



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

49 CFR Part 26

[Docket No. OST-2012-0147]

RIN: 2105-AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

Agency: Office of the Secretary (OST), DOT.

Action: Notice of Proposed Rulemaking (NPRM); Notice of Reopening Comment Period and Public Listening Session

SUMMARY: On September 6, 2012, the Department of Transportation (DOT) issued a notice of proposed rulemaking (NPRM) concerning various modifications to the Department's Disadvantaged Business Enterprise (DBE) Program. In a later notice published on October 25, 2012, the Department extended the public comment period until December 24, 2012. Various commenters to the NPRM expressed interest in the Department holding a public meeting on the proposed changes prior to issuing a final rule. The Department agrees. The Department will hold a public listening session on the changes proposed in the NPRM on October 9, 2013, from 12:00 p.m. EDT to 4:00 p.m. EDT in the Department's Washington, D.C. headquarters. The Department is simultaneously reopening the comment period from [insert date of publication] to October 30, 2013. Interested persons from both the public and private sectors are invited to offer their views orally or in writing on specific aspects of the NPRM noted below.

DATES: A public listening session will be held on October 9, 2013, in Washington, D.C., which will commence at 12:00 noon EDT and end no later than 4:00 pm EDT. The comment period for the NPRM is extended to October 30, 2013.

ADDRESSES: (1) Public Listening Session: The public listening session will be held at DOT's Washington, D.C. Headquarters at 1200 New Jersey Avenue SE, Washington, D.C., 20590, in the Oklahoma City conference room located on the ground floor of the West Building. (2) Attendance: Due to security and seating limitations, any person wishing to attend the listening session should register at least five business days before the date of the session (October 2, 2013) by going to the OSDDBU website at www.dot.gov/osdbu. Seating is on a first-come first-served basis and space is limited. For information on facilities or services for persons with disabilities or to request special assistance at the meeting, please contact Marilyn Hearn in DOT's Office of General Counsel by telephone (202-366-9154) or by email (Marilyn.Hearn@dot.gov) as soon as possible. (3) Teleconference: Please contact Marilyn Hearn if you wish to participate in this public listening session via teleconference line.

FOR FURTHER INFORMATION CONTACT: Jo Anne Robinson, Office of General Law, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-6984, JoAnne.Robinson@dot.gov.

SUPPLEMENTARY INFORMATION:

On September 6, 2012, the Department published a notice of proposed rulemaking (NPRM) entitled, "Disadvantaged Business Enterprise: Program Implementation Modifications," at 77 FR 54952, that proposed various changes to the Department's DBE program, including: revisions to personal net worth, application, and reporting forms; modifications to various certification-related provisions of the rule; and revisions to several other

provisions of the rule, concerning such subjects as good faith efforts, transit vehicle manufacturers and goal setting. The Department then published a notice on October 25, 2012, at 77 FR 651164, that corrected minor errors in the NPRM related to the Paperwork Reduction Act and extended the public comment period until December 24, 2012. Several commenters suggested that the Department hold a public meeting or listening session on the proposed changes before issuing a final rule. After reviewing the comments, the Department agrees that a public listening session would be helpful to all relevant stakeholders as well as interested members of the public and has scheduled a public listening session for October 9, 2013.

Listening Session

The listening session will provide an opportunity for interested parties to articulate the issues and concerns they have with certain aspects of the NPRM. In particular, the Department is interested in hearing from the public on the following:

1. What are the specific, quantifiable costs and benefits associated with completing or reviewing the proposed forms (Personal Net Worth, Certification Application, Uniform Report on Awards/Commitments; DBE Payment Data) from the perspective of a certifying entity, an applicant firm, or a recipient (where applicable);
2. What are the specific, quantifiable costs and benefits associated with requiring certified DBEs to submit additional documents with the annual no change affidavit from the perspective of a certifying entity and a certified DBE;
3. What are the specific, quantifiable costs and benefits associated with requiring good faith efforts documentation when bids are due and requiring additional documents (i.e., DBE and non-DBE quotes, DBE subcontracts) from the perspective of a prime contractor, a DBE, and the recipient letting the contract.

Any person wishing to participate in the listening session should notify DOT by telephone or by email, at the addresses provided in the Attendance section of this notice at least five business days prior to the date of the listening session (October 2, 2013). The notification should identify the party the person represents, and the particular subject(s) described above the person plans to address. The notification should also provide the participant's contact information. Please put "NPRM Listening Session" in the subject line of the email notification.

At the listening session, a DOT representative will make an opening statement outlining the procedures for the session. Speakers' remarks will be limited to 5 minutes each, although the Department may need to limit the duration of presentations, if necessary, to provide all participants the opportunity to speak. If sufficient time exists after all initial statements by those wishing to speak have been completed, the Department may allow those persons wishing to make a brief rebuttal to do so in the same order in which the initial statements were made. If necessary, the Department may provide additional instructions and modify speaking limits at the time of the listening session. A transcript of the discussions will be made a part of the public docket in this rulemaking.

Extension of Comment Period

To accommodate the public listening session and to provide interested parties the opportunity to submit comments in response to views or information provided at the public listening session, the Department is reopening the comment period for this rulemaking from [insert date of publication] to October 30, 2013. You may submit comments (identified by the agency name and DOT Docket ID Number OST-2012-0147) by any of the following methods:

- *Federal Rulemaking Portal:* Go to www.regulations.gov and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. Materials may also be submitted directly to DOT staff at the public listening session.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

Issued this 9th day of September, 2013 at Washington, D.C., under authority delegated in 49 CFR part 1.27.

Kathryn B. Thomson

Acting General Counsel

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