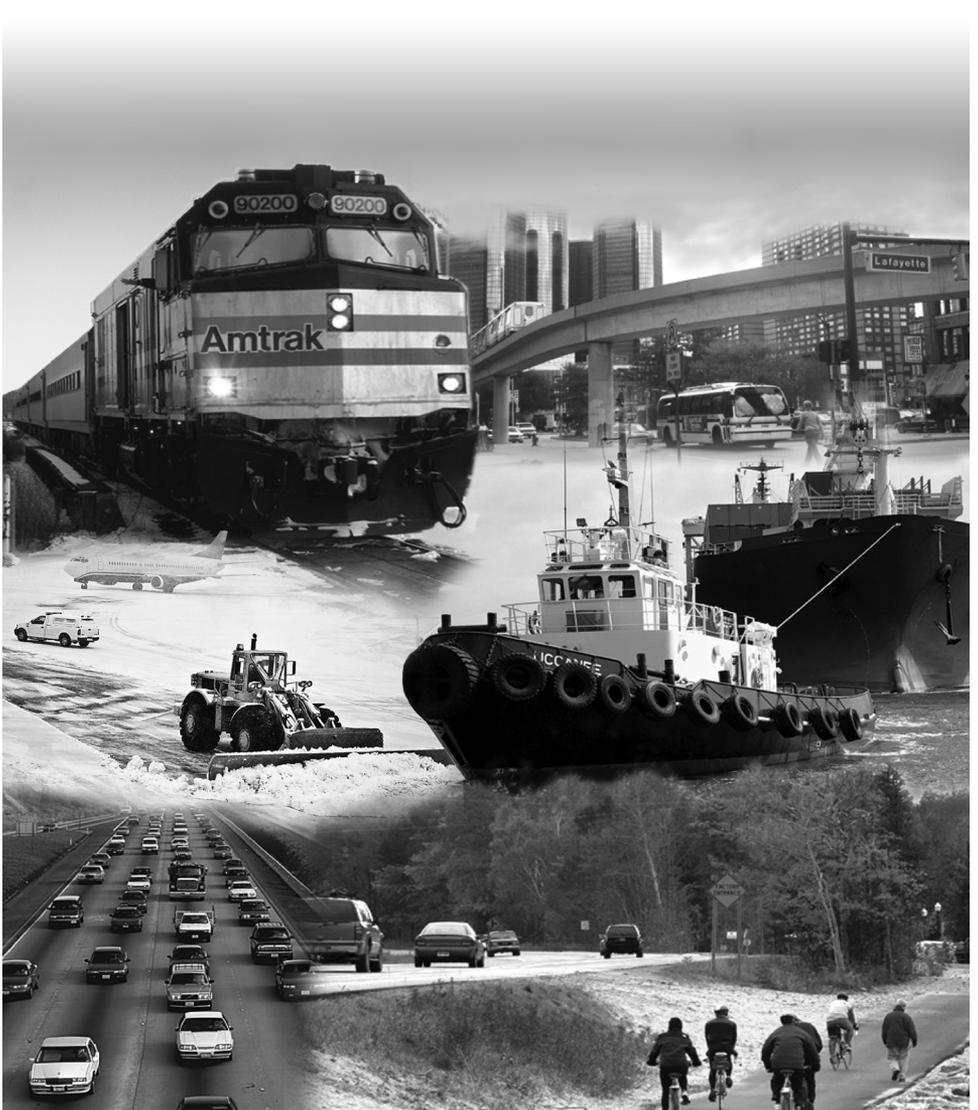


What DBEs Need to Know Before Committing to Work on MDOT Contracts



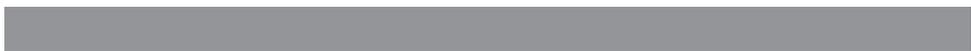


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DBE Participation Sheets (MDOT Form 0178)

A DBE participation sheet is not a contract; it is a commitment to work. Never sign a blank or incomplete sheet. Keep signed copies and related attachments.

- Sign a DBE participation sheet only if you are DBE-certified, and, if required, Michigan Department of Transportation (MDOT)-prequalified, in the work. Do not allow another person to sign for you.
 - > Do not sign a DBE participation sheet if you do not have the expertise, ability, or financial and equipment resources needed to complete the job.
- Execute a legal subcontract or purchase order, depending on the nature of the work, which includes federal and state-mandated language required by the MDOT contract after signing the DBE participation sheet. Subcontracts and/or purchase orders must be in place before work begins.
- If a DBE participation sheet has been submitted for your company and another contractor does your work, or you only do a small portion of the work, immediately contact MDOT's Office of Business Development (OBD) toll-free at 866-323-4009 or by e-mail at mdot-dbe@michigan.gov.

49 Code of Federal Regulations §26.37 (49CFR§26.37) requires that work committed to DBEs is done by DBEs to which work was committed.

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, that will impact your work.

