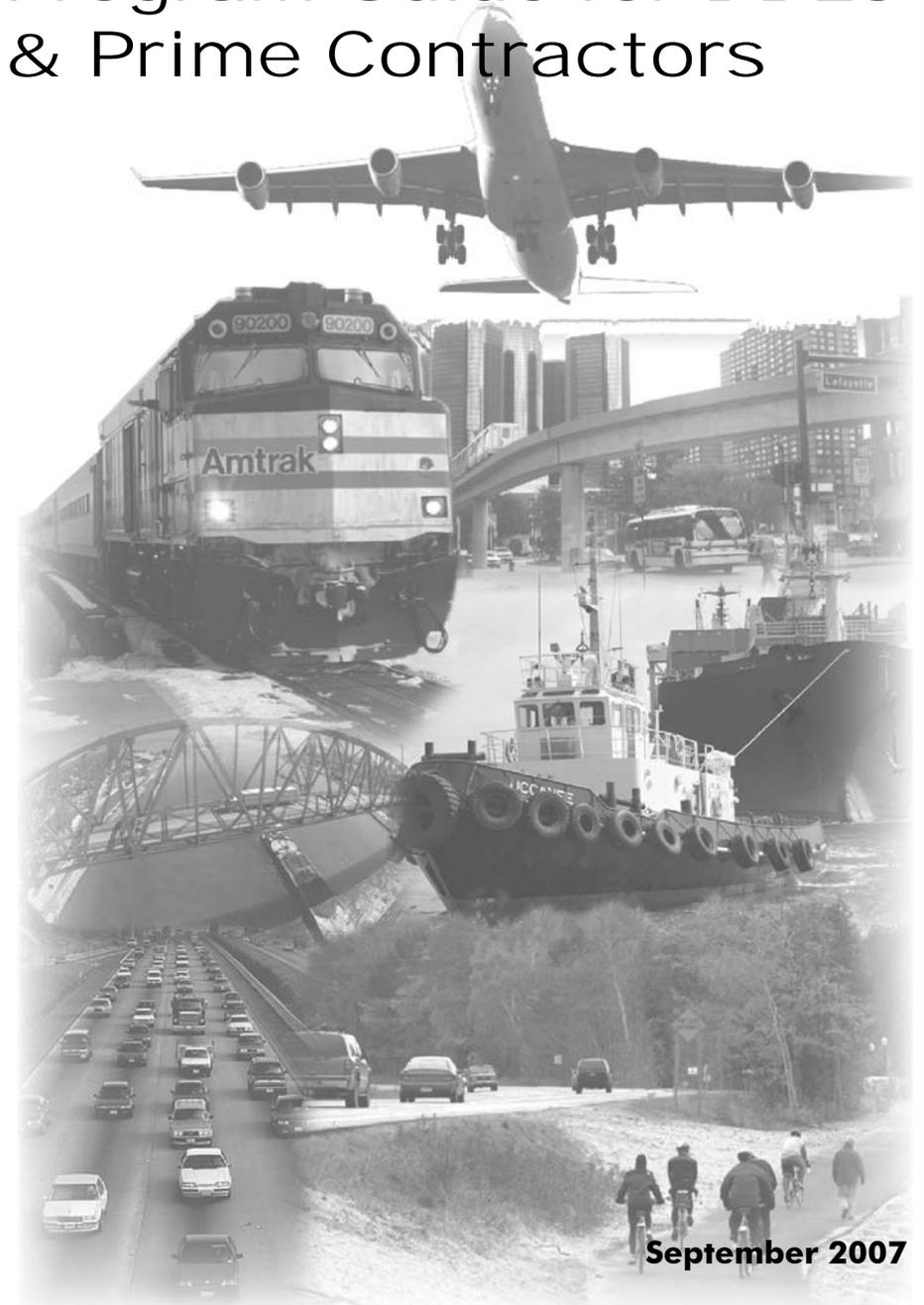


Disadvantaged Business Enterprise (DBE)

Program Guide for DBEs & Prime Contractors



MDOT: Providing the highest quality integrated transportation services for economic benefit and improved quality of life.

