



## Michigan Department of Transportation Small Business Program

MDOT's Small Business Program (SBP) is designed to provide contracting opportunities for SBE firms on federal and state-funded transportation projects. The SBP program is designed to facilitate greater participation of small businesses in transportation-related work by helping to overcome barriers in state contracting.

The expansion of the current SBP would establish a construction and consultant/engineering SBP goal-setting process. This element would apply to both federally assisted and state-funded transportation projects (highway, transit and aviation).

This program will be implemented by the MDOT OBD upon receipt of approval from the Director's Executive Team and fully operational within three months after that.

Firms performing 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 USDOT operating authority through MDOT, unless they are working as a part of the Mentor/Protégé Program.

If you require assistance accessing this information or require it in an alternative format, contact MDOT's Americans with Disabilities Act (ADA) coordinator at [Michigan.gov/MDOT-ADA](https://www.michigan.gov/MDOT-ADA).

### Certification criteria

In order to participate in MDOT contracts as a certified SBE, vendors must:

- A. Fill out the SBE Certification Application form in its entirety, including all applicable sections, and any needed additional documentation. MDOT does not process partial or incomplete certification applications. Partially complete applications, or applications that are missing significant documentation, will be deemed not viable for processing and will be returned to the applicant.
- B. Once MDOT has determined that an application is complete, a certification analyst will be assigned to the application for a certification review. MDOT certification analysts will review all the applicable documentation, including documentation submitted to MDOT through executed contracts, prequalification applications and all other available materials. MDOT certification analysts may reach out to the applicant for additional documentation.

- C. Once the MDOT certification analyst has finished a review of the documentation, they will reach out to the firm to schedule an in-person interview at a time of convenience for both parties.
- D. MDOT certification analysts will conduct a compliance inspection and visit the firm's business locations and worksites, and interview all owners of the firm and key personnel. MDOT will inspect the facilities, inventory, equipment, payroll and any other factors necessary to render a certification decision.
- E. MDOT will make reasonable efforts to process SBE applications within 45 days of the receipt of a completed application.
- F. Applicant firms will cooperate with MDOT's investigation of the firm's certification application review, including but not limited to:
  - i. Firms must agree to cooperate fully with MDOT's investigation of their eligibility for certification as an MDOT SBE. MDOT will work with firms to establish reasonable expectations and deadlines for the submittal of required documentation; however, failure to adequately respond to requests for documentation or additional information may result in an application being deemed not viable for processing or a certification denial.
  - ii. If MDOT investigators obtain reasonable evidence that a firm is attempting to commit fraud, provide false or deliberately misleading information, or obstruct the certification investigation, the firm will be immediately deemed ineligible to participate in the MDOT SBP.
- G. SBE applicants carry the burden of demonstrating, by submitting documented evidence, that they meet all certification criteria for participation in the program, which includes the following:
  - i. Applicants must be a for-profit business principally located within the United States or territories.
  - ii. The applicant firm must be 51 percent or more owned and principally controlled by US citizens or legal permanent US residents.
  - iii. The applicant firm's five-year average gross receipts, including affiliates, cannot exceed the current size standards for participation in the Small Business Administration (SBA) SBP outlined in 13 CFR Part 121 in any of the NAICS codes awarded.
  - iv. MDOT will only certify firms that have demonstrated experience performing work within NAICS codes that are directly related to the kinds of work MDOT regularly utilizes on contracts.

MDOT will not issue SBE certifications to aspirational businesses, business plans or startup firms that have not performed any work at the time of application.

