirements**

1. Civil Rights Act of 1964, as amended (42 U.S.C. 2000d). Compliance with civil rights statutes is required, including compliance with equity in service.
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act (ADA) requirements in 49 CFR parts 27, 37, and 38.
3. A DBE must execute a Certificate Regarding Lobbying in compliance with 49 CFR Part 20
4. An application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
5. Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98.

B. ARRA BAP Reimbursement Program Eligibility

To be eligible for a performance, payment, or bid/proposal bond fee cost reimbursement under the DBE ARRA BAP, a contractor must:

1. be a certified DBE in accordance with Title 49 Code of Federal Regulation Part 26 (49CFR26);
2. have a current Dun and Bradstreet Number (DUNS#);
3. be registered in the Central Contractor Registration (CCR), CCR.gov, complete with bank information for electronic payment; and
4. Provide goods or services on a contract for a transportation-related project receiving DOT funding pursuant to ARRA or if a bid/proposal bond is required,

bid on a contract for a transportation infrastructure project receiving DOT funding pursuant to ARRA.

5. Applications must be received by mail or electronically submitted to DOT OST OSDBU on or before September 8, 2010 for bonds issued on ARRA projects with issue dates on or after August --, 2009. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications.

Bonding premiums and fees incurred by the DBE prior to this notice are not eligible for reimbursement under the DBE ARRA BAP.

- C. Types of surety bonds eligible for reimbursement of bond premiums and fees under the DBE ARRA BAP: A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities. The following are types of surety bonds eligible for reimbursement of bond premiums and fees:

1. Bid/Proposal – A bond which guarantees that the bidder on a contract will enter into the contract and furnish the required payment and performance bonds. A proposal bond also guarantees that the offeror on a contract will enter into the contract and furnish the required payment and performance bonds. It is used in response to a Request for Proposal (RFP).
2. Payment – A bond which guarantees payment from the contractor to persons who furnish labor, materials equipment and/or supplies for use in the performance of the contract.

3. Performance – A bond which guarantees that the contractor will perform the contract in accordance with its terms.

### **III. Application Process**

- A. The DBE will select an approved surety company listed in Department of the Treasury's Listing of Approved Sureties (Department Circular 570) and establish a business relationship.
- B. The DBE will submit a bond application to the surety company in accordance with the surety company's requirements. In the event the DBE is participating in the SBA's SBGP, the contractor will comply with SBA's requirements.
- C. Upon approval, the DBE will pay all required bonding premiums. In the event the DBE is participating in the SBA's SBGP, the DBE will also pay SBA's principal fee.
- D. To receive reimbursement from DOT for the bonding premium/fees paid to the surety company and possibly SBA, the DBE will be required to submit an Application for Reimbursement of Bond Fees to DOT. A separate application must be submitted for each bond for which the applicant is seeking reimbursement of the bond premiums and fees paid by the applicant. Applications submitted by mail may be delayed due to mail screening security requirements. For faster reimbursement, the DBE should consider electronic submission by email. The application is an electronically fillable application form. We strongly suggest applicants utilize the electronically fillable form to complete the application entries. Illegible applications will delay processing time. The DBE will be required to submit the following information on the form:

1. Legal name of the company and full street address of the primary business location
2. TIN (Federal Tax ID Number)
3. Dun & Bradstreet Number (DUNS)#
4. Affirmation that the DBR is registered in central contractor registration (ccr.gov), inclusive of banking information
5. Surety bond information
  - (a) Bond number
  - (b) Date of issue
  - (c) Name of surety company
  - (d) Type of bond
  - (e) Bond amount
  - (f) Total bond premiums and fees for which the DBE is seeking reimbursement
6. Transportation-related contract information
  - (a) Contract Awarder (Agency/Prime/Subcontractor)
  - (b) Contract number
  - (c) Federal project number and Name
  - (d) Contract amount
  - (e) Contract start date
  - (f) Contract estimated completion date
7. DBE certification information
  - (a) Certification that the applicant is a DBE and the contract being bonded is a transportation-related contract

- (b) Name of the entity which certified the contractor's business as a DBE
  - (c) State of certification
  - (d) Certification expiration/renewal date
  - (e) The most current annual affidavit date. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
8. Signature of applicant and contact information
  9. Certification that the DBE has not sought reimbursement for the bond fees for which they are seeking reimbursement from DOT, nor will the DBE seek reimbursement in the event they receive reimbursement from DOT. The DBE will also provide consent for DOT to contact the agency/prime/subcontractor to confirm non-reimbursement of the bond fees.
- E. The DBE will be required to submit the following documentation with the application:
1. A copy of the bond
  2. A copy of the contract
  3. DBE certification letter from the DBE certification office in their state and a current annual affidavit. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
  4. Regardless of whether the DBE is a prime contractor or a subcontractor, a letter from the federal, state or local transportation authority, on their letterhead, indicating the DBE is a prime contractor or a subcontractor and the federal project number. In the event the DBE is already in possession of other documentation

- from the federal, state or local transportation authority indicating the federal project number, that documentation may be submitted in lieu of the letter.
5. A copy of their invoice(s) from the surety company and if applicable, SBA and cancelled checks or other proof of payment of the bond fees in support of the total amount claimed for reimbursement.

The Application for Reimbursement of Bond Fees, application instructions, and additional guidance is located at <http://www.dot.gov/recovery/ost/XXXXXX>

#### **IV. Application Content**

Submitted Applications must contain:

- A. A completed and signed application
- B. Supporting Documentation outlined in Section III.E
- C. Certificate Regarding Lobbying in compliance with 49 CFR Part 20
- D. Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- E. Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98.