Prepared by: MDOT Graphics\OEO\DBE\What DBEs need to know.ind 9/07 (CJ)
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Downloading Search Results

To save search results, press “**download search results**,” located on the right side of the screen. This will allow you to either open the search results in Microsoft Word, or save results for later viewing.

Advanced Searches

Advanced search functions narrow down the list of available DBEs. For example, if you are looking for a company to truck sand in Clinton County:

- **On the MUCP homepage, use the pull down arrow to select “trucking” under “Type of Business.”**
- **Then use the pull down arrow under Work Location County to select “Clinton” and click “search.”**

Search results showing all DBE truckers willing to work in Clinton County.

- **Next, press “CTRL” and “F” at the same time. In the search box, type “sand.” Then press “Find Next” and the search engine will jump to each entry with the word “sand” in it. Continue to hit “find next” until you have seen all the entries.**

“CTRL-F” can be used to search for a particular type of business as soon as any search results appear. Similar to searching for a vendor by name, use only a portion of the name of the type of work. For example, if you are looking for a firm to do electrical work, enter only “elect” in the search. The “find next” function will locate all firms with “elect” in work descriptions (i.e., electrician, electrical, electronics, etc.)

- **If looking for MDOT prequalified contractors, press “CTRL-F” and enter “prequ” in the search box. MDOT prequalification classifications are listed in parentheses in the work description for each DBE.**

For further assistance, please contact one of the organizations listed under “Contact MUCP” at the top of the MUCP homepage.

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DBE Participation Sheets (MDOT Form 0178)

A Disadvantaged Business Enterprise (DBE) participation sheet/commitment sheet is not a contract it is a commitment to work on a contract which has DBE goals. Never sign a blank DBE participation sheet or a sheet that is not completely filled out.

Keep a copy of all DBE Participation sheets you have signed.

Do not sign a DBE participation sheet unless you are DBE-certified, and, if required, MDOT prequalified, in the work. Do not allow another person to sign the sheet on your behalf.

Before signing a DBE Participation sheet, talk to the prime contractor and review contract documents to determine if there are special requirements, such as expedited progress schedules or non-standard items which will impact your work. Be wary of request to provide information unless you first sign a DBE Participation sheet.

Your DBE technician/Engineer or MDOT's Office of Business Development can arrange for you to review plans or proposals.

In addition to the DBE participation sheet, be sure to execute a legal subcontract or purchase order, depending on the nature of the work you plan to do, which includes federal and state-mandated language required by the contract.

- **It is not necessary to execute a subcontract or purchase order at the time of signing the DBE Participation sheet, however, these documents must be executed before starting project work.**
- **MDOT is entitled to obtain documents related to the contract. Failure to cooperate by providing requested information can result in removal of DBE certification.**

Do not sign a DBE Participation sheet if you do not have the expertise or ability to complete the job. If you discover a DBE Participation sheet has been submitted for your company and the prime, or another contractor, does the work, or you only do a small portion of the work, let MDOT's Office of Business Development know right away.

DBEs and primes who subvert the intent of the DBE program by providing false documentation related to DBE participation on a contract will be penalized. Penalties are based on the nature of the violation and range from a simple warning to criminal prosecution.

DBE Firm Name

- **Spell the name of the DBE correctly.**
- **If unsure of the correct spelling or format of a name, search on part of the name. For example, locate "A person Enterprises" by entering "son" in the box next to "DBE Firm Name." Then press "search," located on the right of the screen under "Work Location by County." All businesses containing "son" in their name will appear.**
- **If the company has an "&" symbol in its name, make sure to spell out the word "and" while searching. For example, if you are looking for "Y & Z Industries," type in "Y and Z ".**
- **The database will bring up the entire list of certified DBEs by simply typing in the first letter. This may be the easiest way to search when unsure of the spelling or full name of the business.**

Type of Business

- This search identifies DBEs by their primary type of work. Click on the drop down arrow (the upside-down triangle), select the best option and press "search."

Work Location County

You can search for DBEs by county. Click on the drop down arrow (the upside-down triangle), select the county of interest and press "search."