- v. Applicants must establish that they are fully independently owned and operated. MDOT will closely review a firms' personnel, management, financials, business relationships and agreements (whether written or otherwise) to determine whether there is good cause to believe the firm may not be independent of other firms that have a vested interest in MDOT contracts. MDOT will consider firms owned by trusts or other entities (e.g., subsidiaries) or other non-traditional ownership so long as the 51 percent owners can demonstrate, by documented evidence, that they ultimately own and control the firm.
  - vi. Applicants must be 51 percent or more owned by individuals who can demonstrate that the sum total of each owner's personal assets minus the sum total of their overall liabilities (an individual's personal total equity) does not exceed \$3.41 million. The calculation will not include the value of the assets that are owned by the applicant firm or the equity in the owner's primary residence.
- H. Certified SBE firms must perform the following actions in order to maintain their certification as an MDOT SBE:
- i. Applicant firms must notify MDOT in writing within 30 days of the material change of any circumstances that may affect a firm's certification eligibility. Failure to provide MDOT with written notice of a relevant material change may result in the denial or decertification/revocation of a firm's eligibility in the MDOT SBP.
  - ii. If a firm participates in an MDOT contract as an SBE, the firm must strictly adhere to all requirements by the SBP special provision.
  - iii. In order to remain eligible for continued participation in the MDOT SBE once certified, firms must submit to MDOT a Statement of Eligibility and Qualifications with the firm's most recent business income tax returns every year on the anniversary of their certification.

## **SBP methodology**

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

**Step 1:** Determine the base figure for the overall goal.

- Calculate the actual relative availability of SBEs to perform the types of federally assisted prime contract 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 contract and subcontract.
- Disaggregate the resulting weighted availability figures.

**Step 2:** Adjust the base figure using factors relevant to MDOT's marketplace. If the evidence does not suggest any adjustment is necessary, then no adjustment shall be made.

### **SBP bid letting information**

Please see the Special Provision for Subletting Contract Work to SBEs.

### **Project selection for projects let by MDOT**

MDOT's Contract Selection Team (CST) will review projects for SBP participation potential by designated individuals from areas of the department responsible for the execution and administration of contracts covered under this program. CST meets at least monthly to review project details and will assign an SBP participation goal to suitable projects, using the following criteria:

1. Projects will be run through a small business goal-setting algorithm.
2. If appropriate, the projects may be designated as set-aside projects where only SBP firms may submit quotes or bids.

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

## **SBP Goal-Setting Procedures**

MDOT's CST reviews all MDOT-let projects for SBE participation potential. CST members include individuals from MDOT's OBD, Finance and Administration, Highways, Transportation Planning and Aeronautics. The CST meets at least monthly.

1. Prior to project advertisement, which occurs approximately six weeks before each letting, the CST reviews the quarterly running tally. Then, AASHTOWare Project Preconstruction 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 SBE firms certified and/or prequalified to perform each work classification, and the primary business address of each SBE firm. Using a standard algorithm to calculate SBE availability and other relevant information, the committee sets the final goal.
  - a. A version of the Cost Summary specifically created for vendor use is available on the Letting link at [Michigan.gov/MUCP](https://Michigan.gov/MUCP).
  - b. SBE participation recommendations are tracked using MDOT's JobNet/SMART system.

Following each CST meeting, OBD program staff prepares meeting minutes that are electronically distributed to MDOT region representatives for review and comment. Regional comments are provided to the CST. Once the CST and region representatives agree with the SBE participation goals set on each project, the list is forwarded to the Contracts Services Division for project advertisement.

MDOT will not set DBE and SBP goals on the same project. In addition, the SBP is not a replacement to the DBE Program, it is in addition to the DBE program.

### **Composition of the CST**

The CST brings a wealth of expertise in areas such as project work to be performed, firsthand location knowledge, financial factors (such as performance incentive/disincentive), effects of night work, airport considerations, local agency considerations (for example county-wide performance), project materials needed, proportion of trucking needed, etc. This information is vital in determining appropriate goals and is not available through the algorithm.

**Note:** All CST members will have alternate representatives:

- OBD: Three representatives (including the team chair, Lansing Business and Workforce Engagement manager)
- Regions: Three representatives
- Finance and Administration: One representative
- Construction Field Services Division: One representative

- Transportation Planning: One representative
- Executive Office: One representative
- Aeronautics: One representative
- Highway Development: One representative

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 OBD administrator, to make final decisions on individual project goals.

### Setting goals on individual projects

The following is the algorithm used for computing project-specific SBE participation goals:

**Step 1:** Run “Cost Summary by Proposal” statements for each project to generate the engineer’s estimate, required work classifications and the percentage of total project for each work classification.

**Step 2:** Calculate the SBE multiplier using the following formula for all work classifications:

$$\frac{\text{Number of prequalified and certified SBE contractors, SBE truckers, and SBE suppliers per work classification}}{\text{Number of prequalified contractors, truckers, and approved suppliers per work classification (including SBEs)}}$$

MDOT will use suppliers and truckers per the MDOT Material Source Guide and census data. MDOT will update the sources indicated in Step 2 on a bi-annual basis.

