

Disadvantaged Business Enterprise

PROGRAM PROCEDURES

MDOT

Michigan Department of Transportation

2013

Michigan Department of Transportation

DBE Program Procedures

The Michigan Department of Transportation (MDOT) has established a Disadvantaged Business Enterprise (DBE) program in compliance with regulations of the U.S. Department of Transportation (US DOT) at 49 CFR Part 26. As a condition of receiving federal financial assistance, MDOT has signed an assurance with US DOT that it will comply with 49 CFR Part 26.

Federal DBE Program Commitment

The Michigan State Transportation Commission (STC) established a policy for a DBE program consistent with US DOT objectives found at 49 CFR § 26.1. MDOT's program procedures, incorporated in this document, are consistent with STC policy.

Responsibilities

MDOT has been delegated responsibility for the administration and management of public transportation systems by Michigan's Public Act 51 of 1951, as amended.

The Michigan Department of Technology, Management and Budget (DTMB) has delegated authority for management of state-owned facilities, including related contracting processes, based on provisions of Michigan's Management and Budget Act 431 of 1984, as amended.

The Director of MDOT shall be responsible for implementation of the DBE program. The Director shall designate a DBE Liaison Officer who shall be responsible for administering all aspects of the MDOT DBE program.

The DBE Liaison Officer and staff, supported by operating divisions, shall be responsible for developing, managing and implementing the program on a day-to-day basis. The DBE Liaison Officer also shall be responsible for carrying out technical assistance activities, for disseminating information on available business opportunities so that DBEs are provided an opportunity to participate in MDOT's contracts and for maintaining an accurate and up-to-date directory of DBEs certified in Michigan.

Goals

MDOT shall recommend DBE goals to the STC tri-annually, as required by amendments to federal regulations dated March 5, 2010, and also provides an annual update. Upon receiving the recommended goals, the STC shall establish appropriate goals as required by federal and state law.

The department will use race-neutral and race-conscious means to meet recommended DBE goals on projects funded in whole or in part with Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) funds.

Contract goal(s) shall be set for suitable US DOT-assisted construction, consulting, procurement, and service contracts or grants with subcontracting opportunities. Prospective recipients of department contracts must assure the department of their intent to meet the established goal(s) in order to be eligible for award.

The department will not use quotas in any way in the administration of this DBE program.

Adopted by MDOT, February 2012.



Kirk T. Steudle
Director

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Program Authority

MDOT's DBE Program

On Feb. 2, 1999, the US DOT published in the **Federal Register** its final rule at 49 CFR Part 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," as amended Sept. 8, 2000, June 16, 2003, Feb. 3, 2010, and Jan. 28, 2011. It superseded all DBE regulations, orders, circulars and administrative requirements concerning financial assistance programs issued by the US DOT before March 4, 1999. This rule requires MDOT to implement a program to encourage the participation of DBEs in its federal-aid contracting activities.

The Michigan Legislature, by Section 6a(h) of 1964 PA 286, as amended, MCL 247.806(h); MSA 9.216 (6), authorized the Director of MDOT:

To do anything necessary and proper to comply fully with the provisions of present or future federal-aid acts.

In addition to the procedures outlined in this program procedure, MDOT will adhere to all current federal and state laws, regulations, executive orders and directives of the Governor concerning the DBE program and subject to the availability of federal and state funds.

Funding Sources of the MDOT DBE Program

MDOT's DBE program applies to federally assisted projects awarded or administered by MDOT which are funded from the following sources:

1. Moving Ahead for Progress in the 21st Century Act (MAP-21) (2012 P.L. 112-141), Title I, Subtitle A, Sec. 1101 (b)
2. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
3. Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III and V of the TEA-21, Pub. L. 105-178.
4. Airport funds authorized by 49 U.S.C. 47101, et seq.
5. The 2005 SAFETEA-LU Act (Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users) Pub. L 109-59.
6. Federal-aid aviation, highway, and transit funds authorized by the American Recovery and Reinvestment Act of 2009, Title XII.

Program Information

Overall DBE Participation Goal

Every three years, pursuant to the Feb. 3, 2010, amendment to DBE regulations at 49 CFR Part 26, MDOT will publish a notice of its proposed overall DBE participation goal. This is done to inform the public that the proposed goal and its rationale are available for inspection, and to solicit comment.

Complaint Procedure

MDOT recognizes its responsibility to render courteous and timely service to the public. Comments/concerns regarding the DBE program should be forwarded to:

Michigan Department of Transportation
Office of Business Development
Dr. Patricia A. Collins, DBE Program Administrator
P.O. Box 30050
425 West Ottawa St.
Lansing, MI 48909

1. Complaints must be submitted to MDOT in writing. Complainants must include facts and supporting documentation regarding the complaint.
2. If a response is requested, the complainant must sign the complaint and/or give an address and telephone number. Refer to 49 CFR § 26.109 (b) for details.
3. MDOT will provide a written response to complaints within 15 calendar days of receipt.

Source for Additional DBE Program Information

For additional program information or documents call, write, or visit the MDOT Web site:

Michigan Department of Transportation
Office of Business Development
Disadvantaged Business Enterprise (DBE) Program
P.O. Box 30050
425 West Ottawa St.
Lansing, MI 48909
Toll-free phone: 866-323-1264
Fax: 517-335-0945
Web address: www.michigan.gov/mdotdbe
E-mail: mdot-dbe@michigan.gov

American with Disabilities Act (ADA) and Title VI, Including Limited English Proficiency

For information about the ADA or Title VI, including limited English proficiency, contact:

Michigan Department of Transportation
Attn: Cheryl Hudson, Equal Employment Officer
P.O. Box 30050
425 West Ottawa St.
Lansing, MI 48909
Phone: 517-373-0980
E-mail: hudsonc1@michigan.gov

Freedom of Information Act (FOIA) Requests

For a Freedom of Information request, contact:

Michigan Department of Transportation
Metro Region Office
Attn: Bill Perod
18101 W. Nine Mile Road
Southfield, MI 48075
FOIA phone: 248-483-5206
FOIA fax: 248-569-3302
FOIA cell phone: 248-470-3508

Public Information Guidelines

All inquiries by the general public, contractors, news reporters and attorneys shall be handled in accordance with the provisions of 1976 PA 442, MCL 15.231; MSA 4.1801(1), as amended.

Reporting False, Fraudulent, or Dishonest Conduct

MDOT will report any false, fraudulent, or dishonest conduct in connection with the DBE program to the US DOT Office of the Inspector General for appropriate action.

MDOT Fraud and Abuse Hotline

MDOT has established a hotline for employees, contractors, consultants, and others to report suspected fraud or abuse, such as:

- Prevailing wage non-compliance
- Theft
- Kickbacks
- Wrongful claims
- Contract fraud
- Use of materials that do not comply with specifications
- Unapproved substitution of materials, commodities, or test samples

- Failure to follow contract procedures

To reach the hotline, call toll-free: 866-460-6368, or 517-241-2256

Intimidation or Retaliation Acts Prohibited

No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

A. Michigan Unified Certification Program (MUCP)

US DOT regulations at 49 CFR §26.81 (b)(2) state: “The UCP shall provide ‘one-stop shopping’ to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.”

All recipients of funds from the FAA, FHWA and FTA in each state were required to unite and implement the Unified Certification Program (UCP).

In support of this requirement, the State of Michigan established an MUCP Task Committee. This Committee agreed to certify DBE firms based on mandatory reciprocity among the certifying entities in the state. As a result, these organizations will certify DBEs in Michigan:

Michigan Department of Transportation
Office of Business Development
425 West Ottawa St.
P.O. Box 30050
Lansing, MI 48909
DBE program toll-free telephone (Lansing Office): 866-323-1264
DBE program toll-free telephone (Oak Park Office): 866-323-4009
DBE program fax: 517-335-0945
DBE program e-mail: mdot-dbe@michigan.gov

Wayne County Human Relations Division
600 Randolph, 5th Floor
Detroit, MI 48226
Telephone: 313-224-5021
Fax: 313-224-6932

Detroit Department of Transportation
Contract Compliance
1301 E. Warren
Detroit, MI 48207
Telephone: 313-833-769
Fax: 313-833-5523

MUCP-Certifying Agency Requirements

Each certifying agency will notify all MUCP agencies and certification applicants in writing, within a reasonable period of time, of their certification decision for each new applicant. Certifying agencies must keep complete files on applicants and provide information as required. Certifications which do not follow MUCP guidelines will not be valid.

Each certifying agency agrees to provide information and documentation, upon request, to any out-of-state certifying agency where an MUCP DBE firm is seeking certification. All MUCP agencies agree to refer any UCP inquiries from out-of-state UCPs to the appropriate

certifying agency. Information on the certifying agency will be available on the MUCP Web page.

Each certifying agency agrees to require home-state certification as a prerequisite to certifying an out-of-state firm. The certifying agency where an out-of-state DBE firm is seeking certification may contact the applicant or the home state in order to address questions and concerns.

Annual Affidavit and Personal Net Worth

Each certifying agency will annually provide its DBE firms with an affidavit and personal net worth form. Completion of these forms is required for continued certification eligibility. The certifying agencies will notify all MUCP agencies of the firm's continued eligibility. In accordance with 49 CFR Part 26, an applicant's personal net worth form and supporting documentation will be kept confidential unless the certifying agency receives written approval from the applicant to forward applicant information.

B. | Certification Standards for DBE Applicants

The integrity of the MUCP DBE program depends, to a large extent, upon the establishment of systematic procedures to ensure that only bona fide disadvantaged businesses are certified to participate in federally assisted programs. In essence, only small firms independently owned and controlled by socially and economically disadvantaged persons are eligible to participate in the US DOT DBE program. The MUCP will use the following standards to establish DBE certification eligibility in accordance with 49 CFR Part 26, formal US DOT guidance, the MUCP Memorandum of Understanding, and US DOT interpretations of the regulations contained in their appeal decisions.

Small Business Size

In order to be certified, a business must qualify as a small business as defined by U.S. Small Business Administration (SBA) regulations at 13 CFR Part 121, as amended. Size standards for each applicant shall be determined by identifying the firm's primary area(s) of work, locating the related North American Industry Classification System (NAICS) code(s) and applying the corresponding SBA size standard.

No business shall be considered small if average annual gross receipts of the business and its affiliates exceed \$22.41 million over the previous three fiscal years, even though receipts do not exceed the threshold for the applicable NAICS code. This maximum size standard is adjusted periodically to offset inflation.

Social and Economic Disadvantage Status

All applicants for DBE certification must submit a signed, notarized certification that the presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

A signed, notarized statement of personal net worth must be submitted for each individual owner of a firm whose ownership and control are relied upon for DBE certification. Supporting documentation, including personal tax returns, is required as evidence. If an individual's personal net worth exceeds \$1.32 million (excluding the value of the individual's primary residence and ownership interest in the firm seeking certification), the individual's presumption of economic disadvantage is rebutted and he or she will not qualify for this program.

If an individual's presumption of social and/or economic disadvantage is rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility.

Under 49 CFR §§ 26.5 and 26.67, U.S. citizens or lawfully admitted permanent residents who are members of the following groups are presumed to be socially and economically disadvantaged:

1. Black Americans, which includes persons having origins in any of the Black racial groups of Africa.

2. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
3. Native Americans; which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
4. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.
5. Subcontinent Asian Americans; which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6. Women.
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Note: Special rules apply to certification of firms related to Alaska Native Corporations (ANC). See 49 CFR § 26.73(i).

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage on a case-by-case basis in accordance with 49 CFR § 26.63(b).

Individual Determinations of Social and Economic Disadvantage

Persons who are not presumed to be socially and economically disadvantaged, including individuals whose presumed disadvantage has been rebutted, may apply for DBE certification. The applicant has the burden of demonstrating, by a preponderance of evidence, that they are socially and economically disadvantaged. No individual whose personal net worth exceeds \$1.32 million (excluding the value of the applicant's primary residence and interest in the firm seeking certification) may be deemed economically disadvantaged. In making determinations of social and economic disadvantage for non-presumptive individuals, the MUCP will use the standards put forth by 49 CFR Part 26, Appendix E.

Ownership

In establishing ownership, the MUCP is required by 49 CFR § 26.69 to consider all the facts in the record, viewed as a whole. Ownership is determined as follows:

1. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
2. To establish ownership, the socially and economically disadvantaged owner(s) must have made a “real and substantial” contribution to acquire their ownership interest. The contribution may be capital, other assets, or expertise. Contributions of capital or other assets must derive from the disadvantaged person(s) individually and independently owned resources. Resources acquired from another source through a transfer or gift may be scrutinized to assure they are, in fact, individually and independently owned.
3. All applicants for certification are required to establish the source of their contribution(s) to acquire their ownership interest.

Control and Independence

Control, as defined in 49 CFR § 26.71, is comprised of three parts: operational control, managerial control and independence. To establish control, the disadvantaged owner(s) must have sufficient expertise and authority, specifically in the firm’s field of operations, to control the overall destiny and the day-to-day operations of the firm. Additionally, a firm must be an independent business whose viability does not depend on its relationship with another firm or non-disadvantaged individual. In determining whether the disadvantaged owner(s) controls the firm, the following factors will be considered:

1. Operational Control

- A. Of primary importance is the extent to which the disadvantaged owner actually operates the business. The disadvantaged owner must show he or she makes the basic decisions in the daily operations of the firm.
- B. The disadvantaged owner must have an overall understanding of and technical competence and experience directly related to the type of business in which the firm is engaged and in the firm’s operations. Technical competence is defined as experience, education, expertise and/or background sufficient to afford the disadvantaged owner an ability to control the critical operations of the firm’s business, including but not limited to operations such as estimating, marketing, sales, field supervision and bidding. Technical competence in this sense does not mean expert knowledge. It means substantial knowledge of the technical requirements of the industry for which the business seeks certification.
- C. If state or local law requires a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged person(s) who owns and controls a potential DBE firm must possess the required license or credential.
- D. The disadvantaged owner should be able to show that basic decisions pertaining to the daily operations of the business are made independently. If a disadvantaged owner relies on the decisions of other employees in the critical operations of the firm’s business, the disadvantaged owner must show he or she can intelligently use

and critically evaluate information presented in making decisions concerning the daily operational activities of the business.

- E. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- F. In order to be viewed as controlling a firm, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

2. Managerial Control

- A. The disadvantaged owner must have the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as long-term, decisions on matters of management, policy and operation.
- B. The disadvantaged owner should be able to show there are no restrictions through corporate charter provisions, by-law provisions, contracts, voting rights or powers, bank signatures, or any other formal or informal devices which would limit control of the firm.
- C. The disadvantaged owner should be able to show, clearly through documentary evidence, that he or she controls the firm in areas such as, but not limited to:
 - (1) The disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - (2) In a corporation, disadvantaged owners must control the board of directors.
 - (3) In a partnership, one or more disadvantaged owners must serve as general partners with control over all partnership decisions.
 - (4) The disadvantaged owner must have the power to hire and fire any persons to whom key control operations have been delegated.
- D. Differences in wages and other compensation between the disadvantaged owner and non-disadvantaged individuals will be considered as a factor in determining who controls the firm.

3. Independence

- A. An independent firm is one whose viability does not depend on its relationship with other firms or individuals. Factors, which will be reviewed in determining independence pursuant to 49 CFR § 26.71, include relationships with non-DBE firms in areas such as personnel, facilities, equipment, financial and/or bonding support and other resources.

- B. A firm is considered controlling or having power to control a certified DBE or an applicant when one or more of the following circumstances are found to exist:
- (1) Officers, directors, employees, or principal stockholders of one firm serve as a working majority of the board of directors or officers of the DBE firm.
 - (2) The DBE shares common office space and/or employees and/or equipment and/or other facilities with another business (whether or not for a purported fee or other consideration) particularly where both firms are in the same or related industry or field of operations or were formerly affiliated.
 - (3) Former officers, directors, principal stockholders and/or key employees of one firm organize a new DBE business in the same or related industry or field of operation and serve as its officers, directors, principal stockholders and/or key employees.
 - (4) One firm gives or promises to give the other subcontracts, financial or technical support and/or other facilities (whether or not for a purported fee or other consideration).
- C. The certifying agency also will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms compromise the independence of the potential DBE.
- D. The potential DBE's relationships with prime contractors will be examined to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of a potential DBE.
- E. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to show that a firm is an independent business.
- F. A business operating under a franchise or license agreement may be certified if it meets the standards and the franchiser or licensor is not affiliated with the franchisee or licensee.
- G. DBE firms entering into a joint venture with another DBE firm must have the joint venture certified as a separate entity.

Work Classifications

MUCP-certifying agencies will grant certification only in specific types of work in which the disadvantaged owners have the ability to control the firm. The types of work a firm can perform (whether on initial certification or when a new type of work is added) are described in terms of the most specific available NAICS code. MDOT-certified firms are also assigned MDOT-specific work classification codes.

Vendors who wish to work for MDOT in areas which require service or construction prequalification also must become prequalified. Prequalification and DBE certification are not

the same. Applications for service or construction prequalification are available on the Web at www.michigan.gov/mdot. Choose the "Doing Business" link, then choose either the construction or service prequalification link, as applicable, under the section entitled "How to...."

Annual Affidavit Required to Maintain Certification

DBE certification is valid as long as the firm continues to meet all eligibility standards, unless certification is removed. Certified firms will be required to submit a yearly affidavit that there have been no changes which would affect the firm's eligibility to participate as a DBE.

Complete, notarized affidavits must be returned annually on the anniversary date of your certification, with the appropriate supporting documentation.

Accuracy of tax forms and other documentation provided may be confirmed by the Michigan Department of Treasury.

The MUCP-certifying agency must be notified, in writing, of any changes which would affect the size, disadvantaged status, ownership, or control requirements, or of any material changes in the information provided in the certification application as follows:

1. Written notification must be provided within 30 days of the change.
2. Notification must be in the form of a notarized affidavit. Supporting documentation describing in detail the nature of the changes must be attached.
3. Failure to notify MDOT in a timely manner of changes which affect certification eligibility can result in certification being removed.

Note: It is the responsibility of the DBE to notify the MUCP-certifying agency of any changes in address, phone number, fax, or e-mail.