Tip: Selecting options listed under both "Type of Business" and "Work Location County" before pressing "search" will narrow down the list of available DBEs to only those DBEs working in the type of business and county chosen.



- ▷ Identify work items, including partial items, which will be performed by others. Include the unit price charged by each subcontractor, including second- and third-tier subcontractors.

- ▶ Items or partial items to be performed by DBEs should be identified as DBE items. Again, include unit prices.

- ◆ **Submit copies of quotes received from all subcontractors, truckers, suppliers, etc.**

While not mandatory, you may want to submit documentation of other MDOT projects you have done where DBE participation has exceeded the required percentage, or of non-DBE participation projects where DBEs were chosen to work.

The Michigan Uniform Certification Program Web Site

Information about DBEs is available on the Michigan Uniform Certification Program (MUCP) Web site at: <http://www.michigan.gov/mdotdbe>. Once on the DBE site, click the link entitled “**New searchable MUCP DBE Directory**”. You may want to bookmark this site.

The MUCP site has several search functions. Search functions on the right side of the screen are entitled DBE Firm Name, “NAICS Code,” “Type of Business” and “Work Location County.”

Counting DBE Project Participation/Commercially Useful Function

When a DBE participates in a contract, only the value of the work performed by the DBE, its managers, workers, equipment, and materials will count toward DBE goals.

- **A DBE performs a commercially useful function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.**
- **The DBE must also be responsible for negotiating price, determining quantity, quality, ordering, installing (where applicable) and paying for materials and supplies used on the contract.**
- **Work subcontracted by a DBE to a non-DBE does not count toward DBE goals.**

Count the entire portion of a contract performed by the DBE’s own forces.

- **Do not count supplies and equipment purchased or leased from the prime contractor, the prime’s affiliates, or non-DBEs working on the contract.**

Count the entire amount of fees or commissions charged for providing a bona fide service such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the contract, that contribute toward the DBE goals.

- **Fees must be reasonable and not excessive – compared with similar fees allowed for comparable services.**
- **Expenditures to a DBE contractor that count toward DBE goals are those that cover the cost of commercially useful functions on the contract for which the DBE receives compensation for the work.**

When a DBE participates in a joint venture, count the dollar value of the contract equal to the distinct, clearly defined, portion of the work the DBE performs with its own forces.





New Procedures for Counting DBE Truckers

Primes are responsible to ensure that DBE truckers meet their commitments.

- Primes are responsible even if trucking participation is delegated to a subcontractor on the project.
- The DBE must be responsible for the management and supervision of its entire trucking operation on a contract. There cannot be a false arrangement for the purpose of meeting DBE goals.
- A DBE trucker may take full credit for each truck used on a contract that it owns, operates and insures.
- A DBE may supplement its fleet using long-term lease/broker agreements.
- For MDOT purposes, leased/broker agreement covers the DBE's use of another company's vehicles and drivers. Under this arrangement, the DBE normally would issue a 1099 tax statement to the other company.
- Full credit can be counted for leased/brokered trucks that are owned, operated, and insured by other DBEs.
- Lease/brokering agreements must indicate that the DBE has exclusive use of and control over the truck. This does not prevent the leased/brokered trucking operation from working for others during the term of the lease, with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased trucks.
- A DBE trucker also may lease/broker trucks from non-DBEs, except from the prime or affiliates of the prime.
- A DBE who leases/brokers trucks from a non-DBE may take full credit for an equal number of non-DBE trucks.
 - For example, a DBE owns 3 trucks and leases 4 trucks from other DBEs, for a total of 7 DBE trucks. The DBE may take full credit for a maximum of 7 trucks leased on a long-term lease basis from non-DBEs. In this example, full credit is given for a total of 14 DBE and non-DBE trucks.