**Step 3:** For each work classification compute:

$$\begin{aligned} &\text{Dollar value of work classification} \times \text{SBE multiplier (refer to Step 2)} \\ &= \text{SBE dollar value of work classification} \end{aligned}$$

**Step 4:** Compute the total project SBE participation goal for contractors:

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

The CST will determine non-mathematical considerations related to SBE participation goal designations (including comments regarding service firms, truckers, brokers and newly certified SBE firms), the political environment, relevant current SBE issues, relevant historical issues, relevant project location issues, relevant project scope issues, any additional considerations, comments regarding the algorithm, and others.

### **SBE 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 an SBE participation goal in advance of advertisement.

### **SBP set-asides**

MDOT-let projects will be designated as SBP prime set-aside projects when they meet selection criteria specified below. The MDOT CST with input from the responsible MDOT region office, 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 FTA.
- B. Projects must have at least three small businesses qualifying to bid as a prime contractor on each respective project.
- C. Projects must have small business contracting opportunities.
- D. Projects must have an estimated construction cost of \$1,000,000 or less; consulting contracts must have an estimated consultant cost of \$250,000 or less.

## **Efforts to obtain SBP participation**

Efforts to obtain SBP participation shall be intense, aggressive and sincere for the specific project and shall go beyond simple paperwork exercises. Efforts shall include written communication, personal contact, follow-up and, where appropriate, earnest negotiation with SBEs. MDOT expects all prime contractors bidding on a project with an SBP contract goal to be aware of the SBP participation requirement and to make timely and adequate efforts to use SBEs.

Types of actions MDOT will consider as part of the contractor's GFE to meet SBP participation goals will include:

- A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified SBEs that have the capability to perform the work of the contract.

This shall include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of notices of sources sought and/or requests for proposals, and written notices or emails to all SBEs listed in the state's directory of transportation firms that specialize in the areas of work desired (as noted in the SBP directory) and that are located in the area or surrounding areas of the project.

(2) The bidder shall solicit this interest as early in the acquisition process as practicable to allow the SBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder shall determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.

- B. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBP goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to promote SBP participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This must include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and promotes SBP participation.
- C. Providing interested SBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- D. (1) Negotiating in good faith with interested SBEs. It is the bidder's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of SBEs 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 SBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a bidder's failure to meet the contract SBE goal as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make GFES.

Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

- E. (1) Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

The contractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union versus non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient GFE is the rejection of the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement SBE at the original price is not alone sufficient to support a finding that GFEs have been made to replace the original SBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make GFEs to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote.

- F. Making efforts to assist interested SBEs in obtaining bonding, lines of credit or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested SBEs 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 SBEs.

Bidder's efforts consistent with these guidelines need to be documented and provided to MDOT no later than five days from bid opening.

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.

Assistance provided cannot affect the SBE's independent actions on this project or violate Contract Compliance Monitoring (CCM) rules.

# **Contractor's good faith effort (GFE)**

## **Pre-award good faith efforts**

If an apparent low bidder or quoter is unable to fulfill the SBP 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 low bidder or quoter must submit the Contractor's Good Faith Efforts Form (MDOT Form 2668) and supporting documentation.

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 an SBE. MDOT expects all prime contractors who are bidding on a project with an SBP contract goal to be aware of the SBP participation requirement and to make timely and adequate efforts to solicit SBEs.

Requests shall be reviewed by the GFE Committee within 20 business days of receipt of a complete GFE application package. The apparent low bidder or quoter will be notified of the committee's determination by email. Incomplete requests will be returned.

A pre-award GFE request may be withdrawn prior to a determination without penalty if the apparent low bidder or quoter obtains sufficient participation to meet the SBP participation goal.

## **Composition of the GFE committee**

- Section Manager, OBD (chair).
- Engineer of Highway Development or designee.
- Engineer of Highway Delivery or designee.
- Contract Services Division administrator or designee.
- Construction Field Services administrator or designee.
- One Region Engineer or designee.
- Goals Specialist, OBD

Two-thirds of the members/representatives must vote in order to have a quorum and conduct business. Committee members may submit their decision and any additional questions or comments electronically. Final GFE decisions require consenting votes from at least four committee members.