- Plans and proposals are available at <http://mdotcf.state.mi.us/public/bids/>. Select "Sign-in" to view or download them. Your DBE technician or engineer and the MDOT OBD also can arrange for a review of plans or proposals.
- MDOT is entitled to obtain documents related to the contract. Failure to cooperate in providing requested information can result in DBE certification removal.

If you have signed a DBE participation sheet for a construction contract let through MDOT's construction bid-letting system and do not know your commitment status or job details, check the MDOT Construction Contract Inquiry at www.michigan.gov/mdot; select "Doing Business," then "Contractor Services," "Payments & Awards," and "Construction Contract Inquiry." Select from the available options, enter the MDOT contract or project number, then press "OK."

Vendors who provide false documentation related to DBE participation will be penalized. Penalties are based on the nature of the violation and range from a warning to criminal prosecution.

49 Code of Federal Regulations §26.53 (49CFR§26.53) prohibits DBEs from being terminated for convenience and requires substitutions only for good cause

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to CFR Parts 180, 215 and 1,200, or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

Commercially Useful Function (CUF)

DBE work counts toward goals only when the DBE is paid for work done by DBE supervisors and workers using DBE equipment and materials.

- A DBE performs a CUF when it is responsible for a distinct portion of work and carries out its responsibilities by performing, managing and supervising that work.
- The DBE is 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.

CUF violations should immediately be reported to OBD's CUF Specialist Ben Baftiu at 313-965-5557 or baftiub@michigan.gov, or Frank Adams at 313-965-2355 or adamsf@michigan.gov. They also are available to answer CUF questions.

CUF Questions and Answers

1. **Q:** How should "primes" react when a DBE firm lacks capacity to do the amount of work bid? For example, a DBE with minimal equipment and few employees bids \$5 million in work.

- A:** A contractor should follow the same process when reviewing any quote from a potential subcontractor. The capacity of the firm to perform work being quoted should be a factor in determining if their quote will be accepted. If it is necessary to explain this to MDOT, the contractor should document the steps taken to verify the capability of the DBE and steps taken with other subcontractors quoting similar work.
2. **Q:** Can the value of material a DBE purchases from the prime contractor or a sister company of the prime contractor count toward DBE goals?
- A:** No. Purchases from prime contractors or their affiliates do not count toward DBE goals. A DBE cannot purchase materials from any non-DBE working on the same project.
3. **Q:** Can a prime contractor back-charge the DBE subcontractor the 1 percent for bonds and dues that is typically charged to all subcontractors?
- A:** Yes, for project bonding. The amount subtracted for the bond will reduce the dollar amount allowed for DBE credit. Dues should not be back-charged to the DBE subcontractor and cannot be allowed for DBE credit.
4. **Q:** What documentation is required to prove Race-neutral (RN) participation on MDOT-let projects? Is RN participation only counted for work on MDOT-let projects?
- A:** RN participation is counted toward the project on which work was performed. Yes, RN participation counts on MDOT-let projects only.
5. **Q:** Is RN participation tracked (reported) like Race-conscious (RC)?
- A:** Yes, RN participation is tracked and reported as part of MDOT's overall goal attainment each fiscal year. Use the DBE Participation Sheet (Form 0178) to document RN participation when a project has no DBE goal. On contracts with DBE participation, any DBE work in excess of the contract goal is RN.
6. **Q:** Is it legal to provide a line of credit, insurance, material, or supplies to a DBE and meet CUF requirements?
- A:** No. Arranging for the purchase of materials and supplies on behalf of a DBE firm is a CUF violation. DBE firms should obtain their own lines of credit, insurance, materials, and supplies. Primes can provide assistance to DBE firms, such as introducing the DBE to a bonding agent or referring the DBE firm to a supplier.
7. **Q:** With regard to CUF standards and violations, does MDOT, OBD, or the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or Federal Transit Administration (FTA), as appropriate based on project funding, make the final determination?
- A:** It depends on how the CUF violation is discovered; MDOT and OBD will always be involved. Under certain circumstances, USDOT operating authorities may be involved. For example, if FHWA discovers a violation during an audit they may notify MDOT and continue to monitor the project until the situation is properly addressed.

Counting DBE Participation

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.

- Fees must be reasonable and not excessive compared to fees allowed for comparable services.
- DBE expenditures that count toward DBE goals are those necessary to ensure a CUF is performed. The DBE must be paid for its work before goal credit is allowed.

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.

DBE Trucking

A DBE trucker must provide the number of trucks to be used, the date work is expected to begin, specific to/from hauling locations, and a description of what will be hauled on the DBE Participation Sheet (MDOT Form 0178A).

Truck detail, including both DBE and non-DBE trucks, must be provided on the DBE Heavy Construction Trucking Credit Worksheet (MDOT Form 4101).

- The DBE, on each of its contracts, must itself own and operate at least one fully licensed, insured and operational truck.