- ◆ A brief letter addressed to the Good Faith Efforts (GFE) Committee stating why this request is necessary. Include details outlining the steps taken to solicit DBEs.
- ◆ Executed "Disadvantaged Business Enterprise (DBE) Participation" (MDOT Form 0178) sheets for each DBE committed to work on the contract
- ◆ Copies of advertisements (media, Webpage, etc.) published to solicit DBEs
- ◆ Documentation of good faith efforts to solicit DBEs, including.
 - ▷ A list of DBEs solicited to work on this project.
 - ▷ Include letters, phone logs, fax transmissions, and E-mails sent to DBEs, which clearly identify each DBE firm contacted.
 - ▶ Fax transmissions should show the fax number and name of each DBE firm solicited.
 - ▶ E-mail addresses should include the name of the DBE solicited at each individual E-mail address.
- ◆ Copies of responses from DBE regarding their availability to work on the contract
- ◆ A list of work items from the proposal.
 - ▷ Identify work items which will be performed by the Prime, include the unit price for each item

Penalties. Failure to fulfill the DBE subcontracting requirement may result in the Department exercising the rights and remedies available in accordance with the provisions of the contract and may be considered a breach of contract. These may also include suspension, reduction, or removal of the contractor's prequalification as stated in the "Administrative Rules Governing the Prequalification of bidders for Highway and Transportation Construction Work."



Note: Pre- and post-award waiver or modification requirements are also detailed in Section 102.18 of MDOT's 2003 Standard Specifications for Construction, "Subletting work to Disadvantaged Business Enterprises."

Information Needed For A Waiver/ Modification

Prime Contractors seeking a modification or waiver of DBE participation goals must include the following documents in the Good Faith Effort Application packet:

- ◆ **A completed, signed "Contractor Good Faith Effort Application" (MDOT Form 0169)**



Note: For DBE program purposes, all vendors working under subcontract or purchase order (including truckers, suppliers, inspectors, construction stakeout, etc.) are considered subcontractors and should be listed on Part D of Form 0169.

- **Brokerage credit only is allowed for any leased non-DBE trucks that exceed the number of DBE trucks.**
- **Additionally, brokerage credit only is allowed for payments to non-DBE trucks that exceed payments to DBE trucks.**
- **All leased/brokered trucks must display the name and identification number of the DBE in the format required by the Michigan Public Service Commission (MPSC).**
- **A DBE must supply the number of trucks specified on the DBE Participation Sheet (MDOT Form 0178) and the DBE Heavy Construction Trucking Credit Worksheet (MDOT Form 4101). If a DBE is unable to provide the number of trucks committed to a contract when needed, the reason for this must be documented in writing and submitted to the Prime and to the Field Services Section of the MDOT Office of Business Development.**
- **Each DBE trucker will receive the MDOT DBE Trucking CUF (Commercially Useful Function) Report (Form 4100) and must answer all questions and return the form within 10 days. This form will typically be requested twice during the project, although the frequency may vary depending on MDOT's needs. The DBE regulations 49 CFR 26.109(c) specifies: "All participants in the department's DBE program . . . are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved. . . ."**
- **If a prime is unable to meet the DBE obligations on a project, it must request DBE goal modification approval from the MDOT Office Business Development.**

This information, as well as additional information regarding the DBE program, is available on our Web site at:

<http://mdot270.state.mi.us:8080/UCP/HomePageServlet>



Counting DBE Suppliers

A DBE supplier must be responsible for negotiating price, determining quality and quantity, ensuring MDOT requirements related to material(s) used on a contract are met, and ordering and paying for the materials or supplies used.

- **Invoices for materials should be invoiced to the DBE firm and not to the prime contractor. The department will periodically review invoices for materials to ensure compliance.**

There are three DBE supplier classifications: manufacturer, regular dealer, and broker. Each classification is based on the individual material or supply the DBE provides. This means some DBEs may be certified in more than one supplier classification. For example, a DBE could be a manufacturer of sand and a broker of steel.

- **DBE manufacturers: Count 100 percent of the cost of the materials or supplies purchased from DBE manufacturers toward DBE goals.**

Although a DBE may be certified as a manufacturer, if the materials used on the contract have not been produced by the DBE on its premises, the DBE is not acting as a manufacturer and can not count credit as a manufacturer.