The GFE applicant will be notified of the investigator assigned to the review to address any questions or concerns prior to receiving a determination. When required, the committee may meet with the bidder/quoter to ask additional questions.

The committee will consider the merit of the request, the sufficiency of the evidence and the documentation supporting the request prior to making a decision.

### **GFE reconsideration request**

Contractors or consultants whose request for waiver or modification of the SBP participation goal has been determined insufficient may appeal the decision or be deemed ineligible for the award of the contract.

Written requests for reconsideration must be submitted to the OBD administrator within three business days of the contractor's receipt of the GFE Committee's decision.

The reconsideration decision will be provided by the OBD. Decisions are administratively final.

### **Post-award good faith efforts**

If during the course of completing an awarded MDOT project a contractor finds themselves unable to fulfill their SBP participation requirements, they may submit a GFE request. To request a post-award modification request, the contractor must submit a completed Contractor Good-Faith Efforts (SBE) form (MDOT Form 2668) and supporting documentation. The contractor must submit evidence of GFEs to meet the SBP participation goal and include proof that on the date the contractor became aware that the SBP goal would not be met, the amount of contract work remaining was carefully reviewed to identify other work that could be subcontracted to SBE firms. Post-award requests must be submitted within 14 days of the contractor being made aware of their inability to meet the SBP participation, per the instructions on the MDOT form.

Only GFE investigators may request additional documentation to clarify or supplement information provided by the prime contractor or consultant.

If the GFE Committee determines the contractor demonstrated sufficient GFE to achieve the goal, the department will modify the goal as requested. If the department denies the request or modifies the goal in a manner other than what was requested, the department will notify the contractor by email within five business days of receipt of the request.

### **Termination**

The prime contractor must not terminate an SBE subcontractor, or any portion of its work listed on Form 2668, without providing the SBE with proper notification, including its good cause reasons and five days in which to respond.

The prime contractor must concurrently provide a copy of this notification to the project engineer and the OBD at [MDOT-SBP@Michigan.gov](mailto:MDOT-SBP@Michigan.gov) per the instructions listed on MDOT Form 2672. This includes but is not limited to any reduction or underrun in work listed for an SBE, or instances in which a prime contractor seeks to perform work originally designated for an SBE subcontractor with its own forces or those of an affiliate, a non-SBE firm or with another SBE firm.

SBE firms can be terminated or replaced for good cause only with prior approval by MDOT Form 2672. In all cases, SBEs must be given written notice, which includes the contractor's intent to request to terminate and/or substitute and the reason for the request with a copy of the written notice to MDOT, and provide five business days to respond prior to Form 2672 being sent to the project engineer for approval. The project engineer will then send the form and all supporting documentation to the OBD at [MDOT-SBP@Michigan.gov](mailto:MDOT-SBP@Michigan.gov) for review and approval.

Good cause includes:

- SBE fails or refuses to execute a written contract;
- SBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the SBE firm to perform its work of the subcontract results from the bad faith or discriminatory action of the prime contractor;
- SBE fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements;
- SBE becomes bankrupt, insolvent or exhibits credit unworthiness;
- SBE is ineligible to work on federally assisted contracts because of suspension and debarment proceedings;
- SBE is determined by MDOT to not be a responsible vendor;
- SBE voluntarily withdraws from the project and provides written notice to MDOT of its withdrawal;
- SBE is ineligible to receive SBP credit for the type of work required;
- SBE owner dies or becomes disabled and is unable to complete the work; or
- Other documented good cause that MDOT determines to require the termination of the SBE firm.

### **SBE substitution**

Primes are required to make a GFE to substitute an SBE that is unable to perform with another SBE to perform at least the same amount of work under the contract as the

SBE that was terminated to the extent needed to meet the contract goal. If the substitute subcontractor is an SBE, they must be included on an updated SBE Participation form (MDOT Form 2668) and submitted to the project engineer and Contract Services Division for approval prior to starting work. Include any supply forms (Form 2670) as necessary.