C. | MDOT DBE Certification Procedures

Purpose

Certification procedures are designed to ensure all businesses participating in the MDOT DBE program meet the eligibility standards defined in US DOT regulations at 49 CFR Part 26. A business certified as a DBE can bid on all projects in the state of Michigan, provided individual agency requirements which apply to all firms, DBE and non-DBE alike, also have been met.

Firms wishing to be considered for DBE certification must complete the “Michigan Unified Certification Program (MUCP) Disadvantaged Business Enterprise (DBE) Certification Application” and submit all information requested on the application. The application is designed to solicit information to determine whether an applicant business is eligible for certification as a DBE under 49 CFR Part 26.

Go to “download forms” at www.michigan.gov/mucp for a DBE application.

Processing of Applications

The completed MUCP DBE Unified Certification Application and all other required information should be mailed or delivered to MDOT using the address provided with the application.

The signed and notarized certification application and related documents will be reviewed for completeness. Incomplete application packages will be returned within 15 calendar days with a list of information needed to complete the application package.

Certifying agencies will certify eligible firms within 90 calendar days after receipt of all information required by 49 CFR § 26.73 (c). Regulations allow a one-time extension of 60 additional calendar days upon providing written notice to the firm of the reason for the extension.

Application packages are processed based on date of receipt.

Interstate Certification

A DBE whose primary office is not in Michigan must become DBE-certified in its home state before applying for certification in Michigan. The non-Michigan DBE must provide MDOT with a complete copy of the application provided to the home state and all supporting documents, including a copy of the certification approval. MDOT will obtain confirmation of the applicant’s DBE certification from the home state. Within 60 days of receipt of all information required to determine certification eligibility, MDOT will send the non-Michigan applicant firm either a written notification of certification or a notification of intended denial.

Michigan law may require credentials that the home state does not; i.e., the owner of an electrical firm must be a licensed electrician. Failure to have credentials required to operate in Michigan will result in certification denial.

When MDOT determines that an applicant's home state certification should not apply in Michigan, MDOT will provide written notification containing specific reasons for an intended denial of certification and offer the firm an opportunity to respond. The non-Michigan firm may respond in writing or request an in-person meeting. If the firm requests a meeting, MDOT will schedule the meeting to take place within 30 days of receiving the firm's request. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets DBE eligibility requirements with respect to the issues raised by MDOT's written notice.

A non-Michigan applicant receiving an intended denial must provide all notices or correspondence from states other than its home state, and any other information submitted to the home state or any other state related to its certification. An applicant who filed a certification appeal with the US DOT must inform MDOT and provide letters of appeal and US DOT's response. Lastly, these documents must include an affidavit sworn to by the firm's owners before a person who is authorized by law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States, that all information required by regulation has been submitted, that the information is complete, and that the information is an identical copy of information submitted to the home state.

MDOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later. The firm's application for certification in Michigan is stayed pending the outcome of this process.

Any applicant who has been denied certification may appeal the decision. For additional information, please refer to "Appeals to the US DOT" below.

Intake

Applications are received by MDOT, logged and reviewed for completeness. Complete application packages are scheduled for an on-site visit. Incomplete application packages may be returned.

OBD supportive services staff are available to answer questions if the certification application is returned.

On-site Visits and Field Monitoring

On-site visits required by 49 CFR § 26.83(c) (1) are conducted at the applicant's principal place of business with firms seeking first-time certification. During the on-site visit, the firm's principal officers and key employees must respond in writing to questions designed to clarify information contained either in the application package or received at the on-site visit. Questions are designed to verify whether or not the applicant meets DBE certification standards.

Accommodations for those with difficulty reading or writing are available upon request.

During the on-site visit, compliance staff may review a firm's financial, corporate, payroll and other records.

On-site visits will be scheduled at a mutually convenient time for the certifying agency and the firm. A subsequent on-site visit may be necessary if the basis upon which the certification was granted has changed. In addition, on-site visits are conducted as a result of:

1. US DOT request
2. MUCP-certifying agency requests
3. Other state's DBE certification agency requests
4. Company changes affecting eligibility
5. Third-party written complaint
6. Changes in the firm's principle business activity

Following the on-site visit, a report based on facts contained in the applicant's file will be developed and presented for managerial review and a certification eligibility decision.

US DOT regulation 49 CFR § 26.73 (c) states: "DBE firms and firms seeking DBE certification shall cooperate fully with [DOT] requests (and US DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification."

A reasonable period of time will be allowed to enable the firm to assemble the requested information.

At the end of the on-site visit, the firm's principal officers may copy the written questions and the written responses. In the event that copying facilities are not available, MDOT staff conducting the on-site visit will copy the questions and the written responses upon their return to the office and mail them to the firm's principal officers, if requested.

Compliance staff may conduct field monitoring at job sites where the applicant firm is working.

Application Process Complete

The report of the on-site visit is completed and a recommendation made to management.

The section management reviews the recommendation on whether the applicant meets eligibility standards established in federal regulations and/or state law and recommends approval or denial to the DBE Program Administrator. All final determinations are made by the appropriate section manager.

MDOT Denial Process

If grounds for a determination of certification ineligibility are sufficient, the MDOT Office of Business Development field services managers will mail the firm a Notice of Certification Denial. The Notice of Certification Denial contains reasons for the decision and advises the applicant of its right to appeal to the US DOT.

Appeals to the US DOT

Applicants have 90 days from the date of the Notice of Certification Denial to appeal to the US DOT. Should an applicant appeal to the US DOT, the denial will not be effective until a decision has been rendered by the US DOT. The appeal letter to the US DOT must contain information and arguments on why the denial should be reversed.

Appeals should be mailed to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754 TTY: 202-366-9696
Fax: 202-366-5575

Firms denied DBE certification must wait 12 months after the effective date of the final decision before reapplying for DBE certification.

DBE Certification Eligibility Removal and Appeal Process

If grounds for removal of DBE certification eligibility are sufficient, the DBE is mailed a Notice of Intent to Remove Eligibility with the reasons for the decision and advised of the opportunity for a hearing before the MUCP Removal of Eligibility Committee. The applicant has 30 calendar days from the date of delivery of the notice of intended removal of eligibility to appeal to the committee.

The Removal of Eligibility Committee, made up of representatives from each MUCP DBE certifying agency, processes DBE removals of eligibility in accordance with 49 CFR §26.87. The committee meets on an as-needed basis.

Members of the MUCP Removal of Eligibility Committee, other than the agency which performed the initial certification, will have one vote each. The agency requesting removal of eligibility will abstain from voting or, if necessary to break a tie, will be represented by an alternate member. In accordance with the regulations, each firm will be allowed to present their case in person or through an administrative review of documents.

Removal of eligibility to participate in the DBE program may occur for any of the following reasons:

- A. Notification by the firm that it no longer meets federal regulations for DBE certification.
- B. If the DBE's business entity has changed to the extent the business is no longer a small business concern.

Small business size is determined in two ways:

A firm and its affiliates cannot exceed the overall size limitation established for the

DBE program. The current overall dollar limitation is \$22.41 million in gross receipts averaged over a three-year period. This is adjusted periodically for inflation.

A DBE cannot exceed the size standard assigned to individual NAICS codes in which the firm is certified. A table of size standards is available at www.sba.gov/size.

- C. For federal-aid projects funded by FHWA, FAA and FTA funds, if the socially and economically disadvantaged individual's status has been challenged and MDOT has found the individual does not meet the definition of a "socially and economically disadvantaged individual" used in 49 CFR §§ 26.63, 26.67 and Appendix E, "Individual Determinations of Social and Economic Disadvantage," and that the firm is no longer owned and controlled at least 51 percent by a socially and economically disadvantaged individual(s).
- D. If the firm's business entity has changed to the extent the business is no longer owned and controlled by socially and economically disadvantaged individual(s) as defined by the federal regulation.
- E. For federal-aid projects, if the MUCP agency receives an order from the Office of the Secretary of Transportation, US DOT, to remove the eligibility of a DBE firm.
- F. If an investigation uncovers evidence of violations of 49 CFR Part 26, with regard to the actual work performed by a DBE, and the findings and conclusions show that the firm's ownership or control has changed to the extent that the firm is no longer eligible.

Intent to Remove Eligibility Hearing

The MUCP-certifying agency will schedule a hearing within 30 days of receipt of a request. At the conference, reasons for the intended removal of eligibility will be discussed, either in person by the DBE or through an administrative review of documents, if requested by the firm. The Removal of Eligibility Committee will receive information and evidence intended to show that certification eligibility should not be removed and will ask questions related to the intended removal of eligibility.

The panel will only review the findings of the Notice of Intent to Remove Eligibility, the certification file and the appealing firm's rebuttal of these findings. The committee will not consider any changes in the firm's organization, structure or operations that occurred after the date of the Notice of Intent to Remove Eligibility or that were not documented in the certifying agency's file as of that same date. The committee will render a written decision based on its findings within 60 calendar days after the conference.

The committee's decision will determine whether the intended removal of eligibility will be sustained or overruled. The committee's determination will have full force and effect.

If no written request for appeal is received as specified above, the intended determination to remove eligibility will become final and have full force and effect. Firms who have their eligibility removed must wait 12 months after the effective date of the final decision before reapplying for DBE certification with any US DOT-certifying agency in the state of Michigan.

Appeals to the US DOT

Firms may appeal to the US DOT within 90 calendar days of the date of the final decision. The appeal letter must contain information and arguments on why the removal of eligibility should be reversed. MDOT's decision remains in effect, pending the US DOT's decision in the matter.

49 CFR §26.89 describes the process for appeals to the US DOT.

Appeals to the US DOT should be sent to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

A firm has the option of first exhausting the MUCP-certifying agency's administrative appeal processes before proceeding with an appeal to the US DOT.

D. | Commercially Useful Function (CUF)

DBEs are required to perform a commercially useful function (CUF) on US DOT-assisted contracts. CUF requirements are included in 49 CFR § 26.55. Failure to perform a CUF can result in removal of eligibility to participate as a DBE if it is determined that the DBE owner(s) no longer meets certification standards for ownership or control. Prime contractors also are subject to sanction when DBEs do not perform a CUF on their federally funded projects.

A DBE does not perform a CUF 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. Such pass-through arrangements are in violation of federal regulation and may result in removal of eligibility to participate as a DBE.

DBEs working as participants in a joint venture must be responsible for a distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

In order to do a CUF, DBEs must:

1. Perform a bona fide service, such as professional, technical, consultant, or managerial services, or provide bonds or insurance specifically required for the performance of a US DOT-assisted contract, providing the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
2. Do all their contracted work items using the DBE's own supervisors/managers, workers, materials and equipment. Use of another contractor's supervisors, managers, foremen, workers, materials, or equipment to do work contracted or subcontracted to the DBE is in violation of CUF requirements.
3. Be paid for their work as agreed upon in their contract.
4. Do their work according to normal industry practice, except where such practices violate DBE regulations outlined in 49 CFR Part 26.

A DBE subcontractor listed in the prime contractor's commitment (as required by § 26.53(b)(2)) or an approved substitute DBE can be terminated only with MDOT's prior written consent for good cause.

MDOT must be notified immediately if a DBE is unwilling or unable to perform its work. **The prime contractor must provide DBEs five days written notice prior to MDOT approving their replacement. A prime contractor must submit MDOT Form 0196 – Request to Replace a DBE, to the MDOT project manager, with a copy to the MDOT Office of Business Development before substituting DBEs.** The MDOT project manager will forward the signed, approved copy to the MDOT Contracts Services Division.

A prime is not required to provide five days written notice in cases where the DBE in question has provided written notice that it is withdrawing from the contract to the prime, with cc's to the MDOT project manager and MDOT DBE Administrator.

The DBE substitute shall perform at least the same amount of work under the contract as the DBE that was terminated. Appropriate administrative remedies will be invoked in the event a prime contractor fails to comply with requirements.

Detail regarding performance of a CUF is provided below:

DBE Management

Management includes scheduling work operations, ordering and paying for equipment and materials necessary to do the contract, preparing and submitting payrolls and all other required reports and forms, and hiring and firing of employees, including supervisory employees.

1. The DBE must supervise the daily operations of the work contracted.
2. The DBE owner may act as superintendent and directly supervise the work, or a skilled and knowledgeable superintendent who is a regular employee of the DBE must directly supervise the work. If the latter is used, the DBE owner must be actively involved in making operational and managerial decisions of the firm.
3. All administrative functions must be done by personnel responsible to or employed by the DBE at facilities or locations under the control of the DBE.

DBE Work Force

The DBE must supervise and perform contract work with workers on its payroll and under the direct supervision of the DBE owner(s) or a superintendent of the DBE who is a regular employee, consistent with normal industry practice.

1. The DBE or his/her superintendent must, on a full-time basis, supervise and control the work of the contract.
2. The majority of the DBE's workforce and his or her superintendent/foreman must be regular employees of the DBE.

Equipment

DBEs may lease equipment consistent with standard industry practice.

1. It is not acceptable to bid a project based on a "labor and materials only" basis. The DBE must either own or lease equipment used to do its work. The cost of equipment leased from the prime contractor or an affiliate of the prime contractor may not be counted toward DBE participation goals.

2. A DBE must submit lease agreements for all equipment leased. Lease/rental agreements must be separate from the subcontract and must specify the terms of the lease arrangement. Operation of leased/rented equipment should be subject to the full control of the DBE.
 - A. If the equipment is of a specialized nature, the lease may include the operator. If this practice is generally acceptable within the industry, the operator can remain on the lessor's payroll. Such an arrangement should be for a short term and involve a specialized piece of heavy equipment readily available at the job site.
 - B. For equipment that is not specialized, the DBE is expected to provide the operator and be responsible for all payroll and labor compliance requirements.
3. A DBE may not pay for rented or leased equipment by having the payment deducted from the prime contractor's payment(s) to the DBE for work done.

A DBE may not use equipment belonging to another contractor without having a formal lease agreement for the equipment.

For additional CUF guidance on DBE trucking operations, please refer to "Doing Business for MDOT Construction Contractors" in Section G.

Materials

The DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material.

1. Invoices for materials used in the DBE's work should be invoiced to the DBE firm and not to the prime contractor. MDOT will periodically review invoices for materials to ensure compliance.
2. The cost of materials and supplies the DBE subcontractor purchases from the prime contractor or its affiliate may not be counted toward DBE participation goals.

Joint Check

With prior approval, a joint or two-party check between a subcontractor, a prime contractor, and a materials supplier may be used to guarantee payment for materials. The "Application to Use Joint Checks" (MDOT Form 0183) is available on the Web at: <http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>.

For additional CUF guidance on DBE liquid asphalt dealers, and for joint check guidance, please refer to "Doing Business for MDOT Construction Contractors" in Section G.

CUF Reviews and Outcomes

MDOT conducts field monitoring of prime contractors to assure that DBE-certified firms working on contracts perform a CUF. Investigations are done on DBE firms suspected of not

performing a CUF as a result of field monitoring or based on receipt of a third-party complaint. Investigations showing a DBE may not have complied with all CUF requirements on a project(s) will result in the firm being called in for a conference with MDOT to discuss the alleged violation(s).

Non-attendance to a conference may result in the removal of certification for failure to cooperate. Following the CUF conference, the DBE administrator will review information received and make a determination regarding the DBE firm's compliance with federal regulations. Firms are notified in writing of the determination. Determinations include:

1. No violation of federal regulations found.
2. Minor violation(s) of federal regulations will result in the firm being cited and warned that future violations may result in removal of eligibility to participate as a DBE. The cited firm is subject to increased field monitoring of the firm's projects.
3. MDOT may remove work classifications related to CUF violations. Firms do not have the right to appeal removed work classifications.
4. MDOT may remove a firm's eligibility to participate as a DBE if it is determined that violations occurred on more than one project; and that these violations indicate a lack of independence or control of the DBE firm or disadvantaged owner.
5. One major violation showing willful intent to subvert federal regulations may result in removal of firm's eligibility to participate as a DBE.

Further information on removal of a DBE's eligibility may be found in 49 CFR § 26.87.

Prime contractors are responsible for their subcontractors. When DBE-certified firms are determined to have violated federal regulations by failing to perform a CUF, prime contractors are notified in writing and given the opportunity to provide explanation. Prime contractors unable to show compliance with federal regulations are subject to a variety of sanctions. Sanctions are based on the severity of the violation and may include:

1. The prime contractors will be determined to have a deficiency in DBE participation corresponding to the dollar value of the DBE's work that did not meet federal regulations.
2. The FHWA will be notified that MDOT has overstated the reported DBE participation for this project.
3. MDOT's Prequalification Committee will be notified of the prime's DBE participation deficiency on the project.
4. Prime contractors are subject to a wide variety of sanctions, ranging from a written notice of violation, up to and including loss of bidding privileges or criminal charges.

E. | Third-Party Complaints

As provided by 49 CFR § 26.87, any person may file a written complaint alleging that a currently certified firm is in violation of DBE regulations. Information received about a DBE prior to the initial certification decision being made will be considered in the investigation of the application for certification.

MDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. Confidentiality of complainants' identities is protected to the extent provided in 49 CFR § 26.109(b).

1. The ineligibility complaint shall be filed with MDOT in writing no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was discovered. MDOT may extend the time for filing or waive the time limit in the interest of justice, specifying in writing, the reason for so doing. The complainant shall include any information or arguments supporting their assertion that the DBE firm against whom the complaint is lodged is ineligible and should not continue to be certified.
 - A. The complainant must sign the complaint and give an address and telephone number where they may be reached during the investigation.
2. While the complaint is pending, the DBE against whom the complaint was lodged will remain eligible to participate in the DBE program.
3. MDOT will evaluate information available to it and also may request additional information from the DBE firm or conduct any other investigation deemed necessary.
 - A. A DBE will not have its eligibility removed based on a complaint without first having an opportunity to respond to the complaint.
 - B. Failure of the DBE to appear at a scheduled investigatory conference or to respond, if requested by MDOT, in writing, to the complaint within 30 calendar days of mailing may result in removal of eligibility.
4. MDOT will make a determination as to the eligibility of the DBE based on the record. Both the complainant and the DBE will be notified in writing of the determination and the reasons for the determination. Notifications shall reference specific evidence in the record on which each reason is based.
 - A. If MDOT intends to remove the DBE's eligibility to participate in the DBE program, the process for removal of eligibility shall be followed.
 - B. If MDOT determines there is no reason to believe that the DBE against whom the complaint is filed is ineligible, MDOT will inform the challenging party in writing.
5. The complainant may request, in writing, a review of the decision before the DBE administrator. The request must be made within 30 calendar days of the date of written

notification of the decision. If no request for review is submitted within 30 calendar days, the decision is final.