- **DBE regular dealers: Count 60 percent of the cost of the materials or supplies toward DBE goals. Additionally, DBE regular dealers must deliver the materials or supplies using equipment they own or lease on a long-term, rather than ad-hoc or contract-by-contract basis. Costs of delivering materials or supplies are incidental to the cost of the material or supply. When delivery charges are calculated separately, count 60 percent of the delivery cost toward DBE goals.**

While a DBE may be certified as a regular dealer, if the DBE delivers materials to the project using trucks the DBE neither owns nor leases, the DBE is acting as a broker instead of a regular dealer, and can count credit only as a broker.

- **DBE brokers: Count toward DBE goals, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site. Fees must be reasonable and not excessive when compared to fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies toward DBE goals.**

goal, the Department will modify or waive the goal as requested. If the Department denies the request or modifies the goal in a manner other than that requested, the Department will notify the contractor by certified mail within twenty (20) calendar days of receipt of the request. The prime contractor may be subject to sanctions for failure to comply with post award waiver/modification requirements.

Requests for waiver or modification of the goal for DBE participation must be submitted to the DBE Program Administrator. Form 0169 and other forms in appendix C (Contract Waiver Modification Packet) are to be completed and submitted. The Department's Good Faith Efforts Committee will evaluate the good faith efforts of the contractor based on the direction provided by 49 CFR, Appendix A to Part 26 - Guidance Concerning Good Faith Efforts. Good Faith Efforts Committee Guidelines will be followed. Where deemed appropriate and/or required, the concurrence of the U.S. Federal Highway Administration will be sought.

Appeals

A contractor receiving an adverse determination, related to their request for waiver or modification of the DBE participation goal, may appeal the determination. Written appeals must be submitted to the DBE Program within ten (10) calendar days of the contractor's receipt of the Good Faith Efforts Committee decision. The Appeal Panel's determination will be provided by certified mail to the contractor within fifteen (15) calendar days of the determination. Determination of the Appeals Panel are administratively final.

The Department reserves the right to modify any requirement or shorten any time period where the need to place the project under contract is such that the public interest warrants such action and would be impaired by further delay. If the Department waives any of these requirements, except the length of a time period, it will assure that no bidder is given a material competitive advantage by these actions.

The prime contractor is required to submit to the Project Engineer a complete "Prime Contractor Statement of DBE Subcontractor Payments", (form 0164), as required by MDOT.

A final statement will be submitted within thirty (30) days after the Engineer's submission of the final pay estimate.



the contract and bond forms. The Department will advise the contractor of its decision by certified mail.

If the Department denies the request, the Department will notify the bidder of the determination by certified mail. The determination will include a statement of any additional good faith efforts the bidder may take in order to effect compliance. The bidder will have ten (10) calendar days from the date of the bidder's receipt of such determination to comply or appeal. If the bidder fails to comply with the Department's determination within the ten (10) calendar day period, the bidder will be deemed ineligible for award of the contract.

Post-Award Waivers or Modifications

The Code of Federal Regulations (49CFR § 26.53) provides that prime contractors may not terminate for convenience an approved DBE working on a federally-assisted contract and then perform the work of the terminated DBE. Additionally, MDOT must be notified immediately of a DBE's inability to perform any or all of its work and the contractor's intent to obtain a substitute DBE. Contractors are required to make a good faith effort to replace a DBE that is unable to perform with another DBE. The substitute DBE must be approved by the Department prior to starting work.

The contractor may, after award, request a waiver or modification of the DBE participation goal. However, the contractor must submit evidence of good faith efforts to meet the DBE participation goal and include proof that on the date the contractor became aware the DBE goal would not be met, the amount of contract work remaining was carefully reviewed to identify other work which could be subcontracted to DBE firms.