A DBE trucker must manage and supervise its trucking operation. There cannot be a false arrangement for the purpose of meeting DBE goals.

A DBE may supplement its fleet using lease/broker agreements.

- Full credit counts for leased/brokered trucks owned, operated and insured by other DBEs.
- A DBE trucker may lease/broker trucks from non-DBEs, except the prime or prime affiliates.
- For MDOT purposes, a lease/broker agreement covers the DBE's use of another company's vehicles and drivers.
- Lease/broker agreements must show the DBE has exclusive use and control of the truck.

This does not prevent leased/brokered trucks from working for others with DBE consent as long as the lease gives the DBE absolute priority for use.

DBE truckers are encouraged to use MPSC Form P-341-T for lease/broker agreements.

- A DBE who leases/brokers trucks from other DBEs may take full credit for leasing an equal number of non-DBE trucks.

Example: a DBE owns three trucks and leases four trucks from other DBEs, for a total of seven DBE trucks. The DBE may lease seven trucks from non-DBEs and take full credit for 14 trucks.

- If a DBE leases trucks from non-DBEs, the total value of trucking services provided by non-DBEs cannot exceed the value of trucking services provided by DBEs. When a DBE leases more non-DBE than DBE trucks, only the fee or commission the DBE trucker receives is credited for the extra non-DBE trucks.
- All leased/brokered trucks must have a copy of the lease agreement in their truck.
- All trucks used for credit must display the name and identification number of the DBE.

If a DBE cannot fulfill a commitment as submitted on the DBE Heavy Construction Trucking Worksheet (MDOT Form 4101), immediately document changes in writing and submit to the prime contractor and the OBD. Call or e-mail Alicia Banks with trucking questions at 517-335-6537 or banksa3@michigan.gov.



DBE Suppliers

DBE suppliers are responsible for negotiating price, determining quality and quantity, ensuring MDOT requirements related to materials used on a contract are met, and ordering and paying for materials used.

- Materials should be invoiced to the DBE, not the prime contractor.

There are three DBE supplier classifications: manufacturer, regular dealer and broker. Some DBEs are certified in more than one 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 materials supplied.
While a DBE may be certified as a manufacturer, the DBE cannot count manufacturer credit if materials have not been produced by the DBE on its premises.
- DBE regular dealers count 60 percent of the costs of materials toward DBE goals.
Materials must be delivered using equipment the dealer owns or leases on a long-term, rather than ad-hoc or contract-by-contract, basis. Materials delivered using trucks neither owned nor leased by the DBE regular dealer count for broker credit only.
Costs of delivering materials are incidental to the cost of the material. When delivery charges are calculated separately, count 60 percent of the delivery cost toward DBE goals
- DBE brokers count only fees or commissions charged for assistance in the procurement of materials, or fees or transportation charges for delivery of materials, for DBE credit.

DBE suppliers must comply with requirements outlined in MDOT's "Materials Quality Assurance Procedures Manual." This manual is available at www.michigan.gov/mdot. Choose "Maps and Publications," then "Manuals, Guides, Advisories & Memos."

Liquid Asphalt Supply

MDOT monitors DBE supply and delivery of liquid asphalt. There are three MDOT forms associated with the DBE liquid asphalt supplier program:

- MDOT Form 0192 - Petroleum Company Account(s) Information and Liquid Asphalt Cement Tractors and Trailers Information
- MDOT Form 0193 - DBE Regular Dealer Liquid Asphalt Supplier Participation Affidavit – Prime
- MDOT Form 0194 - Total Quantities of Liquid Asphalt Supplied

Prime contractors must make every effort to ensure DBE participation complies with regulatory requirements at 49 CFR Part 26.

To count DBE liquid asphalt regular dealer participation toward project goals, the following criteria must be met:

1. The DBE must directly arrange for, receive price quotes, agree to pricing, and order the required grade of liquid asphalt cement with an MDOT-approved petroleum refinery or blender for the grade of liquid asphalt cement to be provided.

“MDOT-approved” refers to refineries or blenders that are approved by MDOT’s Construction and Technology Division and are not affiliated with the prime contractor or the project the DBE is participating on.

The prime is not to negotiate on behalf of the DBE with the MDOT-approved petroleum refinery or blender.

All DBEs certified in TBR (Asphalt and Petroleum Products - Regular Dealer) must provide information about their accounts with refineries/blenders on an annual basis. This is done through submitting MDOT Form 0192.

2. Documentation of DBE delivery of liquid asphalt cement (invoices, delivery tickets, bank statements, etc.) must be maintained by the DBE and submitted upon request.
3. DBE lease of tractors and trailers is allowable using long-term lease agreements only, not on an ad hoc or contract-by-contract basis. Equipment shall not be leased from the prime, prime’s affiliates or contractor to whom the DBE is supplying liquid asphalt cement. Lease agreements must be supplied upon request.
4. A DBE must pay the refineries/blenders with its own funds. Payments must come from the DBE’s bank account(s). A DBE may not pay for materials using funds from bank accounts belonging to or shared with the prime contractor.
5. No sales between the prime and its affiliates via the DBE count toward DBE goals.
6. Any joint check arrangement must be pre-approved using an Application to Use Joint Checks (MDOT Form 0183). A joint check is a two-party check between a subcontractor, a prime contractor and a materials supplier used to guarantee payment to the supplier.