Complainants in an ineligibility complaint may appeal the determination to the US DOT pursuant to the procedures set forth in 49 CFR § 26.89. If US DOT does not find reasonable cause to propose removing the firm's eligibility, the firm is eligible. Complainants wishing to file an appeal must send a letter to the US DOT within 90 days of MDOT's final decision, including information and arguments concerning why MDOT's decision should be reversed. Pending US DOT's decision in the matter, MDOT's decision remains in effect.

US DOT Directive to Remove a Firm's Eligibility

1. If US DOT believes the record provides reasonable cause to believe that a DBE certified by MDOT is not eligible, US DOT may direct MDOT to begin proceedings to remove the DBE's certification.
2. US DOT will provide MDOT and the DBE firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
3. MDOT must immediately take steps to remove the DBE's certification eligibility. MDOT will follow the process for removal of eligibility.

All participants in the DBE program, including contractors using DBEs to meet contract goals, are required to cooperate fully with MDOT in a compliance or certification review, investigation or request for information. Failure to cooperate may result in a finding that the firm is not in compliance with program procedures and appropriate action against the firm may be taken.

F. | DBE Program Goals

Overall DBE Goal Determination

Pursuant to requirements of 49 CFR Part 26, MDOT submits its overall goal for DBE participation on contracts funded in whole or in part with funds from FHWA, FAA and FTA by Aug. 1 on a staggered three-year schedule. The year of submission is established by each federal agency and is published on its Web site.

MDOT regularly reviews its progress toward meeting its overall goal and may make adjustments to the overall goal during the three-year period based on changed circumstances.

MDOT's proposed overall FHWA goal is presented to the STC for approval. Once approved by the STC, the goal is forwarded for review and approval by the FHWA Michigan Division and FHWA Legal Counsel.

DBE participation goals are designated on individual projects in order to meet the race-conscious portion of the overall goal. Refer to "The Contract Selection Team and DBE Participation Goals" for detailed information about the project-level process.

MDOT's proposed FAA and FTA goals are submitted to the respective Great Lakes Region Office for review and approval.

The overall goal reflects the relative availability of DBEs who are ready, willing and able to work for MDOT, in comparison to all firms within MDOT's marketplace. The overall goal is MDOT's determination of the level of DBE participation which could be expected, absent the effects of discrimination.

Based on revisions to the federal regulations which took effect Jan. 28, 2011, if MDOT does not meet its projected overall DBE goal at the end of a fiscal year, the reasons for not achieving the goal must be analyzed and specific steps taken in order to fully meet the goal in the new fiscal year. The analysis and corrective actions must be submitted within 90 days of the end of the fiscal year to the appropriate US DOT operating authority.

Methodology

MDOT uses a two-step process to determine its overall DBE participation goal:

STEP 1. Determine the base figure for the overall goal

- Calculate the actual relative availability of DBEs to perform the types of federally assisted prime and subcontracts MDOT intends to let: heavy construction, materials supply, engineering and other professional services, and transit services.
- Weigh availability figures by the respective contract dollars to be expended in each type of federally assisted prime and subcontract.

- Disaggregate the resulting weighted availability figures.

STEP 2. Adjust the base figure using factors relevant to MDOT’s marketplace

The methodology used includes an explanation of how portions of the forecasted tri-annual overall goal are achieved using race-neutral and race-conscious means.

Additional Information About Steps 1 and 2

The Step 1 base figure is calculated individually for heavy construction, professional services, and transit services pursuant to guidance provided by federal regulations at 49 CFR §26.45 and *Federal Register* Vol.64, No.21 dated Feb. 2, 1999.

STEP 1: Determine the Base Figure for the Overall Goal

MDOT’s directories of certified DBEs, prequalified firms and approved suppliers provide relevant and reliable data to measure its marketplace. These data sources are used for the following reasons:

- The State of Michigan requires prime contractors and subcontractors wishing to do business with MDOT to be prequalified.
- MDOT maintains a database of approved suppliers and publishes the list on the Web.
- MDOT’s *Vendor Availability Questionnaire* Web site is used to survey the universe of vendors seeking work with MDOT. A review of submissions supports MDOT’s determination that its marketplace consists of vendors who are DBE-certified, prequalified, or approved suppliers.

The Step 1 base figure is determined for each operating authority (FHWA, FAA or FTA) by adding weighted DBE-relative availability in heavy construction, professional services, or transit services, as applicable.

Projected weighted dollar value x DBE relative availability = Weighted DBE-relative availability

Estimated federally assisted heavy construction contract dollars = Projected weighted dollar value heavy construction (%)
 Total federally assisted program dollars

Number of DBEs in heavy construction = DBE relative availability in heavy construction (%)
 Number of non-DBEs and DBEs in heavy construction

Projected weighted dollar value x DBE-relative availability = Weighted DBE-relative availability heavy const.

The base figure reflects only the sum of the weighted relative DBE availability in heavy construction, professional services or transit services for FHWA, FAA, or FTA-assisted contracts, as applicable, and is not in itself a direct measure of capacity.

STEP 2: Adjusting the Base Figure for the Overall Goal

Factors relevant to MDOT's contracting market are used to make adjustments to the Step 1 base figure. These factors may include:

- Median DBE participation for the past 10 years
- Comparative analysis of the mix of projects, the dollar volume of the projected program and the availability of DBEs in the types of work needed
- The number of projects which may not be conducive to DBE race-conscious participation designations due to small project size
- Publication of the goal within the media
- The number of projects which may not be conducive to DBE participation due to the location of the contract
- DBE certification activity
- Initiatives taken by MDOT to encourage small business participation
- Historical data involving approved waiver/modification requests
- Feedback and consultation regarding the proposed goal with industry, minority and women's groups as required by 49 CFR § 26.45 (g)(1)

Projecting Race-Neutral/Race-Conscious Portions of the Goal

Once the Step 1 base figure has been adjusted to determine the overall goal, MDOT projects the portion of the goal to be met using race-neutral (RN) or race-conscious (RC) means.

- RN DBE participation includes instances when a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or is awarded a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

The projected RN portion of the overall goal is based on median RN DBE participation achieved during the previous 10 years.

To facilitate RN participation, MDOT utilizes small business outreach, technical assistance and networking sessions, conferences, reimbursement programs, support, license subsidies and targeted training.

- RC DBE participation includes instances when a DBE receives subcontracts from a prime contractor because of required DBE contract goals.

RC participation is assigned to federally assisted construction projects by MDOT's Contract Selection Team (CST). The selection process is described below.

NOTE: MDOT will ensure that its DBE program continues to be narrowly tailored to overcome the effects of discrimination by tracking and examining actual RN and RC DBE participation obtained during the course of the year and as necessary, will make appropriate modifications in its use of RN and/or RC measures in accordance to 49 CFR § 26.45.

The CST and DBE Participation Goals on MDOT-let Highway Projects

Collecting Contract Information

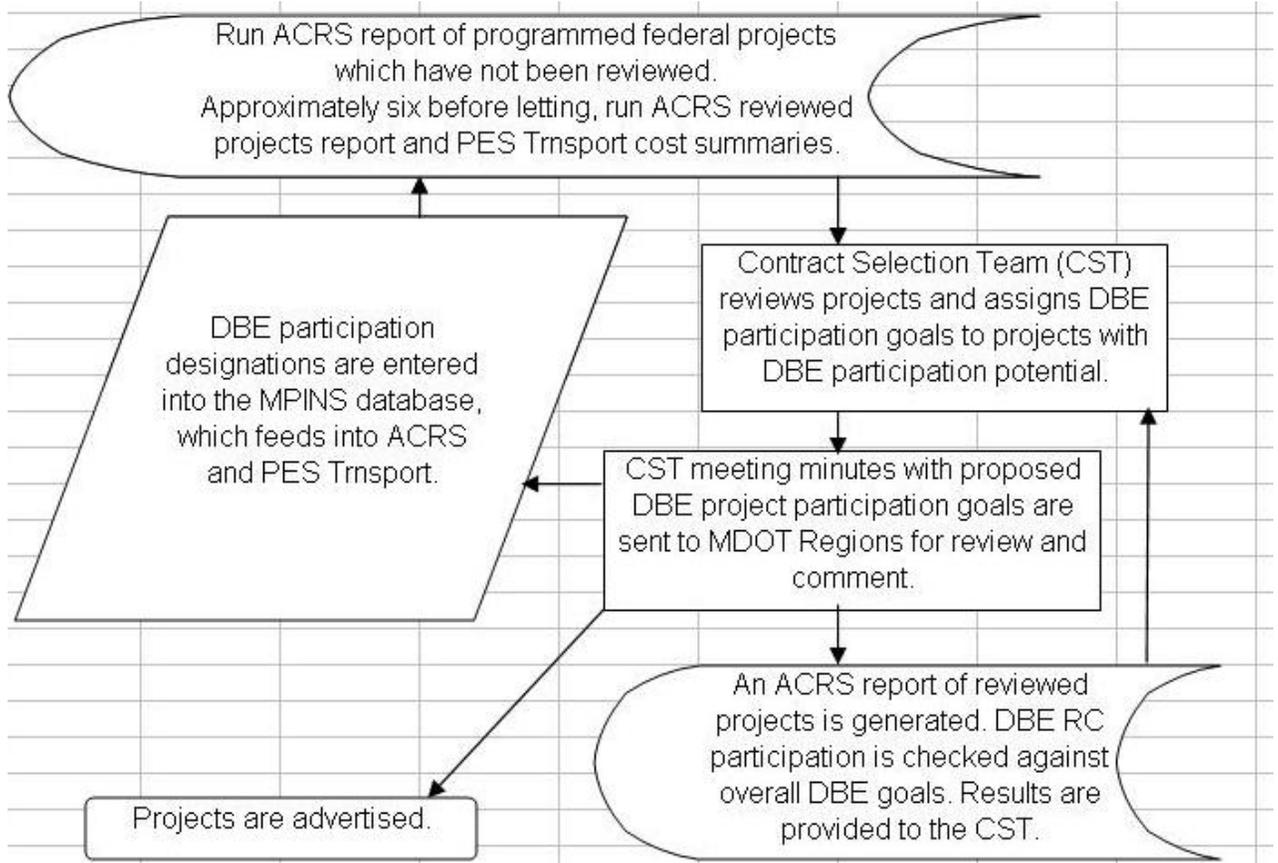
MDOT's CST reviews federally funded trunk line projects for DBE participation potential. CST members include individuals from MDOT's DBE program and the bureaus of Finance and Administration, Highways, Transportation Planning, and Aeronautics. The CST meets at least monthly to review project detail and assigns a DBE participation goal to suitable projects.

Projects are typically reviewed by the CST for DBE participation potential at least twice:

1. Programmed projects which have not had prior CST review are downloaded from MDOT's Administrative Customizable Reporting System (ACRS) database. The CST reviews project details, including estimated cost, location, types of work, and availability of DBEs. Suitable projects are assigned a DBE participation goal.
 - a. DBE participation recommendations are tracked using MDOT's MAP Project Information System (MPINS) database. This database feeds into ACRS and MDOT's Transport Preliminary Engineering System (PES).
2. Prior to project advertisement, approximately six weeks before each letting, the CST performs a second review. Transport PES is used to generate a "Cost Summary" for each project. The "Cost Summary" includes project identification numbers, location and general type of work (preventive maintenance, roadside construction, etc.), project description, engineer's estimated value, project work classifications, a list of DBE firms certified and/or prequalified to perform each work classification, and the primary business address of each DBE firm. Using a standard algorithm to calculate DBE availability, the CST determines whether or not the project should have a DBE goal, and if so, sets the goal.
 - b. A version of the "Cost Summary" specifically created for vendor use is available on the "letting" link at www.michigan.gov/mdotdbe.

Following each CST meeting, DBE program staff prepares meeting minutes, which are electronically distributed to MDOT region representatives for review and comment. Region comments are provided to the CST. Once the CST and region representatives agree with the DBE participation goals set on each project, the list is forwarded to the Contracts Services Division (CSD) for project advertisement

A flow chart of the contract selection and review process for trunk line and local agency projects is shown below. The process for CST review of service contracts is under development.



RC DBE participation is checked against overall DBE goals. Results are provided to the CST.

Setting Goals on Individual Projects

Algorithm for Computing the Science Portion of the Project Specific DBE Participation Goals

- Step 1: Run “Cost Summary by Proposal” statements for each project to generate the engineer’s estimate, required work classifications, and percentage of total project for each work classification.
- Step 2: Review the Cost Summary by Proposal for prime contract 40 percent work classifications. This amount will not be used in the calculation of the DBE goal. If there is more than one prime classification, the algorithm will be run for each prime classification. The lowest percentage will be used for this portion of the overall project goal. If the prime classification(s) amount is greater than 40 percent, the remaining portion of that work classification will be used in the calculation of the DBE goal.

- Step 3: Calculate the DBE multiplier using the following formula:

active preq and cert DBE contractors in the project region per work classification

active preq subcontractors in the region per work classification (including DBEs)

Note: For purposes of this process, “active” is defined as the DBEs/non-DBEs working on a contract on which an estimate has been processed in the last two years.

- Step 4: For each work classification compute:

$$\text{\$ value of work classification} \times \text{DBE multiplier} = \text{DBE \$ value of work classification}$$

- Step 5: Compute Total Project DBE Participation Goal for contractors:

$$\frac{\text{Sum of all DBE \$ values of work classifications}}{\text{Engineer's estimate of project}}$$

Note: The use of “active” in this algorithm is not to be considered a bidders list as defined by 49 CFR 26.45(c)(2). The portion of DBEs who have been unable to secure a subcontract will be a part of the “art” portion of the DBE goal calculation. Other “art” portion considerations will include, but are not limited to, trucker and supplier opportunities, emerging new DBE contractors, community issues, political concerns, and historical DBE attainment in the area/work type.

Non-mathematical considerations related to DBE participation goal designations: comments regarding service firms, truckers, brokers and newly certified DBE firms; the political environment; relevant current DBE issues; relevant historical issues;

relevant project location issues; relevant project scope issues; any additional considerations; comments regarding the algorithm (construction projects only); other.

DBE Participation Designations on Design-Build Projects

Design-Build (DB) is a construction project contract that combines engineering design services, construction services and sometimes maintenance services into a single contract. The design-builder is usually the general construction contractor but in some cases it also is the engineering design firm. The CST reviews a DB project summary to establish a DBE participation goal in advance of advertisement.

Composition of the CST - all CST members will have alternate representatives:

- a. Office of Business Development - Three representatives (including the Team Chair)
- b. Regions - Two representatives
- c. Finance and Administration - One representative
- d. Highway Development - One representative
- e. Highway Delivery - One representative
- f. Transportation Planning - One representative
- g. Executive Office - One representative on an as-needed basis
- h. Aeronautics - One representative
- i. When the CST reviews service consulting contracts, representatives from the respective contracting area will participate. Service consulting includes Construction Services, Design Services, Real Estate, Passenger Transportation, Planning, Traffic and Safety, etc.

The Chair of the CST has the authority, with the advisement of the Chief Operations Officer (COO), to make final decisions on individual project goals. This may occur in instances where the CST cannot agree on a project DBE percentage, or when a decision must be made within a short time frame and it is not possible to get CST input and meet a critical deadline.

G. | Doing Business for MDOT Construction Contractors

MDOT's public Web site has the most up-to-date information about the department at www.michigan.gov/mdot. Individuals interested in doing business with MDOT should click on "Business Links, Contractor Services."

Construction Prequalification

Prequalification and DBE certification are not the same. While prequalification is not required to become DBE certified, it is a required part of the MDOT contracting process.

Contractors performing the following types of work must become construction prequalified: road construction or repair, bridge construction or repair; concrete paving; hot-mix asphalt paving; demolition; concrete curb and gutter and sidewalk; street lighting, sewer and water main installation; landscaping; sodding and seeding; traffic lighting; traffic signs; guardrail and fencing.

Construction prequalification applications are available on MDOT's Web site at www.michigan.gov/mdot under "Business Links, Prequalification. DBEs may contact the DBE program toll-free at 866-323-1264 for assistance, or call or write the MDOT Contracts Services Division:

Michigan Department of Transportation
Contracts Services Division
P.O. Box 30050
Lansing, MI 48909
Telephone: 517-335-4281

Assistance with Construction Contracts

MDOT has assigned technicians to provide technical assistance to DBEs relating to MDOT project plans, specifications and bid proposals. This assistance is aimed at participants who have construction contracts. The most current list is available at www.michigan.gov/mdotdbe under the heading "Construction Tech Contacts."

Requirements to Bid on MDOT Construction Contracts as a Prime Contractor

- A. Prequalification in the required work classification(s).
- B. Net numerical rating equal to or greater than the rating in the project advertisement.
- C. Complete a Form 1300EZ, Statement of Current Contracts, available michigan.gov/mdot, "Doing Business, Forms, Bid Letting."

Send Form 1300EZ to MDOT's Contract Services Division by fax at 517-373-3707 not less than six days or more than 30 days before the date of the specific

bid letting. Check the 1300EZ filing schedule on MDOT's Bid Letting Web site at www.michigan.gov/mdot. Click the "Business Links" on the right of the screen, "Contractor Services, Bid Letting."

Contractors who fail to submit a 1300EZ form within the required time period will not be issued bidding documents.

- D. Fax a completed MDOT Form 1381, Request for Eligibility to Bid, to the Contract Services Division no later than 5:00 p.m. the day before the letting. Get the form at michigan.gov/mdot, "Business Links, MDOT Forms" and enter 1381 in the form number search, then press "go."
- E. Bids from construction vendors are submitted electronically. Prime bidders must license Bid Express software and pay for a digital I.D. in order to bid. The link to purchase Bid Express is on MDOT's Bid Letting Web site.