If the Department determines the contractor has demonstrated a sufficient good faith effort to achieve the



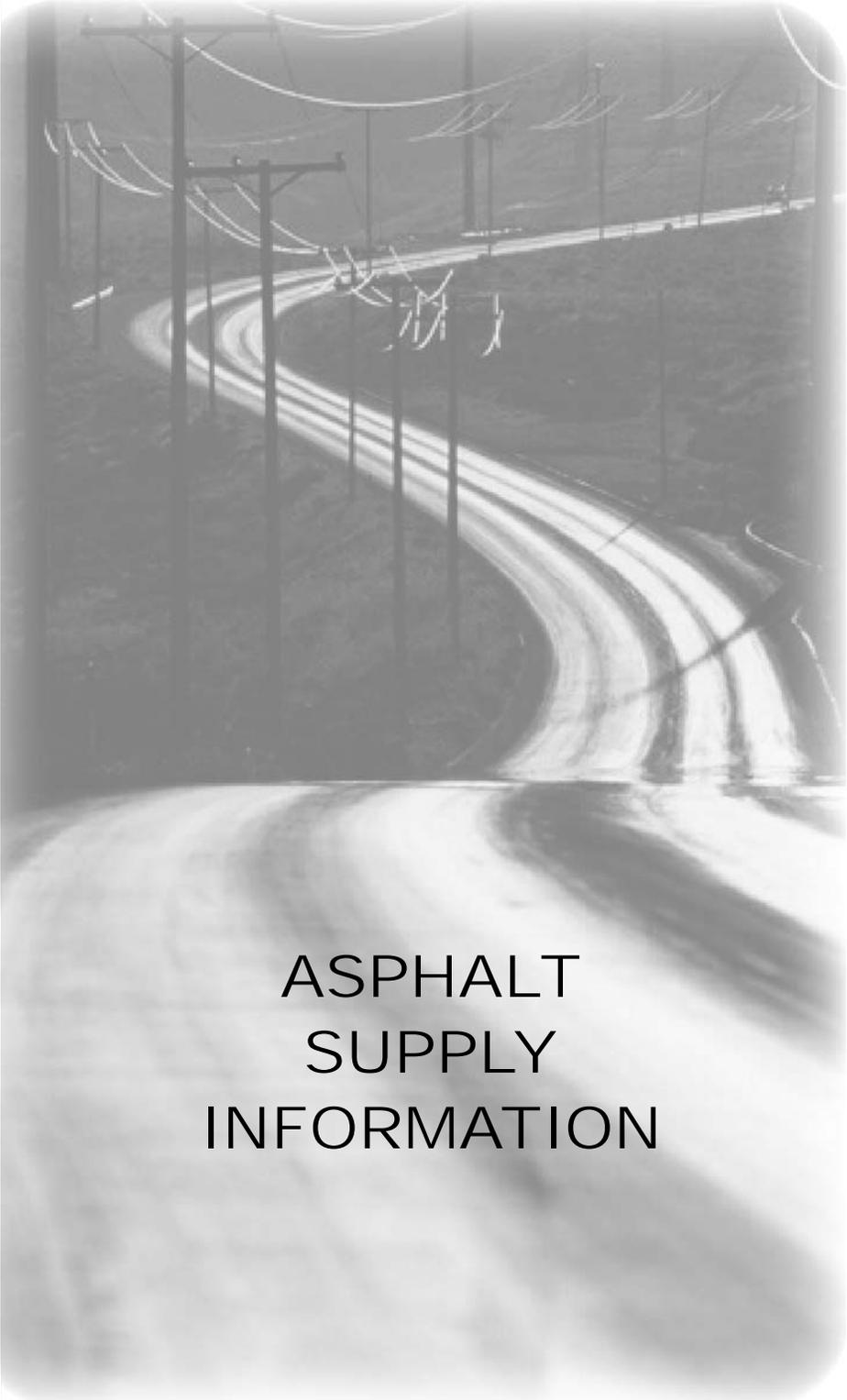
DBE suppliers of construction materials must comply with requirements outlined in MDOT's "Materials Quality Assurance Procedures Manual."