Questions regarding liquid asphalt supply should be directed to Reidar Keating at 517-241-0052 or keatingr@michigan.gov.

Joint Check Process

Participants in a joint/two-party check arrangement must submit an Application to Use Joint Checks (MDOT Form 0183) at least one week prior to the joint check transaction to:

Michigan Department of Transportation

Administrator - Office of Business Development

P.O. Box 30050

Lansing, MI 48909

Fax: 517-335-0945

E-mail: MDOT-DBE@michigan.gov

A joint check is a two-party check between a DBE and a prime contractor to submit to a materials supplier of the DBE. The prime contractor issues a check as payer to the DBE and the materials supplier jointly to guarantee payment to the supplier for the materials/supplies used by the DBE. The use of joint checks for payment of materials/supplies is acceptable when the following conditions are met:

1. Form 0183 must be approved by the OBD prior to issuance of the check.
2. The second party/payer (typically the prime contractor) acts solely as a guarantor.
3. The DBE must release the check to the supplier.
4. The DBE (not the prime/payer) negotiates the quantities, price and delivery of materials.
5. The DBE is responsible for furnishing and installing the material.
6. The prime contractor/payer cannot require the DBE to use a specific supplier or the prime contractor's negotiated unit price.
7. Joint checks cannot be used for any other purpose than payment to the material suppliers.
8. The arrangement is short-term (no more than two construction seasons) with the purpose being to establish or increase the DBE's credit line with the material supplier.
9. Copies of cancelled checks must be provided for review by MDOT upon request.

Failure to follow the above requirements could result in a CUF violation. MDOT will closely monitor joint-check activity.

Post-Award DBE Replacement or Substitutions

MDOT must be notified immediately of a DBE's inability to perform any or all of its work and of the prime's intent to obtain a substitute DBE.

A prime must give a DBE that is unwilling or unable to perform any or all of its work five days written notice of the prime's intent to replace the DBE before submitting MDOT Form 0196 – Request to Replace a DBE.

Primes 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 project manager and MDOT's Contract Services Division prior to starting work.

Once approved, the substitute DBE must be included on MDOT Form 2124A – Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments (construction contracts), or MDOT Form 0165 – Prime Consultant Statement of DBE Sub-consultant Payments.

The replacement DBE cannot work on the contract until its work eligibility has been confirmed and required subcontracts, supply, trucking commitments, or other services have been approved by MDOT.

Good Faith Efforts (GFEs) Required by Prime Contractors

When MDOT establishes a DBE contract goal, the contract must be awarded only to a bidder that makes good faith efforts to meet the goal. MDOT determines a bidder has made GFEs when the bidder:

1. Documents that enough DBE participation has been obtained to meet the goal; or
2. Documents adequate good faith efforts to meet the goal were made, even though the prime vendor did not succeed in obtaining enough DBE participation to do so.



Following is a list of actions considered as part of the bidder's good faith efforts to obtain DBE participation. This list is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or efforts may be relevant. 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 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 DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to promote DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about plans, specifications and contract requirements 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 work available and to select portions of work or material needs consistent with available DBEs to promote DBE participation. Evidence of such negotiation includes names, addresses and telephone numbers of DBEs considered; a description of information provided regarding plans and specifications for 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 DBEs 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.

- F. Making efforts to assist interested DBEs in obtaining required bonding, lines of credit or insurance.
- 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 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: Sending blanket faxes or e-mail messages to all DBE firms, or contacting only plan holders 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, if 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, combined with other factors, as evidence of the apparent successful bidder having made good faith efforts.

GFE Procedures for Requesting Contract Waivers and Modifications

A bidder who fails to submit sufficient DBE participation to meet a project goal will be deemed ineligible for award of the contract, unless the bidder submits and obtains approval for a waiver or modification of the goal. Requests for waiver or modification shall be submitted using the Contractor Good Faith Effort Application (MDOT Form 0188).

Pre-Award Waivers or Modifications

If the low bidder submits a request for waiver or modification of the DBE goal, the contract will not be awarded until a decision is made by MDOT. Pre-award GFE requests are to be submitted within 10 calendar days* after the construction letting date or after final cost negotiation date for consultants.

* Effective Oct. 4, 2013, projects with a 6 percent or greater DBE participation goal are part of MDOT's Data Collection Process. GFE applications and documentation must be submitted within three business days of the bid letting or release from TBA status.

MDOT will advise the contractor of its decision by mail and fax. If the bidder fails to appeal a denial or comply with the project goal within two calendar days, the bidder will be deemed ineligible for contract award.