#### **V. Application Approval**

OSDBU will review submitted applications in the order of receipt. Applications will be reviewed for eligibility and completeness. Applications that are incomplete or contain inaccurate information will not be considered for approval. OSDBU will verify supporting documentation and the DBE's registration status on [www.ccr.gov](http://www.ccr.gov).

Incomplete applications will not be considered for approval. OSDBU will notify the

applicant in the event of approval or disapproval of an application. The Director or OSDBU or his designee will provide signatory approval on applications approved for cost reimbursement. DOT intends to expedite payment of approved applications. Payment will not be made for approved applications until the DBE's bank information is completed in their registration profile on [www.ccr.gov](http://www.ccr.gov).

## **VI. Reporting Requirements**

- A.** ARRA Section 1512 Recipient Reporting: DBEs that receive bonding assistance under DBE ARRA BAP are not subject to reporting requirements under Section 1512 unless such awards of assistance exceed the reporting threshold of \$25,000 for prime recipients. DOT also notes that eligible recipients are already subject to ARRA Section 1512 recipient reporting requirements by the DOT modes of transportation, such as FHWA, FTA, FAA, FRA, and MARAD. Please reference additional guidance located <http://www.dot.gov/recovery/ost/XXXXXX> for specific Section 1512 reporting instructions for recipients of bonding assistance under the DBE ARRA BAP
- B.** Other Reporting: To satisfy the needs for transparency and accountability related to funding appropriated under the ARRA, DBEs may be required to provide additional information not yet specified in this notice to satisfy requests from the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Government Accountability Office (GAO), or the DOT Office of Inspector General (IG). DOT/OSDBU will inform the DBEs if and when such additional reports are required. Through its participation in the DBE ARRA BAP, the DBE agrees to provide the additional required information.

## **VII. Technical Assistance**

Technical assistance pertaining to the DBE ARRA BAP is available from OSDBU headquarters, S-40, 1200 New Jersey Avenue SE Washington, DC 20590 1-800-532-1169 or through the regional DOT Small Business Transportation Resource Centers (SBTRC).

### **Small Business Transportation Resource Centers (SBTRCs):**

#### **Northeast Region:**

New York, Headquarters

New Jersey

Massachusetts

Connecticut

Rhode Island

Maine

New Hampshire

Vermont

Contact: LaGuardia Community College

Elizabeth Perdomo

Project Director, SBTRC

LaGuardia Community College

29-10 Thompson Avenue, 9th Floor

Long Island City, NY 11101

Telephone: (718) 482-5941

FAX: (718) 609-2036

Email: [eperdomo@lagcc.cuny.edu](mailto:eperdomo@lagcc.cuny.edu)

**Mid Atlantic Region:**

Pennsylvania, Headquarters

Maryland

Virginia

District of Columbia

Delaware

West Virginia

Contact: Greater Philadelphia Minority Business Strategic Alliance

Tiffany L. King

Project Director

105 N. 22nd Street

Philadelphia, Pennsylvania 19103

Telephone: (215) 399-0062

Fax: (215) 399-0063

Email: [tking@gpmba.com](mailto:tking@gpmba.com)

**South Atlantic Region:**

North Carolina, Headquarters

Tennessee

South Carolina

Kentucky

Contact: North Carolina Agricultural and Technical (NC A&T) State University

George C. Jones, Jr.

Project Director, SBTRC

Rm 312-G Craig Hall

The Transportation Institute

NC A&T State University

1601 E. Market Street

Greensboro, NC 27411

Ph: (336) 256-2111

Fax: (336) 334-7093

Email: [gcjones@ncat.edu](mailto:gcjones@ncat.edu)

**Southeast Region:**

Florida, Headquarters

Georgia

Alabama

Mississippi

Puerto Rico

US Virgin Islands

Contact: Miami Dade College

Adrianna Clark

Project Director, SBTRC

Miami Dade College, Homestead

500 College Terrace, Office B230

Homestead, FL 33160

Telephone: (305) 237-5115

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Email: [aclark1@mdc.edu](mailto:aclark1@mdc.edu)

**Gulf Region:**

Texas, Headquarters

Louisiana

Oklahoma

New Mexico

Arkansas

Contact: Greater Dallas Hispanic Chamber of Commerce

Yolanda Tafoya

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**Great Lakes Region:**

Illinois, Headquarters

Indiana

Michigan

Ohio

Wisconsin

Contact: Hispanic American Construction Industry Association

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Project Director, SBTRC

901 W. Jackson Blvd., Suite 205

Chicago, Illinois 60607

Telephone: (312) 666-6070, ext 22

Fax: (312) 666-5692

Email: [jgomez@haciaworks.org](mailto:jgomez@haciaworks.org)

**Central Region:**

Missouri, Headquarters

Colorado

Minnesota

Iowa

Kansas

Nebraska

South Dakota

North Dakota

Wyoming

Contact: University of Missouri-Columbia

Rhonda K. Wilson

Project Director, SBTRC

W1026 Lafferre Hall

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**Southwest Region:**

California, Headquarters

Arizona

Utah

Nevada

Hawaii

Contact: US Pan Asian American Chamber of Commerce

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San Francisco, CA 94103

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**Northwest Region:**

Washington, Headquarters

Oregon

Alaska

Idaho

Montana

Contact: Economic Development Council of Snohomish County

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