This manual is available on MDOT's Web site at:

<http://www.michigan.gov/mdot>

- choose "maps and publications" on the left side of the screen
- choose "publications"
- choose "manuals and guides"





ASPHALT SUPPLY INFORMATION

Procedures for Requesting Contract Waivers and Modifications

The DBE portion of work set for a project, as specified in the notice of advertisement, shall be made available to Department certified Disadvantaged Business Enterprises (DBEs). Compliance with the designated DBE participation goal must be met by the utilization of DBEs to perform commercially useful functions as required by 49 CFR § 26.55 of the Federal Register and contractual requirements. The names of the DBEs and the description of work to be performed by each will be submitted by the determined lowest qualified bidder to the Contract Services Division of the Department within fourteen (14) calendar days after the furnishing of the contract and bond forms by the bidder. This information must be submitted on the form provided by the Department (form 0178) and signed by an authorized signer for each certified and/or pre-qualified DBE and the prime contractor.

A bidder who fails to submit the names of certified DBEs and the description and value of work to be performed by each DBE, sufficient to meet the DBE participation goal, will be deemed ineligible for award of the contract unless the bidder submits a request for consideration of waiver or modification of the DBE participation goal. This must be done on the forms and in the format required by the Department.

Pre-Award Waivers or Modifications

If the apparent low bidder submits a request for waiver or modification of the DBE participation goal the contract will not be awarded until a determination on the request is made by the Department. The bidder must submit evidence of good faith efforts to meet the DBE participation goal. Requests for modification or waiver of DBE participations and all required documentation offered by the prime in support of the request, must be submitted to the department within 14 calendar days after the furnishing of





PROCEDURES
FOR
REQUESTING
CONTRACT
WAIVERS
&
MODIFICATIONS

Asphalt Supply Information

It has come to MDOT's attention that there appears to be a misunderstanding regarding the use of material suppliers for DBE participation goals. Please keep the following information in mind when selecting a DBE supplier for use on your MDOT projects:

Only the value of the work actually performed by the DBE counts toward the DBE goal.

You may include 100% of the cost of the materials purchased from a DBE manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

If materials or supplies are purchased from a DBE regular dealer, 60% of the cost of the materials or supplies may be counted towards the DBE goal. This cost (prior to applying the 60%) includes the delivery of the materials or supplies. The delivery must be made using at least one of the DBE's owned trucks. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. Additionally, a person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of the regular dealers' own distribution equipment shall be by a long-term lease agreement only.





Furthermore, these DBE regular dealers must be performing a commercially useful function in order to count the material/supply expenditures toward a DBE goal. Please keep the following information in mind when selecting a DBE regular dealer for use on your MDOT projects:

The DBE must be responsible for actually performing, managing, and supervising the work involved. The DBE must also be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. The cost of materials and supplies purchased from the prime (or a subcontractor of the prime who is performing the work requiring the purchased material) cannot be counted toward the DBE goal. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the department.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services as long as these efforts do not violate any commercially useful function (CUF) guidelines
- H. Effectively using the services of available minority/women contractors' groups; local state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.



Note: Efforts such as sending blanket faxes or e-mail messages to all DBE firms is not considered a good faith effort. Also, contacting plan holders only is not considered a good faith effort.

In determining whether a bidder has made good faith efforts, MDOT may take into account the performance of other bidders in meeting the contract DBE percentage. For example, when the apparent successful bidder fails to meet the contract DBE percentage, but others meet it, the department may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the department may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.