Before the identified substitute SBE(s) can begin work:

1. The SBE Removal/Substitution Request Form (MDOT Form 2672) must be approved by the project engineer and OBD, and
2. The Contractor Good Faith Effort Form (MDOT Form 2668 and 2668D) for the substitute SBE firm(s) must be submitted and approved by Contract Services Division.
  - a. If a substitute SBE is performing supply work, Form 2670 must be included with Form 2668 and 2668D.

If written approval by MDOT, using Forms 2672 and 2668 (as applicable), is not granted, the prime contractor shall not be entitled to any payment or credit toward a contract goal for work or material committed or originally contracted to the SBE firm.

## **Compliance and performance for the MDOT Small Business Program**

It is proposed that the SBP be implemented on projects in accordance with all existing MDOT performance provisions and criteria in place.

### **Contract Compliance Monitoring (CCM)**

MDOT and recipient agencies are required to perform CCM for SBEs on all projects, contracts, subcontracts, purchase orders or other transactions with MDOT. Additional information regarding CCM can be found in the [MDOT Construction Manual](#). The procedures in this construction manual apply to all MDOT and local agency projects that include participation of a certified SBE

An SBE may be removed from a project or lose some or all of its eligibility to participate as an SBE if it fails to perform its contract/subcontract/project work independently and in a commercially useful or viable manner.

Prime contractors are also subject to sanctions if they are responsible for an SBE's failure to perform in a commercially useful or viable manner.

In order to perform in a commercially useful and viable manner, an SBE must:

- A. Be responsible for execution of the work of the contract and carry out its responsibilities by performing, managing and supervising the work involved.
- B. Not be limited to that of an extra participant in a transaction, contract or project through which funds are passed to obtain the appearance of SBE participation.
- C. Perform at least 50 percent of the total cost of its subcontract with its own workforce.

The following describe possible SBE CCM violations:

### **Management**

- Supervision of the SBE's employee(s) is performed by another contractor or personnel associated with another company.
- The SBE's superintendent is not a regular full-time, exclusive employee of the SBE.
- The SBE doesn't have a subcontract, purchase order or other contractual document.

### **Workforce**

- Movement of SBE employees to/from other contractors.
- Employee(s) paid by another contractor.
- Employee(s) working for the SBE and another company.

### **Materials**

- Materials for the SBE are ordered and/or paid for by another contractor.
- Joint (two-party) checks are sent directly to SBE suppliers without the knowledge or consent of the SBE.
- Materials or supplies to be obtained by the SBE are delivered to, billed to or paid for by another contractor.

### **Performance**

- SBE firm work is being done jointly by the SBE and another contractor without an MDOT-approved mentor/protégé agreement in place.
- The work to be performed is outside of the SBE's known experience or capability (SBE certification/prequalification categories).
- The SBE only performs work without a subcontract, purchase order or other signed contractual document.

**Note:** Not every red flag means there is a CCM violation. However, notice of red flag(s) should be documented and reported to OBD at [MDOT-CCM@Michigan.gov](mailto:MDOT-CCM@Michigan.gov).

## CCM reviews and outcomes

MDOT field staff (which includes but are not limited to inspectors, technicians, engineers and CCM compliance staff) conduct field monitoring of contractors to assure that SBE firms perform CCM and that work committed to SBE companies is performed by said companies. This is accomplished using [Form 2671 \(Contract Compliance Monitoring \(CCM\) Reviews\)](#) on all projects.

In many cases, construction staff will need to reference the SBE commitment information to ensure that all companies are reviewed. Completed 2671 forms are stored at their respective project office and, when applicable, in MDOT's electronic project management database, ProjectWise.

At the completion of the project, the construction/project engineer will certify that all SBE firms were monitored for contract compliance. This certification will be noted on Form 1105 (Final Estimate Package Memo).

Investigations of SBE firms that may not be performing independently in a viable, compliant manner are conducted based on field monitoring or receipt of a third-party complaint.

Failure to attend a conference may result in further action as indicated in the SBP Special Provision and SBP Procedures.

- A. The prime contractor is responsible for notifying the project engineer and OBD immediately if they have evidence that an SBE may not be performing independently in a viable, compliant manner. The prime contractor will be determined to have a deficiency in SBE participation corresponding to the dollar value of the SBE's work that did not meet CCM requirements.
- B. The violation will be reported to the Contract Performance and Compliance Review Team, and according to its procedures they will review the violation and decide the next steps.
- C. Serious violations or evidence of SBE program fraud may also be referred directly to the MDOT Prequalification Committee for sanction, per the Administrative Rules Governing the Prequalification of Bidders for Highway and Transportation Construction Work.