Post-Award Waivers or Modifications

49 CFR § 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. MDOT must be notified immediately of a DBE's inability to perform any or all of its work and the prime vendor's intent to obtain a substitute DBE. Prime vendors 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 MDOT prior to starting work.

A waiver or modification of the DBE participation goal must be requested post-award if the approved DBE goal will not be met. The prime vendor must submit evidence of good faith efforts made to meet the DBE participation goal and include proof that, on the date the vendor became aware the DBE goal would not be met, the amount of contract work remaining was carefully reviewed to identify other work that could be subcontracted to DBE firms.

Post-award Good Faith Effort Applications (MDOT Form 0188) must be submitted within 14 days of the prime vendor being made aware of their inability to meet the DBE participation goal. If MDOT determines the prime vendor has demonstrated sufficient good faith efforts, the department will modify or waive the goal.

Appeals

A contractor receiving an adverse determination related to their request for waiver or modification of the DBE participation goal may appeal the determination. The GFE Appeals Committee will not consider information or documentation that was not included in the original GFE application package. Written appeals must be submitted to the DBE Program within two calendar days of receipt of the GFE Appeals Committee decision. The GFE Appeal Committee's determination will be provided by fax and mail. Determinations of the committee are administratively final.

Penalties: Failure to fulfill the DBE subcontracting requirement may result in MDOT exercising the rights and remedies available in accordance with the provisions of the contract and may be considered a breach of contract. These also may 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."

For further information about pre- and post-award GFEs, please refer to MDOT's DBE Program Procedures, available at www.michigan.gov/mdotdbe under "Resources."

Information Needed For a Waiver or Modification

Prime vendors 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 0188).
- A brief letter addressed to the GFE Appeals 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, Web, 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 that 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 that will be performed by the prime contractor, including the unit price for each item.
 - Identify work items, including partial items that 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.

Locating DBEs: The Michigan Uniform Certification Program (MUCP) Website

Information about DBEs is available on the MUCP website at: www.michigan.gov/mdotdbe. Once on the DBE site, click the “Search MUCP DBE Directory for All Certified DBEs in Michigan” link. This is a good site to bookmark.

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

DBE Firm Name

- Spell the name of the DBE correctly.
- If unsure of the correct spelling or format of a name, search using 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 primary type of work. Click on the dropdown arrow (the upside-down triangle), select the best option and click on “Search.”

Work Location County

You can search for DBEs by county. Click on the dropdown arrow (the upside-down triangle), select the county of interest and click on “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.

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 website, use the pull-down arrow to select “Trucking” under the 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 will appear.

- 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 their work description (i.e., electrician, electrical, electronics, etc.).

- If looking for MDOT-prequalified contractors, press “CTRL+F” and enter “prequal” 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” on the MUCP website.

All of this information, as well as additional information regarding the DBE program, is available on MDOT’s website at: www.michigan.gov/mdotdbe.

Service consultant information is available by selecting the Vendor/Consultant Services link, located on the left of the MDOT website at: www.michigan.gov/mdot.

Bureau of Highway Instructional Memorandum 2013-12 (Oct. 10, 2013) - DBE CUF Compliance

This instructional memorandum provides MDOT’s procedures to ensure compliance with 49 CFR Part 26.37(b), effective immediately. These procedures apply to all federally funded MDOT and local agency construction projects that include participation of a DBE-certified company. It should be noted that this applies to all projects with work completed by DBE firms, not just projects with a DBE goal.

General Information

DBE companies are prime and subcontract contracting firms, truckers, material suppliers, consultants, and other service providers that are certified as having met requirements of 49 Code of Federal Regulations Part 26 (49 CFR Part 26). A current list of all DBE companies certified to work in Michigan by work classification and work type is available at: www.michigan.gov/mucp.

MDOT's DBE Program Procedures document is MDOT's federally approved plan detailing how MDOT will implement its DBE program, containing detailed and helpful information. It is available at www.michigan.gov/mdotdbe under the "Resources" link.

DBE commitments, subcontracts, and current DBE goals (when applicable) assigned to a project also are posted on MDOT's Construction Contract Inquiry website at <http://mdotcf.state.mi.us/public/trnsport/>.

OBD has developed a supplemental guide to assist construction staff in the monitoring of CUF activities. The MDOT DBE Program Guide for CUF Monitoring on Federal-Aid Projects is available on the MDOT DBE website at www.michigan.gov/mdotdbe, under the "Resources" link.

Preconstruction Meeting

Contractors should be asked to provide verbal notice of any DBE subcontractors or vendors that will be working on the project. It should be emphasized that any DBE work that will occur off project site must be documented by construction staff and, therefore, the prime contractor must provide notice (dates, times, locations, etc.) to the construction/project engineer in advance of this work. This information is to be documented in the meeting minutes; the minutes must be provided to all project staff.