Exception to Construction Prequalification Requirement

Prequalification is not required for prequalification-waived work, such as building construction or other non-categorized work.

Vendor Availability Questionnaire

Firms bidding on prime contracts and bidding or quoting on subcontracts (including truckers, material suppliers and service providers/consultants) should complete and submit MDOT's "Vendor Availability Questionnaire," (MDOT Form 0168A). Cooperation in providing vendor availability information helps MDOT comply with federal regulations at 49 CFR 26.11(c), which require MDOT to maintain a list of firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. This information should be submitted annually.

In the goal-setting process, vendor availability data is used to verify MDOT's ready, willing, and able vendor population. Information provided by vendors is confidential.

Bid Process - Construction Contracts

MDOT construction requirements are often more strict than those found in private work. **Before bidding on any MDOT contract as a prime contractor, or submitting a subcontract quote to a prime contractor, be sure you know what each project requires.** Visit the site of the proposed job to check for unusual site conditions. Study the contract proposal and relevant standard plans, special plan details, and traffic control requirements, as well as the Standard Specifications for Construction. To obtain copies of construction-related publications or to view plans and specifications online, go to www.michigan.gov/mdot, "Maps and Publications."

Wage Rates

Bidders must pay the correct wage. Wage rates are posted in the back of each project proposal and addendums may be posted on the bid letting site. Federal wage rate

laws often require contractors to pay higher employee wages and benefits than you may pay on other projects. Federal wage rates apply not only to prime contractors and subcontractors, but could apply to truckers and suppliers who take part in contract work. Please read Bureau of Highways Instructional Memorandum (BOHIM) 2009-07, titled "Prevailing Wage Oversight Procedures," available on the Prevailing Wage Compliance Web page.

BOHIMs are available at www.michigan.gov/mdot. Click "Maps & Publications," "Manuals, Guides, Advisories & Memos," "Prevailing Wage Compliance."

Need wage rate help? Contact Chris Roe at roec@michigan.gov or call 517-202-3716.

Bid Lettings

Construction bid lettings, where prime contractors submit bids for advertised construction contracts, are typically held the first Friday of each month. Occasionally, special lettings are added. To access MDOT bid letting information, go to www.michigan.gov/mdot, "Quick Links, **Bid Letting.**" Bids for construction contracts are submitted electronically, using Bid Express software. Information about bid submittal and Bid Express is available on the "Bid Letting" site.

MDOT provides contract proposals and plans for each contract electronically, at no cost. Proposals and plans are available on the Bid Letting Web site.

Whether you are bidding as a construction prime contractor or quoting to prime contractors as a subcontractor, it is important to review the project proposal and plans to be sure you are aware of all project requirements. It also is a good idea to review the job site so you can see any conditions that may affect your bid.

1. Plans and proposals for projects located in a specific MDOT region are available for viewing at the respective region office. Contact information for each region office is available on the Web at www.michigan.gov/mdot by choosing the "About MDOT" link on the left side of the screen.
2. Project plans and proposals also can be purchased. Refer to the Bid Letting Web site for the most current list of registered print vendors.
3. Fax current 1300EZ and 1381 forms to the Contract Services Division.
4. Once bid documents have been received, complete them according to the instructions on the Bidder's Checklist included in your bidding document packet.

Bids submitted after the official closing of bids will not be reviewed.

For questions about the bid process, e-mail using the "Contact Us" link on the Contractors Service Center Web site, or call 517-373-2341.

Firms wishing to submit construction subcontract or purchase order quotes may obtain a list of all firms bidding or requesting plans. This list is available under “bid letting” on the Contractors Service Center Web site.

Subletting Contract Work to DBEs on Projects with DBE Participation Goals

The DBE portion of work set for a project, as specified in the notice of advertisement, shall be made available to certified DBEs. Compliance with the designated DBE participation project goal must be met by the utilization of DBEs to perform commercially useful functions as required by 49 CFR § 26.55. The apparent low bidder on a construction project shall submit the names of the DBEs and the description of work to be performed by each to MDOT’s Financial Services Division on MDOT Form 0178, “Disadvantaged Business Enterprise (DBE) Participation,” which is furnished with the contract and bond forms to the apparent low bidder. Forms 0178 shall be signed by an authorized signer for each certified DBE and the prime contractor.

Pursuant to subsection 102.15 of MDOT’s “2012 Standard Specifications for Construction,” the bidder must return fully executed contract and bond forms, including MDOT Form 0178, within 28 calendar days of transmittal to the bidder.

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 Good Faith Effort (GFE) request for consideration of waiver or modification of the DBE participation goal.

For addition additional information about the GFE process, please refer to the section titled Good Faith Effort (GFE) Application.

MDOT must be notified immediately if a DBE is unwilling or unable to perform its work. DBEs must be given five days’ notice prior to MDOT approving their replacement. A prime must submit MDOT Form 0196, Request to Replace a DBE, to the MDOT project manager, with a copy to the Office of Business Development, before substituting DBEs. The MDOT project manager will forward the signed, approved copy to the MDOT Contracts Services Division.

Penalties for Failing to Meet DBE Subcontracting Requirements

Failure to fulfill the DBE subcontracting requirement on a project with DBE participation goals 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.”

Counting DBE Participation Toward Contract Goals

49 CFR Part § 26.55, Part A requires MDOT to count only the value of work actually performed by a DBE.

Recipients of FAA, FHWA, and FTA financial assistance must ensure that work committed to DBEs whether pre- or post-award is actually performed by the DBEs to which the work was committed. A written certification is required verifying that contracting records have been reviewed and work sites have been monitored. This requirement applies to all federally assisted contracts.

Project management staff shall provide this certification as part of the normal contract monitoring process.

Primes are required to submit MDOT Form 2124A, Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments as specified on the form and in the project proposal. MDOT uses this information to maintain a running tally of payments made to DBEs, as required by regulation.

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.

1. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). Paragraph (a)(2) states the following:

Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar serves.

2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Counting DBE Joint Ventures

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

Counting and Commercially Useful Function

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

- (1) A DBE performs a commercially useful function 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. To perform a commercially useful function, the DBE also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- (2) 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.

Counting for DBE Truckers

The DBE must be responsible for the management and supervision of the entire trucking operation on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

1. The DBE must own and operate at least one fully licensed, insured and operational truck used on the contract.
2. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
3. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
4. The DBE also may lease trucks from a non-DBE firm or owner-operator, **except** from the prime contractor or affiliates of the prime contractor. A DBE who leases/brokers trucks from a non-DBE may take full credit for an equal number of non-DBE trucks. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

For example, a DBE owns three trucks and leases four trucks from other DBEs, for a total of seven DBE trucks. The prime contractor may take full credit for a maximum of seven leased trucks from non-DBEs. In this

example, full credit is given for a total of 14 DBE and non-DBE trucks. Any additional trucks leased from non-DBEs would count for broker credit only.

5. DBE truckers must submit a completed DBE Heavy Construction Trucking Worksheet (MDOT Form 4101) with their signed DBE Participation (MDOT Form 0178) commitments. Both forms are available at michigan.gov/mdot, "Business Links, MDOT Forms."

For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck 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 truck. All leased/brokered trucks must display the name and MDOT vendor identification number of the DBE trucking firm leasing the trucks.

Counting DBE Suppliers

Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count 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, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

Guidance for DBE Participation as Regular Dealers of Liquid Asphalt

In order to count DBE regular dealer participation toward project goals, the following criteria must be met:

1. The DBE must directly negotiate (make arrangements for – i.e., receiving price quotes, agreeing to pricing, and ordering of required grade of liquid asphalt cement) with an MDOT-approved petroleum refinery or blender for the grade of liquid asphalt cement they are providing for the project. (Note: "MDOT-approved" refers to refineries or blenders who 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 contractor is

not to negotiate on behalf of the DBE with the MDOT-approved petroleum refinery or blender. All DBEs who will keep the work classification TBR (Asphalt and Petroleum Products - Regular Dealer) will need to provide information on their accounts with refineries/blenders on an annual basis. This is done through submittal of MDOT Form 0192.

2. The DBE must arrange for the delivery of materials it supplies for the project. Documentation of the DBE's delivery of the liquid asphalt cement (such as invoices, delivery tickets, bank statements) must be maintained by the DBE and submitted if requested by MDOT.
3. The DBE may use leased tractors and trailers on the project only if there are long-term lease agreements for the equipment. Any supplementing of the regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. This equipment may not be leased from the prime asphalt paving contractor (or any affiliate of the asphalt paving contractor) for whom the DBE is supplying the project's liquid asphalt cement. The DBE must be able to supply all lease agreements upon request by MDOT.
4. DBEs must pay the refineries/blenders with their own funds. The prime contractor is not to pay the refineries/blenders directly for the materials the DBE is designated to supply. Payments made by DBEs for material they purchase must come from their own independent bank accounts. A DBE may not acquire material using funds from bank accounts belonging to or shared with the prime contractor.
5. No sales between the prime contractor and any of its affiliates via the DBE are to be counted toward the project DBE goal.
6. Any joint-check arrangement must be pre-approved by MDOT before the arrangement or transaction takes place. This is done through submittal of MDOT Form 0183. A joint check is a two-party check between a subcontractor, a prime contractor, and a materials supplier. Joint checks are used to guarantee payment to the supplier for materials used by the subcontractor. MDOT Form 0183 must be used for all joint-check arrangements.
7. Verification of Regular Dealer Status: MDOT will obtain information from each of the certified DBE regular dealers to update its files and ensure continued eligibility in work classification TBR (Asphalt and Petroleum Products - Regular Dealer).

On an annual basis, a completed MDOT Form 0192 will be requested of the DBE regular dealer to help MDOT ensure that:

- The DBE owns its own delivery equipment and has valid lease agreements in place (if supplementing his/her asphalt cement equipment.)

- The DBE has accounts and lines of credit with the oil refineries/blenders from whom it purchases the liquid asphalt cement.
8. Pre-Award Approval: Primes will submit for review the Disadvantaged Business Enterprise (DBE) Regular Dealer Liquid Asphalt Supplier Participation Affidavit (MDOT Form 0193) for approval, along with the Disadvantaged Business (DBE) Participation Form (MDOT Form 0178). The prime contractor affirms in the affidavit that it has reviewed the DBE requirements under 49 CFR 26.55 found in the project proposal, etc., and believes that its proposed arrangement with the DBE liquid asphalt supplier is in compliance with the regulations. MDOT's Contract Services Division will receive and forward the liquid asphalt affidavit to the designated Office of Business Development (OBD) staff for approval (similar to what is done for trucking.) MDOT staff will make every effort to complete the review of the affidavit and make a determination within five working days. This review includes:
- Determining that the prime contractor has selected an eligible DBE (Contract Services and OBD both do this.)
 - OBD staff will cross-check the DBE's file and participation on other projects to determine that the DBE is not over its credit limit.
 - OBD staff will ensure that a purchase order is submitted with each project, post-award and prior to delivery.
 - OBD staff will ensure that an anticipated date of transaction with the DBE is included in the affidavit the prime submits.
 - The DBE is not allowed to lease equipment from the prime or the prime's subsidiaries/affiliates. OBD staff will review the DBE's record to ensure that the DBE does not lease equipment from the prime contractor specified on the project under review.
9. Follow-up review: DBEs will be required to complete an MDOT questionnaire (MDOT Form 0194) regarding DBE supplier activities on the project. The OBD staff will contact the DBE within 10 days following the date the prime contractor specified on the affidavit to determine if the sale and delivery of material took place. Staff will continue to follow up until the transaction takes place. Once the date of transaction is determined, the questionnaire will be forwarded to the DBE. The questionnaire is to be returned to OBD within 10 days.
10. If MDOT receives information indicating that the DBE firm may not be performing a commercially useful function as specified under 49 CFR 26.55, MDOT will request appropriate documents needed to reasonably verify the material the DBE supplied. This documentation may include the following:
- Invoices for material.
 - Proofs of payment, such as canceled checks and bank statements.

- Additional lease agreements for equipment not currently on file.
- If it appears that the terms specified in the approved MDOT Form 0178 are not being met, the issues will be addressed with the prime contractor, DBE, project office, MDOT administration, FHWA, etc., as appropriate.

11. Finalization: Once all information is obtained, a determination is made as to whether the DBE supplied the volume of material reported on the approved MDOT Form 0178.

If MDOT determines that the DBE did not perform a commercially useful function or failed to supply the amount of material specified in the MDOT Form 0178, the DBE will be informed and allowed an opportunity to provide information to rebut the findings. This opportunity is allowed under 49 CFR 26.55(c) (3) and (4).

If the approved level of participation is not met, MDOT will inform the prime contractor regarding the amount of liquid asphalt which is being credited to the project as DBE participation.

Counting DBE Participation When DBEs are Paid

Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid.

Construction prime contractors are required to submit the "Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments" (MDOT Form 2124A) throughout the life of each MDOT-let project, regardless of whether the project does or does not have a DBE participation goal. DBEs must sign Form 2124A at project completion and final estimate only. Prime Contractors and MDOT project managers must submit a hard copy of the signed Form 2124A to the MDOT Office of Business Development upon project completion. For a copy of Form 2124A, refer to the contract proposal or enter 2124A in the search box at www.michigan.gov/mdot "Business Links, MDOT Forms."

For additional prompt payment guidance, refer to the Special Provision for Prompt Payment 12SP 109(A) www.michigan.gov/mdot, "Maps and Publications , Supplemental Specifications/Special Provisions, Special Provisions – Frequently Used (2012), 12SP109A.:

Review of the MDOT Instructional Memo IM2011-006, Field Review of Prompt Payment Complaints at www.michigan.gov/mdot, "Maps and Publications; Manuals, Guides, Advisories & Memos; Highway Instructional Memos" (left side of the screen) is also recommended.

Prime consultants with service consulting contracts shall submit the "Prime Consultant Statement of DBE Sub-Consultant Payments" (MDOT Form 0165) to the MDOT project manager regardless of whether the contract does or does

not have a DBE participation goal. Refer to “Attachment G” of the consultant contract for a copy of the form, or enter 0165 into the search box on MDOT’s Web site at <http://mdotwas1.mdot.state.mi.us/public/webforms/>. Prime contractor payment statements must include payment data for all DBEs working on the contract – including DBEs working as lower tier subcontractors to parent subcontractors.

Use of Joint Checks to Guarantee Payment for Materials and Supplies

With prior approval, a joint or two-party check between a subcontractor, a prime contractor, and a materials supplier who is neither the prime contractor nor an affiliate of the prime contractor may be used to guarantee payment for materials. The “Application to Use Joint Checks” (MDOT Form 0183) is available at <http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>

An acceptable joint-check arrangement must include the following:

- The prime contractor/payor cannot require the subcontractor to use a specific supplier or the prime contractor’s negotiated unit price.
- The subcontractor is more than an extra participant in releasing the check to the material supplier.
- The subcontractor (not the prime contractor/payor) negotiates the quantities, price and delivery of materials.
- The prime contractor/payor issuing the check acts solely as guarantor.
- The subcontractor releases the check to the supplier.
- The arrangement is short-term (no more than two seasons) with the purpose being the subcontractor’s establishment or increase of a credit line with the material supplier.
- The subcontractor is responsible to both furnish and install the material/work item.

Copies of cancelled joint checks must be provided to MDOT personnel for review and approval upon request.

Good Faith Effort (GFE) Application

There are two circumstances in which an application must be submitted for consideration of a vendor’s good faith effort toward meeting the DBE participation requirement for a specific project:

- 1) Before a contract can be awarded, when the bidder does not propose to meet the project goal, a pre-award GFE request must be submitted and a determination made on the bidders efforts to meet the DBE requirement.
- 2) During execution of the contract when DBE participation needed to meet the requirement does not materialize or fall shorts, a post-award GFE request must be submitted.

Post-award good faith efforts can be defined as efforts taken by the prime vendor to meet the DBE goal after the contract has been awarded and an approved DBE firm will not or cannot perform their work. Once DBE participation commitments are approved by MDOT, DBE firms cannot be changed or replaced by non-DBE firms without:

1. Good cause. A DBE subcontractor listed in the prime vendor's commitment [as required by § 26.53(b)(2)] or an approved substitute DBE can be terminated only with the recipient's prior written consent for good cause that includes:
 - DBE fails or refuses to execute a written contract;
 - DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards. Good cause does not exist where failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime vendor;
 - DBE fails to meet reasonable, nondiscriminatory bond requirements;
 - DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - DBE is ineligible to work because of suspension and debarment proceedings;
 - DBE is not a responsible vendor;
 - DBE voluntarily withdraws from the project and provides written notice;
 - DBE is ineligible to receive DBE credit for the type of work required;
 - DBE owner dies or becomes disabled and is unable to complete its work;
 - Or other documented good cause that compels termination

2. Prior approval by MDOT OBD.

Prime vendors may not terminate for convenience an approved DBE working on a federally assisted contract and then perform the work of the terminated DBE without prior consent by MDOT. Prime vendors are required to make a good faith effort to replace a DBE that is unable to perform with another DBE. Substitute DBEs must be approved by MDOT prior to starting work.

- The MDOT project manager and OBD administrator 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.
 - Submit MDOT Form 0196, *Request to Replace a Disadvantaged Business Enterprise (DBE)* for review and approval before replacement DBE(s) begin work.

- Once approved by OBD and the project manager, substitute DBEs must be included on Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments (MDOT Form 2124A), and, for construction vendors, in MDOT's MERS payment reporting system.

DBEs must provide written notification to the MDOT project manager, with a copy to the OBD, when they are unable or unwilling to perform all or part of their committed work. Notification must be provided within 5 business days of the date they were to work to:

Michigan Department of Transportation
Attn: DBE Program Administrator
Office of Business Development
P.O. Box 30050
Lansing, MI 48909
Fax: 517-335-6859
E-mail: mdot-dbe@michigan.gov

If quantities for items subcontracted to DBE firms are decreased or completely deleted by MDOT, the prime vendor should consider subcontracting other work to DBE firms to meet the DBE goal. All efforts to meet the DBE participation goal should be documented. On the date the prime vendor becomes aware that the DBE goal will not be met, the amount of contract work left at that point must be carefully reviewed to determine available work which may be subcontracted to DBE firms.