## **Counting SBE participation toward contract goals**

When an SBE participates in a contract, only the value of the work actually performed by the SBE is counted toward SBE goals. The following guidelines detail what can be counted:

- A. Count the entire amount of that portion of a construction contract (or other contract not covered in B) that is performed by the SBE's own forces. Include the cost of supplies and materials obtained by the SBE for the work of the contract, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE subcontractor purchases or leases from the prime contractor or its affiliate).
- B. When an SBE subcontracts part of the work of its contract to another SBE, the value of the subcontracted work may be counted toward SBE goals.
- C. Deduct for material and work subcontracted to non-SBEs.

## **SBE credit and CCM**

Count expenditures to an SBE contractor toward SBP goals only if the SBE is performing independently in a viable, compliant manner on that contract. If a firm is not currently certified as an SBE with MDOT at the time of execution of the subcontract, the firm's participation cannot be counted toward any SBP goals.

If the SBE firm is decertified during the life of the contract, the recipient may continue to count the portion of the decertified firm's performance on the contract remaining after the certifier decertified it toward the contract goal if a prime contractor has executed a subcontract with the firm or the recipient has executed a prime contract with the DBE that was later decertified.

An SBE contractor's work cannot be counted toward a prime contractor's final compliance with its SBP obligation until the SBE has been paid in full for the work performed.

## **SBE payment**

Reporting is required when the prime contractor makes payments to any SBE (sub-subcontractors, suppliers, truckers, etc.) at any tier. The contractor is required to submit payments to subcontractors and all SBEs on the project in the MDOT-approved electronic reporting system in accordance with the contract.

## **SBE suppliers**

Count expenditures with SBEs for materials or supplies toward SBP goals as provided in the following:

**Manufacturer:** A manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When an SBE makes minor modifications to the materials, supplies, articles or equipment, the SBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

**Regular Dealer:** A regular dealer is a firm that owns (or leases) and operates a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities and regularly sold or leased to the public in the usual course of business.

Items kept and regularly sold by the SBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.

To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

An SBE may be a regular dealer in bulk items (gravel, for example) without owning and operating a place of business if the firm both owns and operates the distribution equipment used to deliver the products.

An SBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items.

**Broker:** Packagers, brokers, manufacturers' representatives or other entities that arrange, facilitate or expedite transactions are not regular dealers.

Count expenditures with SBEs for materials or supplies toward SBP goals as provided in the following:

- A. If the materials or supplies are obtained from an SBE **manufacturer**, count 100 percent of the cost of the materials or supplies.
- B. If the materials or supplies are purchased from an SBE **regular dealer**, count 60 percent of the cost of the materials or supplies (including transportation costs).
- C. With respect to materials or supplies purchased from an SBE that is neither a manufacturer nor a regular dealer (broker), count the entire amount of fees or commission charged that you deem to be reasonable, including transportation charges for the delivery of materials or supplies. Do not count any portion of the cost of the materials and supplies themselves.
- D. MDOT determines the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer, distributor or a transaction facilitator) on a contract-by-contract basis.

### **Guidance for SBE participation as suppliers**

The successful bidder/prime contractor is responsible for compliance with the governing SBE Special Provision included in each MDOT project proposal. Prime contractors are to make every effort to ensure that arrangements and practices on the project are in line with the SBP regulations.

SBE-certified suppliers must comply with all requirements and specifications outlined in MDOT's Materials Source Guide. This manual is available on [MDOT's Materials Source Guide \(MSG\)](#).

To count SBE supplier participation toward project goals, the following criteria must be met:

- A. The SBE must directly negotiate (i.e., receiving price quotes, agreeing to pricing and ordering of materials) with their supplier(s) for the materials they are providing for the project. The prime contractor is not to negotiate on behalf of the SBE with the SBE's supplier. SBEs that act as regular dealer-bulk items will need to provide information on their delivery equipment and accounts with their suppliers.
- B. The SBE must arrange for the delivery of materials it supplies for the project. Documentation of the SBE's delivery of materials (such as equipment information, BOLs, delivery tickets, load tickets, invoices, bank statements, etc.) must be maintained by the SBE and submitted if requested by MDOT.
- C. The SBE may use leased equipment 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 contractor (or any affiliate of the prime contractor) for whom the SBE is supplying the project's material. The SBE must be able to supply all lease agreements upon request by MDOT.