Construction Guidance

The following guidance is provided to help determine if a CUF has been provided. DBE companies are required to perform a CUF, meaning that each DBE firm must be responsible for the execution of a contract or a distinct element of the contract work by actually performing, managing, and supervising the work involved using their own managers, workers, equipment, and materials ordered and paid for by the DBE company.

A DBE company does not perform a CUF if their role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of a CUF. DBE purchases of materials or supplies from the prime contractor/subcontractors on the project is a CUF violation. DBE credit will not be provided to the prime contractor/subcontractors if this occurs.

Construction staff must monitor and document that work committed to DBE companies is actually performed by said companies. This will be accomplished through the use of Form 4109, CUF Review. Completion of this form is required for all DBE companies on all federally funded projects, including projects with no DBE goal. This also includes DBE truckers, suppliers and other vendors where a subcontract is not required. In many cases, construction staff will need to reference the DBE commitment information to ensure that all companies are reviewed. Form 4109 is available at on the MDOT website at www.michigan.gov/mdot/0,4616,7-151-9625_23109--,00.html.

OBD will determine CUF performance for DBE liquid asphalt suppliers. Questions regarding liquid asphalt suppliers are to be directed to the OBD liquid asphalt topic analyst at 517-241-0052. DBE trucking CUF performance (Inspector Daily Reports (IDR) Form 4109) is to be documented and verified by construction staff.

Purchase orders are to be provided to construction staff for off-site DBE work (suppliers) and for trucking work. If they are not provided, a request should be documented to the prime contractor. Construction staff is to verify that purchase order work was completed by suppliers and truckers. Non-asphalt trucking-related questions may be directed to the OBD trucking topic technician at 517-335-6537.

Supplier questions may be directed to the OBD CUF specialist at 313-965-5557 or 313-965-2355.

General performance of DBE companies is to be documented on IDRs, as would be the case for non-DBE contractors. IDR reporting should include the DBE companies that are on site, the work that they are completing, material and equipment usage, etc. If any DBE companies are missed during their construction operations or support activities, the construction/project engineer must immediately contact the OBD CUF specialist at 313-965-5557 or 313-965-2355 to determine what documentation is available and what actions are to be taken.

To ensure construction staff is fully aware of all DBE participation elements (commitments, subcontractors, truckers, suppliers and service providers) committed to a project with a DBE goal, the construction/project engineer is notified of all commitments by the Contracts Services Division (CSD). The e-mail notification includes all DBE commitment specifics and whenever a commitment is added, changed, or when the goal on the project has been modified. These e-mails are to be shared with construction staff assigned to the project and are only generated on RC projects. The industry may use Form 0178, DBE Participation, to indicate a DBE is being used on a project that doesn't have a DBE goal. This can be noted by selecting the appropriate check box on Form 0178.

If a DBE fails to perform a CUF (presence of a non-CUF indicator, fails to complete work, etc.) or if a contractor fails to meet its obligations (commitments, percentage requirements, etc.) under the DBE regulations and/or contract provisions, the construction/project engineer must immediately notify the OBD CUF specialist at 313-965-5557 or 313-965-2355. Replacement of a DBE company requires five days written notice to the DBE firm with a copy to the construction/project engineer and OBD. These performance issues also are to be reflected on the respective contractor performance evaluation. The rating must include descriptive comments and/or narrative in the comments section for both the DBE and the prime contractor as applicable.

At the completion of the project, the construction/project engineer will certify that all DBEs provided a CUF. This certification will be noted on Form 1105, Final Estimate Package Memo. The certification language options will be as follows:

I certify that to the best of my knowledge the contracting records have been reviewed, the Disadvantaged Business Enterprise (DBE) companies have been monitored on the project site and work committed to DBE companies has been performed by the respective companies.

I certify that to the best of my knowledge the contracting records have been reviewed, the Disadvantaged Business Enterprise (DBE) companies have been monitored on the project site and work committed to DBE companies has been performed by the respective companies with the exception of the following companies which have been forwarded to the Office of Business Development (OBD) for further investigation.

Companies: _____



DBE Performance Indicators

The DBE must be responsible for the performance, management, and supervision of a distinct element of the work in accordance with MDOT's Standard Specifications for Construction, and the current version of MDOT's DBE Program Procedures. MDOT requires prime contractors to self-perform at least 40 percent of the contract work, and subcontractors must self-perform at least 50 percent of their work. Non-trucking DBE work subcontracted to non-DBE companies is not eligible for DBE credit.

DBE and CUF performance issues are to be documented on an IDR, Form 4109, and reported to OBD. Performance indicators and factors that require follow-up with OBD are noted on the second page of Form 4109, as well as the CUF Pocket Card that is available at www.michigan.gov/mdotdbe under the "Resources" link.