Examples of Good Faith Efforts to Meet DBE Participation Goals (examples are taken from Appendix A of 49 CFR Part 26)

- 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 initial solicitations;
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goal being achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation;
- 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. Negotiating in good faith with interested DBEs. Evidence of such negotiations should include 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;
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by MDOT or the contractor;
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- H. Effectively using the services of available minority/women community organizations; 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; and
- I. Evidence of the contractor's record of exceeding DBE participation goals on prior projects.

This is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Good Faith Effort (GFE) Application – MDOT Form 0188

Apparent low bidders and prime vendors requesting either a pre- or post-award modification of a contract's DBE participation goal must submit a completed MDOT Form 0188, *Contractor Good Faith Effort Application*. Information showing why the contract goal should be modified, including documentation of efforts made to meet the goal, must be attached to the application. Incomplete applications will be returned.

The "Contractor Good-Faith Effort Application" contains a checklist identifying the types of documents which should accompany the application. Form 0188 is available at <http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>.

Pre-Award Good Faith Efforts (GFE)

Time limits for submission and processing of pre-award GFE requests are based on project letting date for construction contracts and final cost negotiation date for consultant contracts.

- Within ten calendar days of letting (construction contracts) or final cost negotiations (consultant contracts), a prime who cannot meet the DBE participation goal must submit a GFE request.
- Within 17 calendar days, the prime will be notified of the GFE determination.
- Within 19 calendar days, denied GFE requests must be appealed.
 - Failure to appeal may result in MDOT contacting the next low bidder.
- Within 21 calendar days, MDOT shall provide the GFE Appeals Committee with the original GFE application – no new information will be reviewed.
- Within 24 calendar days the Appeals Committee will make a decision and the prime will be notified of that decision.

- Within 28 calendar days, the Contract Services Division shall award the contract if the Appeals Committee approves the GFE.

If an apparent low bidder is unable to fulfill the DBE participation goal and submits a pre-award request to modify the goal, the contract will not be awarded until a determination is made by the department. The bidder must submit the "Good Faith Effort Application" (MDOT Form 0188) and supporting documentation to the address shown on the application.

Efforts should be intense, aggressive, and sincere for the specific project and should go beyond simple paperwork exercises. Efforts should include written communication, personal contact, follow-up and, where appropriate, earnest negotiation with DBEs. MDOT expects all primes bidding on a project with a DBE contract goal to be aware of the DBE participation requirement and to make timely and adequate efforts to recruit DBEs.

Once a decision is rendered no additional efforts will be considered.

If the GFE Committee denies the request to modify the DBE participation goal, the apparent bidder will be notified by email, fax and certified mail and will have two calendar days from the date of the fax to appeal. If the bidder fails to appeal the determination within two calendar days, the bidder will be deemed ineligible for award of the contract. The project may be awarded to the next lowest bidder.

Post-Award Good Faith Efforts

If during the course of completing an awarded MDOT project a prime vendor is unable to fulfill its DBE participation requirements, a good faith effort application must be submitted. To request a post-award modification request, the contractor must submit a completed " Good-Faith Effort Application" (MDOT Form 0188) and supporting documentation. The vendor must submit evidence of good faith efforts to meet the DBE participation goal and include proof that on the date the prime vendor 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. Post-award applications must be submitted within 14 days of the prime vendor being made aware of their inability to meet the DBE participation goal.

Modification requests shall be reviewed by the GFE Committee at the next meeting following the receipt of a complete GFE application package. The bidder will be notified of the committee determination by fax and certified mail. Incomplete applications will be returned.

GFE investigators may request additional documentation to clarify or supplement information provided by the bidder. Additional documentation received prior to the meeting will be discussed at the meeting. Once a decision is rendered no additional efforts will be considered.

If the GFE Committee determines the vendor demonstrated sufficient good faith effort to achieve the goal, MDOT will modify the goal as requested. If MDOT denies the request or modifies the goal in a manner other than that requested, MDOT will notify the contractor by fax and certified mail within 17 calendar days of receipt of the request.

Where to Submit GFE Applications (MDOT Form 0188) and Supporting Documentation

Michigan Department of Transportation
Office of Business Development
Good Faith Effort Committee
P.O. Box 30050, 425 West Ottawa St.
Lansing, MI 48909

Composition of the GFE Committee (each committee member will have an alternate):

- DBE Administrator, OBD (Chair)
- Engineer of Highway Development or designee
- Engineer of Highway Delivery or designee
- Contract Services Division Administrator or designee
- Construction and Technology Division Administrator or designee
- One Region Engineer or designee
- Section Manager, OBD

Two-thirds of the members must be present in order to have a quorum and conduct business. When scheduling conflicts occur, committee members may submit their decision and any additional questions or comments electronically. Final GFE application decisions require consenting votes from at least four committee members.

The GFE applicant will be notified, upon request, of the date and time of the GFE Committee meeting at which the request will be considered. The applicant is allowed to appear before the GFE Determination Committee and make an oral presentation to supplement the written request. The oral presentation cannot take the place of the written request and documentary evidence must be submitted to show the efforts undertaken by the requestor. Request for oral presentations must be submitted to the appropriate GFE investigator in advance of the meeting.

The committee will consider the merit of the request, the sufficiency of the evidence and documentation supporting the request and make a decision. The committee may grant the modification, or deny the request.

Good Faith Effort Appeals

Vendors whose request for waiver or modification of the DBE participation goal has been denied may appeal the decision. The GFE Appeals Committee will not consider information or documentation which was not included in the original GFE application package.

Written appeals must be submitted within two calendar days of the vendor's receipt of the GFE Committee's decision to:

Michigan Department of Transportation
DBE Administrator, Office of Business Development
P.O. Box 30050
425 West Ottawa St.
Lansing, MI 48909

The composition of the GFE Appeals Committee (each member will have an alternate) is as follows:

- MDOT Chief Operations Officer (Chair)
- MDOT Chief Administrative Officer
- Bureau of Finance and Administration Director

The GFE Appeals Committee meets as needed.

The GFE Appeals Committee's decision will be provided by the Chair of the Appeals Committee through fax and certified mail to the contractor within 24 calendar days of receipt of the original GFE request from the prime vendor. Two-thirds of the members or a representative must be present in order to have a quorum and conduct business.

Decisions of the GFE Appeals Committee are administratively final.

This material has been prepared to provide contractors with an explanation of MDOT's minimum requirements for considering a request for waiver or modification of the contract goals. Since every situation is considered unique, depending on the pertinent facts, each request is evaluated on its own merit.

Simply submitting the documentation in the format specified and following the necessary steps does not guarantee that a waiver or modification will be approved. MDOT must be convinced that the contractor exercised diligence in seeking DBE firms for subcontracting in order to meet the contract goals.

Requirements for Construction Projects with Race-Conscious (RC) DBE Goals

All projects with a DBE goal higher than 5% will include the following contract requirements:

1. By 2:00 pm on the day of the bid letting, the three lowest "as-submitted" bidders shall provide "blue sheet" type information for all subcontractors that support the overall DBE percentage. The three lowest "as-submitted" bidders shall complete the "**Data Collection Prime Contractor Submission**" (MDOT Form 4107) and submit via e-mail to MDOT-BidLetting@michigan.gov.
2. Within 3 business days after the bid, the low bidder shall submit their signed blue sheets ([MDOT Form 0178](#)). If the DBE participation goal is met, no further action

is required. If the DBE participation goal is not met, the submittal shall include the low bidder's Request for Modification/Waiver and their GFE documentation. (A standard template for the GFE Modification/Waiver is available at www.michigan.gov/mdotdbe.)

3. Within 3 business days after the bid, DBE subcontractors who quoted the three lowest "as-submitted" bidders shall complete the "**DBE Data Collection Subcontractor Submission**" form (MDOT Form 4108) and submit via e-mail to mdot-dbe@michigan.gov or fax to 517-335-6859 within the above timeframe.
4. A bidder who fails to meet either of Steps 1 and 2 of this process which is applicable or fails to submit a Data Collection Prime Contractor Submission form (MDOT Form 4107), shall be deemed to have submitted an irregular bid and their bid shall be rejected. The Bidder can appeal the bid rejection in accordance with Subsections 102.11 and 102.12 of the Standard Specifications for Construction.
5. Within 3 business days of MDOT's receipt of the confirmed low bidder's Request for Modification/Waiver ([MDOT Form 0188](#)) and GFE submittal, the GFE Review Committee shall meet and issue a determination relative to the low bidder's request for DBE participation modification or waiver. In the event a GFE request is denied, the GFE Review Committee shall include rationale for the basis of the denial in the decision letter.
6. Within 2 business days of receipt of an adverse determination, the low bidder may appeal that decision. This appeal shall be made in writing to the Appeal Panel in accordance with the Program Procedures (Good Faith Effort Appeals). The low bidder may request to meet in person with the Appeal Panel.
7. Within 2 business days of receipt of the low bidder's appeal, the Appeal Panel shall meet and issue their determination. The determination of the Appeal Panel is administratively final (not appealable to the U.S. Department of Transportation). In the event a GFE request is denied, the Appeal Panel shall include rationale for the basis of the denial in the determination letter and the department will reject the bid. The department will then take the necessary steps to award the contract in a manner best suited to the Department's interest, including advertising for new proposals.

Small Business Program

MDOT's Small Business Program (SBP) is a race- and gender-neutral program designed to provide contracting opportunities for small businesses on projects assisted by the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

This program will be implemented by MDOT upon receipt of United States Department of Transportation (US DOT) approval and fully operational within six months of approval.

Firms bidding on work under this program must meet the same conditions and standards required of all contractors, consultants, suppliers and subcontractors performing work for the department and sub-recipient grantees who report to their respective US DOT operating authority through MDOT.

Eligibility Criteria

In order to bid as a small business on SBP projects, vendors must:

- F. Submit documentation needed to determine whether they meet US Small Business Administration (SBA) and Disadvantaged Business Enterprise (DBE) small business size standard requirements. Certified DBE firms submit this documentation as a condition of certification.
 - a. Documentation must be submitted annually or at least one month prior to submitting a bid on a SBP project.
 - b. Documentation will be reviewed by the MDOT Office of Business Development (OBD) to ensure only small businesses participate in this program.
 - c. No vendor, including affiliate firms, with three year average gross receipts which exceed \$22.41 million will qualify for the SBP.
- G. Submit documentation needed to determine whether the owners exceed the personal net worth requirement of the DBE program. The current personal net worth maximum per owner is \$1.32 million per year; this figure excludes assets owned by the business applying for the SBP and the value of the primary residence of each owner.
- H. Be approved to work in the classification required to bid on a respective project when required by MDOT or state policy.
 - a. Prequalification requirements for construction contractors are located at <http://www.michigan.gov/mdot/0,4616,7-151-9625-58255--,00.html>.
 - b. Prequalification requirements for consultant contractors are located at http://www.michigan.gov/mdot/0,1607,7-151-9625_21540-34068--,00.html.
- I. Highway construction contractors must have sufficient capacity available to be eligible to bid, as determined by MDOT, in accordance with existing requirements.
- J. Consultants and suppliers must comply with state and federal requirements.

Project Selection for MDOT-let Projects

MDOT-let projects will be designated as SBP prime set-aside projects when they meet selection criteria specified below. The MDOT Contract Selection Team (CST) with input from the responsible MDOT Region, using the following criteria, shall select SBP projects:

- a) Projects considered for the SBP must be funded in whole or in part by the FAA, FHWA or the FTA.
- b) There must be at least three small businesses qualifying to bid as a prime on each respective project.
- c) Projects must have small business subcontracting opportunities.

Large projects will be reviewed to determine the feasibility of unbundling project elements to facilitate competition by small business concerns. A notice detailing SBP participation requirements and expectations will be provided to potential bidders as part of the project advertisement and incorporated in contract documents.

Project Selection Criteria for non-MDOT let Sub-Recipient Grantee Projects

All bids for these projects will be received by the local agency. MDOT will partner with sub-recipient grantees to identify alternative acquisition strategies and to structure procurements to facilitate the ability of small businesses to compete for and perform prime contracts. Compliance with the provisions of this SBP will be required for all sub-recipients receiving federal funds through MDOT.

The MDOT Office of Aeronautics (AERO) with input from the respective grantee, using the following criteria, shall select FAA-assisted projects, which are not let by MDOT:

- Projects must have small business subcontracting opportunities; designated projects will be assigned a five percent small business participation goal.
- The number of businesses qualifying to bid as a small business at the time of advertisement
- The feasibility of unbundling large contracts into smaller contracts to facilitate competition by small business concerns.
- AERO will encourage prime vendors to facilitate participation by small businesses. Accomplishments and goal attainment will be tracked yearly by sub-recipients and AERO. These projects are locally-let and bids are accepted at the local level, not through the MDOT bidding process.
- FTA-assisted projects that meet the following criteria must have a five percent small business participation goal unless a waiver is granted by the MDOT Office of Passenger Transportation (OPT).
- All sub-recipient consultant projects over \$500,000 and construction (including rehabilitation) projects over \$500,000.

OPT will add the following requirements to their procurement guidelines for all projects that meet the above criteria:

- If the sub-recipient is using the Invitation for Bid (IFB) method of procurement, the IFB must include the following:
 - Submissions that meet the five percent small business participation goal will be given a five percent price preference when determining the lowest qualified bidder. In determining the lowest bid amount of the qualified bids, the bid amount of those bids that meet the small business goal will be reduced by 5 percent. The contract will be awarded based on the approved bid amount of the selected bid.¹

If the sub-recipient is using the Request for Proposal (RFP) method of procurement, the RFP must include the following:

- Five percent of the total possible points will be assigned to meeting the five percent small business participation goal. The bidder must meet the five percent goal to the associated points. The contract will be awarded to the bidder with the greatest number of points based on all scored items.
- OPT will use its existing methods for sub-recipient procurement oversight to ensure these requirements are included in bid documents and followed in the vendor selection. These projects are locally-let and bids are accepted at the local level, not through the MDOT bidding process.

A sub-recipient may request a waiver for these requirements if they determine that meeting the requirements will be a significant hindrance to contracting. In approving a waiver, OPT in consultation with the OBD will use the following criteria:

- Project does not contain work in which small businesses can competitively bid in their respective area of the state.
- There are a limited number of businesses available in NAICS codes needed to perform the contract in the respective area of the State where the project will be undertaken.

¹For IFB procurements, this method of showing preference, i.e. discounting the bid price of those that meet the preference is already being used in the State of Michigan for veteran's preference under section 261 of The Management and Budget Act, PA 431 of 1984, as amended.

Direct Report Agencies

Direct report agencies currently develop and submit DBE-related plans, reports, and other items directly to their respective US DOT operating authority. These Michigan agencies are not a part of this plan but have submitted their own RN small business programs directly to the USDOT. The following list of agencies currently report directly to a USDOT operating authority and are therefore not bound to this agreement:

Detroit Department of Transportation	Kalamazoo Metro Transit System	Hancock-Houghton County Memorial Airport
Detroit Transportation Corporation	Livingston Essential Transportation	Kalamazoo-Kalamazoo-Battle Creek International Airport
SEMCOG	Macatawa Area Express (MAX)	Lansing-Capital Region International Airport
SMART		Marquette-Sawyer International Airport
Ann Arbor Transportation Authority	Muskegon Area Transit System	Muskegon County Airport
Battle Creek Transit	Niles Dial-A-Ride	Pellston Regional Airport
Bay Metro Transportation Authority	Twin Cities Area Transportation Authority	Saginaw-MBS International Airport
Blue Water Transportation Commission	Charlevoix Municipal Airport	Sault Ste. Marie-Chippewa County International Airport
Capital Area Transportation Authority	Detroit Metropolitan Wayne County Airport	Traverse City-Cherry Capital Airport
Flint Mass Transportation Authority	Flint-Bishop International Airport	Harbor Transit
Jackson Transportation Authority	Grand Rapids-Gerald R. Ford International Airport	Interurban Transit Partnership (RAPID)

Implementation Schedule:

1. Within 30 days of receiving US DOT approval MDOT will begin identifying potential projects.
2. Within 60 days of receiving US DOT approval, notice of the new program will be sent to all firms who have registered to bid on MDOT projects. This notice will include a list of required information that must be provided to determine eligibility to bid as a small business.
3. Within 60 days of receiving US DOT approval MDOT will prepare and post on our website a directory of eligible businesses.
4. With 120 days of receiving US DOT approval MDOT will implement the approved program.

A notice detailing SBP participation requirements and expectations will be provided to potential bidders as part of the project advertisement.

Actions Taken to Foster Small Business Involvement and Recruitment

MDOT routinely holds conferences and participates with government and public partners to advertise its opportunities and recruit and train vendors and we will mention the SBP at these events. Additionally, in advance of advertisement of SBP projects, MDOT will:

- Post notices to advise potential bidders about upcoming SBP projects
- Hold public participation meetings as appropriate
- Provide personal notification to eligible small businesses using E-mail, fax, or telephone contact to identified small businesses
- Advertisements and recruitment information will be posted on MDOT Websites.

MDOT Assurances

1. To qualify for this program, a firm, including its affiliates, must be a small business as defined by the U.S. Small Business Administration (SBA) in 13 CFR Part 121.
 - a. Even if a firm meets the SBA size requirements above, it is only eligible to participate in the Small Business Program if the firm (including its affiliates) has previous three year average annual gross receipts that are below \$22.14 million.
2. No geographic preferences or limitations shall be imposed on any federally assisted procurement included in the program.
3. The Small Business Program is acceptable under state law.
4. There are no limits on the number of contracts awarded to firms participating in the program, as long as financial capacity is not exceeded.
5. The small business program does not replace the MDOT DBE Program or otherwise operate as a replacement for the DBE program. The Small Business Program is race- and gender-neutral. DBE dollars earned under this program will count toward the race-neutral portion of MDOTs overall DBE goal.
6. This program does not create barriers to new, emerging and untried businesses.