- D. SBEs must pay their suppliers with their own funds. The prime contractor is not to pay the SBE's suppliers directly for the materials the SBE is designated to supply. Payments made by SBEs for material they purchase must come from their own independent bank accounts. An SBE may not acquire material using funds from bank accounts belonging to or shared with the prime contractor.
- E. No sales between the prime contractor and any of its affiliates via the SBE are to be counted toward the project SBP goal.
- F. Any joint check arrangement must be pre-approved by MDOT before the arrangement or transaction takes place. Requests must be made via the Application to Use Joint Checks (MDOT Form 0183). A joint check is a two-party check between a subcontractor, a prime contractor and a materials supplier. Joint checks are used to guarantee payment to the supplier for materials used by the subcontractor.
- G. Verification of Regular Dealer-Bulk Petroleum Suppliers: Upon first receipt of a proposed transaction that includes an SBE acting as a regular dealer-bulk item (supplying petroleum products or liquid asphalt), MDOT will obtain from the SBE a completed MDOT Form 0192 (Petroleum Company Account(s) Information and Liquid Asphalt Cement Tractors and Trailers Information) and all supplemental documentation to ensure:
  - i. The SBE owns its own delivery/distribution equipment and has valid lease agreements in place (if supplementing its own delivery/distribution equipment).
  - ii. The SBE has accounts and lines of credit with the suppliers from which it purchases the materials it is supplying on the project.

The SBE may provide a completed MDOT Form 0192 at any time and in anticipation of acting as a regular dealer-bulk item; however, MDOT may request an updated Form 0192 and/or supplemental documentation at any time.

- A. **Pre-award approval:** Prime contractors will submit for review the SBE Supplier Participation Affidavit (MDOT Form 2670) for approval along with the SBE Participation Form (MDOT Form 2668). OBD staff will make every effort to complete the review of the affidavit and make a determination within five working days. This review includes:

- i. Determining that the prime contractor has selected an eligible SBE. This is done by comparing the MDOT work code(s) and NAICS code(s) listed in the proposed arrangement with the MDOT work code(s) and NAICS code(s) assigned to the SBE. (Contract Services and OBD both perform this.) The SBE must be SBE-certified in the type of work requested for SBP credit.
  - ii. OBD staff will cross-check the SBE's file and participation in other projects to determine that the SBE is not over its distribution capacity or credit limit.
  - iii. OBD staff may request a purchase order to be submitted with each project, post-award and prior to delivery.
  - iv. OBD staff will ensure that an anticipated date of transaction with the SBE is included in the affidavit the prime contractor submits.
  - v. If a license or certification is required for the product and/or service to be provided on the project, the SBE must hold that license and/or product certification to perform a CCM.
- I. **Follow-up review:** OBD staff may request additional information to verify whether a CCM was performed on a project. SBE regular dealers-petroleum suppliers will be required to complete an MDOT questionnaire (MDOT Form 0194) regarding SBE supplier activities on the project. OBD staff will contact the SBE 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 SBE. The questionnaire is to be returned to OBD within 10 days. OBD staff will provide the project engineer/project office/field staff with all documents on file necessary to complete a CCM review on MDOT Form 2671.

All forms are [available online](#).

### **Use of joint checks to guarantee payment for materials and supplies**

With prior approval, a joint or two-party check between contractors and a materials supplier that 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 \(Form 0183\)](#) is available online.

An acceptable joint-check arrangement must include the following:

- A. The prime contractor/payor cannot require the subcontractor to use a specific supplier
- B. The subcontractor is more than an extra participant in releasing the check to the Supplier.

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

If you require assistance accessing this information or require it in an alternative format, contact the Michigan Department of Transportation's (MDOT) Americans with Disabilities Act (ADA) coordinator at [Michigan.gov/MDOT-ADA](https://www.michigan.gov/MDOT-ADA).