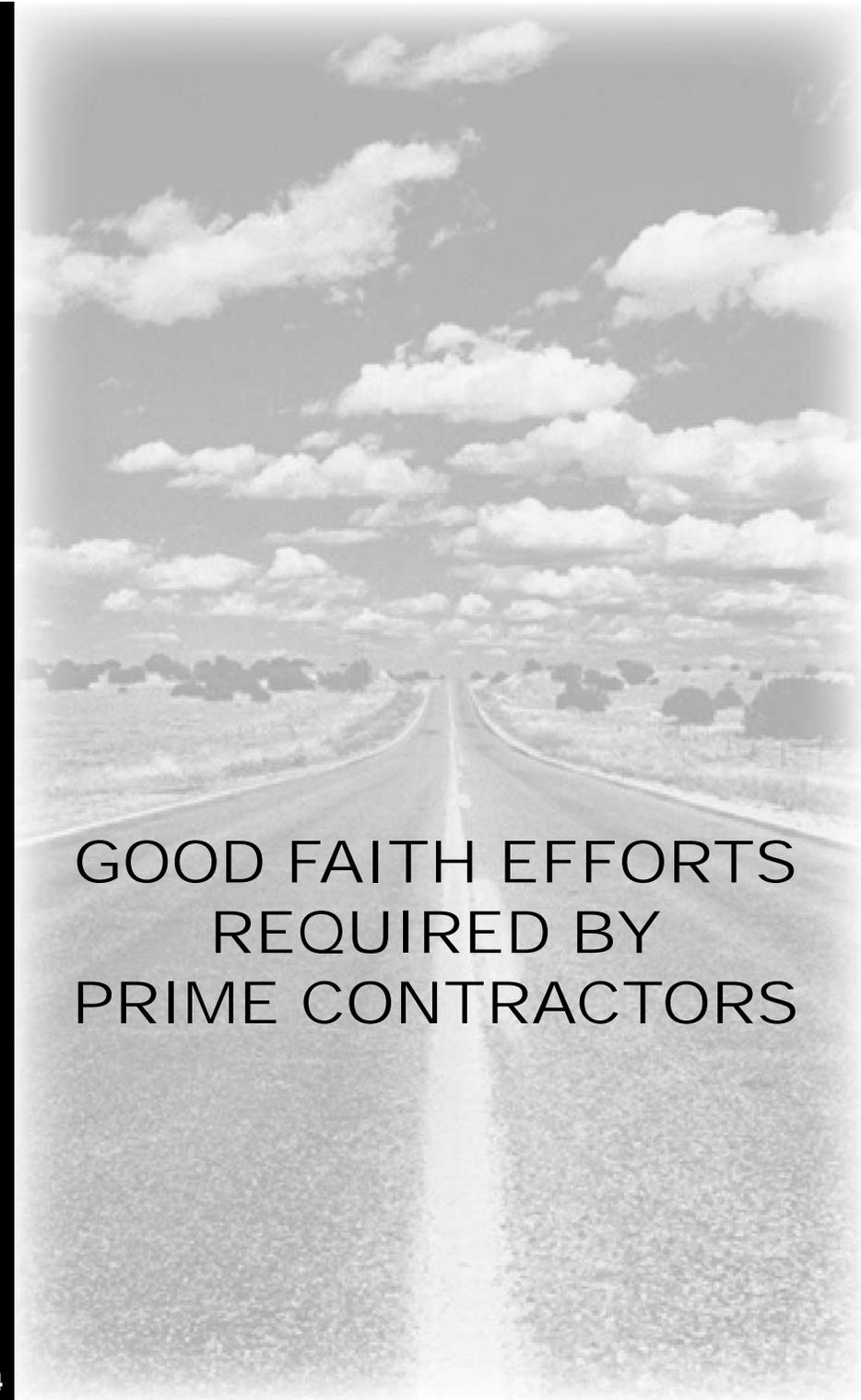
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

All of this information, as well as additional information regarding the DBE program, is available on our website at:

<http://www.michigan.gov/mdotdbe>

Service Consultant information is available by clicking on the Vendor/Consultant Services link, located on the left side of the MDOT homepage.

<http://www.michigan.gov/mdot>



GOOD FAITH EFFORTS REQUIRED BY PRIME CONTRACTORS

Good Faith Efforts Required by Prime Contractors

When MDOT establishes a DBE contract goal, the department must award the contract only to a bidder who makes good faith efforts to meet the DBE contract goal. MDOT will determine that a bidder has made good faith efforts if the bidder:

1. **Documents that he/she has obtained enough DBE participation to meet the goal; or**
2. **Documents that he/she made adequate good faith efforts to meet the goal, even though he/she did not succeed in obtaining enough DBE participation to do so.**

Following is a list of actions which will be considered as part of the bidder's good faith efforts to obtain DBE participation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or efforts may be relevant in appropriate cases. For example, previous efforts by a prime contractor to meet or exceed a contract DBE percentage can be considered.

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