Prompt Payment Requirements

No credit toward DBE project participation goals shall be allowed until all subcontractors, subconsultants, truckers, suppliers, and other vendors who work using a subcontract or purchase order at any level of the contract are paid for their work.

Prime vendors and MDOT project managers must submit a hard copy of the Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments (MDOT Form 2124A), signed by the Prime, the MDOT Project Manager and each DBE on the project to the MDOT Office of Business Development upon project completion.

109.10 Prompt Payment.

- A. **Definitions.** For purposes of this special provision, use the following definitions:
- (1) Lower-tier subcontract - An agreement between a subcontractor of any tier and any individual or legal entity to perform a part of the subcontract work.
 - (2) Lower-tier subcontractor - The individual or legal entity that performs part of the subcontract work through a lower-tier subcontract with a subcontractor.
 - (3) Supplier - The individual or legal entity that agrees to provide materials or services to the prime contractor, a subcontractor, or a lower-tier subcontractor for the performance of their contract work.
 - (4) Sworn Statement - A written verification under oath reflecting all persons or entities, including union fringe benefit funds, who have furnished labor, equipment or materials to a subcontractor or lower tier subcontractor for performance of work on the project and the original contract amount, current amount due, amounts paid to date and balance to finish for each person or entity.
 - (5) Waiver of Lien - A written release and waiver of any claim or right to payment for payments actually received for labor, equipment or materials furnished for performance of work on the project.
- B. **Progress Payments.** For the first payment, or for a one-time payment, the prime contractor agrees to pay each subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime contractor receives payment from the department and a duly executed Sworn Statement from the subcontractor.

For the second and subsequent payments, the prime contractor agrees to pay each subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime contractor receives from the subcontractor its current Sworn Statement and Waivers of Lien from the subcontractor and the subcontractors' lower-tier subcontractors and suppliers verifying the prior payment has been received, but no later than 30 days from the prime contractor's receipt of payment from the department for said work.

Proof of payment documentation, using the department's current form, also is required from the prime contractor to the engineer prior to release of the second and subsequent estimates.

Release of payment from the department for any work is confirmation that the department has determined the work to have met the standards of satisfactory completion as defined below.

If the prime contractor has concerns about the satisfactory completion of subcontractor or lower-tier subcontractor work items, this must be brought to the engineer's attention as soon as the concern is discovered. If the work meets the requirements of satisfactory completion and the prime contractor has

been paid for that work, the engineer must determine whether the prime contractor has demonstrated a valid reason for withholding payment from the subcontractor or supplier, or the subcontractor has demonstrated a valid reason for withholding payment from the lower-tier subcontractor or supplier. If the prime contractor or subcontractor has done so, the engineer will process a negative estimate pulling back the amount involved in the complaint. If payment has not been made, the engineer will not include those items of work on an estimate until the issue has been resolved.

The prime contractor remains responsible to make prompt payments to their subcontractors and suppliers even if the prime contractor is in violation of other contractual obligations and the department is withholding payment from the prime contractor for those violations.

The prime contractor must include in all subcontracts notice of the department's prohibiting prime contractors from holding retainage from subcontractors under 49 CFR 26.29.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a subcontractor against the department. This provision applies to both DBE and non-DBE subcontractors.

C. **Satisfactory Completion.** Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:

1. Upon preliminary review, the engineer finds the work completed in accordance with the contract, plans, and specifications; and
2. Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., has been received and reviewed by the engineer.

The determination of whether work meets the standards of satisfactory completion is the responsibility of the engineer and not the prime contractor or subcontractors.

D. **Less than full payment release.** Any delay or postponement of payment from the time frames specified herein, or partial payment from the prime contractor to a subcontractor or supplier, or from a subcontractor to a lower-tier subcontractor or supplier, may occur only upon receipt of written approval from the engineer. There may be circumstances where a prime contractor or subcontractor has a valid reason to withhold payment from a subcontractor or lower-tier subcontractor or supplier. Examples of such circumstances include but are not limited to: a demonstrated failure of the subcontractor to pay, or verify payment to, its lower-tier subcontractors or suppliers; a demonstrated breach of the subcontract by the subcontractor, such as abandonment of the work, unacceptably tardy progress in the work resulting in delays to the project which may subject or have subjected the prime contractor to liquidated

damages; failure or refusal to correct defective work, failure or refusal to provide required submittals, such as materials certifications, certified payrolls, etc.

- E. **Non-Payment Claims.** Notifications of failure to meet prompt payment provisions can be referred by the prime contractor, subcontractor, lower-tier subcontractor or supplier to the alleged offending party and must be made in writing and sent certified mail, with a copy to the engineer and the prime Contractor. All notifications should be mailed within 30 calendar days of the date the payment was to be received. The alleged offending party must respond in writing to the claimant, with a copy to the engineer, the prime contractor and the Engineer of Construction and Technology, within seven business days of receipt of the notification of failure to meet prompt payment provisions. Upon receipt of the written notice and response, the engineer must verify in writing whether grounds exist for the prompt payment complaint. If the alleged offending party provides written evidence of the circumstances outlined in D. above, the parties to the complaint should employ dispute resolution procedures as provided in Subsection F. below to resolve the prompt payment issue. At this point, and pending completion of the dispute resolution procedures, there is no basis for any negative action against the alleged offending party. Failure on the part of the alleged offending party to respond to a notification from a claimant shall be considered by the department as an admission of the violation and may result in sanctions.

Any non-payment claimant has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimately due payments are made.

- F. **Dispute Resolution.** The parties must attempt to agree on whether to mediate or arbitrate the dispute and agree upon a mediator or arbitrator within 10 calendar days after a written complaint has been verified by the engineer. If, within that 10-day period, the parties agree upon a mediator or arbitrator, the entire dispute resolution process must be completed within 60 days from initiation unless, for good cause verified by the mediator or arbitrator, the proceeding will require more time to complete. The cost of the mediation or arbitration shall be borne by the parties as determined by the mediator or arbitrator. Qualified costs of mediation or arbitration, for certified DBEs, will be paid by the department based on current procedures. The DBE must contact the Office of Business Development for information on current procedures and to receive reimbursement. Outcomes of the dispute resolution will be provided to the engineer by the mediator or arbitrator within 10 days of the decision. Upon receipt of the status and results of the dispute resolution procedure, the engineer shall release the disputed payment being held by the department as outlined by the mediator or arbitrator. If the parties cannot agree upon mediating or arbitrating the dispute or upon a mediator or arbitrator within the 10-day period specified herein, the complaining party shall initiate whatever dispute resolution procedure is specified in the parties' agreement or as available under Michigan law within 30 days of the complaint being verified by the engineer. The result of the dispute resolution proceeding or

litigation shall be provided to the engineer promptly upon the conclusion of the proceeding and the engineer shall release the disputed payment being held by the department in accordance with the result.

At the engineer's discretion, copies of documents related to prompt payment claims may be requested for inclusion in the project files.

- G. **Sanctions.** Failure to comply with any of the prompt payment special provision requirements by the prime contractor, subcontractor, lower-tier subcontractor, or supplier may result in sanctions against the offending party. These sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction or removal of prequalification; and/or suspension of bidding privileges.

All provisions of this prompt payment special provision apply to all subcontracts, lower-tier subcontracts, and supplier agreements and must be included in each subcontract for the contract, including all lower-tier subcontracts and agreements.

Federal Equal Opportunity (EO) Requirements for Vendors

MDOT is responsible for ensuring that vendors who work on federally assisted projects do not discriminate in employment and contracting practices based on race, color, religion, sex, national origin, age or disability. Equal opportunity (EO) requirements of "Required Contract Provisions" (FHWA-1273), which is always included in federal-aid project proposals, apply to all contractors and subcontractors with federal-aid contracts of \$10,000 or more.

Prime contractors must include FHWA-1273 in its entirety in each subcontract/vendor agreement. It is not permissible to include FHWA-1273 in subcontract agreements by reference only.

The OBD conducts EO compliance reviews of MDOT vendors to determine whether they are making good faith efforts to ensure the gender and ethnic population of their workforces reflects local demographics. Project work forces in each job classification should reflect the resident population demographics in each trade surrounding a project as much as possible.

Michigan work trade demographics are available by county on the U.S. Census Web site at www.census.gov. On the left of the census page, choose the following links: Data Tools, Census 2000 Data Tool, Access to 2000 EEO Occupation Data, On-line Access to the EEO Data Tool, select both Employment by Census Occupation Codes and, under Select Geography, Residence and press "next." Select Michigan at the County Sets drop down and "next." Choose the appropriate occupation categories under "Select one or more occupation categories" (or Census Occupation Codes) by holding down the "CTRL" button as selections are made, and Display table at the bottom of the page.

Following is a set of good faith effort criteria for contractor compliance, as established by FHWA contract provisions:

1. The contractor's written EEO policy statement.
2. The contractor sufficiently distributes the EEO policy statement.
3. The authority and responsibility of the EEO Officer is adequate.
4. The contractor holds periodic EEO meetings with management and employees responsible for personnel decisions.
5. The contractor posts proper notices and posters in the office and on the projects
6. The contractor includes "*EEO Employer*" clause in advertisements.
7. The contractor makes systematic and direct recruitment efforts with sources likely to yield minorities and women. Recruiting relationships with specific recruiting sources and contact persons must be established and real recruiting efforts must be documented and easily verified.
8. The contractor educates all new supervisors regarding EO/EEO requirements within 30 days of reporting to duty.
9. The contractor encourages present employees to refer minorities and women to apply for job openings.
10. The contractor evaluates the spread of wages to determine whether discrimination exists.
11. The contractor investigates and appropriately resolves all complaints of discrimination and harassment.
12. The contractor assists in locating, qualifying and increasing the skills of minorities and women.
13. The contractor fully uses training programs and advises employees and applicants of training opportunities.
14. The contractor has minorities and women in its training programs.
15. The contractor ensures non-segregated facilities on its projects and in its offices.
16. The contractor employs minorities and women in all occupations, crafts and job classifications on an equal basis. The contractor's workforce should be representative of demographic data for the areas where its projects are located. The contractor's good faith efforts to ensure this must be evident.
17. The contractor has procedures establishing the monitoring of subcontractors' compliance with nondiscrimination, EO and EEO obligations.
18. The contractor maintains adequate records and provides the information requested during a compliance review or as otherwise requested by MDOT, FHWA, OFCCP, etc.
19. The women and minorities in the contractor's workforce accumulate work hours that would be expected based upon their representation.
20. The contractor ensures all field employees are notified of the procedures for dealing with discrimination and harassment complaints.

Failure of a vendor to show it is making EO good faith efforts may result in sanctions. Sanctions may range from increased monitoring of vendor EO efforts by MDOT staff to removal of bidding privileges on MDOT projects for serious violations.

H. | **Doing Business for MDOT Consultants**

DBE Participation on Projects with DBE Goals

The DBE participation level goal for a service contract will be specified in the Request for Proposal (RFP) used during the selection process. The prime consultant shall select DBEs to perform, at minimum, work which corresponds in dollar value to the DBE participation goal. DBEs must perform a commercially useful function as required by 49 CFR §26.55 of the Federal Register and by contractual requirements. Commercially Useful Function (CUF) guidelines apply to any work performed by a DBE to meet a contract goal and are clearly defined elsewhere in this document.

Only DBEs who are currently certified and listed on the Web-based Michigan Unified Certification Program (MUCP) database and on the Contract Services Division (CSD) prequalification database are eligible for DBE participation credit. Additionally, if prequalification is required, a DBE firm must be both prequalified and DBE-certified in the respective work classification. An MUCP DBE directory is linked to the MDOT Web site at: <http://www.michigan.gov/mucp>.

Proposals will be scored in accordance with the Vendor Guidelines. Any potential DBE modification or waiver action will not be taken into consideration during the scoring process. After a consultant has been selected, and has negotiated the cost of the contract with MDOT, it must complete the Disadvantaged Business Enterprise (DBE) Participation Form 0182 and submit it to the contact person identified in the RFP. After scoring, selection approval and final negotiations, if the most qualified vendor/consultant does not meet the DBE participation goal, the firm must apply for a GFE modification or waiver. An application for consideration of modification or waiver of the DBE goal must be submitted using the Vendor Good Faith Effort Application, MDOT Form 0188, available at <http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>. The firm will be deemed ineligible for award of the contract unless the firm either meets the goal or receives an approved GFE modification or waiver from MDOT.

The RFP will state if prequalification is required and in which categories. While the prime vendor/consultant must be prequalified in all classifications listed as primary prequalification classifications, the prime vendor/consultant also must be prequalified or have subvendors/subconsultants that cover any required secondary prequalification classifications. DBEs may provide prequalified or non-prequalified services. The prime contractor must ensure each DBE is DBE-certified, regardless of whether prequalification is required or not.

Prequalified DBE Consultant Matrix

In addition to understanding the work requirements of a project, the Prequalified DBE Consultant Matrix is a reference tool used in determining the DBE percentage on consultant services contracts. The purpose of the matrix with the DBE directory is to help provide an analysis of the availability of DBEs in each work classification. The

Office of Business Development (OBD) is responsible for maintaining and updating the matrix and providing a copy of the matrix to the Contract Services Division.

Goal Setting Procedure for Consultant Contracts

Step 1: The Contract Services Division's Scoping Engineer (or designee) review scope and contact the Project Manager to ensure the scope, including the prequalification categories, accurately depict the work that is required for the project.

Step 2: Coupled with input from the Project Manager, the scope of work and a review of the department's DBE Consultant Matrix, the Scoping Engineer will place a preliminary DBE percentage on the scope.

Step 3: Once the preliminary percentage has been determined, the Scoping Engineer (or designee) will forward the scope to an Office of Business Development (OBD) representative to solicit approval from the Contract Selection Team (CST). During the course of CST's review, if any questions and/or comments require a response, it will be brought forth by the OBD representative and shared with the Scoping Engineer to respond.

Step 4: Once concurrence has been achieved, the OBD representative will notify the Scoping Engineer (or designee) of the approval and CSD will post the scope for advertisement on its regular posting day. Given the program delivery demands, the DBE contract goal setting process will be completed within one to three days.

Consultant DBE goals will be maintained in the consultant database. CST has the authority, with the advisement of the affected Region Engineer/Bureau Director, the Chief Operations Officer, the Bureau of Finance and Administration Director, and the DBE Liaison Officer to remove a project from advertising if valid reasons exist regarding the DBE goal.

Note: Some service contracts may not have a DBE goal set due to several factors including but not limited to:

- Contract type (i.e. As Needed Contracts, Rail projects)
- No DBEs available in the work classifications
- Limited subcontracting opportunity

Good Faith Effort (GFE) Application

Good Faith Effort applications information and timelines are outlined in the GFE section of this document.

I. | **The DBE Directory**

The Michigan Unified Certification Program (MUCP) directory of all certified DBE firms in Michigan is available on the Web at www.michigan.gov/mucp.

A hardcopy directory of DBE-certified firms is available from MDOT. The directory is provided to those who express an interest. The printed directory is published and updated upon request but no less than once a year.

The DBE directory includes the following:

Alphabetical list of certified DBE firms; including name, address, telephone and work classifications that the firm has been determined to possess adequate resources to perform.

To obtain a copy of the DBE directory, write or call MDOT at:

Michigan Department of Transportation
Office of Business Development
DBE Program
P.O. Box 30050
425 West Ottawa St.
Lansing, MI 48909
Toll-free phone: 866-323-1264

J. | Business Development and Assistance Programs

MDOT is charged with the responsibility of establishing a race-neutral means of facilitating DBE participation as mandated by the requirements of the federal regulations. Race-neutral services will be provided to DBEs and other non-DBE small businesses.

Based on Supportive Services provisions of 49 CFR Part 26, MDOT offers a number of business development and assistance services for MDOT-certified DBEs, including, but not limited to:

- Workshops and conferences
- MDOT and industry-sponsored seminars and training sessions
- Networking and technical assistance sessions
- Educational/Training Reimbursement program
- Consultant Services Program
- Professional Association Membership Program
- Subscription Services Program

MDOT is committed to the success of DBEs. In an effort to further the federal regulatory goal of “leveling the playing field” between large construction companies and their smaller counterparts, the MDOT OBD has developed a training curriculum. Courses are designed to provide participants with an in-depth understanding of MDOT’s contracting processes and requirements. Participants in training courses will be provided with detailed information, including but not limited to:

- Ensuring payrolls are completed correctly and in a timely manner;
- Adhering to federally mandated CUF guidelines;
- Tracking work quantities completed on construction contracts using FieldManager software to review Inspector’s Daily Reports;
- Identifying contract specific requirements in proposals and on MDOT’s Web site; and
- Understanding supportive services provided

Please contact the MDOT DBE Program toll-free at 866-DBE-1264 for a current list of available services.

K. | Technical Assistance

The Construction and Technology Division of the MDOT's Bureau of Highways provides technical assistance to DBEs. Assistance is provided by the division's staff engineers, staff technicians and technical specialists assigned to the respective regions.

Technical assistance is provided to DBEs in several different areas. The following are examples:

1. Interpretation of plans, proposals, special provisions, and specifications
2. Networking and technical assistance sessions
3. Workshops on plan reading, concrete pavement, bituminous pavement, bridge construction, project documentation, claim procedures, force accounts, payroll requirements, drainage and water main, maintaining traffic, mock letting and other construction related areas
4. Project site investigation prior to bidding the project
5. Preconstruction meetings
6. Payment issues
7. Information source of materials and equipment
8. Sub-letting, bid documents, bonds, affidavits and insurance requirements
9. Solving construction related problems from start to the completion of the project
10. Disputed claims
11. Liaison between DBEs, local agencies and the department

A current list of DBE Technicians is available at michigan.gov/mdotdbe under "Contacts."

L. | DBE Basic Training Curriculum

The MDOT OBD is committed to DBE success. To help as many DBEs as possible in successfully navigating MDOT projects, the OBD has developed a training curriculum. Courses described below are designed to provide participants with an in-depth understanding of MDOT's contracting processes and requirements. While OBD sponsors many training sessions, there are five core courses all DBEs should take:

1. DBE Orientation
2. Wage and Labor Compliance/Payroll Preparation
3. Construction Bid Preparation
4. Prequalification and Financial Management
5. Understanding MDOT and Federal DBE Requirements

It is entirely up to each firm to determine when to participate in a specific course; however DBE firms are required to take DBE Orientation and strongly encouraged to complete the entire core curriculum prior to beginning work on their first MDOT project.