DBEs may lease equipment consistent with normal industry practice. When requested, they must submit their lease agreements for all leased equipment. OBD retains this information. Equipment used by a DBE must be subject to the full control of the DBE. Equipment operators must be employees of the DBE and included on DBE payrolls. If necessary, a DBE may lease both the equipment and the operator, although the DBE must be responsible for all payroll and labor compliance requirements. It should be noted that DBE companies are not permitted to lease equipment from the prime contractor or any other non-DBE contractor/subcontractor working on the same project. However, because of space limitations typically associated with the use of heavy equipment, such as cranes, a DBE may use a crane or other heavy equipment supplied by the prime or another subcontractor on the project. Charges for use of this equipment cannot be taken out of the amount the DBE is owed. Questions regarding heavy equipment usage and leasing are to be directed to the OBD CUF specialist at 313-965-5557 or 313-965-2355.

Frequently asked questions (FAQs) regarding DBE Performance of a CUF can be found on the MDOT website:
www.michigan.gov/mdot/0,4616,7-151-31785---F,00.html.



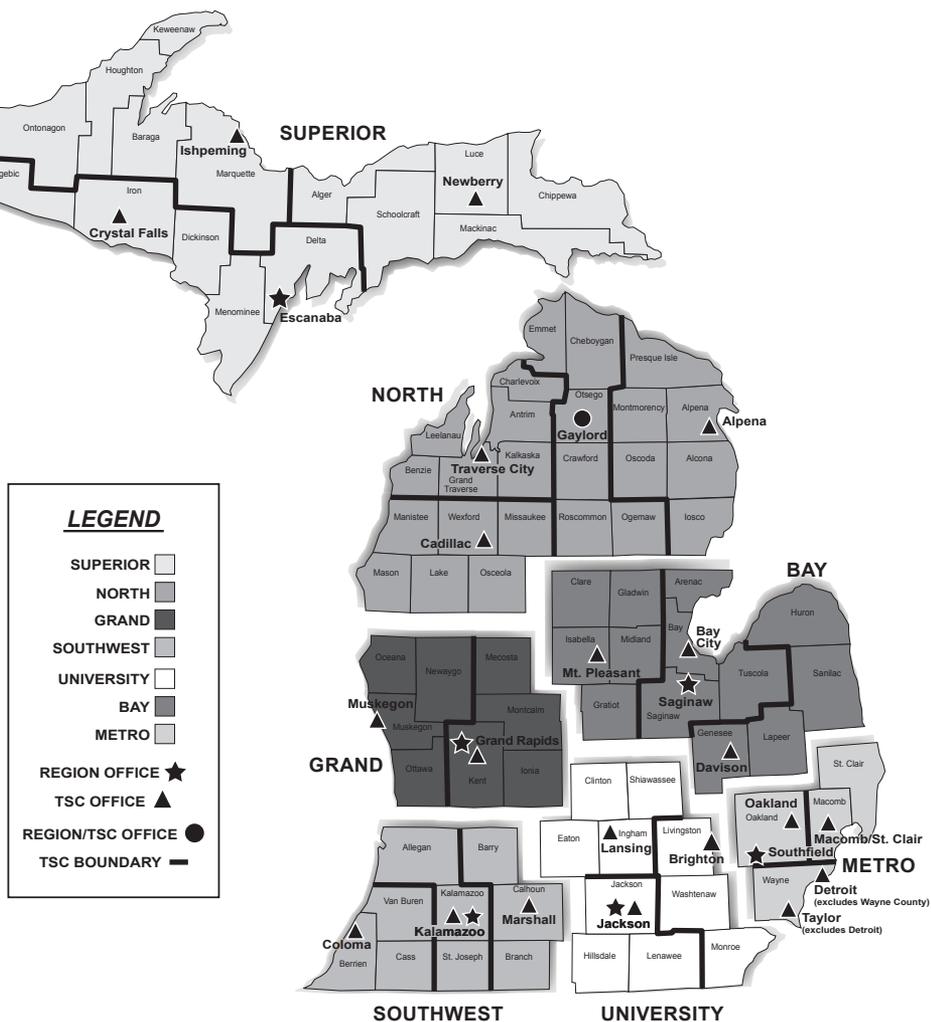
OFFICE OF BUSINESS DEVELOPMENT MANAGEMENT

Location	Management Staff	Duties	Telephone	E-mail
Lansing	Patricia Collins, Administrator	Oversees all work in OBD	517-373-2377	collinsp@michigan.gov
Lansing	Tonya Doyle-Bicy, Manager	DBE Certification and External Civil Rights	517-241-4424	doyle-bicyt@michigan.gov
Lansing	Lisa Thompson, Manager	DBE Supportive Services	517-373-0791	thompsonl@michigan.gov
Metro	Frank Adams, Manager	DBE Certification and External Civil Rights	313-965-2355	adamssf@michigan.gov