DBE ORIENTATION

This course is the foundation upon which the entire curriculum is based. Through participation in this class, attendees will gain an understanding of the overall purpose of the DBE Program and how it functions. Information covered includes:

- An overview of MDOT's contracting process
- Benefits of certification
- Requirements for maintaining certification
- Understanding Good Faith Efforts
- Understanding Commercial Useful Function (CUF)
- Title VI
- DBE Supportive Services

WAGE AND LABOR COMPLIANCE/PAYROLL PREPARATION

This course is designed to promote understanding of state and federal payroll requirements. Knowledge of proper wage and fringe benefits standards are critical to accurate bid submissions, receiving payments for completed work and overall job performance. Objectives for this course include an understanding of the following:

- Prevailing Wage Components
- Overtime
- Contract Documents
- Certified Payrolls
- Wage Decisions
- Trucking Wage Requirements
- Wage Rate Interviews

CONSTRUCTION BID PREPARATION

MDOT projects have a number of requirements that differ from those associated with commercial construction. This course provides hands-on training to assist contractors in identifying information crucial to successful bid preparation. Course content includes:

- Reading Plans and Proposals
- Standard Specification Book Overview
- Researching Items of Work
- Finding Contracts
- Material Source Guide
- Eligible Bid Listings
- Contract Inquiries
- Searching MDOT Forums

PREQUALIFICATION AND FINANCIAL MANAGEMENT

Many of the types of work performed on MDOT projects require the prequalification of the contractor completing the work. The prequalification process considers a variety of factors, and requires specific information, to determine an appropriate assessment of a firm's ability to perform on a MDOT project. This course is designed to provide insight into how prequalification ratings are determined. Participants in this course will gain information on the following:

- Construction Accounting
- Factors impacting prequalification ratings
- Tips to improve a company's financial picture

UNDERSTANDING MDOT AND FEDERAL DBE REQUIREMENTS

This course is designed to provide insight into both the state and federal requirements for maintaining DBE certification and job performance. Participants in this course will gain information on the following:

- Commercially Useful Function
- Certification Renewal Requirements
- Equal Employment Opportunity (EEO) Requirements
- DBE Program Procedures
- MDOT Forms
- Critical Path
- Prompt Payment
- What to Expect on an MDOT Project
- DBE Work Site Plan Requirements

How the Program Works:

Upon completion of each course, DBE participants will take a brief quiz to assess their level of understanding of the material presented. Successful participants will receive a Certificate of Completion for each course taken. Once a participant has completed all five core classes, the participant will receive a graduation acknowledgement for successful completion of the DBE Basic Training Curriculum.

M. | Multi-Modal Transportation and Non-Traditional Contracting

MDOT's Bureaus of Aeronautics, Passenger Transportation, Planning (Heritage Route program), OBD, and the Department of Natural Resources (DNR) Recreational Trails program offer non-traditional contracting opportunities that, based on the types of federal funding received, are subject to DBE program requirements.

Contract Opportunities

These non-traditional areas offer comprehensive, equitable and accessible transportation services to meet the personal, industrial and economic needs of Michigan citizens. The bulk of funding for these non-traditional areas is passed on to local agency grantees and transportation providers throughout the state. This means that most opportunities for DBEs are in direct contracts with these individual providers and grantees, including over 100 local bus transit agencies and airports. Local transportation providers purchase a variety of goods and services, which may include fuels and lubricants, insurance coverage, fringe benefit coverage, professional and technical services, data processing services, tires and vehicle parts, custodial services, trash removal, security services, office supplies and miscellaneous materials.

It should be noted that DBE program requirements for some of these non-traditional areas may be implemented through a different process whenever the bid for the prime contract is let by the department. In these cases, MDOT will use the same forms and procedures that are used for highway or service consulting projects, as appropriate.

Check the MUCP Web site at www.michigan.gov/mucp for procurement or contracting opportunities with non-traditional areas.

Note about Transit Vehicle Manufacturers

Each transit vehicle manufacturer who is bidding on transit vehicle procurement funded by FTA must certify with MDOT its compliance with the requirements of 49 CFR § 26.49 (b) special provision for transit vehicle manufacturers.

For further information about opportunities on non-traditional contracts, contact the following individuals or visit Web sites listed below:

- Bureau of Passenger Transportation Division Administrator at 517-335-2533
- Bureau of Aeronautics DBE Coordinator at 517-335-9458
www.michigan.gov/aero/
- MDOT's Heritage Route Program Manager at 517-335-2929
- DNR Nonmotorized Trails, Mark Mandenberg 517-335-3037
www.michigan.gov/documents/2006_Grant_Programs_140487_7.pdf

N. | Trns•port Civil Rights and Labor Management System (CRLMS)

MDOT uses American Association of State Highway and Transportation Officials (AASHTO) Trns•port™ software to track construction contracting processes from pre-letting through project completion.

Trns•port's Civil Rights and Labor Management System (Trns•port CRLMS) module is currently being tested before being released for agency and vendor use. CRLMS is intended to receive and process data, such as vendor payrolls and subcontractor payment information, needed to meet federal and state civil rights and labor compliance requirements.

CRLMS is a Web-based product that allows the effective administration of an agency's external civil rights and labor compliance activities such as:

- Contractor payrolls
- Labor compliance
- Wage decisions
- DBE certification
- Vendor data management
- DBE commitments
- On-the-Job Trainees (OJT) tracking and monitoring
- Subcontractor data
- Prompt pay tracking
- Bidder/Quoter submittals
- Trucking types and tracking

In the future, MDOT anticipates that CRLMS will replace paper copies of payrolls, DBE payment statements, and annual workforce reports. It is expected that vendors will submit these reports over the Web using a CRLMS interface.

O. | Definitions and Acronyms

For the purpose of MDOT's DBE Program, the following definitions and acronyms will apply.

AASHTO

American Association of State Highway and Transportation Officials

ACRS

Administrative Customizable Reporting System

ADA

Americans with Disabilities Act

Affiliation

MDOT will use the same definition as is included in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native

A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC)

Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Appeals

A request by a corporation, partnership or joint venture denied DBE certification by MDOT, for future review, by a Certification Assistance Representative (CAR) team member(s), or a request for a review by the US DOT pursuant to the provisions of 49 CFR § 26.89.

Applicant

Any corporation, partnership, sole proprietorship or joint venture applying for certification or recertification as a DBE.

ARRA

American Recovery and Reinvestment Act of 2009

Bid Letting

MDOT advertises and accepts bids to perform as a prime contractor on individual construction projects on a monthly basis. The date bids must be submitted is the bid letting, or simply "letting" date. After each letting, MDOT uses several terms to describe bids submitted by each vendor:

- "As Submitted" – the dollar value of each bid as submitted by each vendor, before the bid is checked for errors.
- "As Checked" – the dollar value of each bid submitted after the bid has been checked for errors.
- "Bid Tabulations" – disclose what each bidder bid on each line item.

BOHIM

Bureau of Highways Instructional Memorandum

Broker

See definition of "Supplier."

Certification Assistance Representatives (CAR)

A team of which a member(s) hear appeals requested of a corporation, partnership, or joint venture denied DBE certification.

CFR

Code of Federal Regulations

Chief Operations Officer

MDOT's designated DBE Liaison Officer (DBELO) is Chief Operations Officer Gregory J. Johnson:

Gregory C. Johnson, Chief Operations Officer
Michigan Department of Transportation
425 West Ottawa St.
P.O. Box 30050
Lansing, MI 48909
E-mail: johnsonG2@michigan.gov
Phone: 517-373-4656
Toll-free: 866-323-1264
Fax: 517-355-6859

Contract Selection Team (CST)

The MDOT team which recommends DBE participation goals assigned to individual projects.

Commercially Useful Function (CUF)

The responsibility of a DBE is to perform the distinct element(s) of contractual work by actually performing, managing and supervising the work. The DBE also must be responsible for the materials and supplies used to fulfill the contract, for negotiating prices, determining the quality and quantity of materials for installation, ordering the material and for paying for the materials. If a DBE subcontracts part of its contractual obligation to another firm, the value of the subcontracted work may be counted toward the prime contractor DBE goal if the DBE's subcontractor is a DBE. If a DBE subcontracts a significantly greater portion of the work than would be expected on the basis of normal industry practice or exceeds subletting limitations in effect, the DBE shall be presumed to not perform a commercially useful function as provided under 49 CFR § 26.55. A DBE must perform a CUF in order for the dollars paid to the DBE to qualify for payment against the projects DBE goal.

Compliance

Implementation of federal regulations as required of a state department of transportation.

Contract

A legally binding agreement; the legal document could be a contract, grant, subcontract, purchase order, or lease agreement.

Contractor/Subcontractor

A vendor who participates in a contract.

CRLMS

Trns•port™ Civil Rights and Labor Management System

CSD

Contracts Services Division

CST

Contract Selection Team

CUF

Commercially Useful Function

DB

Design-Build

DBE

Disadvantaged Business Enterprise

DBE Administrator

The designated person responsible for administering MDOT's DBE Program. MDOT has designated Dr. Patricia A. Collins as DBE Administrator:

Patricia A. Collins, Administrator
Office of Business Development (OBD)
425 West Ottawa St.
P.O. Box 30050
Lansing, MI 48909
E-mail: collinsp@michigan.gov or mdot-dbe@michigan.gov
Toll-free: 866-323-1264
Fax: 517-335-6859

DBE Liaison Officer (DBELO)

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that MDOT complies with all provisions of 49 CFR Part 26. MDOT has designated Chief Operations Officer Gregory J. Johnson as DBELO:

Gregory J. Johnson, Chief Operations Officer
Michigan Department of Transportation
425 West Ottawa St.
P.O. Box 30050
Lansing, MI 48909
E-mail address: johnsong2@michigan.gov
Phone: 517-373-4656
Toll-free: 866-323-1264
Fax: 517-335-6859

Disadvantaged Business Enterprise (DBE)

A for-profit small business concern certified, for purposes of these procedures, by participants in the Michigan Unified Certification Program (MUCP):

A DBE, for the purposes of federal-aid contracts funded by the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and/or Federal Transit Administration (FTA), is a small business concern in which at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Department

The Michigan Department of Transportation (MDOT)

DNR

The Michigan Department of Natural Resources

DOT-Assisted Contract

Any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DTMB

The Michigan Department of Technology, Management and Budget

FAA

The Federal Aviation Administration

FHWA

The Federal Highway Administration

Field Monitoring

A job site review of DBE firms under contract to participate on a project funded in some measure by federal funds.

FOIA

Freedom of Information Act

FTA

The Federal Transit Administration

Good Faith Efforts (GFE)

Documented efforts to achieve a DBE goal or other contractual requirement related to the DBE Program.

Home State

The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate Family Member

The father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law of the owner of a business.

Indian Tribe

Any band, nation, or other organized group or community, including any Alaskan Native Corporation (ANC), which is recognized as eligible for the special programs and services provided by the United States to American Indians because of their heritage; this includes recognition of such by the state in which the tribe, band, nation, group, or community resides. See definition of "tribally owned business" in this section.

Joint Venture

An association of a DBE firm(s) with one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, to complete a project. The DBE firm(s) is responsible for a distinct, clearly defined portion of the work of the contract and share in the capital contribution, control, management, risks and profits of the joint venture.

Manufacturer

See definition of "Supplier."

Mentor/Protégé

An arrangement established between two or more businesses where specified training is provided to the less experienced business owner(s)/protégé by another more experienced business owner(s)/mentor.

MDOT

The Michigan Department of Transportation

MPINS

Map Project Information Systems

MUCP

Michigan Unified Certification Program

NAICS

North American Industry Classification System

Native Hawaiian

Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii.

Native Hawaiian Organization

Any community service organization serving Native Hawaiians which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians and whose business activities will principally benefit Native Hawaiians.

Noncompliance

A recipient of federal funds which has not correctly implemented the federal requirements.

OBD

The MDOT Office of Business Development

OJT

On-the-Job Training

Operating Administration (OA)

Any of the following parts of the US DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

On-site Review

An investigation is conducted at the applicant's principal place of business to determine the eligibility of a corporation, sole partnership or joint venture that has applied for DBE status.

Orientation

A session sponsored by MDOT that is designed to familiarize newly certified DBE firms with DBE program objectives, procedures, regulations, and supportive services.

Personal Net Worth

The net value of the assets of an individual which remain after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in the firm that is requested to be certified or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse.

Prequalification

Prequalification is an application process used to determine work classifications a vendor may perform in prequalification-required construction or consulting work and the maximum contract amount a vendor may perform for MDOT. Prequalification and DBE certification are not the same. Construction and service prequalification applications and related information are linked to the MDOT "Doing Business" Web site at www.michigan.gov/mdot, under the section entitled "How to."

Primary Industry Classification

MDOT uses the North American Industry Classification System (NAICS) to designate the primary business of a firm. All NAICS codes are described in the 2007 NAICS Manual, which is available from:

NAICS Association
129 Lakeshore Drive
Rockaway, NJ 07866
Phone: 973-625-5656
Web: www.naics.com/index.html

Primary Recipient

A government agency receiving US DOT funds and passes some or all of these funds to another government agency.

Principal Place of Business

The location where the day-to-day operations of a business occur and records are kept.

Race-conscious (RC) Measure/Program

One that is focused specifically on assisting only DBEs.

Race-neutral (RN) Measure/Program

One that is, or can be, used to assist all small businesses.

Recipient

Any entity, public or private, to which US DOT financial assistance is extended, whether directly or through another recipient.

Regular Dealer

See definition of "Supplier."

RFP

Request for Proposal

SAFETEA-LU

Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users. SAFETEA-LU authorizes implementation of the DBE program.

SBA Certified Firm

A firm with a current, valid certification from or recognized by the SBA under Section 8(a) of SBA regulations.

Small Business Administration (SBA)

The U.S. Small Business Administration

Small Business Concern

Pursuant to Section 3 of the Small Business Act and Small Business Administration regulations (13 CFR part 121): A firm that does not exceed the cap on average annual gross receipts specified in § 26.65(b) of 13 CFR part 121.

Socially and Economically Disadvantaged Individual

Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Socially and economically disadvantaged.
- (2) Any individual in the following groups, presumed to be socially and economically disadvantaged:
 - I. Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
 - II. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - III. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - IV. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - V. Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - VI. Women; or
 - VII. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

STC

Michigan State Transportation Commission

Supplier

A firm classified as a manufacturer, regular dealer or broker:

A manufacturer operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required specified under the contract.

A regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased in the usual course of business.

A broker transports materials as required under a contractual arrangement. (See the Counting DBE Suppliers section of this report.)

TEA-21

Transportation Equity Act for the 21st Century

Tribally owned business

Any business that is at least 51 percent owned by an American Indian tribe.

Trns●port™

MDOT's construction management software, licensed through AASHTO. MDOT utilizes the following Trns●port modules:

CAS: Construction Administration System

LAS: Letting and Award System

PES: Preliminary Engineering System

UCP

Unified Certification Program

U.S.C.

United States Code

US DOT

The United States Department of Transportation

VENDOR

A business that works under contract or through the use of a purchase order as a prime contractor or consultant, subcontractor or subconsultant, supplier, trucker, or other service supplier; a dealer, distributor, merchant, or other seller who promotes or exchanges goods or services for money.

Attachment A

Assurances that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR § 26.13)

- A. Each financial assistance agreement signed with a DOT-operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Attachment B

DEPARTMENT OF TRANSPORTATION Special Provision for Prompt Payment (rev. 3/2011)

109.11 Prompt Payment.

A. Definitions. For purposes of this special provision, use the following definitions:

- (1) Lower-tier subcontract - An agreement between a subcontractor of any tier and any individual or legal entity to perform a part of the subcontract work.
- (2) Lower-tier subcontractor - The individual or legal entity that performs part of the subcontract work through a lower-tier subcontract with a subcontractor.
- (3) Supplier - The individual or legal entity that agrees to provide materials or services to the prime Contractor, a subcontractor, or a lower-tier subcontractor for the performance of their contract work.
- (4) Sworn Statement - A written verification under oath reflecting all persons or entities, including union fringe benefit funds, who have furnished labor, equipment or materials to a subcontractor or lower tier subcontractor for performance of work on the project and the original contract amount, current amount due, amounts paid to date and balance to finish for each person or entity.
- (5) Waiver of Lien - A written release and waiver of any claim or right to payment for payments actually received for labor, equipment or materials furnished for performance of work on the project.

B. Progress Payments. For the first payment, or for a one-time payment, the prime contractor agrees to pay each subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime contractor receives payment from the department and a duly executed Sworn Statement from the subcontractor.

For the second and subsequent payments, the prime contractor agrees to pay each subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime contractor receives from the subcontractor its current Sworn Statement and Waivers of Lien from the subcontractor and the subcontractors' lower-tier subcontractors and suppliers verifying the prior payment has been received, but no later than 30 days from the prime contractor's receipt of payment from the department for said work.

Proof of payment documentation, using the department's current form, is also required from the prime contractor to the engineer prior to release of the second and subsequent estimates.

Release of payment from the department for any work is confirmation that the department has determined the work to have met the standards of satisfactory completion as defined below.

If the prime contractor has concerns about the satisfactory completion of subcontractor or lower-tier subcontractor work items, this must be brought to the engineers attention as soon as the concern is discovered. If the work meets the requirements of satisfactory completion and the prime contractor has been paid for that work, the engineer must determine whether the prime contractor has demonstrated a valid reason for withholding payment from the subcontractor or supplier, or the subcontractor has demonstrated a valid reason for withholding payment from the lower-tier subcontractor or supplier. If the prime contractor or subcontractor has done so, the engineer will process a negative estimate pulling back the amount involved in the complaint. If payment has not been made, the engineer will not include those items of work on an estimate until the issue has been resolved.

The prime contractor remains responsible to make prompt payments to their subcontractors and suppliers even if the prime contractor is in violation of other contractual obligations and the department is withholding payment from the prime contractor for those violations.

The prime contractor must include in all subcontracts notice of the department's prohibiting prime contractors from holding retainage from subcontractors under 49 CFR 26.29.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a subcontractor against the department. This provision applies to both DBE and non-DBE subcontractors.

- C. Satisfactory Completion.** Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:

Upon preliminary review, the engineer finds the work completed in accordance with the contract, plans, and specifications; and

Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., has been received and reviewed by the engineer.

The determination of whether work meets the standards of satisfactory completion is the responsibility of the engineer and not the prime contractor or subcontractors.

- D. Less than full payment release.** Any delay or postponement of payment from the time frames specified herein, or partial payment from the prime contractor to a subcontractor or supplier, or from a subcontractor to a lower-tier subcontractor or supplier, may occur only upon receipt of written approval from the engineer. There may be circumstances where a prime contractor or subcontractor has a valid reason to withhold payment from a subcontractor or lower-tier subcontractor

or supplier. Examples of such circumstances include but are not limited to: a demonstrated failure of the subcontractor to pay, or verify payment to, its lower tier subcontractors or suppliers; a demonstrated breach of the subcontract by the subcontractor such as abandonment of the work, unacceptably tardy progress in the work resulting in delays to the project which may subject or have subjected the prime contractor to liquidated damages; failure or refusal to correct defective work, failure or refusal to provide required submittals such as materials certifications, certified payrolls, etc.

- E. Non-Payment Claims.** Notifications of failure to meet prompt payment provisions can be referred by the prime contractor, subcontractor, lower-tier subcontractor or supplier to the alleged offending party and must be made in writing and sent certified mail, with a copy to the engineer and the prime contractor. All notifications should be mailed within 30 calendar days of the date the payment was to be received. The alleged offending party must respond in writing to the claimant, with a copy to the engineer, the prime contractor and the Engineer of Construction and Technology, within seven business days of receipt of the notification of failure to meet prompt payment provisions. Upon receipt of the written notice and response, the engineer must verify in writing whether grounds exist for the prompt payment complaint. If the alleged offending party provides written evidence of the circumstances outlined in D. above, the parties to the complaint should employ dispute resolution procedures as provided in Subsection F below to resolve the prompt payment issue. At this point, and pending completion of the dispute resolution procedures, there is no basis for any negative action against the alleged offending party. Failure on the part of the alleged offending party to respond to a notification from a claimant shall be considered by the department as an admission of the violation and may result in sanctions.

Any non-payment claimant has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimately due payments are made.

- F. Dispute Resolution.** The parties must attempt to agree on whether to mediate or arbitrate the dispute and agree upon a mediator or arbitrator within 10 calendar days after a written complaint has been verified by the engineer. If, within that 10-day period, the parties agree upon a mediator or arbitrator, the entire dispute resolution process must be completed within 60 days from initiation unless, for good cause verified by the mediator or arbitrator, the proceeding will require more time to complete. The cost of the mediation or arbitration shall be borne by the parties as determined by the mediator or arbitrator. Qualified costs of mediation or arbitration, for certified DBEs, will be paid by the department based on current procedures. The DBE must contact the Office of Business Development for information on current procedures and to receive reimbursement. Outcomes of the dispute resolution will be provided to the

engineer by the mediator or arbitrator within 10 days of the decision. Upon receipt of the status and results of the dispute resolution procedure, the engineer shall release the disputed payment being held by the department as outlined by the mediator or arbitrator. If the parties cannot agree upon mediating or arbitrating the dispute or upon a mediator or arbitrator within the 10-day period specified herein, the complaining party shall initiate whatever dispute resolution procedure is specified in the parties' agreement or as available under Michigan law within 30 days of the complaint being verified by the engineer. The result of the dispute resolution proceeding or litigation shall be provided to the engineer promptly upon the conclusion of the proceeding and the engineer shall release the disputed payment being held by the department in accordance with the result.

At the engineer's discretion, copies of documents related to prompt payment claims may be requested for inclusion in the project files.

- G. Sanctions.** Failure to comply with any of the prompt payment special provision requirements by the prime contractor, subcontractor, lower-tier subcontractor, or supplier may result in sanctions against the offending party. These sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction or removal of prequalification; and/or suspension of bidding privileges.

All provisions of this prompt payment special provision apply to all subcontracts, lower-tier subcontracts, and supplier agreements and must be included in each subcontract for the contract, including all lower-tier subcontracts and agreements.

Attachment C

Mentor/Protégé DBE Development Program

Introduction

Many of the now-recognized leading firms in the transportation industry started their business experience by developing special relationships with engineers, successful contractors, suppliers and others. As a result, a mentor/protégé relationship developed when the arrangements were mutually beneficial. The mentor/protégé concept is not a newcomer to the business world; it is simply a relationship responding to a special need. Such a need exists in the transportation industry of Michigan and MDOT will meet the need through a program with that expressed purpose.

Purpose

The purpose of the mentor/protégé program is to provide DBE firms with advice, assistance, and/or training. This concept is an optional approach available to assist MDOT and the transportation contractors in complying with the requirements of 49 CFR Part 26. It offers an opportunity to gain information and experience in a productive work situation for established DBEs needing training and assistance. It also offers an opportunity to expand DBE contracting.

Scope of Program

MDOT will establish and implement a Mentor/Protégé Development Program within the approval guidelines set forth by FHWA. Such an implemented program can create relationships that comply with the requirements of 49 CFR Part 26. These relationships will be of benefit to DBEs by enhancing their capabilities across many areas of the transportation industry. It must be noted that the Mentor/Protégé Development Program is not intended to diminish or circumvent existing DBE rules or regulations, but rather to increase legitimate DBE activities. Abuse of these program guidelines may be used as the basis for actions against the mentor and/or the protégé, including suspension or debarment from the transportation program.

Eligibility

1. The DBE firm must have been certified with MDOT for a minimum of one year during the preceding last five years. The firm must have engaged in MDOT contracts during this period.
2. DBEs who meet the certification requirements of 49 CFR Part 26, are eligible for participation in a mentor/protégé arrangement. MDOT may grant approval of a

mentor/protégé agreement during the time of its approval of the DBE application for recertification.

1. In all cases, the DBE firm must be an independent company and the ownership by the disadvantaged individual(s) must be in compliance with 49 CFR Part 26. This does not preclude other employment and/or business interest by the DBE firm owners, provided such employment or business interests do not conflict with the power of the disadvantaged owner to direct or cause the direction of the management and policies of the DBE firm to make the day-to-day, as well as major, decisions on matters of management, policy and operations (see 49 CFR § 26.61 Eligibility Standards.)
2. The DBE firm must meet MDOT prequalification requirements as well as all other state and federal requirements for bidding on an MDOT project.

Arrangements/Agreements

1. MDOT recognizes that some mentors have the resources to train more than one protégé at time. MDOT will carefully review those mentors seeking to carry more than one protégé and/or those DBE firms seeking to work with more than one mentor at a time and will limit them to a maximum of two protégés at any given time.
2. A mentor/protégé arrangement will be evidenced by a well-formatted development plan developed by both parties and approved by MDOT (see Guidelines for Development plans.)
3. MDOT will limit mentor/protégé agreements to two years or for the duration of a specified project or series of projects within a period that may exceed two years.
4. At the end of each month, the mentor and protégé must submit to MDOT, within 20 calendar days, a combined detailed summary of the types of training provided. The summary should include a brief narrative on the hours and areas of involvement such as managerial, technical, financial, bonding and insurance.
5. The protégé, from its net profit on each contract, should compensate the mentor for training costs.
6. There are several types of arrangements which a mentor might provide to a protégé firm. These include:

A. Technical and Management Assistance

A successful mentor can provide valuable training in the technical aspects of operating a highway construction, material supply, engineering, or other transportation-related business to a DBE firm, which may be relatively inexperienced. In addition, the mentor also can provide advice on project management and, in particular, make the DBE aware of techniques which may

improve productivity and competitiveness. Other areas where training may be of benefit are in plan interpretation, estimating and cost-accounting methods. In each of these areas, however, the DBE contractor must retain the final decision-making responsibility.

B. Equipment Rental and Use of Personnel

A DBE contractor may need to lease equipment or augment the work force with additional skilled personnel in order to perform certain work. It may work to the mutual benefit of the mentor and the DBE protégé to arrange for the needed equipment through leasing agreements. Likewise, in limited instances, the mentor may provide personnel (with specialized experience) to the DBE protégé, provided the worker is under the direct supervision of the DBE firm for the performance of the particular contract work.

Under such a relationship, the mentor should provide not more than a small portion of the personnel needed by the DBE. Continual or repetitive use by a DBE subcontractor of personnel primarily employed by the mentor will be construed as an attempt to artificially inflate DBE participation. The extent of the condition under which the DBE utilized personnel or equipment of the mentor should be specifically outlined in the Development plan.

C. Bonding

In the long-term, it is desirable for the DBEs to bond jobs on their own, in order to establish a relationship and track record with a surety company. The DBE will eventually need to obtain bonding on its own if it anticipates working in highway contracting as a prime contractor after a mentor/protégé relationship is dissolved. This notwithstanding, there are at least two ways in which a prime contractor commonly assists subcontractors with bonding. In many instances, the prime contractor will bond the entire job and will, in turn, charge his subcontractors their prorated share of the bond cost. In other instances, the prime contractor may bond the entire job and “carry” its subcontractors, absorbing the cost of the bond itself. Either of these instances may be applicable to a prime contractor and a DBE subcontractor relationship.

The mentor/protégé examples discussed here are not meant to be definitive. Other methods of encouraging and supporting the program may be allowable under the regulations. Contractors or associations with proposed innovative ideas and programs should bring them to the attention of MDOT.

Special Concerns

1. Exclusive Arrangements

While state statutes may vary somewhat, federal antitrust statutes are concerned with contracting arrangements which may limit competition. An area of special concern is exclusive arrangements. A relationship in which a mentor requires a protégé to have an exclusive bidding agreement may violate federal laws with respect to limiting competition. During the course of the relationship, the protégé must have the latitude to quote bids to other firms outside the mentor/protégé agreement. Any de facto exclusivity that may occur in the initial stages of the relationship, because the protégé is new and inexperienced and less marketable, is not construed as an agreement by the parties to an exclusive bidding arrangement

2. Brokering

The utilization of a DBE firm as a passive conduit serving no CUF will be found totally unacceptable. This would prohibit the protégé from maintaining the required control and participation in the agreement and would be considered brokering.

A firm is considered to perform a CUF when it is responsible for execution of a distinct element of the work of the contract and carrying out its responsibility by actually performing, managing, and supervising the work involved. This will be monitored by the mentor.

Guidelines for Development Plans

All mentor/protégé arrangements will be evidenced by a written development plan, approved by MDOT. The following should be considered in the preparation of the development plan:

1. The development plan should clearly set forth the objectives of the parties and their respective roles.
2. The development plan should be for two years or for the duration of a specified project or series of projects within the period.
3. The development plan should describe measurable benchmarks to be reached by the protégé (DBE) at successive stages of the plan.
4. The development plan should include training to be provided by the mentor to the protégé (DBE). Such training may include but not be limited to:
 - A. Business Planning
 - B. Recordkeeping
 - C. Technical

- D. Loan Packaging
 - E. Financial Planning and Forecasting
 - F. Bonding and Insurance
 - G. Equipment Utilization
5. The development plan should contain a provision that the mentor/protégé agreement may be terminated by mutual consent and/or by MDOT upon determination that:
- A. The protégé firm no longer meets the eligibility standards for certification as a DBE.
 - B. Either party has failed or is unable to meet its obligations under the development plan.
 - C. The DBE is not progressing or is not likely to progress in accordance with the development plan.
 - D. The DBE has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the development plan.
 - E. The plan or provisions thereof are contrary to the requirements of federal, state and/or local law or regulation, or otherwise harmful to public policy.
 - i. When the mentor/protégé agreement is terminated by either party, MDOT must be notified within 15 days of the termination date.
 - ii. When MDOT terminates the agreement, either party may appeal the decision to the department within 10 days of the receipt of notification.
6. The development plan may include a provision that the arrangement may be dissolved by either party for reasons other than those stated in item 5 above.
7. Copies of the development plan should be retained by all parties to the mentor/protégé agreement and MDOT.

Office of Business Development DBE Staff Contact List

A current contact list is available at www.michigan.gov/mdotdbe by selecting “DBE Staff Contacts.”

MDOT Work Classifications

Please refer to the following Websites for current lists of MDOT work classifications:

- Construction prequalification: michigan.gov/mdot/0,4616,7-151-9625_22043-58255--,00.html , select the “prequalification application” link.
- Consultant prequalification: http://michigan.gov/mdot/0,1607,7-151-9625_21540---,00.html, select “Service Prequalification Classifications and Descriptions.”
- DBE work classifications (including DBE certification and construction and consultant prequalification work classifications): www.michigan.gov/mucp, select “Download Forms, MDOT DBE Application.” The forms are included on pages 17 through 21 of the application.

Forms for Construction Contractors

All forms are available on the Web at:

<http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>

- MDOT Vendor Availability Questionnaire (MDOT Form 0168A)
- Disadvantaged Business Enterprise (DBE) Participation (MDOT Form 0178)
- Contractor Good Faith Effort Application (MDOT Form 0188)
- Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments (MDOT Form 2124A)
- Application to Use Joint Checks (MDOT Form 0183)
- DBE Heavy Construction Trucking Credit Worksheet (MDOT Form 4101)
- MDOT DBE Trucking CUF Report (MDOT Form 4100)
- Petroleum Company Account(s) Information and Liquid Asphalt Cement Tractors and Trailers Information (MDOT Form 0192)
- Regular Dealer Liquid Asphalt Supplier Participation Affidavit – Prime (MDOT Form 0193)
- Final Quantities of Liquid Asphalt Cement Supplied (MDOT Form 0194)
- Request to Replace a Disadvantaged Business Enterprise (DBE) (MDOT Form 0196)
- Data Collection Prime Contractor Submission (MDOT Form 4107)
- DBE Data Collection Subcontractor Submission (MDOT Form 4108)

2003 and 2012 DBE-Related Excerpts “MDOT Standard Specifications for Construction”

Effective October 2012, newly awarded contracts fall under requirements of the MDOT “2012 Standard Specifications for Construction,” unless specified otherwise in the contract proposal. Projects let before October 2012 refer to the 2003 version of the “Standard Specifications.” Following for reference are significant DBE-related excerpts from both the 2003 and 2012 versions:

“MDOT 2012 Standard Specifications for Construction”

102.18. Subletting Contract Work to Disadvantaged Business Enterprises (DBEs).

The DBE portion of work set for a project, as specified in the notice of advertisement, must be made available to 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.

The names of the DBEs and the description of work to be performed by each must be submitted by the apparent low Bidder to the Contract Services Division of the Department after the furnishing of the contract and bond forms to the apparent low Bidder. This information must be submitted on the forms provided by the Department. A Bidder who fails to meet the DBE participation goal will be deemed ineligible for award of the contract subject to the provisions of subsection 102.18.A.

- A. **Pre-Award Waivers or Modifications.** If an apparent low Bidder is unable to meet the DBE participation goal, a request for waiver or modification of the DBE participation goal may be submitted in accordance with current Department DBE Program Procedures. The contract will not be awarded until a determination is made by the Department.
- B. **Post-Award Waivers or Modifications.** The Contractor may, after award, request a waiver or modification of the DBE participation goal in accordance with current Department DBE Program Procedures. 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. The Contractor must notify the Department immediately of a DBE’s inability to perform any or all of its work and the Contractor’s intent to obtain a substitute DBE.
- C. **Appeals.** A Contractor receiving an adverse determination, related to their request for waiver or modification of the DBE participation goal, may appeal the determination in accordance with current Department DBE Program Procedures.

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.

- D. **Reports.** The prime Contractor is required to submit to the Engineer a statement of DBE subcontractor payments in accordance with the contract.
- E. **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 Construction Contractors*.

“MDOT 2003 Standard Specifications for Construction”

102.18 Subletting Contract Work to Disadvantaged Business Enterprises (DBE).

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. The names of the DBEs and the description of work to be performed by each will be submitted by the apparent low Bidder to the Financial Services Division of the Department within 14 days after the furnishing of the contract and bond forms to the apparent low Bidder. This information will be submitted on the forms provided by the Department and signed by an authorized signer for each certified 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 on the form and in the format required by the Department or is granted additional time to correct an inadvertent error.

- A. **Pre-Award Waivers or Modifications.** If an apparent low Bidder submits a request for waiver or modification of the DBE participation goal the contract will not be awarded until a determination is made by the Department. The Contractor must submit evidence of good faith efforts to meet the DBE participation goal. 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 that the Bidder may take in order to effect compliance. The Bidder will have ten 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 calendar day period, the Bidder will be deemed ineligible for award of the contract.

- B. 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. Additionally, the Department will 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. 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 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 20 calendar days of receipt of the request.

Requests for waiver or modification of the goal for DBE participation will be submitted to the Office of Business Development (OBD). The Department will evaluate the good faith efforts of the Contractor based on the direction provided by 49 CFR, Appendix A to Part 26-Guidance 23 Concerning Good Faith Efforts of the Federal Register.

Where deemed appropriate and/or required, the concurrence of the Federal Highway Administration will be sought.

- C. 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 Office of Equal Opportunity (OEO) within ten calendar days of the Contractor's receipt of the Good Faith Determination Committee's decision. The Appeal Panel's determination will be provided by certified mail to the Contractor within 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.

D. **Reports.** The prime Contractor is required to submit to the Engineer a complete MDOT Form 164 *Prime Contractor Statement of DBE Subcontractor Payments* once every three months according to the form schedule.

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

E. **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*.

Forms for Service Consultants

All forms are available on the Web at:

<http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm>

- Disadvantaged Business Enterprise (DBE) Participation – Service (MDOT Form 0182)
- Prime Consultant Statement of DBE Sub-Consultant Payments (MDOT Form 0165)
- Request to Replace a Disadvantaged Business Enterprise (DBE) (MDOT Form 0196)
- Service Consultant Good Faith Effort Application (MDOT Form 0180)
- Request for Proposal Cover Sheet (MDOT Form 5100D)