OFFICE OF BUSINESS DEVELOPMENT REPRESENTATIVES

Region	OBD Staff	Telephone	E-mail
Bay	Anita Costanzo	313-965-2350, ext. 2350	costanzaa@michigan.gov
	Nick Sundberg	517-241-4806	sundbergn@michigan.gov
Grand	Sue Espinoza	517-241-4421	espinozas@michigan.gov
	Jeanne Day-LaBo	517-373-9246	day-laboj@michigan.gov
Metro	Ann Williams	313-965-2319, ext. 2319	williamsa3@michigan.gov
	Ben Baftiu	313-965-5557, ext. 5557	baftiub@michigan.gov
North	Anita Costanzo	313-965-2350, ext. 2350	costanzaa@michigan.gov
	Nick Sundberg	517-241-4806	sundbergn@michigan.gov
Southwest	Rodney Wilson	517-241-4007	wilsonr6@michigan.gov
Superior	Sue Espinoza	517-241-4421	espinozas@michigan.gov
University	Penny Ward	517-373-2652	wardp3@michigan.gov
	Ebony Alexander	517-241-4671	alexandere@michigan.gov

MDOT REGION OFFICES AND TRANSPORTATION SERVICE CENTERS



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BUREAU OF FIELD SERVICES

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Michigan Department of Transportation (MDOT) external civil rights programs are administered by the Office of Business Development (OBD), which oversees:

1. Equal Employment Opportunity (EEO) Contractor Compliance,
2. Disadvantaged Business Enterprise (DBE),
3. Disadvantaged Business Enterprise Supportive Services (DBE/SS), and
4. On-the-Job Training Supportive Services (OJT/SS).

DBE program details are available at www.michigan.gov/mdotdbe under the “MDOT Program Procedures” link.

DBEs On the Job – OBD Roles and Responsibilities

The OBD:

1. Coordinates the MDOT Contract Selection Team (CST) to place DBE participation goals on suitable projects;
2. Processes good faith effort waiver or modification requests for committee review when a prime vendor is unable to meet the assigned DBE participation goal;
3. Monitors DBE work performance to determine whether a commercially useful function (CUF) is performed;
4. Monitors payments made to DBEs to ensure prompt payment requirements are met; and
5. Provides support services, such as training designed to improve DBE project and business success.

The OBD is not responsible for getting work for DBEs.



DBE Roles and Responsibilities

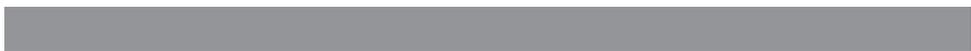
1. DBEs must actively seek work, quote to primes or quote directly as primes.
 - a. Submit quotes on jobs of interest; there is no need to wait for a prime to respond to an inquiry before submitting a quote.
 - b. Begin contract negotiations with primes as soon as a project of interest is identified and the related research has been done.
 - c. If a prime rejects a bid before the letting, consider negotiating to do a smaller portion of work quoted.
 - d. Negotiations must stop when the prime has been awarded the contract.
2. Primes do not have to use high bids. MDOT and its local agencies operate in a taxpayer-supported low bid environment. DBEs must bid competitively.
 - a. Not sure if your bid is competitive? Construction DBEs can check prime unit bid prices at <http://mdotcf.state.mi.us/public/bids/>. Select the letting date of interest, then check “Bid Tabulations” and the project of interest under “Letting Results.”
3. DBEs must do their work with supervision, workers, equipment, and materials controlled by the DBE.

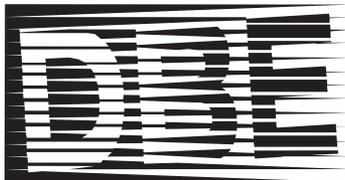


DEFINITIONS

1. **Addendum.** Revisions to the plans and/or proposal issued by MDOT after the advertisement but before the submission of the bid.
2. **Advertisement.** The public announcement of a project inviting vendors to submit bids for work to be performed and materials to be furnished.
3. **Award.** MDOT's formal execution of the contract.
4. **Bid.** A completed schedule of items submitted as an offer to perform work at quoted prices.
5. **Bid Guaranty.** An amount the bidder agrees to pay to MDOT, at the time of bid submission, if the bidder fails to execute the contract form and file satisfactory bonds and other required documents necessary for award of the contract within the 28-day period provided or within MDOT-approved extensions.
6. **Bid Shopping.** Sharing a contractor's or subcontractor's bid with other prospective contractor(s) or subcontractor(s) before the award of a contract in order to secure a lower bid is not allowed.
7. **Bid Peddling.** Bid peddling occurs when a subcontractor who is not selected for a construction project seeks to induce the prime contractor to substitute his or her company for a subcontractor on the original bid by offering to reduce its price.
8. **Low Bid.** The lowest price submitted to perform work in compliance with the plans and specifications.
9. **Performance Bond.** The security furnished by the contractor and the contractor's surety to guarantee performance of the work in accordance with the contract.

Please refer to section 101 of MDOT's Standard Specifications for Construction at www.michigan.gov/mdot/0,4616,7-151-9622---,00.html for more helpful definitions.





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 Before Committing.ind 3/14 (CJ) 